



Department for  
Communities and  
Local Government

Planning Act 2008:

Guidance on Changes to Development  
Consent Orders



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Department for Communities and Local Government  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF  
Telephone: 030 3444 0000

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# Contents

<b>Guidance on Changes to Development Consent Orders</b>	<b>4</b>
Introduction	4
Who is this guidance aimed at?	5
Legal status	5
<b>Changes to Development Consent Orders</b>	<b>6</b>
Non-material or material change?	6
Power to refuse to determine an application for a change	7
<b>Applications for non-material changes</b>	<b>9</b>
Publicising the application (Regulation 6)	10
Making the application (Regulation 4)	11
Duty to consult (Regulation 7)	11
Responding to publicity and consultation	12
Consultation and publicity statement (Regulation 7A)	12
Secretary of State's decision (Regulation 8)	12
<b>Applications for material changes</b>	<b>14</b>
The pre-application process (Regulations 10-15)	15
Making the application (Regulations 16-21)	16
Making representations	18
Decision on whether to hold an examination (Regulations 21A and 21B)	18
Decision on application when no examination is held	19
Procedure and decision when an examination is held (Regulations 22 to 53)	20

# Guidance on Changes to Development Consent Orders

## Introduction

1. This guidance covers the procedures for making a change to a Development Consent Order under the Planning Act 2008 (“the 2008 Act”). The 2008 Act created a new regime for granting planning and other consents for nationally significant infrastructure projects. These are large scale developments, both onshore and offshore, such as new harbours, roads, railways, power stations (including wind farms), and electricity transmission lines. The 2008 Act sets out the thresholds above which certain types of infrastructure development are considered to be nationally significant and in relation to which developers must seek development consent under the Act.
2. Obtaining development consent under the 2008 Act involves a front loaded process where the developer consults on a proposed project before submitting an application. The application, once accepted, will then be examined by a single inspector or a panel of inspectors from the Planning Inspectorate (“the Examining Body”). On completion of the examination, the Examining Body will provide a report and recommendation to the Secretary of State who will decide whether consent should be given<sup>1</sup>.
3. Where the Secretary of State proposes to grant consent for a project, this will be through a Development Consent Order which is normally made as a statutory instrument – a form of secondary legislation. The Development Consent Order not only provides planning consent for the project but may also incorporate other consents and include authorisation for the compulsory acquisition of land. The Order will specify details of the development consented and its location (including plans) and any requirements (conditions) that must be met in implementing the consent.
4. The nature of large scale nationally significant infrastructure projects means it is likely that changes will be needed to the project either before construction of the project begins or during the construction process. Where such changes are not covered by the Development Consent Order that has been granted for the project, an application will need to be made for a formal change to the Order.

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<sup>1</sup> Further advice on the process for obtaining consent can be found at: <http://infrastructure.planninginspectorate.gov.uk/application-process/the-process/> and also in the Department for Communities and Local Government guidance notes on the pre-application and examination processes for consenting a nationally significant infrastructure project: <http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/guidance/>

5. This guidance covers the two types of change that may be made to a Development Consent Order (non-material or material) and the procedures for making such changes. The procedures on material changes also apply where an application is made to revoke a Development Consent Order. The guidance has been produced following the Infrastructure Act 2015 (which amended the 2008 Act) and the subsequent 2015 amendments to The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011<sup>2</sup>. Part 2 of the 2011 Regulations also covers the procedural requirements in cases where it is proposed to revoke a Development Consent Order, but revocation of consents is not covered by this guidance.
6. References in this guidance to “the regulations” or to any specific regulation should be taken as a reference to the 2011 Regulations as amended. The 2015 amendments made to the 2011 Regulations and this guidance apply to all applications made on or after 14 July 2015 for a change to, or revocation of, a Development Consent Order.

## Who is this guidance aimed at?

7. The main audience of this guidance is expected to be developers of nationally significant infrastructure projects who are proposing to make an application to change a Development Consent Order. It may also be of interest to local authorities, statutory consultees, and organisations or individuals who want to understand the application for change process and how to make representations about any application for a change that is brought forward.

## Legal status

8. This guidance is non-statutory and includes an outline of the main regulatory provisions contained in the 2008 Act and the 2011 Regulations. It is not a comprehensive guide and should be read alongside the legislation. Nothing in this guidance should be taken as indicating that any requirement of planning law or any other law may be overridden. The guidance does not replace the statutory provisions of the 2008 Act or the 2011 Regulations and does not add to their scope. Only the courts can give an authoritative interpretation of legislation.

