



Department for  
Communities and  
Local Government

# Government response to the consultation on making changes to Development Consent Orders



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# Introduction

1. Delivering economic growth is a priority for this Government. Improving the efficiency and speed of the planning process, particularly for infrastructure delivery, is a crucial part of creating the right conditions for sustainable growth. This Government is committed to securing investment in new nationally significant infrastructure as part of its efforts to rebuild the economy and create new jobs.
2. Ensuring that the nationally significant infrastructure planning regime is working well is therefore a priority and one of the strands of wider reforms we have made to the planning system.
3. In 2013, this Government decided to begin a review of the nationally significant infrastructure planning regime, some 5 years after the regime was introduced in the Planning Act 2008. When asked about the regime, users thought that it was working effectively and that major change was neither necessary nor desirable, but they did think that there were a number of improvements which would make the regime even more effective. One of the priorities for improvement identified by users was a faster and more flexible process for making changes to Development Consent Orders once they had been granted. The Government agreed to make this a priority area for improvement and made a commitment to consult on a revised process.
4. In July 2014, the Government launched a technical consultation on planning which set out a number of proposals for improving the planning system. Section 6 of this document put forward changes to improve the nationally significant infrastructure planning regime and set out a proposal for a more proportionate approach for making changes to Development Consent Orders. The consultation ran from 31 July 2014 until 26 September 2014.

# Summary of responses to the consultation

5. There were a total of 189 responses to the consultation document with responses from a wide range of organisations and individuals including developers, statutory consultees, local authorities and individuals.

The table below gives a breakdown of respondents.

Type of respondent	Number of responses	Percentage
Developer/Promoter	28	15 %
Trade Association/Representative body	37	19 %
Statutory Consultee (excl local authorities)	13	7 %
Parish Council	16	8 %
Citizen	39	21%
Local authority	56	30%
<b>Total</b>	<b>189</b>	<b>100%</b>

6. The remainder of this document sets out the Government's response. It is split into five sections, mirroring the consultation document. It should be noted that in considering the responses to this consultation, the Government gives more weight to the arguments put forward in support of, or against any particular proposal, rather than the absolute number who were for or against.

# Non-material and material changes to Development Consent Orders

7. The consultation document set out the current process for making changes to Development Consent Orders post consent. It explained that the process for making a change to a Development Consent was set out in the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (“the 2011 Regulations”) - and that different procedures needed to be followed depending on whether the change was deemed to be material or non-material. The consultation document further explained that neither the 2011 Regulations nor the Planning Act 2008 (“the 2008 Act”) which set up the regime, provide a definition of material or non-material changes.
8. The consultation document stated that Government intended to include guidance on whether a proposed change should be considered as material or non-material. It proposed three characteristics which could be used to indicate that a change was more likely to be material, namely:
  - an update would be required to the Environmental Statement (from that at the time the original Development Consent Order was made) to take account of likely significant effects on the environment;
  - there would be a need for a Habitats Regulations Assessment, or the need for a new or additional licence in respect of European Protected Species; or
  - it would involve compulsory acquisition of any land that was not authorised through the existing Development Consent Order.
9. Respondents were asked to indicate whether they agreed with these characteristics and they were also asked to suggest any other characteristics which they thought should be considered.

## Summary of consultation responses

10. There was support from respondents for the characteristics which the Government had identified as being more likely to indicate that a change was non-material, with 86% of those who answered agreeing that they were helpful. A small number of respondents suggested that the reference to a need to update the Environmental Statement should be amended to refer to the need to update the statement to take account of a new or significant environmental effect.
11. Respondents also suggested a number of other characteristics that could be used to help to determine whether a change was likely to be non-material or not including: changes to height and design; impacts on residents, businesses and nearby housing developments; whether it required the moving of a highway or stopping up a public right of way; and also whether it encroached on a major hazards installation.

12. A small number of respondents also indicated that they would like to have the option to go to the Secretary of State for a formal opinion on the nature of the change before they submitted their application. There was a strong desire from respondents for the Government to produce further guidance covering materiality.

