

**EXPLANATORY MEMORANDUM TO THE
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT
PROCEDURE) (AMENDMENT) (ENGLAND) ORDER 2005**

2005 No. 2087

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order amends the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419) for the purpose of implementing certain provisions of the Planning and Compulsory Purchase Act 2004.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Planning and Compulsory Purchase Act 2004 received Royal Assent on 13 May 2004 and is being implemented in progressive stages. Section 43 (insofar as it relates to the power to decline to determine subsequent applications for planning permission or listed buildings consent), section 44 (major infrastructure projects), section 51 (duration or permission and consent), section 54 (duty to respond to consultation) and paragraph 16(4) of Schedule 6 (regional planning bodies to be statutory consultees) come into force on [] (see the Planning and Compulsory Purchase Act 2004 (Commencement No.5 and Savings) Order 2005 (S.I. 2005/)).

4.2 The Town and Country Planning (General Development Procedure) Order 1995 (“the 1995 Order”) sets out the procedure to be followed by local planning authorities and the Secretary of State in granting planning permission (see section 59 of the Town and Country Planning Act 1990).

4.3 Section 44 of the 2004 Act inserts new sections 76A and 76B into the Town and Country Planning Act 1990. They allow the Secretary of State in relation to England to call in any application for planning permission or an application for the approval of a local planning authority required under a development order, if he thinks that the development to which the application relates is of national or regional importance. In such cases the applicant is required to prepare an economic impact report. Section 76A(5) provides that the content and form of such reports must conform with requirements set out by the Secretary of State in a development order. Article 3 of the Order inserts

a new article 4B and Schedule 4A into the 1995 Order and provides among other things for the contents of economic impact reports, timing and publicity.

4.4 Section 54 of the 2004 Act introduces a requirement that those persons or bodies which are required to be consulted by the Secretary of State, the National Assembly for Wales or a local planning authority, as the case may be, before the grant of any permission, approval or consent under the planning Acts must respond to consultation requests within a prescribed period. Article 6 of the Order inserts new article 11A and 11B into the 1995 Order - setting out which consultation requirements the duty to respond applies to, timing and the information to be included. Article 11A(2) requires consultees to respond within 21 days (or any longer period which has been agreed). Article 11B imposes requirements for consultees to submit annual reports to the Secretary of State on their compliance with the duty to respond.

4.5 Paragraph 16 of Schedule 6 to the 2004 Act amends Schedule 1 to the Town and Country Planning Act 1990 (which is concerned with the distribution of functions of local planning authorities) to take account of regional planning bodies established by Part 1 of the 2004 Act. Paragraph 16(4) substitutes a new paragraph 7 in Schedule 1. It provides that a local planning authority must not determine an application for planning permission in certain circumstances unless they have consulted the regional planning body or county planning authority and the period prescribed by development order has elapsed. Article 5 of the Order substitutes a new article 11 into the 1995 Order which provides that the prescribed period is 21 days.

4.6 To ensure consistency with the provisions described in paragraphs 4.4 and 4.5, articles 10, 12 and 13 of the 1995 Order are amended so that the existing consultation periods are extended from 14 to 21 days.

4.7 This Order is linked with the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005 (S.I. 2005/) which sets out the rules to be followed at any inquiry to which section 76A of the Town and Country Planning Act 1990 applies (see paragraph 4.3 above).

5. Extent

5.1 This instrument applies in relation to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 These proposals and the accompanying draft legislation were consulted on in the consultation paper issued on 30 November 2004 - "Changes to the development control system".

7.2 The legislative background for **Economic Impact Reports for major infrastructure projects** is contained in paragraph 4.3.

7.3 Investment in major infrastructure, like airports and reservoirs, is essential to continued economic growth. It was considered that the process for making planning decisions about these projects takes too long is expensive and is highly adversarial. Changes to the process for handling major infrastructure projects (MIPs) were sought. The policy follows on from consultation undertaken in 2001 which produced the MIPs 2002 Rules¹. Further changes to the procedure, proposing Parliamentary approval of projects, were outlined in the Green Paper², but removed following the Select Committee on Procedure's opposition to the proposal in July 2002 (First Special Report - Major Infrastructure Projects: Proposed New Parliamentary Procedures³).

7.4 The proposal to speed up the inquiry process on major development projects by enabling concurrent inquiry sessions to be held was taken forward instead and ultimately provided for through section 44 of the 2004 Act. During the passage of the Bill an amendment was made at House of Lords Consideration of Commons Amendments⁴ stage which requires the applicant to prepare an economic impact report (EIR) if the Secretary of State calls in an application for planning permission or an application for the approval of a local planning authority required under a development order, if he thinks that the development to which the application relates is of national or regional importance.