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<sup>2</sup> For the 2011 Regulations, see: <http://www.legislation.gov.uk/ukxi/2011/2055/contents/made> These were amended by the Localism Act 2011 (Infrastructure Planning)(Consequential Amendment) Regulations 2012 - see <http://www.legislation.gov.uk/ukxi/2012/635/contents/made> The 2015 amendments to the 2011 Regulations can be viewed at: <http://www.legislation.gov.uk/ukxi/2015/760/contents/made>

# Changes to Development Consent Orders

## Non-material or material change?

9. The 2008 Act and the 2011 Regulations provide separate procedures for handling applications for non-material and material changes to Development Consent Orders. The simpler process for handling non-material changes reflects the fact that such changes do not raise issues requiring the same level of scrutiny as changes that are material. The 2008 Act and the 2011 Regulations do not, however, provide any definition of a material or non-material change.
10. Given the range of infrastructure projects that are consented through the 2008 Act, and the variety of changes that could possibly be proposed for a single project, this guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material. Such decisions will inevitably depend on the circumstances of the specific case.
11. However, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change. Some examples of these characteristics are set out below although these only form a starting point for assessing the materiality of a change. Applicants are strongly advised to discuss with the Planning Inspectorate whether a proposed application for a change to a Development Consent Order is a material change before they undertake any of the procedural requirements set out in the 2011 Regulations.

## Environmental statement

12. A change should be treated as material if it would require an updated Environmental Statement (from that at the time the original Development Consent Order was made) to take account of new, or materially different, likely significant effects on the environment.
13. There may be cases where the change proposed to a Development Consent Order will result in likely significant effects on the environment that are entirely positive. In these cases, an updated Environmental Statement will still be required and the application will need to be treated as a material change in order to ensure that the regulatory requirements on Environmental Impact Assessment are met. However, depending on the circumstances, such material changes may be ones where no examination needs to be held (see paragraphs 55-63 below).

## Habitats and protected species

14. A change to a Development Consent Order is likely to be material if it would invoke a need for a Habitats Regulations Assessment. Similarly, the need for a new or additional licence in respect of European Protected Species is also likely to be indicative of a material change. Applicants should consider discussing the need for a Habitats Regulations Assessment or a protected species licence with the appropriate statutory nature conservation body before any application for a change is prepared.

## **Compulsory acquisition**

15. A change should be treated as material that would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the existing Development Consent Order. This is because consideration of the need for compulsory acquisition must include a right for the person whose land or rights are being acquired to express their views at a hearing, and this is not provided for under the 2011 Regulations governing non-material changes (where there is no examination).

## **Impact on business and residents**

16. The potential impact of the proposed changes on local people will also be a consideration in determining whether a change is material. In some cases, these impacts may already have been identified, directly or indirectly, in terms of likely significant effects on the environment. But there may be other situations where this is not the case and where the impact of the change on local people and businesses will be sufficient to indicate that the change should be considered as material. Additional impacts that may be relevant to whether a particular change is material will be dependent on the circumstances of a particular case, but examples might include those relating to visual amenity from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic.

## **Power to refuse to determine an application for a change**

17. Section 28 of the Infrastructure Act 2015 amended the 2008 Act to give the Secretary of State the power to refuse to determine an application for a change to a Development Consent Order. In particular, the Secretary of State may exercise this power if it is considered that the development that would be authorised as a result of the change should properly be the subject of a new application for a Development Consent Order under section 37 of the 2008 Act.
18. Decisions on whether a proposed change to a project would require a full application for a Development Consent Order rather than using the change process will need to be assessed on a case by case basis. Applicants should therefore have early discussions with the Planning Inspectorate to help avoid applications for changes to Development Consent Orders having to be declined on the grounds that what is proposed should be treated as a new project.
19. It is expected that the power to decline to determine an application for a change will be used infrequently. It is more likely in cases where the proposed change would in itself constitute a nationally significant infrastructure project, or where the development as changed would constitute a different kind of infrastructure project from that which has already been given consent. The cumulative effect of previous changes made to the Development Consent Order may also be relevant when considering whether a further application for change should be treated as a new project.

