

EXPLANATORY MEMORANDUM TO
THE INFRASTRUCTURE PLANNING (CHANGES TO, AND REVOCATION
OF, DEVELOPMENT CONSENT ORDERS) (AMENDMENT) REGULATIONS
2015

2015 No. 760

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 amends The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011, which set out procedures for applications to make changes to, or to revoke, a Development Consent Order for a Nationally Significant Infrastructure Project under the Planning Act 2008. The amendments are being made to provide a more streamlined and proportionate processes for making such changes.

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

3.1 The JCSI reported the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 as requiring elucidation (see <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtstatin/214/21403.htm#a8>). This was on the basis that the term “linear” scheme in regulations 14 and 36 of those regulations needed definition. The Government has taken the opportunity in this instrument to make amendment to those regulations to address this issue.

4. Legislative Context

4.1 The Planning Act 2008 makes provision for Development Consent Orders, which grant consent for nationally significant infrastructure projects. Schedule 6 to the 2008 Act provides for applications to be made which change or revoke an existing Development Consent Order. Changes may be “non-material” or “material”. The Infrastructure Planning (Changes to, and Revocation of, Development Consent Order) Regulations 2011 (“the 2011 Regulations”), made under powers in Schedule 6, set out the procedures to be followed in respect of making and determining such an application.

4.2 The Infrastructure Act 2015 amended existing powers in Schedule 6 to the Planning Act 2008 allowing the Secretary of State to prescribe procedural requirements in respect of such applications. The changes made by the Infrastructure Act 2015 enable and facilitate some of the amendments now being made to the 2011 Regulations. The amendments to the 2011 Regulations are designed to provide a process for making an application to change or revoke a Development Consent Order that is more proportionate to the change being made.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales, and to Scotland for limited purposes 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. Decisions on infrastructure projects subject to the regime are taken by the Secretary of State and made through a Development Consent Order.

7.2 Where a change is required to a Development Consent Order after it has been made by the Secretary of State, or somebody wishes to apply to revoke an Order, a formal application is needed. The 2011 Regulations set out the procedures for amending (or revoking) Development Consent Orders. Separate procedures apply for applications to make a “non-material” change and for applications to make a “material” change or to revoke a Development Consent Order.

7.3 In 2013, the Government launched a review of the nationally significant infrastructure planning regime. A recurring feature of responses to the review was support for a more proportionate process for handling changes to Development Consent Orders. Many of the responses pointed to the fact that the procedure for making material changes to a Development Consent Order was effectively the same, and could take as long to process, as the initial application for development consent. Respondents were clear that a revised process that took account of the types of changes being proposed, and delivered these in a shorter statutory timescale than the current process, would be valued. In response to this, the Government issued a consultation paper in Summer 2014 with proposals to amend the procedures for making changes.

Non-material changes

7.4 The key amendment proposed in the consultation for non-material changes was to make the applicant responsible for publicising and consulting upon a proposed non-material change, rather than the Secretary of State. This would bring the process for making non-material changes in line with the process for material changes and applications for Development Consent Orders under the Planning Act 2008.

7.5 Consequent to this change, a number of other amendments were proposed to the 2011 Regulations. These included amending the publication and consultation provisions to ensure that these remained broadly in line with the requirements currently placed on the Secretary of State. For example, in addition to publishing a notice in one or more local newspapers, the applicant

will need to publish the notice in any other publication necessary to ensure that notice of the application is given in the vicinity of the land where development is proposed. The applicant will also need to provide a statement to the Secretary of State with their application on how they have met the requirements relating to publicity and consultation.

Material changes

7.6 The consultation proposed a number of changes to the requirements placed on applicants before an application for a material change is made. These included requiring applicants to consult those parties who could be directly affected by a proposed change, rather than every person who had been consulted about the Development Consent Order the applicant is seeking to change. In addition, it proposed removing the need to produce a statement of community consultation setting out how the applicant would undertake consultation. The consultation also suggested removing the need for an applicant to publicise a proposed application before any application is made to the Secretary of State, although this is not being taken forward in the amendments to the 2011 Regulations.