## **Government response**

13. As the Government indicated in the original consultation document, it is not possible to set out precise, comprehensive and exhaustive guidance on whether a change is material or non-material as this will depend on the circumstances of individual cases. That said, as the supportive responses to the consultation have indicated, the three tests set out in the consultation document and repeated above at paragraph 8 do provide a useful indicator of whether any proposed change is more likely to be material. The Government will therefore take these forward in future guidance. When settling the wording of the guidance in relation to updates to the Environmental Statement, the Government will take into account comments made regarding the need to refer to new significant environmental effects.
14. As respondents indicated in their responses, other factors may also come into play depending on the nature of the project. For example, for projects in built-up urban areas, the impact of the proposed changes on business and residents is likely to be a more significant consideration in determining whether a change is material than for those projects situated in more remote areas. The need to consider relevant factors, including those referred to by respondents where appropriate, will be reflected in guidance. However, Government believes that the three tests it set out in the consultation document will provide applicants with the most helpful indication of whether a change is more likely to be material.
15. The Government will not include an option to seek an early formal opinion on materiality. The Government does not believe that this will be a significant benefit, as any opinion would need to be non-binding given that the final decision will depend on the precise nature of the final application brought forward, and also whether external factors have changed in the intervening period. However, the Government does expect the developer to carry out some preparatory work before submitting their application for a change and as part of this should discuss the nature of the changes with the Planning Inspectorate. This discussion should help to indicate whether a proposed change is likely to be material or not.

## Making a non-material change

16. The consultation document outlined the current process for making a non-material change to a Development Consent Order. It then set out a number of proposals for changing the process. The Government said it wished, provided that the necessary changes to the 2008 Act in the Infrastructure Bill successfully complete their passage through Parliament, to amend the 2011 Regulations to make the applicant responsible for publicising and consulting upon a proposed non-material change rather than the Secretary of State. Its view was that this would speed up the process and bring it into line with similar procedures elsewhere in the 2008 Act.
17. The Government also set out a number of further amendments to the 2011 Regulations which would also be required to support the new process. This included:
  - amending the publication provisions to make clear that, in addition to publishing a notice for at least two successive weeks in one or more local newspapers, the applicant will also need to provide notice in any other publication necessary to ensure that notice is given in the vicinity of the local area;
  - amending the consultation requirements so that the applicant must, in addition to consultation with persons or bodies currently specified in the 2011 Regulations, consult persons or bodies who would be directly affected by the proposed change; and
  - including a new requirement for an applicant to send a copy of the notice used in respect of consultation and notice requirements to the Secretary of State, along with a statement outlining how they have met the revised requirements relating to publicity and consultation.
18. The Government also announced that it intended to make changes to the 2011 Regulations to remove the requirement regarding the scale of maps for offshore developments, and would remove the requirement for the applicant to pay the Secretary of State's costs of publicising an application.
19. Respondents were asked to indicate whether they agreed that publicising and consulting on a non-material change should become the responsibility of the applicant rather than the Secretary of State. They were also asked to say whether they would support the other amendments which the Government was proposing to make to the 2011 Regulations with regard to making non-material changes.

## Summary of consultation responses

20. There was 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 in favour. A small number of respondents said that as well as providing a statement on publicity and consultation to the Secretary of State it was important that the applicant provided a similar statement to the Local Authorities who had commented on the adequacy of



consultation when the original application was submitted, in order to demonstrate that they had consulted appropriately.

21. There was also support for the additional amendments proposed relating to the scale of maps for offshore projects and removing the requirement for an applicant to pay the Secretary of State's costs for publicising an application, with 86% of respondents who responded to this question supporting these changes. A small number of respondents suggested that the changes to the scale of maps should apply to all projects, not just offshore ones.

## **Government response**

22. Taking into account the responses to the proposals in the consultation document, the Government intends to implement all of the changes it proposed to the process for making non-material changes to Development Consent Orders. Provided the necessary changes to the 2008 Act in the Infrastructure Bill come into force, it will amend the 2011 Regulations to require the applicant to publicise and consult on their application rather than the Secretary of State. In addition, the Government will amend the part of the regulation that specifies the scale of maps to ensure that an appropriate scale is used for offshore developments which will bring these requirements into line with those for new applications. The Government does not believe that it is necessary to amend the scale of maps for onshore schemes. It will also remove the requirement for the applicant to pay the Secretary of State's costs for publicising the application.
23. As indicated in the consultation document, the Government will also place a new requirement on the applicant to supply a copy of the notice used in respect of publicity and consultation requirements to the Secretary of State, along with a statement setting out how they have met the requirements for publicising and consulting on their application. The Government believes that this should give enough information to allow the Secretary of State to determine whether the applicant has complied with the relevant requirements and that an additional statement to the Local Authority is not needed.

# Making a material change

24. The consultation document set out the current process for making a material change to a Development Consent Order, explaining that it is broadly the same process as an applicant is required to go through for making a full application. The Government believes that the process for making a change to an existing Development Consent Order should be faster and easier than the process for making the original application. It set out a series of proposed reforms which should achieve this and invited comments from respondents on each of these proposals.

## **Consultation and pre-application procedures**

25. The Government proposed that, at the pre-application stage of the process, an applicant would only be required to consult those persons who could be “directly affected” by the proposed change rather than every person who had been consulted on the original application for a Development Consent Order. The other existing consultation requirements, including the requirement to consult the other bodies listed in Schedule 1 of the 2011 Regulations would remain unchanged. In addition, the Government also proposed that the existing requirements to prepare a statement of community consultation and to formally publicise an application for change before it has been submitted should be removed.

