

**EXPLANATORY MEMORANDUM TO**  
**THE INFRASTRUCTURE PLANNING (MISCELLANEOUS PROVISIONS)**  
**REGULATIONS 2024**

**2024 No. 332**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up Housing and Communities and is laid before Parliament by Command of His Majesty.

**2. Declaration**

- 2.1 Lee Rowley MP, Minister of State for Housing, Planning and Building Safety at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Claire Porter, Deputy Director for Planning-Infrastructure, at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 Josh Wainman, Senior Policy Lead (Nationally Significant Infrastructure Projects) at the Department for Levelling Up, Housing and Communities Telephone: +44(0) 303 444 9022 or email: [infrastructureplanning@levellingup.gov.uk](mailto:infrastructureplanning@levellingup.gov.uk) can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 This instrument (“the amending instrument”) amends the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the 2009 Regulations”) to allow Inspectors who give pre-application advice on proposed applications to also be permitted to be appointed to examine that application once it has been accepted.
- 4.2 The amending instrument amends the 2009 Regulations by removing Regulation 11(3). Removing Regulation 11(3) means there is no longer a prohibition on a person who has been involved in giving pre-application advice under s.51 (Advice for potential applicants and others) of the Planning Act 2008 (“the Act”). They are now able to be appointed to a Panel, or as a single appointed person responsible for examining a relevant application for an order granting development consent. The amending instrument also amends the 2009 Regulations by substituting the table in Schedule 1 for a new table of persons prescribed for the purposes of s.42(1)(a) (duty to consult) and s.56(2) (notifying persons of an accepted application) of the Act.
- 4.3 The amending instrument also amends Regulation 4(2)(b) of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (“the 2015 Regulations”) by extending the requirements relating to the relevant

representation registration form so that it must include the principal submissions which the person proposes to make in respect of the application, and where practicable, the full particulars of the case.

***Where does the legislation extend to, and apply?***

- 4.4 The territorial extent of the amending instrument is England and Wales and Scotland (in very limited circumstances). It extends to Scotland only so far as required for the purpose of the construction (other than by a gas transporter) of an oil or gas cross-country pipeline – one end of which is in England or Wales, and b) the other end of which is in Scotland.
- 4.5 The territorial application of the amending instrument is England and Wales and Scotland (in very limited circumstances). It applies to Scotland only so far as required for the purpose of the construction (other than by a gas transporter) of an oil or gas cross-country pipeline – one end of which is in England or Wales, and b) the other end of which is in Scotland.

**5. Policy Context**

***What is being done and why?***

- 5.1 The amending instrument forms part of a package of statutory instruments which make legislative reforms to the Nationally Significant Infrastructure Projects (NSIP) consenting process as proposed by the government's NSIP Action Plan <sup>1</sup>(published February 2023). These amendments will bring forward operational reforms to support faster consenting processes with an emphasis on delivering proportionate examinations for all applications.
- 5.2 These amendments will also support the delivery of fast-track applications, which will comprise four month examinations for applications that meet certain quality criteria. S.98(4A) of the Planning Act<sup>2</sup> provides that the Secretary of State may set a shorter statutory timeframe for the completion of examinations of NSIP applications, and this will underpin the new fast-track route to consent.
- 5.3 The amending instrument amends the 2009 Regulations as follows:

*Removing the restriction on a person who has been involved in giving pre-application advice under s.51 of the Planning Act 2008 from then being appointed onto a Panel or as a single person responsible for examining an application*

- 5.4 The 2009 Regulations currently prohibit a person who has been involved in giving s.51 advice relating to an application for Development Consent made under the Act from then being appointed as a single person or as part of panel, responsible for examining that application.
- 5.5 This restriction was introduced when the Nationally Significant Infrastructure Projects (NSIP) planning system was being operated by the Infrastructure Planning Commission (IPC), who were responsible for determining Development Consent Order applications. However, the IPC was abolished in 2012 under the provisions of the Localism Act 2011. Under this change, Examining Inspectors, appointed by the Planning Inspectorate are now responsible for making recommendations to the relevant Secretary of State who make decisions on NSIP applications. This restriction

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<sup>1</sup> <https://www.gov.uk/government/publications/nationally-significant-infrastructure-projects-nsip-reforms-action-plan>

<sup>2</sup> Inserted by s.127 of the Levelling Up and Regeneration Act 2023.

was in place, therefore, to establish the operating boundaries when the IPC were both examining the application and making decisions.

