

## EXPLANATORY MEMORANDUM TO

### THE TOWN AND COUNTRY PLANNING (DETERMINATION OF APPEALS BY APPOINTED PERSONS) (PRESCRIBED CLASSES) (AMENDMENT) (ENGLAND) REGULATIONS 2008

2008 No. 595

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

#### 2. Description

2.1 The Regulations amend the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 to give appointed persons (planning inspectors) the power to determine additional classes of appeal instead of the Secretary of State.

2.2 The Regulations transfer jurisdiction to determine:

- appeals relating to buildings in receipt of grants under section 3A or 4 of the Historic Buildings and Ancient Monuments Act 1953;
- appeals relating to mineral permissions under the Environment Act 1995;
- appeals against refusal of hazardous substances consent; and
- appeals concerning tree preservation orders (including appeals under section 208 of the Town and Country Planning Act 1990 against notices to replace trees).

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

3.1 None

#### 4. Legislative Background

4.1 Paragraph 1 of Schedule 6 to the Town and Country Planning Act 1990 (“TCPA”) enables the Secretary of State to make regulations to allow various categories of planning and enforcement appeals to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State, unless she prescribes or directs otherwise. Similar provision is made, in respect of listed building appeals and hazardous substances appeals, by paragraph 1 of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) Act 1990 and paragraph 1 of the Schedule to the Planning (Hazardous Substances) Act 1990 respectively. All of these appeals are referred to in this Memorandum as “planning appeals”.

4.2 The main Regulations are the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 (S.I. 1997 No. 420) as amended by the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 2006 (S.I. 2006 No. 2227). In addition, regulation 8 of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (S.I. 1992 No.2832) prescribes appeals under section 106B TCPA, concerning the modification or discharge of planning obligations.

#### 5. Territorial Extent and Application

5.1 This instrument applies to England.

#### 6. European Convention on Human Rights

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

## **7. Policy background**

7.1 For the majority of categories of planning appeals, the Secretary of State for Communities and Local Government has powers to transfer the decision to a Planning Inspector but, for no obvious historical reasons, the Secretary of State does not have the power to do so for the categories of appeal set out in paragraph 2.2, except by making amending Regulations. There are two more categories of appeal for which primary legislation is required and a further category which depends on a future amendment to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999 No. 293). The government identified this problem in the Planning White Paper 2007<sup>1</sup> and indicated that it intended to rectify it.

7.2 The objective of the policy is to simplify the appeals process in order to speed up decisions, make more efficient use of resources and ensure that all decisions are taken at the appropriate level. There is no change to the Secretary of State's power to recover any planning appeal for her own consideration if she considers it appropriate.

7.3 A consultation exercise was undertaken between 13 August 2007 and 5 November 2007. The consultation paper was placed on the Departmental website, and e-mails/letters were sent to a large number of bodies with potential interests in the proposals, drawing their attention to it. 34 responses were received, all of which were broadly supportive of the proposals. A detailed Response document has been placed on the Departmental website.

## **8. Impact**

8.1 An Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector will be that there will be a saving where it will no longer be necessary for staff resources in Communities and Local Government to be used in revisiting the recommendations of Inspectors on any planning appeal unless the Secretary of State considers it appropriate to recover any particular case for her own decision for policy reasons. The staff resources spent on advising Ministers on relatively minor and uncontentious matters and subsequently writing the decision letters on such cases can then be used for more significant cases/other high priority work.

## **9. Contact**

Jean Nowak at the Department for Communities and Local Government Tel: 020 7944 3958 or e-mail: [jean.nowak@communities.gsi.gov.uk](mailto:jean.nowak@communities.gsi.gov.uk) can answer any queries regarding the instrument

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<sup>1</sup> The Planning White Paper: "Planning for a Sustainable Future" (ref: CM7120) is available from: <http://www.communities.gov.uk/publication/planningandbuilding/planningsustainablefuture>

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>CLG</b>	<b>Title:</b> <b>Impact Assessment of Regulations to secure the transfer of additional planning appeals to Inspectors</b>	
<b>Stage: IA</b>	<b>Version: v1</b>	<b>Date: 20 February 2008</b>
<b>Related Publications:</b> Consultation paper on Transfer of Appeals to Inspectors; Government Response to Consultation on Transfer of Appeals to Inspectors		

Available to view or download at:

Contact for enquiries: Jean Nowak

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### What is the problem under consideration? Why is government intervention necessary?