20. Without prejudice to the need to consider applications in the light of individual circumstances, some theoretical examples of the situations where it might be used could include:
- (i) a road project from town A to town B was granted a Development Consent Order and the applicant subsequently submitted an application to change the consent by extending the road from town B to town C. In such a situation, the Secretary of State might use the power to refuse to determine the application if the building of the road from town B to town C on its own would require a Development Consent Order (because it met the thresholds in the 2008 Act to be a nationally significant infrastructure project).
  - (ii) similarly, if development consent had been granted for a road and a change was proposed so that part of the route was amended such that the length of the new part of the route exceeded the length of what remained of the original route, the Secretary of State might consider that change should be treated as a completely new project rather than a material change to the original development consent.
  - (iii) if a gas fired power station was granted a Development Consent Order, but the applicant subsequently submitted an application for changes so the plant was fired by another fuel (eg biomass or coal), then the Secretary of State might consider that the changes to the project were so significant that the project should be subject to a new application for development consent.



# Applications for non-material changes

21. Applicants proposing to bring forward an application for a non-material change to a Development Consent Order are advised to discuss their proposed change, and in particular the issue of materiality, with the Planning Inspectorate before they undertake any of the procedural steps required by the regulations.

## **Main steps for making an application for a non-material change:**

**Step one:** Applicant prepares application, makes arrangements for publicity and consultation and notifies the Planning Inspectorate of their intention to submit an application.

**Step two:** Publication of notice publicising the application. Applicant submits application to Secretary of State with the notice publicising the application (and copies these documents to the Planning Inspectorate).

**Step three:** Applicant consults by sending out copy of notice publicising application to those persons specified in the 2011 Regulations.

**Step four:** Applicant sends statement to Secretary of State setting out the steps taken to comply with requirements under Regulations 6 and 7 (publicity and consultation).

**Step five:** Responses to publicity and consultation sent to the Planning Inspectorate (on behalf of the Secretary of State) and published on website.

**Step six:** After deadline for receipt of responses, Secretary of State takes decision on application and notifies the applicant, consultees and those making representations on the application.

## Publicising the application (Regulation 6)

22. The applicant must publicise the fact they are making an application by publishing a notice for at least two successive weeks in one or more local newspapers circulating in the vicinity of the land where the project is situated. They must also publish the notice in any other publication that is necessary to ensure that notice is given in the vicinity of the land. Arrangements for publication should be made so that the notice is published for the first time when the application is made to the Secretary of State.
23. Applicants should ensure that the Planning Inspectorate is made aware of the intention to make and publicise an application well in advance of their doing so. The Planning Inspectorate, on behalf of the Secretary of State, will receive any responses to the publicity (see paragraph 36 below). A project e-mail address will need to be set up by the Inspectorate to receive these and the e-mail address will need to be reflected in the notice publicising the application.
24. Regulation 6 sets out the matters that the notice publicising the application should cover. These are:
  - the name and address of the applicant;
  - a statement that the applicant is seeking, by way of an application to the Secretary of State, a change to be made to a development consent order which is not material;
  - a summary of the main elements of the proposed application;
  - a statement that any documents, plans and maps showing the nature and location of the land, and accompanying the application, are available for inspection on a website and also, free of charge, at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice;
  - a statement as to whether a charge will be made for copies of any of the documents and, if so, the amount of any charge;
  - the latest date on which those documents, plans and maps will be available for inspection (being a date not earlier than the deadline set for receipt of responses to publicity);
  - details of how to respond to the publicity; and
  - a deadline for receipt of those responses by the Planning Inspectorate (on behalf of the Secretary of State) being not less than 28 days following the date when the notice is last published.
25. The summary in the notice of the main elements of the application should describe the changes sought to the project in clear, accessible, and non-technical language. Documents, plans and maps that are made available for inspection should provide clarity on the change being sought. If the change is technical in nature, applicants should consider providing a non-technical summary of any documents to be made available for inspection. Applicants should also consider providing with these documents a statement setting out why they consider the changes proposed in their application are non-material.