- 5.6 This restriction is being removed in order to provide greater flexibility to the Planning Inspectorate for the deployment of Inspector resource on applications for Development Consent. The deployment of Examining Inspectors will be at the discretion of the Planning Inspectorate, who will make a judgement based on the nature of the advice which the person has provided during pre-application and the Inspectorate's resourcing capacity.

Updating the list of prescribed persons to be notified and/or consulted on with regards to Development Consent applications

- 5.7 The table in Schedule 1 of the 2009 Regulations contains a list of prescribed persons and the circumstances in which they must be notified and/or consulted about an application and proposed application for Development Consent. The amending instrument replaces the list with an updated list of prescribed persons. These changes are being made to ensure that the prescribed consultees are referred to by their current legal names, some of which have changed since the 2009 Regulations were last amended. The *Marine Management Organisation* (MMO) has been removed from the list in Schedule 1 of prescribed persons to be notified of accepted applications and consulted on proposed applications made under the Planning Act 2008. This will have no practical effect as the MMO are being removed from the list to avoid duplication with existing consultation/notification provisions contained in the Planning Act 2008 itself, where there is already a requirement to consult and notify the MMO under s.42(1)(aa) and s.56(2)(aa), respectively.

- 5.8 The list also now refers to 'all applications' and 'all proposed applications' in columns 2 and 3 in relation to certain prescribed consultees. This replaces the previous wording of 'all cases' where prescribed consultees are required to be notified of and/or consulted on all Development Consent applications. This more accurately mirrors the language used in the 2009 Regulations and the Act.

- 5.9 The amending instrument amends the 2015 Regulations as follows:

Extending the requirement for the information that must be included in a relevant representation registration form

- 5.10 Relevant representations are an important part of the Development Consent Order application process as they provide the opportunity for persons to register as an interested party and submit their views to the Planning Inspectorate about an application after it has been accepted for examination. This is an important part of the pre-examination stage as the information contained in the relevant representations informs the Examining Authority's construction of a proportionate and robust timetable for the examination of the application.
- 5.11 Regulation 4(2)(b) of the 2015 regulations previously required a relevant representation registration form to include "*an **outline** of the principal submissions which the person proposes to make in respect of an application*".
- 5.12 Individuals were not prevented from providing detailed representations if they wished to do so. However, as the 2015 Regulations required only an *outline of the principal submissions*, relevant representations are often brief documents and usually contain only limited information about the person's submissions on the application, in particular, whether they support or object to the proposed application. The information supplied was previously very limited at this stage with people then giving

more detailed submissions when making their written representations, much later in the process. This means it is only at the examination stage that the Examining Authority possesses the full particulars of the case which the person is putting forward, which makes it more difficult to accurately prepare an examination timetable.

- 5.13 The changes to the 2015 Regulations will ensure better frontloading of the information that is provided in relevant representations so that they contain more detailed information. This would include, where practicable, establishing the full extent of the person's case, based on the information available at that stage, and detailing the reasons the person supports or opposes the application with evidence.
- 5.14 These changes have been made to enable the Examining Authority to have as much information as possible about the key issues the application gives rise to well ahead of the drafting of the examination timetable. This will ensure that the examination timetable accurately reflects the key issues pertaining to the application, providing greater confidence that the deadlines of the examination can be met and potentially shortened. This will also be critical for the delivery of shorter examinations that will be required for future fast track applications.

*What was the previous policy, how is this different?*

- 5.15 The restriction on a person who has been involved in giving advice under s.51 of the Planning Act 2008 from then being appointed onto a Panel or as a single person responsible for examining an application.
- 5.16 Previously, Regulation 11(3) of the 2009 Regulations prohibited a person from being appointed onto a panel, or as the single appointed person, responsible for examining an application for Development Consent if that person had been involved in giving advice pursuant to s.51 (Advice for potential applicants and others) of the Planning Act 2008.
- 5.17 The 2009 Regulations did not prevent a person who has previously been deployed as an Examining Inspector on previous applications from giving s.51 advice on a separate, new application. It did, however, prevent that person from being subsequently appointed onto the Panel, or as a single person, responsible for examining that new application under Chapter 2 (The Panel procedure) and Chapter 3 (The single-appointed person procedure) of Part 6 of the Planning Act 2008.
- 5.18 There have been cases where an Examining Inspector has provided some input during the pre-application stage but then is not able to be part of the subsequent acceptance, pre-examination, examination and reporting stages due the previous restriction.
- 5.19 The policy now is to remove the legal restriction and enable the Planning Inspectorate to deploy Examining Inspectors in both the pre-application stage and the examination of the application if it wishes to do so. This will help ensure applicants are given the best possible support to fully understand and address issues that could otherwise be critical and cause delays to examination if not addressed early.
- 5.20 Whilst it will be for the Planning Inspectorate to reach its own judgement about how far an Inspector involved in pre-application will be involved in a subsequent examination, removing the restriction strengthens their ability to deploy skilled and experienced resources particularly for the most complex of NSIP cases.
- 5.21 Updating the list of prescribed persons to be notified and/or consulted on with regards to Development Consent applications

