

**EXPLANATORY MEMORANDUM TO**  
**THE INFRASTRUCTURE PLANNING (INTERESTED PARTIES AND**  
**MISCELLANEOUS PRESCRIBED PROVISIONS) REGULATIONS 2015**

**2015 No. 462**

**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. Purpose of the instrument**

2.1 This instrument relates to processes for granting development consent for nationally significant infrastructure projects under the Planning Act 2008 (“the Act”). It amends and simplifies the requirements for the form and manner in which representations must be made in order to be defined as “relevant representations” relating to an application for consent under the Act. It also amends the list of consent and license requirements which may be considered within a Development Consent Order granted under the 2008 Act with the prior agreement of a consenting body. This instrument consolidates three sets of major infrastructure regulations in line with the Government’s commitment on the Red Tape Challenge.

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

3.1 None

**4. Legislative Context**

4.1 The Planning Act 2008 governs the process for making an application for development consent for nationally significant infrastructure projects. This is primarily a written process whereby interested parties set out their objections or support for projects in written representations. Section 102 (4) of the Act provides the criteria for a representation to be considered relevant and the Infrastructure Planning (Interested Parties) Regulations 2010 (“Interested Parties Regulations”) prescribe the information which must be included within the form used to register this. As part of the ongoing effort to simplify the development consent order process, this instrument has the effect of reducing the amount of information required by this form.

4.2 Under section 120 of the Act, a Development Consent Order for a nationally significant infrastructure project can remove the need to obtain a number of consents that would otherwise be required for development, including planning permission, Green Belt consent, Listed Building consent and Scheduled Monument consent.

4.3 A Development Consent Order may also remove, on a case-by-case basis, the need to separately obtain other non-planning consents. This power is constrained by section 150 of the 2008 Act, which provides that certain prescribed consents can only be removed if the relevant consenting body agrees. These consents are listed in the schedule to the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 (“Miscellaneous Provisions Regulations”).

4.4 The Department for Communities and Local Government aims to simplify the process for obtaining development consent under the 2008 Act by removing three consents from the list in the 2010 regulations. This instrument implements that proposal by reducing the list of prescribed consents in respect of England. The number of prescribed consents for Wales will remain the same.

4.5 This instrument also implements the Red Tape Challenge proposal to merge and simplify major infrastructure regulations by revoking the 2010 Miscellaneous Regulations and the 2010 Interested Parties regulations and re-enacting them with the above amendments, providing one consolidated set of regulations.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England, Wales and Scotland in accordance with the scope of the Planning Act 2008 (section 240).

## **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 The nationally significant infrastructure planning regime was established by the Planning Act 2008. The regime provides that a developer wishing to construct a nationally significant infrastructure project must apply to the Secretary of State (through the Planning Inspectorate) for consent to do so. A feature of the system is an emphasis on the developer carrying out a good level of preparation and consultation, before an application is submitted.

### ***The Development Consent Order process***

7.2 There are clearly defined stages within the Development Consent Order application process. They are the pre-application, acceptance, pre-examination, examination, recommendation and decision stages.

7.3 At the pre-application stage, the developer is required to carry out a good level of consultation with prescribed consultees and the public on its proposals and prepare a robust Development Consent Order application.

7.4 At the acceptance stage, the Secretary of State makes a decision on whether an application should be accepted for examination.

7.5 The pre-examination stage is where the developer publicises the accepted application and asks prescribed parties and the general public to register to take part in the examination and submit their views (representations) on an application.

7.6 During the examination, those who have registered to take part in the examination submit further representations and other evidence either in writing or at hearings. All the representations and evidence is considered by the Examining Authority.

7.7 Following the examination the Examining Authority writes a report with a recommendation to the relevant Secretary of State who then makes a decision on whether the Development Consent Order should be granted.

7.8 A Development Consent Order incorporates separate consents (both planning and non-planning), required for a particular infrastructure project. Some of these consents may only be included in a Development Consent Order with the prior permission of the relevant consenting body. These consents are set out in the Schedule to the 2010 Miscellaneous Provisions Regulations.

