



Ministry of Housing,
Communities &
Local Government

Ministry of Housing, Communities and Local Government

Post Implementation Review of The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 No. 2055

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of Her Majesty**

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Ministry of Housing, Communities and Local Government



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Statutory review of regulations

Infrastructure Planning (Changes to, and Revocation of,
Development Consent Orders) Regulations 2011



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Introduction

1. The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (the 2011 Regulations)¹, as amended², form part of the Government's Nationally Significant Infrastructure Planning (NSIP) regime. This report has been prepared by the Ministry of Housing, Communities and Local Government to set out how the statutory requirement for the review³ of the 2011 Regulations has been met. This is firstly through a comprehensive review of the NSIP regime review undertaken in 2013-14 (see paragraph 10 below). This resulted in the Government making a number of de-regulatory reforms to the regulations in 2015. Secondly, a review of application fees for the NSIP regime has resulted in further amendments to the 2011 Regulations in 2017 (see paragraphs 11 -16 below).
2. The extent to which the 2011 Regulations, as amended in 2015, fulfil their objectives (see paragraph 10 below) has been reviewed. In addition to this, the extent to which the objectives are being achieved within a system of low regulation has also been subject of review.
3. In light of the review process, and de-regulatory reforms in 2015, MHCLG is satisfied that the 2011 Regulations, as amended, provide robust and proportionate procedures for applications for both material and non-material changes to DCOs, enabling legitimate rights to be heard.
4. Through the review process that led to the 2015 amendments, the Government has sought to ensure that these objectives are achieved with a system that imposes less

¹ [SI 2011 No. 2055](#)

² The 2011 Regulations have been amended by:

- the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 ([SI 2012 No.635](#))

- the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders)(Amendment) Regulations 2015 ([SI 2015 No.760](#)); and

- the Infrastructure Planning Fees (Amendment) Regulations 2017 ([SI 2017 No.314](#)).

³ Under regulation 71(2) of the 2011 Regulations.

regulation. MHCLG will continue to keep the procedures under review as further applications are considered.

Background on the NSIP regime

5. The 2011 Regulations form one part of the legislation that underpins the NSIP regime that was established by the Planning Act 2008 (the 2008 Act). This is the bespoke planning regime for nationally significant infrastructure projects in the fields of energy, transport, water, waste water and waste.
6. The Planning Inspectorate, an executive agency of MHCLG, manages the processing and examination of applications to the regime for proposed new projects. Following examination, a report is provided to the Secretary of State who takes the final decision on whether to grant consent for a project. Where consent is granted, this is in the form of a Development Consent Order (DCO). With the first consent issued in 2011, a total of 72 proposals for nationally significant infrastructure projects have now been determined through the regime.

Background on the 2011 Regulations

7. Schedule 6 of the 2008 Act sets out a framework for how a DCO may be changed or revoked after it has been made. The 2011 Regulations, made under powers in Schedule 6, set out the detailed procedures for such changes. For 'material changes' to, or the revocation of, a DCO, the 2001 Regulations (when they came into force in 2011) provided broadly comparable processes to those for considering and determining a new application for a DCO, including requiring an examination to be held. A lighter touch process was required for changes considered to be 'non-material'. Further details of the procedures set out by the 2011 Regulations, when they came into force, are provided at **Annex A**. No applications have yet been made for a material change to a DCO. Twenty-six applications for non-material changes have been received, of which seventeen have been determined. All have been granted.

Objectives to be achieved by the 2011 Regulations

8. The Government's objectives for the 2011 Regulations were set out in the impact assessment produced for their development⁴. The objectives were:
- i. to set out procedures to be sufficiently robust to ensure the potential impacts of proposed changes to DCOs can be thoroughly considered
 - ii. to enable legitimate rights to be heard but not be onerous so as to be disproportionate
 - iii. to ensure that consideration of applications for such changes be limited to issues raised about the proposed changes, and not allow for a re-opening of any debates about the rest of the DCO, and
 - iv. that fees should be payable to recover, as far as possible, the costs incurred to examine the applications.
9. It is considered that these remain the appropriate objectives against which the 2011 Regulations can be assessed as part of their review. The requirement for the review of these regulations has been met by the review of NSIP regime outlined at paragraph 10 and the review of fees outlined at paragraphs 11-16 below.

Review of the regulations

Review leading to the 2015 process reforms

10. The Government carried out a comprehensive review of the wider NSIP regime in 2013-14, five years after its establishment. This considered the processes set out in the 2011 Regulations for applications for changes to DCOs. Following a 2013 discussion paper on NSIP reform and a subsequent 2014 technical consultation focussed on the 2011 Regulations, the Government reformed the regulations in 2015 through the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) (Amendment) Regulations 2015⁵ (the 2015 Regulations). These de-

⁴ The impact assessment can be viewed here:
http://www.legislation.gov.uk/ukia/2011/354/pdfs/ukia_20110354_en.pdf

⁵ Please see [SI 2015 No. 760](#)

regulatory changes included removing the need to hold an examination in respect of an application for a material change to a DCO where it is not necessary, and reducing statutory timescales related to these applications. Responding to issues raised at consultation, the Government also published supporting practice guidance in 2015. This review process, together with the subsequent reforms, is described in further detail at **Annex B**.