- 5.22 Schedule 1 of the 2009 Regulations provides a list prescribed persons to be notified of accepted applications and consulted on proposed applications made under the Planning Act 2008. Schedule 1 previously referred to the names of organisations which have changed since the schedule was drafted.
- 5.23 Schedule 1 previously include the MMO as a prescribed consultee. However, alongside the schedule, there is also a requirement to consult and notify the MMO under s.42(1)(aa) and s.56(2)(aa) of the Planning Act 2008, respectively. To avoid duplication of requirements, the MMO have been removed from Schedule 1, but the duty to consult and notify the MMO remains through s.42(1)(aa) and s.56(2)(aa).
- 5.24 Extending the requirement for the information that must be included in a relevant representation form.
- 5.25 The 2015 Regulations previously stated that a relevant representations registration form must include, an outline of the principal submissions which the person proposes to make in respect of the application. In addition, Planning Act 2008: Guidance for the examination of applications for development consent says that relevant representations should contain sufficient information to enable the Secretary of State to understand which aspects of the application the person supports or objects to, and the reasons why.
- 5.26 The information contained in the relevant representations is very important as it is used to help inform the structure and programme of the examination and provide advance warning of arguments which the various participants are proposing to deploy at examination. The previous position did not prevent stakeholders and consultees from providing more detailed relevant representations if they wished to do so. However, the previous requirements in the 2015 Regulations often led to delays in the provision of detailed representations which contribute to the overall timescale for completing examinations.
- 5.27 The policy now is to equip Examining Authorities with as much detailed information as early as possible to provide the Examining Authority with greater confidence in its drafting of the examination timetable, ensuring it is robust and focused on the key issues that indeed require scrutiny during examination.

## **6. Legislative and Legal Context**

### *How has the law changed?*

- 6.1 Amendments have been made to the 2009 Regulations and the 2015 Regulations. The amendments made are detailed below:
- 6.2 Removing the provision in Regulation 11(3) of the 2009 Regulations which prohibits a person who has been involved in giving advice under s.51(1) (Advice to potential applicants and others) of the Act from then being appointed to a Panel or as a single appointed person responsible for examining the relevant application.
- 6.3 Substituting the Table in Schedule 1 of the 2009 Regulations which prescribes persons to be notified and/or consulted on in relation to NSIP applications under s.42(1)(a) and s.56(2) of the Planning Act 2008 with a new updated Table. These updates include minor drafting changes to take account of changes to the legal names of certain consultees and removing the MMO.
- 6.4 Amending Regulation 4(2)(b) of the 2015 Regulations to provide that the registration form for relevant representations must include the principal submissions and where practicable, the full particulars of the case which the person proposes to make in

respect of the application, to encourage more detailed submissions at an earlier stage, where possible.

***Why was this approach taken to change the law?***

- 6.5 These amendments are necessary to strengthen the pre-application stage of the NSIP process and ensure that applications are in the best possible shape for examination, if and when an application has been accepted. As part of the policy development for these changes, government considered the consequences of not amending the legislation and came to the conclusion that legislating was necessary to achieve the policy objectives. The details of this consideration are provided below.

*Removing the restriction on a person who has been involved in giving advice under s.51 of the Planning Act 2008 from then being appointed onto a Panel or as a single person responsible for examining an application*

- 6.6 If the restriction on Examining Inspectors remained in place this would prohibit a person from being able to provide advice to applicants under s.51 of the Act and then be a person appointed as a single person or to a Panel, responsible for examining the application. This would prevent the Planning Inspectorate from having greater flexibility on the deployment of its Examining Inspectors when projects are in the pre-application stage.