## Making the application (Regulation 4)

26. When the application for a non-material change is made, the notice publicising the application should be published at the same time. Applications should be made to the Secretary of State who granted the Development Consent Order which is the subject of the application for change.
27. A copy of the notice publicising the application, the application and the material made available for public inspection should be sent to the Planning Inspectorate in electronic format at the same time as the application is made to the Secretary of State. This material can then be made available on the relevant project page of the National Infrastructure Planning website, thereby fulfilling the requirement under Regulation 6(2) (d).
28. Regulation 4 sets out the details of what must be included in an application made to the Secretary of State. This includes any documents or plans considered necessary to support the application. If consent is granted for a change, and the original Development Consent Order was made through a statutory instrument, an amending order will also need to be made through a statutory instrument. The documents sent to the Secretary of State as part of the application should therefore include a draft of the Development Consent Order that will amend the original order made<sup>3</sup>.
29. The fee for an application is set out in Regulation 5. The fee must be paid at the same time as the application is made to the Secretary of State.

## Duty to consult (Regulation 7)

30. For a proposed non-material change, the applicant must consult those persons specified in the regulations. This is done by sending them a copy of the notice publicising the application. Those who must be notified include all those who were notified (in accordance with section 56 of the 2008 Act) when the application for the original Development Consent Order was accepted by the Secretary of State.
31. The notice must also be sent to “any other person who may be directly affected by the changes proposed in the application”. Given that the application will be for a non-material change, there may only be a limited number of people, if any, who can be said to be directly affected by the change but will not be consulted automatically because they were notified when the original application for development consent was accepted. Nonetheless, applicants should consider carefully whether there will be additional people who should be sent a copy of the notice. This could, for example, include people or businesses who have moved into the area where the infrastructure project is located and who would not have been consulted on the original application for a Development Consent Order. It may also include those who were not notified under section 56 but who made relevant representations on the original application for development consent.

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<sup>3</sup> The Planning Inspectorate’s Advice note 15 provides advice on drafting Development Consent Orders and is available on the Legislation and Advice section of the National Infrastructure Planning Website: <http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

32. The regulations also provide that an applicant need not consult a person or authority specified in the regulations if they have the written consent of the Secretary of State not to do so. Any such requests should be sent in writing to the Planning Inspectorate well in advance of consultation starting and should set out clearly who it is proposed not to consult and the reason for this. Requests will be considered on a case by case basis, but applicants should note that requests seeking a total exemption from the need to consult are unlikely to be accepted.

## Responding to publicity and consultation

33. The notice publicising the proposed application must include details of how to make a response to the publicity and a deadline for those responses. This deadline should be at least 28 days following the date on which the notice is last published.
34. Any responses to publicity should focus only on the change that is being proposed to the infrastructure project (including, where appropriate, the impact of the change on the project as a whole). Responses should not go into details of wider matters relating to the underlying principles of a project, or other matters not directly related to the change applied for. This would include those matters considered in the examination of the original application for a Development Consent Order and in the Secretary of State's decision on that application.
35. Responses to publicity should be sent to the Planning Inspectorate, who will arrange for these to be published on the project page of the National Infrastructure Planning website. They will then be passed to the Secretary of State so regard can be had to them when taking a decision on the application.

## Consultation and publicity statement (Regulation 7A)

36. The applicant is required to provide the Secretary of State with a copy of the notice used to publicise the application and a statement that sets out the steps that the applicant has taken to comply with the requirements in Regulations 6 and 7 on publicity and consultation. The statement that sets out the steps taken to meet the requirements of Regulations 6 and 7 should also be sent to the Planning Inspectorate so this can be included on the relevant project page of the National Infrastructure Planning website. An application for a non-material change need not be considered by the Secretary of State until the material required by Regulation 7A has been received.

## Secretary of State's decision (Regulation 8)

37. The Secretary of State's decision on an application for a non-material change must be notified to the applicant, those consulted on the application and anyone who made a response to publicity or consultation. There is no statutory timetable for making the decision. However, where the applicant has complied with all necessary procedural requirements and has provided all the information and documents necessary for a decision to be made, a decision should normally be expected within 6 weeks of the closing date for responses to publicity and consultation.

38. Where the original Development Consent Order was made through a statutory instrument, then an amending order will also be made through a statutory instrument. The Secretary of State must deposit a copy of the statutory instrument containing the order in Parliament as soon as practicable after it is made.

# Applications for material changes

## **Main steps for making an application for a material change:**

**Step one:** Consultation.

**Step two:** Applicant publicises proposed application for a material change.

**Step three:** Applicant considers representations made in light of consultation and publicity before making application to Secretary of State. Applicant gives notice of, and publicises, the application and invites representations on the proposal.

