

## EXPLANATORY MEMORANDUM TO

### THE INFRASTRUCTURE PLANNING FEES (AMENDMENT) REGULATIONS 2017

2017 No. 314

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the Infrastructure Planning (Fees) Regulations 2010<sup>1</sup> and the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011<sup>2</sup> to:
  - increase fees for processing applications for development consent for nationally significant infrastructure projects;
  - increase fees for processing applications to make changes to Development Consent Orders;
  - introduce fees for panels consisting of two examining inspectors to examine applications for development consent and for changes to Development Consent Orders;
  - introduce a mechanism for the fees to increase with inflation every year; and
  - insert a review provision into the Infrastructure Planning (Fees) Regulations 2010 and substitute the review provision in the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011.

#### 3. Matters of special interest to Parliament

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

- 3.1 This instrument increases the fees for nationally significant infrastructure projects as outlined in paragraph 2.1 above. This will assist the Planning Inspectorate, an executive agency of the Department for Communities and Local Government, in achieving its aim of full recovery of costs incurred when processing applications for development consent for nationally significant infrastructure projects and for changes to Development Consent Orders. The increase in fees is above the rate of inflation, as fees have not increased since the regime was established in 2010 and have historically been set too low to enable full cost-recovery. The fees will subsequently increase in line with the Consumer Price Index of inflation on 1 April every year starting on 1 April 2018. No further increases above the rate of inflation are planned. The fees will be reviewed in line with the substituted review clause in the Infrastructure Planning

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<sup>1</sup> SI 2010/106

<sup>2</sup> SI 2011/2055

(Changes to, and Revocation of, Development Consent Orders) Regulations 2011, and the new review clause inserted into the Infrastructure Planning (Fees) Regulations 2010.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Developers who apply for development consent for nationally significant infrastructure projects, or who submit applications to make changes to Development Consent Orders, pay fees to the Planning Inspectorate to undertake the statutory processes set out in the Planning Act 2008. These processes include the acceptance of an application, appointing an inspector or panel of inspectors as appropriate to examine the application, and holding the examination, that precede a decision by the Secretary of State on whether to grant development consent, or to allow a change to a Development Consent Order. Provisions for these fees are set out in the Planning Act 2008, the Infrastructure Planning (Fees) Regulations 2010 and the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011.
- 4.2 This instrument increases the fees paid by developers. These fees have not increased since the fees regime was established in 2010.
- 4.3 Additionally, the amendments will introduce a fee for panels consisting of two Examining Inspectors. Section 27 of the Infrastructure Act 2015 amended the Planning Act 2008 to enable examinations of applications for development consent to be undertaken by such panels, and will be commenced on 5 April. The introduction of the fee will facilitate the operation of the two person panel.
- 4.4 The amendments will also introduce a mechanism for fees to increase in-line with inflation on 1 April 2018 and then in every subsequent year. Increases will be calculated on the basis of the 12 month Consumer Price Index rate published for the preceding September.
- 4.5 An amendment is also made to the Infrastructure Planning (Fees) Regulations 2010 to introduce a review provision. The Infrastructure Planning (Changes to, and Revocations of, Development Consent Orders) Regulations 2011 already contained a review provision which provided for one review of the entirety of those Regulations in 2016. To satisfy the requirements of that provision, a review has been undertaken and a report of the review will be laid before Parliament. It is now substituted to provide that a review of the fees contained in the 2011 Regulations (as amended by these Regulations and subject to any inflation increases) takes place every five years.
- 4.6 Finally, a minor amendment is made to the Infrastructure Planning (Fees) Regulations 2010 to replace an out of date reference.

**5. Extent and Territorial Application**

- 5.1 This instrument extends to England and Wales and, for limited purposes, to Scotland in accordance with the extent of the 2008 Act (see section 240).

5.2 This instrument applies to England and Wales and, for limited purposes, to Scotland (see section 240 of the 2008 Act).

## **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**

### *What is being done and why*

- 7.1 The Nationally Significant Infrastructure Planning regime was established by the Planning Act 2008. It offers investors and developers predictability and makes it simpler and faster to receive planning consent by reducing the number of separate applications, permissions and consents required. Since 2010, there have been 70 applications for development consent. Applications are administered and considered by the Planning Inspectorate on behalf of the Secretary of State. A fees regime is in place for developers seeking development consent or wanting to make changes to Development Consent Orders. These fees are a small percentage of the total capital expenditure costs for a nationally significant infrastructure project - on average around 0.1% (with 0.3% being the highest so far).
- 7.2 When the Nationally Significant Infrastructure Planning regime was first established, the fees paid by applicants were intended to achieve full cost-recovery. In practice, this has not been the case. Fees received currently only cover 60% of the cost of the service provided by the Planning Inspectorate, leaving a shortfall of £3 million. The Planning Inspectorate is proposing to reduce the costs of providing their service by £1m through greater use of e-communications and back office efficiencies. The amendments made by these Regulations are intended to meet the remainder of the shortfall by increasing the fees payable for applications, which is expected to increase annual income by approximately £2 million.
- 7.3 The planned increase will bring fees into line with the Government's original intention of full cost-recovery as well as the principles for managing public money. These are that applicants and users should pay fees to cover the costs of administering and considering applications rather than funding this through taxation. It reflects the fact that developers stand to gain financially from the grant of development consent.
- 7.4 The fee increases will enable the Planning Inspectorate to achieve full cost-recovery when processing applications for development consent for nationally significant infrastructure projects and when processing applications to make a material change to a Development Consent Order. From April 2018 onwards, fees will be increased in line with inflation to ensure that full cost-recovery is maintained.
- 7.5 Fees are not being raised for non-material changes to Development Consent Orders as these are paid to the Government department taking the decision and not to the Planning Inspectorate.
- 7.6 As the fees are contained in regulations, the adjustments required cannot be achieved without changes to the secondary legislation. The planned changes will come into effect on 6 April 2017.