*Updating the list of prescribed persons to be notified and/or consulted on with regards to Development Consent Order applications*

- 6.7 The list of persons to be notified and/or consulted on is prescribed in secondary legislation. As these are statutory consultees, it is essential that the name referred to in legislation is legally accurate and up-to-date so that applicants comply fully with their duties in the Act to consult and notify the correct statutory consultees. The MMO have been removed from Schedule 1 of the 2009 Regulations to avoid duplication with the duty to consult and notify the MMO required by the Planning Act 2008.

*Extending the requirement for the information that must be included in a relevant representation registration form*

- 6.8 The legislation previously stated that the form for relevant representations must include, amongst other things, an outline of the principal submissions which the person proposes to make in respect of the application. This did not prevent stakeholders and consultees from providing a more detailed representation if they wished to do so, and there had been some instances where this occurred, but this was the exception and is not broadly adopted practice. This meant that it was only once the examination was underway when the Examining Authority had the full particulars and evidence which the person is putting forward to substantiate its case.
- 6.9 The policy now is to enable the Examining Authority to have as much information as possible about the key issues the application gives rise to well ahead of the drafting of examination timetable. This will ensure that the examination timetable accurately reflects the key issues pertaining to the application, providing greater confidence that the deadlines of the examination can be met. This will also be critical for the delivery of shorter examinations.

## 7. Consultation

### *Summary of consultation outcome and methodology*

#### Consultation on the operational reforms to the NSIP consenting process

- 7.1 A consultation on the operational reforms to the NSIP consenting process took place between 25<sup>th</sup> July 2023 and 19<sup>th</sup> September 2023. The consultation was published on [www.GOV.uk](http://www.GOV.uk) and responses were accepted via online survey, email and written letter.
- 7.2 The purpose of the consultation was to seek views from stakeholders on the operational reforms to the NSIP process which sought to make the system work more effectively for applicants, local authorities and communities. The consultation sought views on the following policy areas:
- Strengthening the role of pre-application and ensuring that consultation is effective and proportionate;
  - Operational reforms which support faster and more proportionate examinations;
  - Establishing a fast-track route to consent;
  - Reviewing the process for making post-consent changes to Development Consent Orders;
  - Resourcing the Planning Inspectorate and updating existing fees;
  - Strengthening the performance of government's expert bodies;
  - Improving engagement with local authorities and communities;
  - Building the skills needed to support infrastructure delivery; and,
  - Updates to national infrastructure planning guidance;
- 7.3 The consultation received 142 responses across a broad range of stakeholders including members of the public, local authorities, town and parish councils, project promoters, legal professionals, professional organisations and bodies, interest groups and voluntary organisations.
- 7.4 The government's response to the consultation was published on 6<sup>th</sup> March 2024 and sets out the policy changes that will be delivered through amendments to secondary legislation. With regards to changes associated with the amending instrument, the consultation provided responses on the following:

#### The proposal to remove the prohibition on an Inspector who has given s.51 advice during the pre-application stage from then being appointed to examine the application, either as part of a panel or a single person

- 7.5 There was strong support for this change with 30.28% of respondents agreeing and 9.15% strongly agreeing to these proposals.<sup>3</sup> Responses agreed that there would be real benefit in having continuity of knowledge about a proposal carried across into the application and subsequent examination of that proposal and could help contribute to the aspiration for faster determination. Whilst the majority of respondents supported this change, some responses highlighted the possible appearance of bias from a Planning Inspector providing pre-application advice on a proposed NSIP application, then being appointed to the Examining Authority Panel, though this concern was limited to only a small number of respondents. Government acknowledges this concern and will ensure that new guidance will provide transparency regarding any

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<sup>3</sup> 14.8% neither agreed or disagreed with the proposal, 4.23% disagreed, 4.23% strongly disagreed and 38% of respondents did not answer this question.

pre-application involvement by Examining Inspectors to all parties, not just the applicant.

- 7.6 Respondents also suggested that a pre-application Inspector could be used as a support resource available to the appointed Examining Authority (rather than directly appointed as part of the Examining Authority) in the same way that legal or expert resource can be appointed. This would enable the pre-application knowledge to be maintained, but a clear separation in examination and reporting maintained. It is noted that these changes do not require an Inspector to give s.51 advice for each and every application and, therefore, the Planning Inspectorate will only deploy inspectors to give s.51 advice and subsequently only to the Examining Authority where it feels it is able to do whilst maintaining independence of the Examining Authority itself.