7.5 The consultation paper sought comments on the draft proposed form and content of an EIR and the draft guidance provided and posed three questions.

7.6 The consultation elicited 55 responses to the EIR section from individual companies, local planning authorities, environmental groups, planning associations and advisory bodies and public sector bodies. 66% of the responses either positively supported the proposals or had no adverse comments on them.

7.7 Of the remainder most made suggestions about how engagement with the process might be improved such as by changing the guidance. A more detailed analysis of responses is available on the Office's website⁵.

¹ The Town and Country Planning (Major Infrastructure Projects Inquiries Procedure)(England) Rules 2002 (SI 2002 No. 1223)

² *Planning: Delivering a Fundamental Change*, DTLR 2001

³ <http://www.publications.parliament.uk/pa/cm200102/cmselect/cmproced/1031/103103.htm>

⁴ [HOL Hansard 26 April 2004 cols 599-603]

⁵

http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplate/odpm_index.hcst?n=6974&l=2

7.8 We considered the suggestions for changes as a result of the consultation responses but did not deem it necessary to make any changes apart from correcting some minor typographical errors and omissions. We have also made some other minor drafting and technical changes since the consultation.

7.9 Paragraph 4.4 sets out the legislative background for the **duty to respond to consultation**.

7.10 There has been some concern that the planning system was sometimes slowed down by the time taken by statutory consultees to provide advice on the application they are consulted on. Although local authorities were able to determine an application after 14 days, they would, in practice, generally have been unwilling to do so without advice from statutory consultees.

7.11 This measure, therefore, introduces a duty to respond to such consultation within 21 days in an effort to help prevent delay in determining applications. However, it is recognised that a 21 day period may not be appropriate for all applications - particularly those more complex applications that require a longer period of time to consider and therefore consultees can agree different periods where appropriate. As part of this measure there is also a requirement for consultees to produce an annual report on their performance in meeting this time limit to the Secretary of State. In addition, a minor amendment is made so that where there is a duty to respond the local planning authority can only determine an application after 21 days.

7.12 Consultation on these proposals formed part of the paper referred to in paragraph 7.4 above. There was broad support for what the measure was seeking to achieve with 48 respondents supporting the duty to respond and only 1, local authority, response opposing its introduction.

7.13 There was a similar level of support for the desire to try and align the response and decision periods at 21 days. However, a number of statutory consultees expressed concern that the one month period for preparing and submitting an annual report on their performance against this duty was insufficient. On balance, these concerns seem legitimate and the original proposals have been amended so as to allow a three month period for submission of the report after the end of the reporting year. A fuller analysis of responses can be found on the Office's website as mentioned in paragraph 7.7.

7.14 The legislative background for making **regional planning bodies statutory consultees** is outlined at paragraph 4.5. Regional planning bodies were established through Part 1 of the 2004 Act. In particular, the regional planning body must keep the Regional Spatial Strategy and matters affecting development in its region under review.

7.15 This measure will ensure that the regional planning body will be consulted on any development which would be of major importance for the implementation of the Regional Spatial Strategy or a relevant regional policy, because of its scale or nature or the location of the land. In addition, each

regional planning body may notify local planning authorities in writing of other descriptions of development in relation to which it wished to be consulted. It is expected that these descriptive criteria will be linked to development likely to impinge on the implementation of the regional spatial strategy or a relevant regional policy, but they may also cover other types of development. It is not expected that there will be significant numbers of planning applications on which they will wish to be consulted. As with other statutory consultees, the amending Order provides that they will also be required to respond to consultation within 21 days.

7.16 Consultation on this proposal, which was part of the consultation package referred to in paragraph 7.4, showed no significant opposition to this measure.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum covering Major Infrastructure Projects economic impact reports. The powers in relation to the duty to respond to consultation and regional Planning Bodies as statutory consultees do not have a significant impact and therefore RIAs have not been prepared for these.

8.2 We would expect the impact of an economic impact report (EIR) for a major infrastructure project to be beneficial to the public, i.e. LPAs and others with an interest such as regional and local interest groups, national environmental bodies, other stakeholder interests, local communities and individual members of the public. An EIR should improve scope for public participation and by helping to reduce the time spent on a potentially long and drawn out inquiry process.