Review and amendment of fees

11. In addition to the setting out the procedures for seeking changes to DCOs, the 2011 Regulations prescribe the fees charged to developers in relation to such applications⁶. Prior to 2017, these had not increased since the NSIP regime was introduced.

Fees for applications for material changes to DCOs

12. An application for a material change to a DCO may follow broadly similar procedures for its processing and examination by the Planning Inspectorate as an application for a new DCO (although, as noted in paragraph 7 holding an examination is no longer mandatory). Therefore both have similar fee structures. The Government has recently reviewed the level of fees for applications for new DCOs and, given the similar application processing and examination procedures, fees for applications for material changes to DCOs were included in the review.

13. Evidence from determined applications has shown that the fee levels originally set when NSIP regime was set up meant only 60% of the costs of providing the service were recovered by the Planning Inspectorate in relation to applications for new DCOs⁷. The same can be assumed for the original fee levels for the parallel procedures for applications for material changes to DCOs set in the 2011 Regulations.

⁶ For non-material changes, regulation 5 requires that a single fee is paid of £6,891. The fee must be paid at the same time that an application is made. For material changes, Schedule 2 sets out a fees structure where fees are required to be paid at different stages of the process to consider an application.

⁷ See the Explanatory Memorandum for the 2017 Regulations for further information:
http://www.legislation.gov.uk/ukxi/2017/314/pdfs/ukxiem_20170314_en.pdf

14. To ensure that applicants continue to receive a robust service, the Government therefore increased fees for both applications for new DCOs and applications for material changes to DCOs by 50% from 6 April 2017. The Infrastructure Planning Fees (Amendment) Regulations 2017⁸ (the 2017 Regulations) amend Schedule 2 of the 2011 Regulations, to provide the increase in relation to applications for material changes to DCOs. From 2018, the fees also increase with inflation. These increases are intended to ensure that full cost recovery is achieved for applications for material changes to DCOs in line with the principles of managing public money and the original objectives for the 2011 Regulations.
15. The Government will keep application fees for material changes to DCOs under review to ensure they are kept to a minimum while achieving full cost recovery. As amended by the 2017 Regulations, the 2011 Regulations now require that a formal review of fees for material changes to DCOs is published at least every five years.

Fees for applications for non-material changes to DCOs

16. In respect of applications for non-material changes, the relatively low single fee to be paid for such applications reflects the lighter touch process in place for handling these applications. As the regime matures and further applications for non-material changes are considered and decided, the Government will keep this fee under review to ensure it is set at a level to achieve full cost recovery, in line with the original objectives for the 2011 Regulations.

Conclusions of the review

17. Following the transparent and comprehensive review of processes provided for the 2011 Regulations described at paragraph 10 and Annex B, it is considered that the 2011 Regulations, as amended in 2015, meet objectives i-iii set out at paragraph 8. In light of the review process, and de-regulatory reforms in 2015, MHCLG is satisfied that

⁸ [SI 2017 No.314](#)

the 2011 Regulations, as amended, provide robust and proportionate procedures for applications for both material and non-material changes to DCOs, enabling legitimate rights to be heard. It is also considered that the 2011 Regulations ensure that the consideration of applications does not allow the re-opening of wider issues related to a DCO, beyond the changes being sought.

18. Through the review process that led to the 2015 amendments, the Government has sought to ensure that these objectives are achieved with a system that imposes less regulation. MHCLG will continue to keep the procedures under review as further applications are considered.

19. In respect of objective iv relating to the recovery through fees, as far as possible, of the costs incurred to examine applications, the 2017 Regulations have amended the fee levels set out in Schedule 2 of the 2011 Regulations for applications for material changes to DCOs. This is to ensure full cost recovery can be achieved. These fee levels will continue to be kept under review. The fee for non-material changes will also be kept under review as further applications are considered through this lighter touch process.

Annex A: procedures provided by the 2011 Regulation for changes to DCOs when they came into force

Non-material changes

1. The procedures for making non-material changes to DCOs are set out in Part 1 of the 2011 Regulations. When the regulations (as amended by the Localism Act 2011(Infrastructure Planning) (Consequential Amendments) Regulations 2012/635) came into force they set out the following main stages:
 - the application is submitted to the Secretary of State, together with a fee;
 - the application is publicised by the Secretary of State through a notice in a local newspaper in the area where the infrastructure project is situated, as well as in any other publication that the Secretary of State considers necessary. Anyone can make representations on the application during a period set out in the notice (a minimum of 28 days);
 - the Secretary of State must also consult persons listed in the 2011 Regulations by sending them a copy of the notice that is published;
 - after the end of the period for making representations, and having considered any representations received, the Secretary of State can make a decision on the application.