### ***2014 Review of the Major Infrastructure Planning regime***

7.9 In 2014, a consultation reviewing the regime was undertaken and the Government's response announced a number of small improvements to reduce the list of non-planning consents which must be obtained outside of the Development Consent Order process, including changes to the three consents relating to discharge for works purposes and trade effluent which will be implemented by this instrument. These are for: (i) discharges to a watercourse when doing works (ii) discharges by water undertakers from operational works and assets; and (iii) notifications to the Environment Agency where special category effluent is to be discharged by a sewerage undertaker. A further seven consents will be streamlined in the next parliament.

7.10 The process for interested parties to register representations relating to applications for development consent for projects under the Act was not raised in the 2014 Review. However, it was later suggested to the Department by the Planning Inspectorate that the current relevant representation form was confusing, especially for members of the public unfamiliar with the process, and that this could deter someone from registering an interest in the application. This is significant because a person or organisation has to be formally recognised as an interested party before they can participate in the public examination of a project.

7.11 The current form with six separate questions is difficult to navigate and certain questions are seen as confusing. The Government has therefore sought to remove some of this prescription in order to simplify the form. This

instrument will now simply require a party to supply their name, address and telephone number and provide an outline of their intended representation in order to become an interested party. This should make it easier for people to make their views known about an application and ensure a fuller range of opinions are considered when an application is examined.

7.13 To meet the Red Tape Challenge commitment to merge and simplify major infrastructure regulations, rather than make separate amendments to the two existing statutory instruments, the opportunity has been taken through these changes to merge the provisions of the 2010 Miscellaneous Provisions Regulations with those of the 2010 Interested Parties Regulations into a single statutory instrument. This will further meet the Red Tape Challenge commitment to reduce the number of regulations which apply to major infrastructure projects and to simplify those consent processes.

## **8. Consultation outcome**

8.1 The changes made by this instrument in respect of consents that could be included in Development Consent Order were subject to consultation as part of the Government's 2014 Review of the Planning 2008 Act regime. Details of the review and the Government's response to it can be found at:

<https://www.gov.uk/government/consultations/reviewing-the-nationally-significant-infrastructure-planning-regime-a-discussion-document>

8.2 In addition, the Government also consulted on specific proposals on consents that could be included in Development Consent Orders as part of the technical consultation on Planning in Summer 2014. The consultation and response can be found at:

<https://www.gov.uk/government/consultations/technical-consultation-on-planning>

8.3 The consultation on streamlining consents delivered a good level of support for the proposal to streamline a further ten consents. Consultees suggested that this could be achieved by streamlining some consents within the Development Consent Order process itself and others within the new Environmental Permitting regulations being introduced between 2015 and 2017.

## **9. Guidance**

9.1 With regard to the option to address more consents within a Development Consent Order there has been no identified need for guidance. Therefore we have no plans to produce any guidance on this.

9.2 With regard to making representations, the Planning Inspectorate currently provides guidance to help parties complete the relevant representations form and the guidance for this will be amended to support the

revised form. The new form will be used for any applications which are submitted after 6 April 2015.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is expected to be beneficial. Developers can choose to address more consents within a single Development Consent Order without the need to seek prior agreement from the relevant consenting body. With regard to representations, an easier and clearer form for making representations will benefit anyone wishing to be involved in the development consent order process.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum for the measure that brings further consents within the Development Consent Order regime without the need to obtain agreement from the consenting body. This will be published alongside the Explanatory Memorandum on the OPSI website. An Impact Assessment has not been prepared for other elements of this instrument, which either replicate provisions in the existing instruments being revoked or are considered to be minor changes without any significant impacts or benefits.

## **11. Regulating small business**

11.1 The legislation applies to businesses of any size that might either submit an application for a Development Consent Order or who might wish to make representations on an application made for a Development Consent Order. However, the proposals set out in this instrument are not expected to have any negative impacts, or impose burdens, on business.

## **12. Monitoring and review**

12.1 The Government will continue to monitor the provisions of this instrument through engagement with key organisations using the nationally significant infrastructure regime. It will be reviewed as necessary as part of any wider reviews of the Planning Act regime that are undertaken.

## **13. Contact**

Andrew Maginn at the Department for Communities and Local Government, Tel: 030344 43101 or email: [Andrew.maginn@communities.gsi.gov.uk](mailto:Andrew.maginn@communities.gsi.gov.uk) can answer any queries regarding the instrument.