Department for Communities and Local Government

Streamlining the consenting process for nationally significant infrastructure planning:

The Government's response to the Summer 2014 Technical Consultation

March 2015
Department for Communities and Local Government

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Introduction

1. The nationally significant infrastructure planning regime, introduced by the Planning Act 2008, exists to ensure the efficient and robust scrutiny of applications to build major infrastructure schemes and to ensure Ministers can make well-judged and well informed decisions. Development Consent Orders lie at the heart of the regime, enabling an applicant to address a range of planning and non-planning consents through one application, examination and decision-making process.

2. Further to the 2014 Review of the nationally significant infrastructure planning regime, the Government consulted on proposals to further streamline the consenting process for major infrastructure applications. This would enable additional non-planning consents, notifications, and licences (called "consents" for convenience in the rest of this document) to be included in a Development Consent Order without first requiring the agreement of the relevant consenting bodies. The consultation ran from 31 July 2014 until 26 September 2014. This report summarises the submissions received and sets out the Government's response.

3. The context for this reform is the priority the Government attaches to economic growth. A crucial part of supporting growth has been improving the efficiency and speed of the planning process, particularly for infrastructure delivery. This Government remains committed to securing investment in new nationally significant infrastructure as part of its efforts to rebuild the economy and create new jobs, and has published its priorities in the 2014 National Infrastructure Plan.

Background

4. The nationally significant infrastructure planning regime aims to provide a 'one stop shop' for authorising large infrastructure projects, removing the need for developers to submit multiple applications to multiple bodies. Developers of such projects can ask the Government to make a single Development Consent Order which automatically removes the need to obtain other planning authorisations that would otherwise be required, such as planning permissions. Developers can also, on a case-by-case basis, request that a Development Consent Order removes the need for other Government consents (relating to planning or otherwise) that may be required to build or operate the project. For a limited number of those consents the relevant consenting body must first agree that the need for consent can be removed and this consultation was on proposals to reduce the number of such consents.

5. Section 150 of the Planning Act 2008 sets out that a Development Consent Order can remove the requirement to obtain certain consents only if the relevant consenting body agrees. The relevant consenting bodies include Natural England, the Environment Agency, the Marine Management Organisation, local authorities and internal drainage boards. The relevant list of consents is set out in the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 (as amended).

6. The consents identified for potential streamlining in the recent consultation concern European protected species, flood defence, waste water discharge, trade effluent, water abstraction and impoundment.

Consultation responses

7. 170 consultation responses were received from a wide range of organisations and individuals including developers, trade associations, professional bodies, local authorities, parish councils, and consultancies.

Table 1: Profile of respondents

Type of respondent	**Number of responses**
Developer/promoter	27
Trade association/representative body	27
Local authority	61
Statutory consultees (excl. local authorities)	10
Parish council	11
Citizen/community group	34
Total	**170**

8. The remainder of this document summarises the consultation proposal, the submissions received and sets out the Government's response. It should be noted that, in considering the responses to the consultation, more weight was given to the evidence and arguments presented than to the number who said they were in favour of or opposed to a proposal.

Consultation proposal

9. The Government proposed to streamline ten non-planning consents, giving applicants the choice to address those matters through a Development Consent Order without first obtaining agreement from consenting bodies. By choosing to wrap up more requirements into one Development Consent Order, applicants might need to apply for fewer consents.

10. In the consultation document, the Government emphasised that this would be a choice for applicants, so they could, if they choose, continue to use the existing consenting process. The document also made clear that decision making would remain no less rigorous than under the existing arrangements.

11. The Development Consent Order process places emphasis on detailed preparation, so applicants might in some circumstances need to undertake additional local consultation and technical preparation before submitting their application. For example, this could include engaging with the current consenting bodies, who will remain statutory consultees, prior to and after an application is submitted for development consent.

12. The consultation document set out our proposal that for six of the ten consents (concerning discharge for works purposes, trade effluent and flood defence), applicants could choose to have their Development Consent Order address the

need for these consents for the entirety of the development without seeking the agreement of the relevant consenting body, i.e. this would address their needs during both construction and the subsequent operation of the completed project.

