



Ministry of Housing,
Communities &
Local Government

Planning Act 2008

The Infrastructure Planning (Fees) Regulations 2010
guidance



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Introduction

1. The Planning Act 2008 (“the Planning Act”) (as amended) created a new development consent regime for nationally significant infrastructure projects in the fields of energy, transport, water, waste water, and waste. These projects are commonly referred to as major infrastructure projects. The promoters of certain business and commercial projects can also apply to be directed into the regime by the Secretary of State.
2. This guidance is to provide project applicants with advice on the fees payable to the Secretary of State for the costs of processing an application for a Development Consent Order under the Planning Act. Fees are only payable in respect of the specific matters set out in the Infrastructure Planning (Fees) Regulations 2010 (“the 2010 Regulations”)¹. This guidance takes into account amendments made to the 2010 Regulations by the Infrastructure Planning (Fees) (Amendment) Regulations 2013 (“the 2013 Regulations”)² and the Infrastructure Planning Fees (Amendment) Regulations 2017 (“the 2017 Regulations”)³.

Summary of fees

3. Fees are charged at different stages:
 - At the time of submitting an application for a Development Consent Order.
 - When an application is accepted for examination. The fee amount is based on whether the Examining Authority consists of a single inspector, a panel of two inspectors⁴, a panel of three inspectors, or a panel of more than three inspectors.
 - Following commencement of the examination, based on a system of day-rates, the level of which depends on whether the Examining Authority is a single inspector, a panel of two inspectors, a panel of three inspectors, or a panel of more than three inspectors. The amount to be paid will be 50% of the estimated examination fee, with the estimate based on the number of days that are expected to be needed for the examination of that particular application.
 - Following completion of the examination a fee is paid for the remaining costs of the examination.

¹ See <http://www.legislation.gov.uk/uksi/2010/106/contents/made>

² See <http://www.legislation.gov.uk/uksi/2013/498/contents/made>

³ See <http://www.legislation.gov.uk/uksi/2017/314/contents/made>

⁴ Section 27 of the Infrastructure Act 2015 amended the Planning Act to enable the Secretary of State to appoint a two-inspector panel as the Examining Authority for an application for an Order granting development consent for a nationally significant infrastructure project. This came into force on 5 April 2017.

- There may also be a fee for any venue costs, i.e. where one is not provided by the applicant.
4. Where applicants are unable to acquire information about interests in land, or require access to land for the purposes of surveying, taking levels or in order to facilitate compliance with the Environmental Impact Assessment or Habitats Directives⁵, they may request authorisation from the Secretary of State to serve a notice requiring such information to be provided, or access granted⁶. A fee is charged for this service.
 5. Applicants should refer to the Planning Inspectorate's website for details of current fees⁷.
 6. These fee levels were set by the 2017 Regulations which amended the 2010 Regulations. The Explanatory Memorandum that accompanies the 2017 Regulations provides the Government's rationale for setting fees at those levels⁸. From April 2018, these fees will increase annually in line with inflation.
 7. Examples of how the fees work in practice, based on the four tiers of Examining Authority size, are available on the Planning Inspectorate's website⁹.

Interpretation of the 2010 Regulations

8. Annex A contains a table setting out the policy intention and interpretation of each regulation. While there is a general presumption that payment of fees should be fully enforced, most of the regulations have been drafted to permit the Secretary of State some discretion when unforeseen circumstances arise e.g. where they are assured that non-payment is simply due to an administrative error.
9. As highlighted above, the 2010 Regulations have been amended by:
 - The 2013 Regulations: the amendments provided clarity about the days that can be counted in calculating the final payment for the handling of an application for an Order granting development consent; and
 - The 2017 Regulations: these amendments -
 - i. increased the fees for processing applications for Orders granting development consent;

⁵ Council Directive 2011/92/EU of 13th December 2011, and Council Directive 92/43/EC of 21 May 1992.

⁶ Sections 52 and 53 in the Planning Act (obtaining information about interests in land, and rights of entry) as amended by the Localism Act 2011.

⁷ See <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

⁸ See <http://www.legislation.gov.uk/ukSI/2017/314/memorandum/contents>

⁹ See <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

- ii. introduced fees for panels for two inspectors to examine applications for Orders granting development consent;
- iii. introduced a mechanism for fees to increase with inflation every year from April 2018; and
- iv. inserted a review provision.

