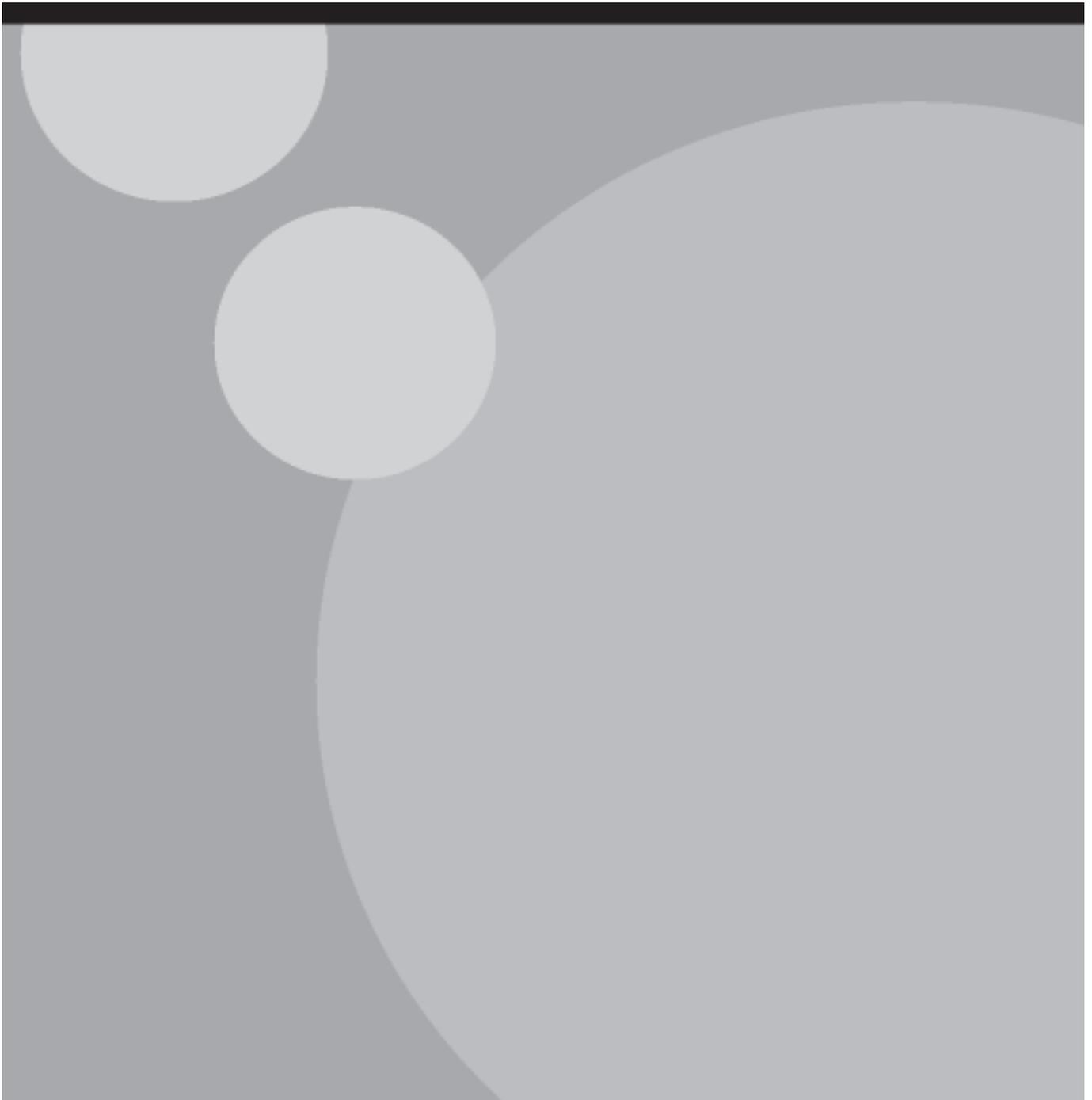




Planning Act 2008

The Infrastructure Planning (Fees) Regulations 2010: Guidance - Consultation





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2010: Guidance - Consultation

April 2012
Department for Communities and Local Government

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Introduction

1. This note provides non-statutory guidance on the fees payable to the Secretary of State when seeking a Development Consent Order for major infrastructure proposals that are determined under the Planning Act 2008.
2. As with other planning systems, under the major infrastructure regime fees are paid in respect of the costs of processing the application. These are set out in the Infrastructure Planning (Fees) Regulations 2010. The fees are separate from any which an applicant may need to pay for seeking any operational or other consents that are not included within the Development Consent Order, such as permits granted by the Environment Agency.
3. All section references in this note relate to sections of the Planning Act 2008.