The problem is that there are some categories of planning appeals which have to be decided by the Secretary of State (SoS). For the majority of categories of appeals the SoS has powers to transfer the decision to the Planning Inspectorate, but for historical reasons this has not been extended to all types of appeal. It is more efficient for the Planning Inspectorate to decide those cases which do not raise significant wider policy issues as they have the appropriate expertise and their report to the Secretary of State forms the basis for her decision. Remedying this in some cases requires primary legislation, which is in hand in the current Planning Bill; but this Impact Assessment is solely concerned with those categories of appeals for which the Secretary of State already has the powers to make appropriate

### What are the policy objectives and the intended effects?

The policy objective of the Regulations is to simplify the appeals process by extending the range of categories of appeal that can be determined by Planning Inspectors. The ability of the Secretary of State to recover individual appeals will be maintained.

The intended effects are to speed up the decision-making process, make more efficient use of resources and ensure that all decisions are taken at the appropriate level.

### What policy options have been considered? Please justify any preferred option.

(i) to do nothing or

(ii) to make the appropriate adjustments to secondary legislation to facilitate the transfers.

The justification for the proposed action is to reduce the level of direct Ministerial involvement in the determination of planning appeals, thereby saving time and resources. Most of the cases which fall within the scope of the proposed Regulations are relatively minor in scale or significance so that the processes to which they currently have to be subjected are disproportionate to their policy implications.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** These Regulations, along with further Regulations which first require amendments to primary legislation (which is currently being sought in the Planning Bill) or amendments to the EIA Regulations, will be reviewed after 3 years.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

Iain Wright.....Date: 5<sup>th</sup> March 2008

## Summary: Analysis & Evidence

<b>Policy Option: ii</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  No additional costs as the Planning Inspectorate already considers these cases in reports to the Secretary of State, to recommend a decision.	
	One-off (Transition)	Yrs		
	£ 0	N/A		
	Average Annual Cost (excluding one-off)			
	£ 0	N/A	<b>Total Cost (PV)</b>	<b>0</b>
Other <b>key non-monetised costs</b> by 'main affected groups'				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  No one-off benefits. Impossible to quantify on-going benefits to CLG because this will depend on the number of relevant cases which arise each year and the amount of time which needs to be spent on them. These variables are likely to fluctuate from year to year and cannot be forecast with any degree of accuracy.	
	One-off	Yrs		
	£ 0	N/A		
	Average Annual Benefit (excluding one-off)			
	£ not known	10	<b>Total Benefit (PV)</b>	£
Other <b>key non-monetised benefits</b> by 'main affected groups'				
Benefit to appellants who would receive decisions up to 9 weeks earlier. Benefit to CLG that Ministers and staff could concentrate on major proposals with significant policy implications.				

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period	<b>Net Benefit Range (NPV)</b>	<b>NET BENEFIT (NPV Best estimate)</b>
22007/08	Years 10	£	£

What is the geographic coverage of the policy/option?	England
On what date will the policy be implemented?	06.04.08
Which organisation(s) will enforce the policy?	no enforcement
What is the total annual cost of enforcement for these organisations?	£ savings
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£
What is the value of changes in greenhouse gas emissions?	£ nil
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro      Small      Medium      Large
Are any of these organisations exempt?	N/A      N/A      N/A      N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of	£ N/A	Decrease of
	£ N/A	<b>Net Impact</b>
		£ N/A

Key:      Annual costs and benefits: Constant Prices      (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### **Proposal**

These Regulations, along with the further Regulations for which legislative cover is currently being sought in the Planning Bill and an amendment to the EIA Regulations which is due to be made in May 2008, will facilitate the transfer of decision making on all planning appeals to Inspectors except where, on an individual case by case basis, there are specific policy reasons for not doing so. This will ensure that all decisions are taken at the appropriate level. At present over 99% of all cases are transferred to Inspectors but, as a result of historical accident and oversights, there are a number of categories of appeals which cannot be transferred even though they are not of sufficient policy significance to merit the automatic reconsideration of the Inspector's recommendation by the Planning Central Casework (PCC) Team and submission to Ministers for decision.

