

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (MAJOR INFRASTRUCTURE
PROJECT INQUIRIES PROCEDURE) (ENGLAND) RULES 2005

2005 No. 2115

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

2. **Description**

2.1 These Rules prescribe the procedure to be followed in connection with local inquiries relating to applications for planning permission or for the approval of a local planning authority required under a development order held by the Secretary of State in England, where he thinks that the development to which the application relates is of national or regional importance.

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

3.1 None.

4. **Legislative Background**

4.1 Section 9 of the Tribunals and Inquiries Act 1992 enables the Lord Chancellor, after consultation with the Council on Tribunals, to make rules regulating the procedure to be followed in connection with statutory inquiries held by or on behalf of Ministers.

4.2 These Rules re-enact, with amendments, the Town and Country Planning (Major Infrastructure Projects Inquiries Procedure) (England) Rules 2002 (S.I. 2002/1223) in consequence of changes made by the Planning and Compulsory Purchase Act 2004. Section 44 of the 2004 Act inserted new sections 76A and 76B into the Town and Country Planning Act 1990. Those sections make provision for handling applications for planning permission and certain other approvals for major infrastructure projects (i.e. ones of regional or national importance). Among other things, sections 76A and 76B allow the Secretary of State to call in the application and provide for the appointment of additional inspectors to hold concurrent sessions into specific aspects of the proposal. These Rules are linked with the Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2005 (S.I. 2005/2087).

4.3 The Town and Country Planning (Major Infrastructure Projects Inquiries Procedure) (England) Rules 2002 will continue to apply in relation to

inquiries for those projects listed in the Schedule to the Rules but which are not treated as a major infrastructure project for the purposes of section 76A.

5. Extent

5.1 This instrument applies in relation to England.

6. European Convention on Human Rights

No statement is required.

7. Policy background

7.1 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. These Rules follow on from consultation undertaken in 2001 which produced the 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). 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 implemented by section 44 of the Planning and Compulsory Purchase Act 2004. This necessitated changes to the inquiry procedures⁴ for handling applications for major development primarily the need to appoint a lead inspector and additional inspectors where concurrent sessions are to be held (rules 4 to 8). Rules 9 and 10 provide for the procedure to be followed at pre-inquiry meetings and publicity following such meetings.

7.2 A 13-week consultation⁵ on the proposed inquiry procedure rules began in October 2003. The consultation elicited 27 responses from individual companies, local planning authorities, environmental groups, planning associations and advisory bodies and public sector bodies. The responses are summarised below with the number of respondents shown in brackets

- no comments (4) with (2) unable to comment until an example has been tested

¹ The Town and Country Planning (Major Infrastructure Projects Inquiries Procedure)(England) Rules 2002

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

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

⁴ The *draft* Town and Country Planning (Major Infrastructure Project Inquiries Procedure)(England) Rules 2005

⁵ The *draft* Town and Country Planning (General Development Procedure)(Amendment)(England) Order 2004 & the *draft* Town and Country Planning (Major Infrastructure Project Inquiries Procedure)(England) Rules 2004, ODPM 2003

- comments in favour and support of the proposals for concurrent inquiry sessions (16)
- comments in support of the proposal but with suggested minor rule changes and related clarification to guidance (5)

7.3 ODPM 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. ODPM also suggested some other minor drafting and technical changes which have been made since the consultation.

7.4 The Regulatory Impact Assessment will be available on the ODPM website when the Rules have been made.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Julian Wheeler at the ODPM Tel: 02079443936 or e-mail:
julian.wheeler@odpm.gsi.gov.uk can answer any queries regarding the instrument.

FINAL RIA

1. The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005

2. Purpose and intended effect of measure

The objective

These rules are based on the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002 (SI 2002 No. 1223), but with specific improvements which allow for the possibility of concurrent inquiry sessions. The lead inspector with major participants will decide whether such an approach is suitable. The introduction of concurrent inquiry sessions is intended help to speed up the inquiry process.

(ii) The background

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 is 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.