8.3 The duty to respond will only require the public bodies who are statutory consultees to respond within 21 days (unless a different time period has been agreed). This should not be an additional burden as these bodies already respond to such consultation and this power merely requires them to do so within a set time. Although they will also be required to submit an annual report of their performance to the Secretary of State this will prove a minimal burden as consultees will generally already collate figures on their performance for internal management purposes.

8.4 It is also expected there will not be a significant burden placed upon regional planning bodies by making them statutory consultees given the limited number of applications they will be consulted on.

9. Contact

Shayne Coulson at the Office of the Deputy Prime Minister (Tel: 020 7944 8716 or e-mail: shayne.coulson@odpm.gsi.gov.uk) can answer any queries regarding the instrument.

Final RIA

1. The Planning and Compulsory Purchase Act 2004 - S.44 Major Infrastructure Projects economic impact reports

2. Purpose and intended effect of measure

(i) The objective

The requirement to prepare an economic impact report (EIR) for a planning application major infrastructure project when it is called in by the Secretary of State is intended to provide better and earlier information and the expected benefit of a reduction in inquiry time on such schemes.

The report should set out the estimated economic impact of a MIP (or options for a MIP) on the economy at 3 spatial scales: sub-regional (e.g. Local Authority area); regional; and UK.

Consideration should generally be restricted to impacts, positive and negative on employment, investment and/or Gross Value Added at these spatial scales. However, where wider economic welfare impacts such as travel time savings or amenity impacts, are likely to be important, these should also be assessed.

(ii) The background

Section 44 of the Planning and Compulsory Purchase Act 2004 inserts new sections 76A and 76B in Town and Country Planning Act 1990. Section 76A (5) requires an applicant for planning permission which has been called in by the Secretary of State as a major infrastructure project (MIP) under subsection (2) to prepare an economic impact report (EIR) which must be in such form and contain such matter as is prescribed by development order to be submitted to the Secretary of State. Section 76A (6) requires the Secretary of State to prescribe by development order the requirements of subsection (5) as to publicity and notice.

The introduction of new inquiry procedure rules for major infrastructure projects was amongst the package of measures announced by the Secretary of State in July 2002 and are a direct result of the part which addressed the intention to streamline the handling of planning decisions on major infrastructure projects of national and regional significance. New rules based on the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002 (SI 2002 No. 1223), will be introduced but with specific improvements which will allow for the possibility of concurrent inquiry sessions. There is a recognised and commonly accepted need for the processing of MIP applications to be speeded up.

(iii) Risk assessment

The current arrangements for handling major national infrastructure projects through public inquiries can impose significant costs on developers and central and local government, including the Planning Inspectorate, and also on voluntary groups and others. The costs involved include the costs of delay (including the perpetuation of uncertainty and property blight for local people) and deferral of the benefits of proposed investment. Also the costs of preparation for and participation in the inquiry itself such as provision of accommodation for the inquiry, the Inspector and the secretariat, reproduction of documents, participants' travelling and overnight costs, loss of earnings, preparation of cases (including professional advice) and legal representation). At the moment, delays in the handling of cases in the latter stages can very often be tracked right back to lack of sufficient consultation or inadequate information being provided at a much earlier stage, and the Office is keen to rectify this undesirable state of affairs.

If the new requirement is not adopted, then major participants and the lead inspector would find it more of a challenge to narrow down and concentrate on the issues needing examination. This would in part be due to the delays caused by questions being asked that would otherwise be addressed in an EIR.

3. Options

Two options were identified

Option 1 – leave the present system as it is, i.e. not to enable Section 76A (5) of the Town and Country Planning Act 1990 which requires an applicant for planning permission which has been called in by the Secretary of State as a major infrastructure project under subsection (2) to prepare an economic impact report (EIR) which must be in such form and contain such matter as is prescribed by development order to be submitted to the Secretary of State. The provision is inserted by section 44 of the Planning and Compulsory Purchase Act 2004 which inserted new sections 76A and 76B in Town and Country Planning Act 1990.

Option 2 – implement the provisions in section 44 of the Planning and Compulsory Purchase Act which allows the Secretary of State to call in for his determination a development which he thinks is of national or regional importance and which will trigger the requirement to prepare an EIR.

Other options for this proposal (e.g. guidance and incentives) were not considered workable since the section in the Act, that this consultation is based on, are regulatory provisions and so do not allow us the flexibility to consider other possibilities.

4. Benefits

- Economic

The estimation of economic impact in the report should separately identify the costs and benefits and positive and negative impacts falling on communities at each spatial scale, as well as identifying the net overall impact. For each spatial scale, impacts should be estimated net of displacement, substitution, leakage, multiplier effects and deadweight (what would have happened in the absence of the project). The assumptions underlying the analysis should be clearly stated and key uncertainties highlighted.