**Step four:** Secretary of State considers the need for an examination of the application.

**Step five:** If the Secretary of State is of the view that an examination is not required, there would then be the opportunity for further representations (for at least 28 days). If the decision not to hold an examination was confirmed, then the Secretary of State's decision on application would be made within 2 months of notification of decision not to hold an examination.

Alternatively, if the Secretary of State decides to hold an examination, an Examining Body is appointed to examine the application (with a maximum of 4 months for the examination). The report and recommendation of the Examining Body would need to be provided within 2 months from close of the examination. The Secretary of State's decision on the application would be made within 2 months from receipt of the Examining Body's report.

## The pre-application process (Regulations 10-15)

### Consultation

39. The applicant is required by Regulation 12 to supply the Secretary of State who made the Development Consent Order with the same information on their proposed application as would be supplied if the Secretary of State were a consultee. This material should also be sent to the Planning Inspectorate before consultation commences.
40. Regulation 10 of the 2011 Regulations sets out who must be consulted prior to any application for a material change to a Development Consent Order. These consultees are:
  - each person who may be directly affected by the changes proposed in the application;
  - any person apart from the applicant who has the benefit of the Development Consent Order to which the application relates;
  - persons or bodies listed in Schedule 1 to the 2011 Regulations;
  - relevant local authorities (as defined in Regulation 2 and section 43 of the 2008 Act);
  - persons with an interest in the land and other persons covered by section 44 of the 2008 Act;
  - the Greater London Authority and the Marine Management Organisation (in specified circumstances);
  - any other person that the Secretary of State considers should be consulted.
41. When consulting, the applicant must notify the person being consulted of the deadline for receipt of any response to that consultation (Regulation 11). This deadline must be no earlier than a period of 28 days starting with the day after the day on which the person receives the consultation documents.
42. Regulation 10 also allows the applicant not to consult a person or authority if they have obtained the written consent of the Secretary of State. Any such requests should be sent in writing to the Planning Inspectorate well in advance of consultation starting and should set out clearly who it is proposed not to consult and the reason for this. Requests will be considered on a case by case basis.
43. The 2015 amendments to the 2011 Regulations removed the requirement to prepare a statement of community consultation setting out how the applicant proposed to consult local people about the proposed application.

### Publicising the proposed application

44. Regulation 14 requires the applicant to publish a notice that publicises their intention to make an application for a material change to a Development Consent Order. The notice must be published for at least two successive weeks in one or more local newspapers, and once in the London Gazette (and the Edinburgh Gazette if land in Scotland is affected). If the application relates to offshore development, the notice

must also be published once in Lloyd's List and once in an appropriate fishing trade journal. There is no longer any requirement to publish the notice in a national newspaper. Regulation 14(2) sets out details of what should be included in the notice. This includes:

- the name and address of the applicant;
- a statement that the applicant intends to make an application to the appropriate authority;
- a summary of the main elements of the proposed application;
- a statement as to whether the proposed application is subject to Environmental Impact Assessment;
- a statement that the documents, plans and maps showing the nature and location of the land are available for inspection free of charge at the places (including at least 1 address in the vicinity of the proposed development) and the times set out in the notice;
- the latest date on which those documents, plans and maps will be available for inspection (being a date not earlier than the deadline set for receipt of responses to publicity);
- whether a charge will be made for copies of any of the documents, plans or maps and the amount of any charge;
- details of how to respond to the publicity; and
- a deadline for receipt of those responses by the applicant, being not less than 28 days following the date when the notice is last published.

The summary of the main elements of the application should describe the changes sought to the project in a clear, accessible, and non-technical language. Documents, plans and maps that are made available for inspection should also provide clarity on the change being sought. If the change is technical in nature, applicants should consider providing a non-technical summary of any documents to be made available for inspection.

45. In addition, the applicant must arrange for a notice of the proposed application to be displayed at, or as close as reasonably possible to, the land to which the application relates at a place accessible to the public. In addition specific requirements apply to applications for schemes where the development involves works with a route or alignment exceeding 5 kilometres in length. These are set out in Regulation 14(4).