*Proposals to require more detailed submissions within relevant representations registration form*

- 7.7 The consultation asked respondents to provide a qualitative response on the extent to which they agreed that this proposal would lead to an improvement in the process if more detail was required to be submitted at the relevant representation stage.
- 7.8 Responses showed strong support from stakeholders including developers, local authorities and professional bodies. Responses noted that this proposal this would help enable the examination process to be ‘frontloaded’ with critical issues that the Examining Authority may wish to consider during examination identified at an early stage. Respondents also reiterated these changes would streamline the examination hearings by reducing the need for participants to provide ‘context setting’ at the beginning of the process.
- 7.9 Some local authorities suggested that there was merit in requesting more detail within relevant representations, providing that there was sufficient engagement with the applicant and other relevant bodies (i.e. statutory consultees and community bodies) to provide the necessary detail during pre-application.
- 7.10 Some stakeholders questioned whether requesting more detail at the relevant representation stage was duplicative of the information to be provided at the written representation stage, and whether this would actually make the examination stage more streamlined. Responses also noted the volume of information that could be submitted at this stage with some stakeholders being at a disadvantage to meet tight deadlines, depending on the complexity of the project. There were also concerns that resource issues with statutory consultees (if not addressed quickly) will impact the level of detail that could be provided if there is limited pre-application engagement. Given that proposals only require full particulars when it is practicable do so, the Government does not believe that these changes will disadvantage stakeholders who are not able to provide full details. These changes do not prevent Interested Parties from providing further detail during the written representation stage if they wish to do so. Further details of the circumstances of when government expects full particulars to be provided in a relevant representation will be set out in guidance.

*Engagement with devolved administrations*

- 7.11 Details of this amending instrument were shared with Welsh Government and Scottish Government ahead of the SI being laid in parliament.



## **8. Applicable Guidance**

- 8.1 Government is revising the suite of guidance relating to the NSIP system, and the revised guidance will contain sections relating to the operation of the provisions in the amending instrument. This will be outlined in new ‘pre-application’ and ‘examination’ sections of the NSIP guidance.
- 8.2 The revised NSIP guidance is due to be published on [www.gov.uk](http://www.gov.uk) in April 2024.

## **Part Two: Impact and the Better Regulation Framework**

### **9. Impact Assessment**

- 9.1 A full Impact Assessment has not been prepared for this instrument because there is an expected small level of beneficial business impacts. Amending Regulation 11(3) will update Regulations from the previous IPC operated NSIP system and allow PINS flexibility over the deployment of Inspector resource on applications for Development Consent. This may result in cost efficiencies, with inspector flexibility allowing for greater knowledge management and coherence throughout the applications process. These impacts have not been quantified due to the uncertainty and case specific nature of the benefits involved.
- 9.2 Amending the Table in Schedule 1 will ensure the legislation reflects the accurate and legal names of statutory consultees. These impacts have not been quantified, but we would expect there to be no impact as a result of this change as the amendments simply reference accurate names of organisations and does not alter the requirements of these organisation.
- 9.3 Amending Regulation 4(2)(b) provides for more detailed submissions to be included within the relevant representations registration form to address previous delays in the provision of detail in people’s relevant representations. This amendment may accelerate examinations, however, it has not been possible to quantify the impact due to the application specific nature of relevant representations.

#### ***Impact on businesses, charities and voluntary bodies***

- 9.4 There is no, or no significant, impact on business, charities or voluntary bodies because there is an expected low level of business impacts.
- 9.5 The legislation does not impact small or micro businesses.
- 9.6 There is no, or no significant, impact on the public sector because the amendments provide further flexibilities and clarity for the Planning Inspectorate.

### **10. Monitoring and review**

#### ***What is the approach to monitoring and reviewing this legislation?***

- 10.1 The impact of the changes are de minimis, as set out in the previous sections. The Department for Levelling Up, Housing and Communities will, however, continue to monitor legislation prescribing the NSIP planning system to ensure intended policy outcomes are achieved. A statutory review clause has not therefore been included for this instrument.

### **Part Three: Statements and Matters of Particular Interest to Parliament**

#### **11. Matters of special interest to Parliament**

11.1 None.

#### **12. European Convention on Human Rights**

12.1 As the Infrastructure Planning (Miscellaneous Provisions) Regulations 2024 are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

#### **13. The Relevant European Union Acts**

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).