The requirement for the applicant to prepare an EIR is intended to benefit everyone involved in a MIP application. More efficient procedures are in the interests of applicants, objectors and other interested parties, as prompter decisions will reduce delay and uncertainty and, potentially, the eventual costs of deciding a scheme. Furthermore, from the point of view of the wider public interest, quicker MIP decisions are likely - if approval is given - to lead to quicker delivery of infrastructure projects that can be important to the economic well-being of the country.

Clearly on most large or above average sized projects the promoter will have prepared an economic feasibility study of some sort. The availability of an EIR at an early stage of a project should help the developer particularly where there are likely to be a number of groups interested in the project. The carrying out of full and meaningful consultations with interested bodies and persons *before* an application is made is likely to be of crucial importance later on to the efficient and effective processing of an application. It can help to allay unnecessary fears and suspicions that can arise from inadequate information about a project, and can lead to modifications being made to a scheme, before it is submitted, in order to meet objections. This can in turn substantially reduce the amount of opposition to a scheme when an application is made, and reduce delays while negotiations take place post-application.

It is also considered that if an applicant were to provide as part of the application a concise and non-technical statement of the aims of the project, it would help members of the public readily understand what the overall purpose of the scheme is which would also help to remove unnecessary fears and objections. An economic impact report would clearly add to understanding the aims.

Any extra work on the part of promoters earlier on in the process by requiring more research and consultation in preparation for an application will come through as savings later on in the process. The requirement to complete an EIR will be expected by major applicants and they can factor in the administration costs of this when budgeting. The certainty of this will be a benefit to applicants compared with the uncertainty of more difficult to predict costs of delay associated with any inquiry process nearer the end of the project.

We recognise that the requirement to prepare an EIR can only be activated if the Secretary of State calls in the application. However, it may be that, as has

been suggested earlier, the developer will be able to provide either a draft EIR or economic feasibility study at the application stage. In this scenario we would expect the provision of early information to be of benefit to the LPA and others with an interest such as regional and local interest groups, national environmental bodies, other stakeholder interests, local communities and individual members of the public. This should help reduce the time spent on a potentially long and drawn out inquiry process. It may also improve scope for public participation overall and save time at the inquiry by making it possible for parties to identify issues of common ground that do not need to be raised at the inquiry. The inquiry inspector could therefore concentrate on specific areas identified upon which there is disagreement.

- Social

The estimation of economic impact in the report should separately identify the benefits, positive and negative, falling on communities.

- Environmental

An EIR will provide an earlier more detailed economic assessment of the impact of a MIP on the environment. We anticipate that for most MIPs there will probably also be a requirement for an accompanying environmental impact assessment.

5. Costs

- Economic

We recognise that applicants likely to be affected by this requirement will have to have a degree of certainty about whether they will need to prepare an economic impact report. There are a few issues that need to be addressed about the possible triggers for an EIR to be prepared. The relevant provision relating to the requirement to prepare an EIR happens at the stage where the Secretary of State has decided to call in the application. There is a presumption that the developer will be aware that the particular project is likely to be one that will constitute a MIP and be called in by the Secretary of State as a MIP. That places the developer in a potentially awkward situation about whether or not to prepare an EIR.

The provision of fuller information up front is intended to reduce the need for applicants to spend a lot of time later on in responding to queries from the relevant Government Department, or in clarifying matters with objectors. It is considered that the requirement to prepare an EIR should bring significant net cost benefits to applicants when account is also taken of the potential cost benefits of quicker decisions. This cannot, however, readily be quantified as the size and nature of MIP cases, and hence the impacts of the requirement, will vary from case to case.

Costs to applicants

It is recognised that the requirement to prepare an EIR is liable to result in some extra compliance cost for applicants at the front end of the application process, as they will need to provide fuller information at the early stage.

A possible cost associated with the requirement is that introducing an EIR may delay applications coming forward. MIPs are likely to be long-term, multi-faceted projects. At the time of submitting an application the applicant may not necessarily have a full appreciation of the various impacts that may occur. They could therefore resist submitting applications until they had a fuller appreciation of the project. However, the risk of this is likely to be small as the type of applicants who will be completing EIRs should have the resources at their disposal to overcome this and will probably face more pressing constraints on their development than an EIR.

Costs to LPAs

Possible costs associated with the requirement may be the resource required to assess the quality of the information provided and of responding at public inquiries.