## Making the application (Regulations 16-21)

46. Before submitting an application for a material change, the applicant is required to take account of responses to the consultation and publicity received by the deadlines set in Regulations 10 and 14.
47. Regulation 16 sets out what must be included in an application. This includes any documents and plans considered necessary to support the application. Although not specifically mentioned in the regulations, the applicant will be expected to include in



their application a draft of the Development Consent Order that will amend their original consent if that was made through a statutory instrument.

48. Applications should be sent to the Planning Inspectorate along with the fee for making an application, as set out in paragraph 2 of Schedule 2 of the 2011 Regulations.

## **Environmental Impact Assessment**

49. Applications are required to include a statement as to whether the application is for development subject to Environmental Impact Assessment. The regulations also require that an application for a material change to a consent should be treated as a subsequent application for the purposes of certain provisions in the separate 2009 regulations governing Environmental Impact Assessment<sup>4</sup>. The effect of this is that where the applicant has notified the Secretary of State that they intend to provide an updated Environmental Statement, or the Secretary of State has issued a screening opinion to the effect that an updated Statement is needed, they will need to submit, and consult on, an updated Environmental Statement. The Secretary of State will not be able to grant consent for a material change to a Development Consent Order until the updated Environmental Statement and any other environmental information have been taken into account. Further information on the general process for Environmental Impact Assessment is available in Planning Inspectorate Advice Note 7<sup>5</sup>.

## **Notice of, and publicising, the application**

50. When the application is made, the applicant is required to notify those persons and bodies set out in Regulation 19 unless they have written consent from the Secretary of State to not do so. This consent should normally be sought from the Planning Inspectorate (acting on behalf of the Secretary of State) before an application for a material change is made. Regulation 19 also sets out the information that must be included in the notice. This includes how to make representations on the application and the deadline for receipt of representations. This deadline must be no less than 28 days following the date on which a person receives the notification.
51. Regulation 20 requires the applicant to publish a notice of their application and sets out what must be included in this notice. This must be done in the same manner as for the notice published at pre-application stage under Regulation 14 (see paragraphs 44 and 45 above). Regulation 20 also sets out what must be included in the notice. This includes how to make representations and a deadline for receipt of these (at least 28 days following the date the notice is last published).

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<sup>4</sup> See: <http://www.legislation.gov.uk/ukxi/2009/2263/contents/made> and amendments made in 2012: <http://www.legislation.gov.uk/ukxi/2012/787/contents/made>

<sup>5</sup> Available in the Legislation and Advice section of the National Infrastructure Planning Website: <http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

## Compulsory acquisition

52. Where the application for a material change to a Development Consent Order includes an authorisation for the compulsory acquisition of land, an interest in land, or a right over land, the applicant must provide the Secretary of State with details of affected persons. These are those persons who the applicant, after making diligent inquiry, knows has an interest in the land, or part of the land, to which the compulsory acquisition in the application for change relates.

## Making representations

53. Anyone can make representations on an application for a material change to a Development Consent Order either in response to having been notified of the application for change or as a result of having seen the notice publicising the application. Representations should be sent to the address specified in the notice.
54. Representations should focus on the changes that are being made to the project (including, where appropriate, the impact of the change on the project as a whole). Responses should not go into details of wider matters relating to the underlying principles of a project, or other matters not directly related to the change applied for. This would include those matters considered in the examination of the original application for a Development Consent Order and in the Secretary of State's decision on that application.

## Decision on whether to hold an examination

### (Regulations 21A and 21B)

55. The 2015 amendments to the 2011 Regulations introduced the possibility of an application for a material change being decided by the Secretary of State without appointing an Examining Body to hold an examination into the application. On receipt of an application for a material change the Secretary of State will therefore consider whether the application is one where a decision can be made without the need for an examination.
56. The Secretary of State will consider the application for a change and all the relevant representations received in light of consultation and publicity. If, in light of those representations, the Secretary of State is of the view that it is not necessary to appoint an Examining Body to examine the application, then the applicant and each person who has made a representation in response to consultation and publicity under regulations 19 and 20 will be notified of this. Representations will be published on the Planning Inspectorate's National Infrastructure Planning website.
57. The notice sent out to those who have made representations will include:
  - a statement to the effect that the Secretary of State is of the view that it is not necessary to appoint an Examining Body to hold an examination into the application for change;
  - a statement setting out the Secretary of State's reasons for taking this view;