13. The Government proposed that for European protected species licencing and three other consents (concerning water abstraction and impoundment) applicants would have the choice to address the need for a consent relating to the construction stage of the project within their Development Consent Order *without* the prior agreement of the relevant consenting body. As now, agreement from the relevant consenting body *would* be needed to address the operational stage within the Development Consent Order.

14. Where a developer chose to use the Development Consent Order route for European Protected Species, we proposed that a new report – an **Assessment of Preparedness** – could be obtained from Natural England prior to submitting a draft Development Consent Order as part of its chargeable services instead of the Letter of No Impediment that exists for those seeking the consent through the current route. This would help a developer gauge the adequacy of their proposals in meeting the requirements of the European Union Habitats Directive (in relation to European protected species).

15. Currently these ten consents are granted by the relevant agencies, and it was also noted that decisions on Development Consent Orders are made by Secretaries of State in response to a recommendation from an Examining Authority.

16. The expectation set was that monitoring, compliance and enforcement would remain the responsibility of the relevant agency or agencies.

17. The proposals would apply to England only.

Summary of consultation responses

General comments on all consents

18. Overall, there was support for the principle of streamlining consents: 77% of respondents agreed with the proposal including the National Infrastructure Planning Association and the Royal Town Planning Institute.

19. One benefit identified was the ability for applicants to have greater certainty over their timetable, as the Development Consent Order process operates to a statutory timetable. Some expressed the view that allowing applicants greater freedom to decide whether to cover more consenting issues within their Development Consent Order was a positive step. Indeed, a very small number of consultees wanted to see the Government go further and repeal section 150 of the Planning Act 2008 entirely, so that their Development Consent Order could address the need for all consents without the need to first gain agreement from the consenting bodies.

20. Twenty three per cent of respondents did not support the proposal to streamline the consents. Their responses did not, in the main, show opposition to the general principle of streamlining, but focused on specific issues affecting one or more of the affected consents. It was argued that in some cases that there was simply no need to make the change, that it could diminish the quality of decision making, and that it would be difficult to operationalise such changes.

21. The argument was advanced that the proposed new arrangements may in reality be slower in some circumstances, potentially more expensive and also less flexible than current arrangements. The view was also expressed that applicants may in some cases need to undertake additional work and consultation at the pre-application stage than would otherwise be the case.

22. In addition, a number of consultees cautioned that it would be confusing to streamline any of the consents twice, i.e. streamlining into the Development Consent Order process and then also consolidating some of them as part of changes to the Environmental Permitting Regulations[1] taking place between during 2015 – 17.

23. Concerns were raised about the potential adverse impact on the quality of decision making, as decisions in specialist areas that are currently made by specialist agencies would instead be determined by a Secretary of State on advice from an Examining Authority. Several consultees were concerned at the possibility of inconsistencies between decisions taken as part of the Development Consent Order process and those taken by current consenting bodies in respect of individual consents.

[1] see the Environmental Permitting (England and Wales) Regulations 2010 (as amended). The UK Government has taken powers through the Water Act 2014, to further expand the Environmental Permitting framework to cover flood defence consents, water abstraction and impoundment licences, and fish pass approvals.

24. Some consultees expressed concerns that should the proposed changes go ahead, the relevant agencies responsible for providing expertise, whether to inform decisions or monitor and enforce conditions, should have the necessary resources to fulfil such roles and provide the right level of service.

25. The view was also expressed that applicants should not need to pay any additional costs if they used the Development Consent Order route, for example one respondent did not agree that the Assessment of Preparedness should be a chargeable service. For their part, some consenting bodies explained that any additional work required of them should be funded so as not to place an additional burden on other users.

26. Some consultees were of the view that a Development Consent Order for at least one or more consents should only deal with the construction stage, and not cover the operational stage. It was argued that some consents or licences for the operational stage were too complex for a Development Consent Order and were unlikely to remain fit for purpose over the lifetime of a project. Views were mixed, however, and one respondent suggested that Development Consent Orders could always be amended, post consent, if circumstances changed.