## **Need to hold an examination**

26. In addition, the Government also proposed to amend the requirement to hold an examination for all applications for a material change. It argued that there may, for instance, be occasions where only a very limited number of representations are received which raise no substantive issues and that the Secretary of State may decide that an examination is not necessary. However, the Government did propose to allow an opportunity in such cases for anyone who had made a relevant representation to submit further representations to the Secretary of State before reaching a decision on the application.

## **Statutory Timetable**

27. The Government also proposed to amend the 2011 Regulations in order to set a shorter statutory timetable for considering an application for a material change. It proposed that the examination should be completed by the end of four months, that the Examining Authority would have to produce their recommendation within two months, and the Secretary of State would have to reach a decision within a further two months.

# Summary of consultation responses

## Publicity and consultation requirements

28. The proposal to change the consultation requirements for a material change to a Development Consent Order was supported by 69% of respondents who answered the question. These respondents agreed that it should not be necessary to automatically consult all of those who were consulted in relation to the original application, and that the existing process was unnecessarily burdensome. However, respondents did think it was important that all statutory consultees continued to be consulted on any proposed material change and many felt that the publicity requirement needed to be retained to provide a safeguard, so that everyone in the local area could be made aware of an application for change. Some respondents felt that the current consultation requirements should remain, arguing that the impact of nationally significant infrastructure can extend far wider the immediate area.
29. There was also support for the proposal that applicants should no longer be required to prepare a statement of community consultation, with 57% of respondents who answered the question supporting this proposal. Some respondents felt that the applicant should be required to produce a 'slimmed down' statement. 53% of respondents opposed the proposal to remove the requirements to publicise the application in advance. Many of those who opposed dropping the requirement to produce a statement of community consultation linked their objection to the proposal to change the publicity requirements. Respondents felt that these two measures, when taken together, significantly increased the risk that people who may want to make a representation on an application for change may not be aware that such an application has been submitted. They argued that retaining the requirement to publicise an application in advance, with appropriate site notices, would provide an important safety net and ensure that all those living in the local area had an opportunity to comment.
30. In addition, respondents pointed out that the proposal on publicising an application was inconsistent with the process for making a non-material change, where applicants would still be required to publicise their application in advance of its submission. There was a suggestion from a few respondents that while it was important to retain the need to publicise an application in advance, the Government should look at the number of publications a notice should be placed in, to make sure that the process is as cost effective as possible. They also suggested that notification should be made online if possible.

## Need to hold an Examination

31. There was support from respondents to the proposal that the Secretary of State should be able to dispense with the need to hold an examination, with 72% of those who answered the question in favour. A number of respondents said that this should be the exception rather than the norm, and the view was expressed that the circumstances where the Government expected this power to be exercised should be set out in guidance. Respondents also felt it was important that in the event that an examination was not held everyone who had made a relevant representation on the

application for change should be allowed an opportunity to make further representations before a decision is reached.

### **Statutory Timetable**

32. There was also support from respondents to the proposal to set shorter statutory timescales for dealing with material changes to Development Consent Orders, with 86% of those who responded to the question in favour. A number of respondents commented that it made sense that applications for changes to an existing Development Consent Order should normally take less time to determine than the original application. Those who supported a change to the timetable also agreed with the Government's proposal that any examination of the proposed changes should take a maximum of four months, with a maximum of two months for the Examining Authority to make their recommendation, and two months for the Secretary of State to make a decision. It was felt that this was a pragmatic timetable which would speed up the process but would still allow time for a full consideration of the issues. A small number of respondents were keen to ensure that there continued to be a provision for these timescales to be extended should the need arise.
33. A number of respondents said that it was important that the Government makes it clear that these were maximum timescales and that guidance should encourage parties to reach to work to a faster timetable where possible. Respondents also supported the suggestion that the Government should review these timescales once sufficient applications have been processed.

### **Safeguards**

34. Although the Government did not consult on the proposal for the Secretary of State to have the power to refuse to determine an application for a material change, which is being taken forward through the Infrastructure Bill 2014. A number of respondents expressed their support. They also made it clear that this was an area where they would appreciate some clear guidance.

### **Government response**

#### **Publicity and consultation requirements**

35. Taking into account the responses to the proposal to amend the consultation and publicity requirements for making an application for a material change, the Government intends to amend the 2011 Regulations. These amendments will require the applicant to consult those parties who could be "directly affected" by the proposed change rather than every person who had been consulted on the original application for a Development Consent Order. The other existing requirements, including the requirement to consult with all the other bodies set out in Schedule 1 of the 2011 Regulations remains unchanged. At the same time the Government will also remove the requirement for the applicant to prepare a statement of community consultation, but will retain the requirement on the applicant to publish a notice publicising their proposed application.