Major infrastructure projects (MIPs) were defined in the 2002 rules but the definitions have been dropped from the 2005 Rules. Under the new proposals as set out in section 44 of the Planning and Compulsory Purchase Act 2004 the Secretary of State may call in for his determination a development which he thinks is of national or regional importance. The changes brought about by these new rules are proposed to speed up the inquiry process for such projects or developments. Once an application has been called in the new rules will allow a degree of front loading of the procedures at pre-inquiry stage to enable major participants and the lead inspector to narrow down and concentrate on the issues which will need examination once the inquiry starts thus reducing overall the time taken at inquiry. At the same time, the proposals are framed to safeguard the quality of the decision-making and to ensure that there is adequate opportunity for the public to make their views known.

(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 and deferral of the benefits of proposed investment (including the perpetuation of uncertainty and property blight for local people) and 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).

3. Options

Two options were identified

Option 1 – continue to leave the present system as it is, i.e. little or no improvement in the time taken to process major infrastructure projects through the planning inquiry system under the existing definitions (in the 2002 Rules) of a potential major infrastructure project.

Option 2 – implement new rules following on from the proposals announced in the Planning Green Paper that resulted in s44 of the Planning and Compulsory Purchase Act. That provision allows the Secretary of State to call in for his determination a development which he thinks is of national or regional importance, and also makes provision for concurrent inquiry sessions to be held if necessary which would streamline the processing of a major infrastructure project inquiry.

4. Benefits

- Economic

Where the Secretary of State has identified an application for planning permission as a MIP [i.e. one which he thinks is of national or regional importance that he intends to call in for his determination] he will require an economic impact report (EIR) to be submitted. The economic impact 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.

The separate requirement for the applicant to prepare an EIR is intended to benefit everyone involved in a MIP application. This should have a positive impact on the way in which these Rules and, as a result, a MIP inquiry is progressed. More efficient procedures as set out in these Rules 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 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 would expect the provision of early information to be of benefit to the local planning authority (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 benefits , positive and negative, falling on communities because of the Rules should be separately identified in the economic impact report which the First Secretary of State will require once a project necessitating this procedure has been identified by him.

- Environmental

The Rules will not have an adverse impact on environmental considerations. It is expected that the requirement for an EIR to be provided for a MIP should allow the Inquiry process to progress more smoothly with all parties having a clearer understanding of their role in the inquiry process. We anticipate that for most MIPs there will probably also be a requirement for an accompanying environmental impact assessment.

5. Costs

- Economic

Costs to applicants

It is recognised that 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. This is liable to result in some extra 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 may be associated with the requirement to prepare 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 Local Planning Authorities

Possible costs associated with the requirements of these Rules may be the resource required to assess the quality of the information provided and of responding at public inquiries. However, we have not received any indication from LPAs of how much these costs might be.

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

The MIPs Inquiry Procedure Rules are intended to help speed up the Inquiry process. We have consulted the Small Business Service and they concur with our initial analysis that the Rules are 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.

8. Competition Assessment

The Rules 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

The Inquiry procedure Rules will only come into play once the Secretary of State has called in a planning application for a MIP. 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, these Rules have arisen because of the specific arrangements necessary to the MIPs inquiry procedure as a direct result of the requirements implemented by s44 of the Planning and Compulsory Purchase Act 2004. Other Government Department's with an interest in major infrastructure projects e.g. Department for Transport and Department for Trade and Industry have been consulted. In addition, the Council on Tribunals and other bodies have been consulted and their comments taken into account.

ii) Public Consultation

A 13-week consultation⁶ on the proposed inquiry procedure rules began in October 2003. The consultation elicited 27 responses from individual companies, local planning authorities, environmental groups, planning associations and advisory bodies and public sector bodies. The responses are summarised below with the number of respondents shown in brackets.

- no comments (4) with (2) unable to comment until an example has been tested;
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- comments in support of the proposal but with suggested minor rule changes and related clarification to guidance (5).

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.

12. Summary and Recommendation

Option 2 was the preferred option. It would provide the opportunity for concurrent inquiry sessions where necessary to take place which could save parties time at the inquiry.

We recommended option 2. We would expect the benefits of the new Rules to result in time savings during the inquiry stage because of the potential use of concurrent inquiry sessions and that this will benefit all parties. We would expect the overall benefits to outweigh any costs arising. In addition the provision of an EIR as required by s44 may also contribute to a quicker inquiry process.

The inquiry procedure rules are intended to 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