27. Several consultees considered that, for some consents, developers might struggle to meet the requirements for detailed preparation before submitting their application for development consent. It was noted that a Development Consent Order can confirm the principle of a project but leave the detailed work for agreement between the relevant parties prior to implementing the consented Development Consent Order.

28. Some consultees gave views on, or expressed interest in, the mechanism for considering these consents within the Development Consent Order process. It was argued that this could be done through disapplying the requirement for the consent in question and including provisions in the Development Consent Order which allowed certain matters to be left to the developer and the usual consenting body (e.g. the Environment Agency or Natural England) to agree before the project is built. Other consultees suggested it would be appropriate to use the existing model of deemed marine licences. The schedules to the Development Consent Order would contain the provisions equivalent to those that would have been used had the consent been obtained separately, and the usual consenting body would comment on those provisions before and during the application for development consent.

Specific comments on consents

European Protected Species Licence

29. With regard to a European Protected Species licence, some consultees were unclear about the extent of practical benefits to applicants, although it was recognised that applicants would have a choice. It was pointed out that there are important factors to be considered:

    - First, the need for appropriate upfront investigation and planning of mitigation. Applicants would need to understand the resource requirements and implications for this work; and

- Secondly, the inherently unpredictable nature of wildlife means that the status of protected species on a relevant site, and the effectiveness of mitigation measures, may change after a Development Consent Order application is accepted for examination or indeed after it is granted. In such circumstances, a separate European Protected Species Licence might still be needed, as currently.

30. Natural England (consenting body for European protected species licensing) wrote that it has no objection to this proposal in terms of the delivery of environmental outcomes and expressed confidence that the Development Consent Order process can deliver the same degree of protection as the current regime as long as arrangements are designed with due rigour. They highlight that applicants will need to understand the implications of using a Development Consent Order route, for example where this changes the timeline, risk profile or level of scrutiny.

Discharge for works purposes: *Consent under section 164 of the Water Resources Act 1991;* ***Discharge for works purposes:***

Consent under section 166 of the Water Industry Act 1991 for discharge from water company works and assets; and

Trade effluent consents referral requirements: *Chapter 3, Part 4 of Water Industry Act 1991*

31. With regards to discharge for works and trade effluent consents, the Environment Agency, as consenting body, expressed no concerns over the proposal to remove these consents from the section 150 list. No other specific concerns have been raised by consultees with regard to these consents.

Flood Defence: *Consent under section 109 of the Water Resources Act 1991 – for works that affect flood risk of main rivers;*

Flood Defence: *Consent under section 23 of the Land Drainage Act 1991 for works that affect the flow of ordinary watercourses. Consent granted by a local authority/ Internal Drainage Board not the Environment Agency; and*

Flood Defence: *Consent under byelaws of the Water Resources Act 1991 for works affecting sea defences/land drainage on main rivers, washlands and floodplains*

32. With regards to flood defence consents, consultees drew a distinction between the construction and operational stage of proposed developments. The Environment Agency was content for their relevant consents to be streamlined within Development Consent Orders for the construction stage subject to agreement on technical implementation issues. They did not support streamlining for the post-construction (operational) stage of a development, as this would raise challenges that would be hard to resolve. Other consultees, including Internal Drainage Boards, were concerned to ensure that local

expertise is brought to bear on the decisions and that monitoring and enforcement continues to be sufficiently resourced and delivered effectively.

33. Consultees raised the potential confusion that would be caused if the Government were to streamline these consents into Development Consent Orders before or after the widening of the Environmental Permitting Regulations, due to take place between 2015 and 2017.

Water Abstraction: *Licence under section 24 of the Water Resources Act 1991 (restrictions on abstraction) to ensure maintenance and preservation of water resources;*

Water Impoundment: *Licence under section 25 of the Water Resources Act 1991 (restrictions on impounding) to allow the construction of dams, weirs and engineering works during construction of a project; and*

Ground Water Investigation: *Consent under section 32 of the Water Resources Act 1991 to allow testing for the presence and quality of ground water before applying for a water abstraction licence*

34. With regards to water abstraction, impoundment and ground water investigation consents, the Environment Agency, as consenting body were supportive of the proposal for the construction stage of development, subject to resolution of issues relating to implementation. They did not support the proposal to cover the post-construction (operational) stages.