## ***Consolidation***

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

## **8. Consultation outcome**

8.1 No consultations were undertaken for these changes as we are simply increasing existing fees to meet the Government's original stated intention of full cost-recovery, and not altering the fee structure. This structure was subject to consultation before it was introduced in 2010.

## **9. Guidance**

9.1 There is currently guidance from the Department for Communities and Local Government on fees<sup>3</sup> which includes an Annex showing worked examples of how fees are calculated. This, and relevant information on the Planning Inspectorate's national infrastructure website, will be updated.

## **10. Impact**

10.1 The impact on business is an additional cost to developers who submit applications for development consent for nationally significant infrastructure projects or for material changes to Development Consent Orders that have already been granted. The increased fees will apply to applications that are submitted once these Regulations come into force. The new fees will not significantly increase the percentage of the total capital expenditure costs dedicated to application fees (these currently only equate to 0.1% - 0.3% of total costs).

10.2 In cases where a panel consisting of two examining inspectors is now required instead of three, there will be lower fees paid by developers. Conversely, in those cases where a panel consisting of two examining inspectors is required instead of one, there will be an increase in fees. Based on past examinations, our initial analysis suggests that the number of cases where there will be a reduction in the panel from 3 to 2 Examining Inspectors will be greater than those cases with an increase from 1 to 2 Inspectors, but this will depend on the actual applications that come forward.

10.3 There will be no impact on charities or voluntary bodies. They will still be able to participate in the application process by making representations and this participation does not attract a fee.

10.4 The impact on the public sector is an increase in the fees paid by public bodies, such as Highways England or Network Rail, when they apply for development consent. The Planning Inspectorate, an executive agency of the Department for Communities and Local Government, will benefit from the increase in income that will result from the fee increase. The increase will enable it to achieve full cost-recovery and continue to provide a quality service that is highly valued by developers.

10.5 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation applies to activities that are undertaken by small businesses. There will be an impact on small businesses of increased costs due to higher fees, but only if

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<sup>3</sup> <https://www.gov.uk/government/publications/planning-act-2008-infrastructure-planning-fees-regulations-2010>

they are seeking development consent for a nationally significant infrastructure project or are seeking to make a change to a Development Consent Order. However, given the nature of the large scale national infrastructure projects consented under the Planning Act 2008, the Government considers it highly unlikely that small businesses will in fact apply for development consent under the Planning Act 2008 or make subsequent applications for a change to a Development Consent Order.

- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that no specific mitigating action is proposed, given that it is unlikely that small businesses will be involved in nationally significant infrastructure projects. However, the Department for Communities and Local Government and the Planning Inspectorate will continue to engage with developers with experience of the Nationally Significant Infrastructure Planning regime, to ensure that this approach remains appropriate.
- 11.3 The basis for the final decision on what action to take to assist small business is based on the nature of projects consented under the Planning Act 2008 and the Government's assessment that it is highly unlikely that small businesses will apply for relevant consents.

## **12. Monitoring & review**

- 12.1 This instrument inserts a review provision into the Infrastructure Planning (Fees) Regulations 2010, which requires the Secretary of State to review the regulatory provision in those regulations, set out the conclusions of that review in a report and publish that report before 6 April 2022, and to then publish subsequent reports at intervals not exceeding five years. The report will set out the objectives intended to be achieved by the regulatory provision contained in the 2010 Regulations, assess the extent to which they are achieved, and assess whether they remain appropriate. This instrument also substitutes the review provision in the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011. The substituted review provision applies in respect of Schedule 2 (fees for applications). A review has been undertaken in-line with the review provision formerly contained in regulation 71, and a report of the review will be laid before Parliament. As this instrument amends two sets of regulations, each of which will contain a review provision, this instrument does not require its own review provision.

## **13. Contact**

- 13.1 James Henderson at the Department for Communities and Local Government, Tel: 0303 444 1632 or email: james.henderson@communities.gsi.gov.uk can answer any queries regarding the instrument.