36. There were a number of respondents who did not support the proposal to remove the requirement to produce a Statement of Community Consultation and some suggested that a slimmed down statement could be required instead. The Government was not persuaded that a slimmed down Statement of Community Consultation would represent a significant streamlining when compared to the existing process.
37. However, the Government recognises that a number of respondents in making their objections to the removal of the State of Community Consultation linked this to the proposal to remove the requirement on the applicant to publicise their application in advance of its submission. They argued that these changes in combination meant there was a risk that people who may wish to comment may be unaware that an application is being submitted. The Government believes that removing the requirement to produce a Statement of Community Consultation, but retaining a requirement to publicise the application in advance addresses these concerns. On reflection, it further believes that these changes strike the right balance between streamlining the process and ensuring that people still have an opportunity to have their say on changes which will affect them.
38. The Government will look at the best means for the application for change to be publicised in order to make sure that these requirements are not unduly burdensome.

### **Need to hold an examination**

39. Taking into account the responses to the proposal that the Secretary of State can dispense with the need to hold an examination should they determine that it is not necessary, the Government intends to amend the 2011 Regulations to make this possible, provided that the changes to the 2008 Act in the Infrastructure Bill successfully complete their passage through Parliament. The Government expects an examination is likely to be necessary in the vast majority of cases. The amended 2011 Regulations will make it clear that where the Secretary of State decides not to hold an examination, there will be an opportunity for all of those who submitted relevant representations on the application for change to make further representations. This process will be set out in the regulations

### **Statutory Timetable**

40. Having taken account of the responses received on this point, the Government intends to amend the 2011 Regulations to set a shorter statutory timetable for making material changes to Development Consent Orders as set out in the consultation document. The Government will also make it clear in the new guidance that these timescales should be viewed as the maximum time allowed and that every effort should be made to conclude each stage before these deadlines.
41. The 2011 Regulations already include provision for the Secretary of State to extend the period within which an examination must be completed and the period within which a decision on an application must be made. No amendment of these provisions is intended. It should be noted that to date, no examination for an application for a Development Consent Order has been extended and the Government does not expect this power to be used frequently.

42. The Government will review these statutory timescales once a sufficient number of applications for material change have been processed in order to ensure that they remain both challenging and achievable.

### **Safeguards**

43. The Government welcomes the support for its proposal to allow the Secretary of State to refuse to determine an application for a material change should they believe that the development that would be authorised by the change should properly be subject to a full application, and recognises the need for further guidance on this. This will be covered in the new guidance to support the process for making changes to Development Consent Orders.

# Guidance on procedures and any other comments

44. In the consultation document, the Government committed to introducing some procedural guidance covering the process for making changes to Development Consent Orders. The Government was clear that this guidance would be published before any changes to the 2011 Regulations governing the process for making changes to Development Consent Orders are made. This can only happen following the successful enactment of the Infrastructure Bill.
45. The consultation document set out a range of issues which the guidance would cover:
- the assessment of whether changes are material or not;
  - practical details on submitting applications for non-material and material changes;
  - the pre-application stage for material changes and consultation requirements, including the role of statutory consultees;
  - examples of the circumstances when the Secretary of State may decide not to hold an examination into a material change; and
  - the circumstances where the Secretary of State may decide to use the power to decline to determine an application for a material change.
46. Respondents were also asked whether there were any other issues which should be covered in the guidance and also whether there were any other comments that they wished to make.

## Summary of consultation responses

47. Half of the respondents who answered this question said that there were other issues that should be covered in the guidance. In particular, respondents were keen to have guidance which covered the whole process for submitting an application for changes to Development Consent Orders which included timescale and went into more detail on the:
- factors influencing decisions about materiality of changes, including examples of the kind of issues that would be relevant; and
  - circumstances when the Secretary of State may determine that an examination will not be held and the process for making further representations.

## Government response

48. The Government recognises that there is a strong desire from users of the regime for guidance to support the revised process. The Government, working with the Planning Inspectorate, will produce a full set of guidance to support applicants and others to

go through the process of making a change to a Development Consent Order before the new process is introduced. This guidance will then be amended, if necessary, in light of practice. However, it is important to be aware that the guidance produced on the materiality of a proposed change and on the circumstances where the Secretary of State may decide that an examination will not be held, cannot be exhaustive and will not cover every eventuality. The Government continues to recommend that all applicants wishing to make a change to their Development Consent Order engage early with the Planning Inspectorate before submitting any application for change.