We would welcome any alternate views of the costs-benefit analysis from recipients of this partial RIA and the associated consultation. Their views would then be taken into account before final decisions are taken.

- Environmental

We anticipate that for most MIPs there will most likely be a requirement for an accompanying environmental impact assessment.

6. Equity and Fairness

There are no significant race, health or rural impacts. There are positive impacts such as improved consultation and information being provided to rural communities by the process. The MIPs Inquiry Procedure Rules are intended to help speed up the Inquiry process. The requirement to provide an EIR should provide an earlier more detailed economic assessment of the impact of a MIP falling on communities at each spatial scale e.g. on the Local Authority area, regional and national. This would be of benefit to environmental groups and local communities.

7. Consultation with small business: the Small Firms' Impact Test

We have consulted the Small Business Service and they concur with our initial analysis that the requirement to produce an economic impact report is unlikely to affect small businesses. This is because we take the view that only a major developer is likely to submit a planning application of such a scale that it would be classified as major infrastructure project. Notwithstanding, as part of the formal consultation we would very much welcome representations from small businesses and their representative bodies, particularly if they think they are likely to be adversely affected.

8. Competition Assessment

The costs of preparing an EIR will have a greater impact on small firms than on large ones. However, it is highly unlikely that anything other than a major developer or business will put forward a planning application on the scale of an expected MIP. This may be particularly relevant where the costs are not directly related to output: for example, where there has to be a large capital investment, or where administrative costs are substantial.

9. Enforcement and Sanctions

It is the Secretary of State who will direct under this legislation that an EIR must be provided when a planning application for a MIP is called in. The Secretary of State through the Planning Inspectorate and the inspector appointed to conduct the public will enforce the legislation. There are no criminal sanctions for non-compliance but non-compliance may lead to a delay in the inquiry timetable and process. This will not only affect the applicant but may lead to claims for costs against the applicant from other parties at the inquiry.

10. Monitoring and Review

The policy division in conjunction with the Planning Inspectorate will monitor the efficiency of the new arrangements over a five year period. Given the infrequency with which major infrastructure projects of national and regional importance come forward, it is thought that to monitor over a shorter period would not be useful. As part of the monitoring, the impact on resources over time for the different parties will be assessed and, if necessary, changes will be considered.

11. Consultation

i) Within government

As noted above, the requirement to prepare an EIR when a MIP application is called in was brought about by an amendment to the Planning and Compulsory Purchase Act 2004 during the latter stages of its consideration in Parliament. Other Government Department's with an interest in major infrastructure projects e.g. DfT and DTI will be consulted. In addition, the Council on Tribunals and other bodies will be consulted and their comments taken into account.

ii) Public Consultation

The consultation paper to which this RIA is being annexed is being sent to a very wide range of bodies with an interest in the MIPs process, and they are being given 3 months in which to comment. These include major developers, their agents and representative bodies, various national associations and a

range of other bodies in both the public and private sectors as well as all local planning authorities in England.

The consultation elicited 55 responses to the EIR section from individual companies, local planning authorities, environmental groups, planning associations and advisory bodies and public sector bodies. 66% of the responses either positively supported the proposals or had no adverse comments on them.

Of the remainder most made suggestions about how engagement with the process might be improved such as by changing the guidance. An analysis of the consultation responses can be found on pages 9-10 of the summary at: http://www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_037950.pdf

12. Summary and Recommendation

Option 2 is the preferred option since it would provide interested parties with the economic justification for a MIP under consideration and would also save time at the inquiry. It would be in the interest of the inspector(s) and all parties taking part in the inquiry if an economic impact report is available at as early a stage as possible in the proceedings preferably at application stage. We have recommended, in the draft article, that the EIR should be submitted to the Secretary of State within 15 weeks of the date of the request. This should mean that the report would be available in time for the [first] pre-inquiry meeting.

We recommend option 2. We would expect the benefits, identified by having an EIR available, to result in time savings in the lead up to application stage and again during the inquiry stage and that this will benefit all parties. We would expect the overall benefits to outweigh any costs arising. The requirement in the GDPO to prepare an EIR will be referred to in the accompanying Circular guidance to the new MIPs Rules.

The inquiry procedure rules are intended to simplify and streamline the inquiry process for a major development whilst allowing full participation in the process by all parties. We anticipate that the introduction of an EIR as part of the process may better inform parties at the inquiry and thus contribute to a quicker inquiry process which will benefit all in terms of costs and time spent.

13. Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

SignedYvette Cooper.....

Date **25th July 2005**

Yvette Cooper, Minister for Housing and Planning, Office of the Deputy Prime Minister