Annex A: Policy intention and interpretation of the 2010 Regulations

Regulation	Policy intention and commentary
1. Citation and commencement	<p>This provides that the regulations come into force on 1 March 2010.</p> <p>The regulations extend to England and Wales and, for limited purposes, to Scotland, in accordance with the Planning Act 2008 (section 240); and apply to England and Wales and, subject to modifications, Scotland (sections 236 and 240). They also apply in territorial waters adjacent to England and Wales, and any Renewable Energy Zone (except those where Scottish Ministers have functions).</p>
2. Interpretation	<p>This provides for interpretation of various defined terms and references used throughout the regulations.</p>
3. Fee in respect of authorisation under sections 52 and 53 of the Planning Act	<p><i>Policy intention</i></p> <p>Sections 52 and 53 relate to obtaining information about interests in land, and entering land for the purposes of surveying or taking levels or in order to facilitate compliance with the Environmental Impact Assessment or Habitats Directives¹⁰, respectively.</p> <p>Where an applicant is refused information and / or access, and in relation to section 53 is considering a distinct project of real substance genuinely requiring entry onto the land in question¹¹, they can submit a request to the Secretary of State who can require that the information or access is to be provided. A fee must be paid at the same time as any request is made¹².</p> <p>Applicants are expected to act reasonably, first seeking to obtain relevant information or permission to access land directly before seeking authorisation under these provisions. Specifically, applicants should only submit</p>

¹⁰ Directive 2011/92/EU of 13th December 2011, and Council Directive 92/43/EC of 21 May 1992. Sections 52 and 53 in the Planning Act have been amended by the Localism Act 2011.

¹¹ This test is set out in section 53(2)(a) of the Planning Act.

¹² Applicants should refer to the Planning Inspectorate's website for current fee levels: <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

Regulation	Policy intention and commentary
	<p>requests for those aspects of information, or access to parcels of land, where they consider they have been unreasonably refused that information or access and the Secretary of State's intervention is necessary as a last resort.</p> <p><i>Interpretation</i></p> <p>The regulation has been specifically drafted widely enough to allow the Secretary of State to decide whether, in each particular case, one or several requests for authorisation under section 52 or 53 of the Planning Act are required.¹³</p>
<p>4. Fee in respect of venue costs</p>	<p><i>Policy intention</i></p> <p>Applicants should provide the hearing venue bearing in mind what type of facilities the Examining Authority needs to undertake its examination. This approach gives the applicant greater control over venue costs.</p> <p>Where the applicant does not provide a hearing venue the Examining Authority will need to do so, and regulation 4 provides power for the Secretary of State to recover any costs reasonably incurred. When providing a venue, consideration should be given to public sector organisations in the locality that might have suitable facilities available.</p> <p><i>Interpretation</i></p> <p>(i) The power is permissive and does not require the Secretary of State to charge, but this is only expected where a venue cannot be provided free of charge.</p> <p>(ii) As set out in regulation 2, "hearing" has the same meaning as section 95(2) of the Planning Act and in this context particularly relates to:</p> <ul style="list-style-type: none"> • the "preliminary meeting" where discussion takes place on how the application should be examined • hearings to examine a specific issue • hearings to examine the compulsory acquisition aspects of an application

¹³ Applicants may wish to refer to the Planning Inspectorate's Advice Notes 4 and 5 for further information:
[Planning Inspectorate – Advice Note 4](#)
[Planning Inspectorate -- Advice Note 5](#)