Material changes

2. The process for applications to make a material change to a DCO is set out in Part 2 of the 2011 Regulations. When the regulations (as amended by the Localism Act 2011(Infrastructure Planning) (Consequential Amendments) Regulations 2012/635) came into force, they required an applicant to go through broadly the same process as if they were making an application for a new DCO. The main steps were:

- a pre-application consultation process;
- a duty on the applicant to publicise the proposed application;
- before making an application, the applicant must have regard to relevant responses;
- an application is submitted to the Secretary of State, together with the relevant fee;
- the applicant is required to publicise and give notice of the application to specified persons and invite representations to be made on the application;
- an Examining Authority will then be appointed to hold an examination into the application for change, and provide a report and recommendation to the Secretary of State;
- the Secretary of State will then make a decision on the application for a material change.

Annex B: process leading to the 2015 reform of the regulations

2013-14 Review of the Nationally Significant Infrastructure Planning regime

December 2013 discussion paper

1. The Government began its first wide-ranging review of the NSIP regime five years after its establishment through the 2008 Act. Views were sought on options for change for different parts of the regime through a consultation discussion document in December 2013⁹. This sought views specifically on the processes set out in the 2011 Regulations for making changes to DCOs after consent is granted (although no applications for changes to DCOs had been sought at that point). It noted views of stakeholders that the process for such changes would be potentially burdensome and time consuming, and proposed some specific potential reforms¹⁰.

April 2014 Government response

2. The Government response¹¹, published in April 2014, reported widespread support for a more proportionate process for handling changes to the DCOs, while recognising the need to maintain a proportionate level of consultation. Many consultees also said that clear guidance should be provided on what constituted a non-material change, as opposed to a material change to a DCO. The 2011 Regulations set out different processes for material and non-material changes, but did not define these terms.
3. The Government committed to revise procedures for both non-material and material changes. There was also commitment to produce supporting guidance which would cover, among other matters, whether a change is material or non-material.

⁹ The discussion document can be viewed [here](#)

¹⁰ These included: - streamlining of consultation and notification arrangements for non-material changes
- possible distinction between minor and more significant material changes.

¹¹ The Government response can be viewed [here](#).

Technical consultation on the procedures provided by the 2011 Regulations

July 2014 consultation paper

4. The Government then developed detailed reforms for making improvements to the 2011 Regulations procedures for making both material and non-material changes to DCOs. These were published as part of a wide ranging technical consultation on planning in July 2014¹². The Government also reaffirmed its proposal to introduce supporting procedural guidance including on whether a change is material or non-material.
5. Proposed reforms included:
 - for proposed **non-material changes** making the applicant responsible for the publicity and consultation of applications rather than the Secretary of State
 - for proposed **material changes** providing discretion to determine an application on the basis of written representations without necessarily holding an examination (which, at that time, was mandatory), and reducing the statutory timescales for any examination and the determination of applications.

November 2014 Government response and subsequent amendments to the 2011 Regulations

6. The Government's response¹³ reported that 189 consultees had responded to the consultation. This included 28 developers and 37 trade associations or representative bodies. The Government committed to take forward all the proposed reforms in respect of the proposed non-material changes. In respect of material changes, the Government response also committed to take forward reforms to dispense with the need to hold an examination where it is not considered necessary, and to reduce the length of the statutory timetables. There was also a commitment to take forward the

¹² The technical consultation can be viewed [here](#). Proposals for improvements to the NSIP regime are set out in section 6.

¹³ The Government response can be viewed [here](#).

majority other proposed streamlining measures in respect of consultation and publicity of applications¹⁴.

7. The Government took forward changes to the 2011 Regulations through the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) (Amendment) Regulations 2015¹⁵ (the 2015 Regulations). The impact assessment¹⁶ of these regulatory changes shows that the impacts on business, in overall terms, are de-regulatory. The measures were to provide simpler procedures and potential savings in time taken for applications for changes to DCOs to be decided. The impact assessment was validated by the Regulatory Policy Committee.

Supporting practice guidance

8. The Government published new guidance on the procedures in the 2011 Regulations, as amended by the 2015 Regulations, in December 2015¹⁷. Reflecting consultees' responses to the consultations in 2013 and 2014, guidance is provided on the issue of whether a change is likely to be material or non-material.

¹⁴ An exception was the removal of a requirement for the applicant to publicise their application. This was not taken forward because of concerns raised by consultees that, together with proposals to remove the requirement for an applicant to produce a Statement of Community Consultation, there would be a risk that people who may wish to comment would be unaware that an application is being submitted.

¹⁵ Please see - [SI 2015 No. 760](#)

¹⁶ The impact assessment can be viewed [here](#).

¹⁷ The guidance can be viewed [here](#).