### **Background**

The current system uses up staff resources within CLG which could otherwise be used for more significant cases/other high priority work. It also means that officials in PCC can sometimes be faced with working on types of cases for which they have no expertise as they relate to matters which do not arise very frequently and on which they are therefore heavily dependent on the report written by the Inspectors to recommend an appeal decision to the Secretary of State. Furthermore, it means that the appellants have to wait for a further period of approximately 9 weeks before receiving a decision (with potential opportunity costs caused by that delay).

### **Rationale for change**

The time and resource taken by an Inspector to write a report to the Secretary of State making recommendations on an appeal, as per the current system, is very similar to the time and resource required to write an actual decision letter as per the proposed system. However, under the current system, PCC are then required to analyse the Inspector's report, write a submission to Ministers and draft a decision letter. Savings in terms of time and resource can be made under the proposed system.

### **Objective**

The Regulations to which this Impact Assessment relates will simplify the process by which the following categories of appeal are determined:

- decisions on appeals relating to Listed Buildings in Receipt of Grant Aid;
- appeals under the provisions of the Environment Act 1995 against the determination of conditions for old mineral workings;
- appeals against refusal of hazardous substances consent); and
- Tree Preservation Order (TPO) appeals (including appeals under section 208 of the Town and Country Planning Act 1990 against notices to replace trees)

### **Options**

#### **Option i: Do Nothing**

Maintain the current process where some categories of appeals cannot be transferred to the Planning Inspectorate.

## **Option ii: Facilitate the Transfer of all Appeals Decisions to Inspectors**

Make the appropriate changes to primary and secondary legislation to enable all categories of appeals to be transferred to inspectors whilst maintaining the ability of the Secretary of State to recover appeal decisions where appropriate for policy reasons. (The Regulations to which this Impact Assessment relates represent the next stage of this task.)

### **Benefits and Costs**

#### **Sectors and Groups Affected**

- Communities and Local Government.
- The Planning Inspectorate.
- Appellants.

#### **Option i**

No new or additional costs or benefits have been identified under this option.

#### **Option ii**

##### **Benefits**

###### *Cost Savings to Communities and Local Government*

The PCC team will no longer have to deal with all appeals in the categories to which the new Regulations will relate, but only those specifically recovered by the Secretary of State. It is impossible to quantify these savings as the amount of staff-time required varies markedly from case to case and the number of cases arising in each of the relevant categories varies from year to year. The costs saving will be moderate as the numbers of cases in each of these categories per year are low, - never more than single figures. The gathering of evidence on exact number of cases per year and the staff time spent on each case would be disproportionate.

###### *The Planning Inspectorate*

No significant benefits – the workload per case will remain substantially the same.

###### *Time Savings to Appellants*

Appellants will get their decisions more quickly as these will be issued directly by the Planning Inspectorate without additional consideration by the Secretary of State. This could result in decisions being received up to nine weeks earlier.

##### **Costs**

No additional costs have been identified as PINS currently examine the case as part of their report to recommend a decision to the Secretary of State. It will typically take the same amount of time for an Inspector to write a decision letter as to write a report to the Secretary of State. The planning Inspectorate will have responsibility for sending the appeal outcomes to appellants. This is however now done by CLG and, as the Planning Inspectorate is an Agency of CLG, there will be no net effects from this.

##### **Specific Impact Assessments**

No specific assessment tests have been undertaken as we do not believe that the proposed changes would have any specific impacts on particular sectors of society. However, one of the purposes of the consultation exercise was to provide an opportunity for interested persons to produce evidence to the contrary. A specific question to that effect was included in the consultation exercise, but no such evidence was submitted.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No