Regulation	Policy intention and commentary
	<ul style="list-style-type: none"> • ‘open floor’ hearings, such as when an interested party wishes to make an oral representation on a matter; and • any other meeting or hearing that the Examining Authority causes to be held for the purposes of the Examining Authority’s examination of the application. <p>It is a decision for the Examining Authority as to how many hearings are required, bearing in mind the need to undertake an efficient but thorough examination of the issues (and the rights of interested parties to make representations orally).</p> <p>(iii) Where a fee is charged and not received within 28 days of the date of invoice, the Secretary of State has discretion to take no further steps in relation to an application until the fee has been paid. The Secretary of State is not compelled to cease work on the application, for instance he/she may decide to continue where he/she is satisfied that payment has not arrived due to an administrative error.</p>
5. Fee to accompany an application	<p><i>Policy intention</i></p> <p>An initial fee must accompany all applications for an Order granting development consent¹⁴. This aims to recover costs of assessing whether the application meets the criteria at section 55 of the Planning Act and, as such, whether the Secretary of State will accept it for examination. Matters that the Secretary of State will need to consider include whether the application is of a standard that the Secretary of State considers is satisfactory and if the applicant has met their duty to carry out effective pre-application consultation.</p> <p><i>Interpretation</i></p> <p>Applicants must pay this fee at the same time as making the application. The Secretary of State does not need to consider the application until the fee has been received.</p>
6. Fee in respect of the initial decision	<p><i>Policy intention</i></p> <p>Once an application has been accepted by the Secretary of State (i.e. it has met the criteria at section 55 of the Planning Act), an Examining Authority will be appointed for its examination.</p>

¹⁴ See <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

Regulation	Policy intention and commentary
	<p>Four 'tiers' of Examining Authority size are set out in the regulations:</p> <ul style="list-style-type: none"> • cases examined by a single inspector; • cases examined by a Panel of two inspectors; • cases examined by a Panel of three inspectors; and • cases examined by a Panel of more than three inspectors. <p>Applicants must pay a fixed fee within 28 days of the Secretary of State appointing the Examining Authority, with the fee depending on which 'tier' is chosen¹⁵.</p> <p><i>Interpretation</i></p> <p>Where a fee is charged and not received within 28 days of the date of invoice, the Secretary of State has discretion to take no further steps in relation to an application until the fee has been paid. The Secretary of State is not compelled to cease work on the application, for instance he/she may decide to continue where he/she is satisfied that payment has not arrived due to an administrative error.</p>
7. Fee in respect of handling an application	<p>This regulation provides that two fees will be charged in accordance with:</p> <ul style="list-style-type: none"> • regulation 8 (following the start of the examination); and • regulation 9 (following the end of the examination). <p>These fees aim to recover the total costs of the examination and making of the recommendation report to the Secretary of State, based on a system of day-rates applied over the examination period.</p>
8. Initial payment in respect of the handling of an application	<p><i>Policy intention</i></p> <p>Regulations 8 and 9 relate to the charging of day-rates in relation to the Examining Authority's examination of an application (as set out in Chapter 4 of Part 6 of the Planning Act).</p> <p>Following the "preliminary meeting" (see section 88 of the Planning Act), the Examining Authority will make its</p>

¹⁵ See <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

Regulation	Policy intention and commentary
	<p>procedural decision about how the application will be examined, including setting the timetable for the examination, and under regulation 8 will charge 50% of the expected fee based on the estimated overall length of the examination period. Remaining fees will then be paid following the end of the examination based on actual days taken (see commentary to regulation 9 below).</p> <p>As set out in the commentary on regulation 6, there are four ‘tiers’ of Examining Authority size. Accordingly four tiers of day-rate have been set out for the initial payment in respect of handling an application under regulation 8¹⁶.</p> <p><i>Interpretation</i></p> <p>(i) Where a fee is charged and not received within 28 days of the date of invoice, the Secretary of State has discretion to take no further steps in relation to an application until the fee has been paid. The Secretary of State is not compelled to cease work on the application, for instance he/she may decide to continue where he/she is satisfied that payment has not arrived due to an administrative error.</p> <p>(ii) The regulations have been drafted such that they are triggered whenever the Examining Authority begins an examination i.e. after holding a preliminary meeting under section 88 of the Planning Act (which is when the proposed timetable for the examination is discussed with interested parties).</p> <p>(iii) Regulation 8(2) defines “estimated relevant day” as a day estimated by the Examining Authority as required for examining the application. The fee will normally be expected to be charged for every working or “relevant” day in the period from the start of the examination until its end (normally excluding weekends and public holidays). There is discretion not to charge for certain days where there are good reasons to do so; any reduction in fees would be reflected in the final payment at the end of the examination (see commentary to regulation 9 below).</p>
9. Final payment in respect of the handling of an application	<p><i>Policy intention</i></p> <p>See the commentary under regulation 8. Regulation 9 relates to the final payment after the end of the examination.</p> <p>This fee is calculated by determining the total number of</p>