- a statement that representations have been published on a website;
  - details of how to make further representations about the application; and
  - a deadline for receipt of any further representations (not less than 28 days following the date of the notice).
58. The opportunity to make further representations allows those who have already made representations to put forward any additional points or information on the application and the Secretary of State's intention not to hold an examination. Following receipt of any further representations, the Secretary of State will consider all the representations received before either confirming the intention not to hold an examination, or deciding that an examination is in fact required.
59. Where the decision to not hold an examination is confirmed, the Secretary of State will:
- issue a notice of that decision to the applicant, everyone who was notified of the application under Regulation 19, and any other person who has made a relevant representation about the application;
  - publish the reasons for the decision on the Planning Inspectorate's National Infrastructure Planning website; and
  - publish the further representations made on the application.
60. If following further representations, the Secretary of State decides to hold an examination, an Examining Body will be appointed to hold the examination (see paragraphs 64-68 below).
61. It is not expected that the power to be able to decide an application for a change without holding an examination will be used frequently. Whether it is exercised will depend on the circumstances of individual applications. However it may, for example, be used in cases where the Secretary of State is confident that the issues raised in representations do not require further probing or investigation, or where the representations made entirely support the change. It is not envisaged that it would be appropriate to exercise this power in cases where the application involves the compulsory acquisition of land. It is also highly unlikely to be appropriate where there are substantial issues raised in representations from local authorities or bodies listed in Schedule 1 of the 2011 Regulations.

## Decision on application when no examination is held

62. Where the Secretary of State decides that no examination of the application is needed, the application will be decided by the Secretary of State taking into account all the relevant representations that have been received. Regulation 47 sets out the matters that the Secretary of State must have regard to when taking a decision on an application for a material change, and the way in which the decision must be made. With the exception of a local impact report (which is not a requirement where an application for change is being made), the provisions of Regulation 19 cover the same requirements as those for decisions taken under section 104 of the 2008 Act.

63. Where no examination is held, the Secretary of State is required to determine the application by the end of a period of 2 months starting from the date of the notice confirming the decision not to hold an examination (see paragraph 57 above).

## Procedure and decision when an examination is held (Regulations 22 to 53)

64. Where the Secretary of State decides that an application should be subject to an examination, that examination will be governed by the procedural requirements set out in Regulations 22-46. These cover the same ground as the requirements set out in the 2008 Act and in the Infrastructure Planning (Examination Procedure) Rules 2010<sup>6</sup>. Further guidance is available that specifically covers the examinations process for applications for Development Consent Orders<sup>7</sup>. This will also be of relevance, as appropriate, to examinations into applications for material changes to Development Consent Orders but is not repeated here.
65. The examination of an application for a material change must be completed within 4 months beginning with the day after the last day of the preliminary meeting. The Examining Body will make a written report to the Secretary of State by the end of the period of 2 months beginning with the deadline for completion of the examination, or, if earlier, the end of the day on which examination is in fact completed.
66. The Secretary of State must then take a decision on the application by the end of the 2 month period beginning with the deadline for the Secretary of State to receive a report from the Examining Body, or, if earlier, the end of the day on which the Secretary of State in fact receives that report. The Secretary of State must also provide a written notice of their decision along with a statement of reasons to the persons and bodies set out in Regulation 52. This includes anyone who has made a relevant representation on the application. The statement of reasons must also be published in such a manner as the Secretary of State thinks appropriate.
67. Where the Secretary of State grants consent to the application for change, this will be done by making an Order that amends the original Development Consent Order for the project. Where that original Order was made through a statutory instrument, the amending Order will also be made through a statutory instrument and deposited in Parliament as soon as practicable after the Order is made.
68. Where the Order granting consent for the change includes authorisation for the compulsory acquisition of land or a right over land, Regulation 51 requires the prospective purchaser to serve a compulsory acquisition notice on owners, lessees and occupiers of the land or right in question. A copy of the Order must be made available at a place in the vicinity of the land for inspection by the public at all reasonable hours, and the compulsory acquisition notice must be affixed to a conspicuous object on or near the land covered by the Order.

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<sup>6</sup> See: <http://www.legislation.gov.uk/ukxi/2010/103/contents/made>

<sup>7</sup> See: <https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent>

Regulation 51(6) also requires that a compulsory acquisition notice is published in one or more local newspapers circulating in the locality of the land subject to the Order.