7.7 The Government also proposed amending the requirement for a formal examination of every application for a material change. The consultation proposed giving the Secretary of State the discretion not to hold an examination if one was not considered necessary. In cases where no examination would be held, the consultation proposed that persons who had made a representation about an application would be given an opportunity to make further representations before the Secretary of State made a decision. The consultation also proposed shorter statutory time periods for the change process in cases where an examination was held: 4 months for the examination; 2 months for a recommendation to be made following the examination; and 2 months for the Secretary of State to reach a decision.

7.8 In respect of both non material and material changes, the Government has taken the opportunity to amend existing provisions allowing an applicant not to comply with a prescribed requirement (eg. the requirement to give notice to certain persons and authorities) where they have obtained the consent of the Secretary of State. The amendments made have clarified that the Secretary of State's consent must be obtained in writing. The amendments made to the Planning Act 2008 by the Infrastructure Act 2015 have put beyond any doubt that such provision may be included in the Regulations.

7.9 There are no plans to consolidate the relevant secondary legislation.

8. Consultation outcome

8.1 The Government consulted on the changes proposed to the process for making a change to a Development Consent Order between 31 July 2014 and 29 September 2014. This was part of a wider consultation covering a number of planning matters. There were 189 responses from a mixture of individuals and organisations to the section of the consultation covering changes to Development Consent Orders. The consultation paper can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/339528/Technical_consultation_on_planning.pdf

Non-material Changes

8.2. There was strong support for the proposal to make publicising and consulting on a non-material change the responsibility of the applicant rather than the Secretary of State, with 80% of respondents who answered the question being in favour.

Material Changes

8.3 The proposal to change the consultation requirements for a material change to a Development Consent Order was supported by 69% of those responding. There was also support (57% of responses) for the proposal that applicants should no longer be required to prepare a statement of community consultation. However, 53% of respondents opposed the proposal to remove the requirement to publicise proposed applications for a material change in advance of an application being made. As a consequence, this proposal is not being taken forward.

8.4 On the question of the Secretary of State being able to dispense with the need for an examination, 72% who responded were in favour, although a number of respondents said that this should be the exception rather than the norm and the circumstances where the Government expected this power to be exercised should be set out in guidance. There was also substantial support from respondents to the proposal to set shorter statutory timescales, with 86% of those who responded to the question in favour.

8.5 The full Government response to the consultation can be viewed at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370425/Govt_response_to_consultation_on_changes_to_Development_Consent_Orders.pdf

9. Guidance

9.1 The Government will be publishing new guidance on the procedures covering applications for Development Consent Orders to coincide with the coming into force of this instrument.

10. Impact

10.1 The impact on business is de-regulatory in overall terms. The measures provide simpler procedures and potential savings in the time taken for applications for changes to Development Consent Orders to be decided.

10.2 For *non-material changes*, there will be a small additional cost to the applicant as a result of the need to send a copy of the notice used to publicise their application to the persons referred to in the 2011 Regulations.

10.3 For *material changes*, there will be benefits to applicants arising from the removal of some of the current requirements in the 2011 Regulations. For

publicising applications, publicity at the local level is considered to bring the most benefits, and it is not considered necessary to publicise applications for what may be small scale changes to a Development Consent Order in a national newspaper. As a consequence of this there will be cost savings, and further savings arising from significantly lower fees if the Secretary of State decides that their application does not need an examination.

10.4 There will be no impact from these measures on charities or voluntary bodies. Charities and voluntary bodies will still be able to participate in the process for making changes to Development Consent Orders by making representations on the project.

10.5 The impact on the public sector is negligible. The changes made by this instrument are focussed on improvements to the current process for applicants.

10.6 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the www.legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to small business. However, given the size and scale of projects consented under the Planning Act, the Government considers it very unlikely that small businesses will apply for a Development Consent Order under the Planning Act 2008, and so will not be making subsequent applications for a change to an Order. If they did bring forward an application for a change to a Development Consent Order, the overall effects of the amendments being made by this instrument would be beneficial.

12. Monitoring & review

12.1 The Government will continue to monitor applications submitted for changes to Development Consent Orders with a view to ensuring that the arrangements for handling applications for change are efficient and effective. The Government will review the changes made by this instrument once a sufficient number of applications for change have been made and decided.

13. Contact

David Wilkes at the Department for Communities and Local Government Tel: 0303 4441724 or email: davida.wilkes@communities.gsi.gov.uk can answer any queries regarding the instrument.