¹⁶ See <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

Regulation	Policy intention and commentary
	<p>'relevant days' that were needed for the examination, which will normally be every working day in the period from the start of the examination to its end, multiplied against the final payment day-rate in regulation 9 and deducting the fee paid under regulation 8.</p> <p>The four tiers of day-rates for the final payment in respect of handling an application under regulation 9 are set out on the Planning Inspectorate's website¹⁷.</p> <p>Where payment is not made within 28 days, the duty on the Examining Authority for making a report and recommendation to the Secretary of State within three months (as set out in section 98 of the Planning Act) is extended by the number of days in which payment has been delayed. E.g. if payment is one month late, the Examining Authority has four (instead of three) months from the end of the examination to submit the recommendation report to the Secretary of State.</p> <p><i>Interpretation</i></p> <p>(i) Under Regulation 9(3) (as substituted by the Infrastructure Planning (Fees) (Amendment) Regulations 2013) a "relevant day" excludes weekends and public holidays, unless they are required for the handling of the examination, and any day on which consideration of the application is formally suspended (i.e. due to the review of the national policy statement, or the absence of adequate environmental information).</p> <p>There is also discretion not to charge for certain days where there are good reasons to do so e.g. where the inspector that is examining a single appointed inspector case falls ill and progress on the case is delayed. In such circumstances the number of "relevant days" counted can be reduced accordingly, thus reducing the final fee paid by the applicant.</p> <p>(ii) Where a fee is charged and not received within 28 days of the date of invoice, submission of the Examining Authority's recommendation report to the Secretary of State can be delayed until payment has been obtained. The statutory deadline to make the recommendation report within three months (see section 98) is extended in such circumstances by the number of days delay in the payment.</p>

¹⁷ See <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

Regulation	Policy intention and commentary
<p>10. Direction made under section 35 of the Planning Act</p>	<p><i>Policy intention</i></p> <p>The Planning Act¹⁸ includes a power at section 35ZA(3)(a) for the Secretary of State to direct that, where a direction has been made under section 35(1) (Directions in relation to projects of national significance) in relation to development, any application(s) listed at section 33(1) or (2) that has already been made to a “relevant authority” in relation to the development, be determined under the Planning Act.</p> <p>In order to offset fees that would have already been paid to the relevant authority alongside the initial application(s) listed at section 33(1) or (2), applicants will not need to pay the following fees to the Secretary of State:</p> <ul style="list-style-type: none"> • the fee normally paid to accompany an application (under regulation 5)¹⁹; and • the fee normally paid in respect of the initial decision (under regulation 6). This fee varies according to the size of the examining authority²⁰. <p>Other fees paid to the Secretary of State will continue to apply as normal.</p> <p><i>Interpretation</i></p> <p>This regulation provides that regulations 5 and 6 do not apply in the case of applications that are transferred to the Secretary of State pursuant to a direction made by the Secretary of State under section 35ZA(3)(a) of the Planning Act. However, those regulations will apply, and the relevant fees must be paid, in the case of <u>proposed</u> applications that are directed into the regime under section 35ZA(3)(b) of the Planning Act, i.e. where a person proposes to make, but has yet to make, an application to a relevant authority and a direction is made by the Secretary of State under section 35ZA(3)(b).</p>

¹⁸ As amended by section 26 of the Growth and Infrastructure Act 2013.

¹⁹ See <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

²⁰ See <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

Regulation	Policy intention and commentary
12. Fees payable on or after 1 April 2018	<p>From April 2018, this regulation (inserted by the 2017 Regulations) specified the fees which may be charged in relation to an application for a development consent order will increase annually in line with inflation. The measure of inflation is the annual Consumer Price Index (CPI) rate published for the preceding September. When the CPI rate is positive, the same percentage increase will be applied to the relevant fees the following April. Fees charged in respect of venue costs under regulation 4 are excluded from any increase, with the Secretary of State recovering the costs that have been reasonably incurred in each case, as outlined in the commentary to regulation 4 above.</p>