35. The view was expressed that there would be significant operational challenges to implement such a change given the need to consider other users of water, and to do so in a way that did not increase the overall costs of managing water resources and granting consents. There would also be issues to resolve concerning resources, and ensuring that those who undertake such work are duly recompensed.

36. Consultees raised the potential confusion that would be caused if the Government were to streamline these consents into Development Consent Orders before or after the widening of the Environmental Permitting Regulations, due to take place between 2015 and 2017.

The Government's response: next steps

37. **After careful analysis of the consultation responses, the Government considers that the proposal to streamline is appropriate and three consents concerning discharge for works purposes and trade effluent will be removed from the section 150 list during this Parliament, with European Protected Species Licence to follow early in the next Parliament when a suitable legislative vehicle is identified. The remaining six consents will be streamlined between 2015 and 2017 when taking forward work to consolidate consents within the Environmental Permitting Regulations. This is summarised in Table 2.**

38. The Government is not persuaded by the suggestion that section 150 should be repealed in its entirety. Consents are retained on the section 150 list for safety, security or technical reasons.

39. The Government does not propose to streamline consents into the Development Consent Order process and also take them into the Environmental Permitting Regulations. Developers can benefit from streamlining whether that takes place in the Development Consent Order or Environmental Permit regimes.

40. Information about how these changes will be implemented will be announced in due course, including relevant details on timing, legislative method, and whether, in some cases, the Development Consent Order may cover the operational as well as construction stage, as outlined in the consultation. The Government will also consider further any other arrangements as may be necessary, including the proposed Assessment of Preparedness service for European Protected Species.

41. Once the changes are made, the Consents Services Unit within the Planning Inspectorate will be able to help any applicant who is unsure about their choices. The Unit exists to help applicants navigate the system, including the provision of advice on how best to work with and obtain help from the various consenting bodies who developers need to work with.

Table 2: Next steps

Consents consulted on	Conclusions and decisions
1. European Protected Species: Licence under regulation 53 of the Conservation of Habitats and Species Regulations 2010 – issued to allow for necessary movement or disturbance of protected species.	The Government will take forward work to streamline this consent (within the Development Consent Order regime) early in the next Parliament once a suitable legislative vehicle is identified. Relevant information will be announced nearer the time, including relevant details about the proposed Assessment of Preparedness service.

2. Discharge for works purposes: Consent under section 164 of the Water Resources Act 1991. **3. Discharge for works purposes:** Consent under section 166 of the Water Industry Act 1991 for discharge from water company works and assets. **4. Trade effluent consents referral requirements:** Chapter 3, Part 4 of Water Industry Act 1991	The Government will take forward work to streamline these consents (into the Development Consent Order regime) during this Parliament**.**
5. Flood Defence: Consent under section 109 of the Water Resources Act 1991 – for works that affect flood risk of main rivers. **6. Flood Defence:** Consent under section 23 of the Land Drainage Act 1991 for works that affect the flow of ordinary watercourses. Consent granted by a local authority/ Internal Drainage Board not the Environment Agency **7. Flood Defence:** Consent under byelaws of the Water Resources Act 1991 for works affecting sea defences/land drainage on main rivers, washlands and floodplains.	The Government will take forward work to streamline these consents between 2015 and 2017 while consolidating consents within the Environmental Permitting (England and Wales) Regulations 2010 (as amended).
8. Water Abstraction: Licence under section 24 of the Water Resources Act 1991 (restrictions on abstraction) to ensure maintenance and preservation of water resources. **9. Water Impoundment:** Licence under section 25 of the Water Resources Act 1991 (restrictions on impounding) to allow the construction of dams, weirs and engineering works during construction of a project. **10. Ground Water Investigation:** Consent under section 32 of the Water Resources Act 1991 to allow testing for the presence and quality of ground water before applying for a water abstraction licence	The Government will take forward work to streamline these consents between 2015 and 2017 while consolidating consents within the Environmental Permitting (England and Wales) Regulations 2010 (as amended).