Summary of fees

4. Fees are charged at different stages:
 - At the time of submitting an application for development consent
 - When an application is accepted for examination, The fee amount is based on whether the Examining authority, which is appointed by the Secretary of State to examine the case, consists of either a single appointed person, a Panel of three appointed persons (a “Normal Panel”) or a Panel of more than three appointed persons (a “Large Panel”)
 - When the formal examination commences, based on a system of day-rates, the level of which depends whether the Examining authority is a single appointed person, a Normal Panel or a Large Panel. The amount to be paid will be 50% of the estimated examination fee, with the estimation based on the number of days that are expected to be needed for the formal examination of that particular case
 - When the formal examination has been completed. This is the remainder of the examination fee, which is the fee that is payable based on the total number of days that were actually required for the formal examination, less the amount that was paid at the beginning of the formal examination
 - There may also be a fee for any venue costs, i.e. where one is not provided by the applicant
5. Where applicants are unable to acquire information about interests in land, or access land for the purposes of surveying and taking

levels, they may request authorisation from the Secretary of State to serve a notice requiring such information to be provided, or access granted. Such requests should only be made as a last resort and will incur a fee.

6. The fees are summarised in the following table:

Application stage		Fees		
		Single appointed person cases	Normal Panel cases	Large Panel cases
Request for authority to serve a notice requiring information to be provided on interests in land (section 52)		£1,000 per request		
Request to authorise right of entry to land (section 53)		£1,000 per request		
Fee when submitting an application		£4,500 per application		
Fee once application accepted		£13,000	£30,000	£43,000
Examination	<i>Daily fee (per working day²)</i>	£1,230	£2,680	£4,080

7. It is expected that most cases will be examined by an Examining authority which consists of a single appointed person or a Normal Panel.
8. The methodology and underpinning assumptions used to generate the above fees (including what costs they recover) are set out in the impact assessment that accompanied the regulations.

Interpretation of the regulations

9. Attached to this note (see Annex) is a table which sets 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 administrative error.

² Every day in the period from the start of formal examination to its end, normally excluding weekends and public holidays.

⁴ The impact assessment is at the end of the Explanatory Memorandum which can be found at <http://www.legislation.gov.uk/ukxi/2010/106/memorandum/contents>

Annex: Interpretation of Infrastructure Planning (Fees) Regulations 2010

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 have the same extent of the Planning Act 2008 (the Planning Act) and apply to England, Wales and Scotland (see section 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 terms used throughout the regulations.</p>

<p>3. Fee in respect of authorisation under sections 52 and 53</p> <p><i>Continued</i></p>	<p><i>Policy intention</i></p> <p>Sections 52 and 53 relate to obtaining information about interests in land or entering it for the purposes of surveying or taking levels.</p> <p>Where an applicant is refused information and / or access, and is genuinely considering a nationally significant infrastructure project which would require use of the land in question, they can submit a request to the Secretary of State who can require that the information or access is to be provided. An up-front fee of £1,000 must be made with any request.</p> <p>However we wish to ensure that the use of these powers (and the applicable fees) is proportionate, such that:</p> <ul style="list-style-type: none"> • the ability to enter / acquire information about land cannot be unduly frustrated e.g. by objectors buying up plots of land and then selling small amounts on to different people, with the aim of requiring an applicant to submit potentially hundreds of requests for each ‘parcel’ of land (each costing £1,000); • applicants do not submit a single request for the whole project (or large sections of it) e.g. the entire length of a proposed 100 mile pipeline. <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 requests for</p>
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Regulation	Policy intention and commentary
	<p>those aspects of information, or access to parcels of land, where they consider they have been reasonably refused that information or access.</p> <p><i>Interpretation</i></p> <p>(i) 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 are required. This will also ensure that the £1,000 fee approximately covers the resource cost involved.</p>

<p>4. Fee in respect of venue costs</p>	<p><i>Policy intention</i></p> <p>This adopts the widely used policy of applicants providing the inquiry venue (such as for inquiries held under the Harbours Act 1964, Electricity Act 1989 and Transport and Works Act 1992). 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 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) 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 • ‘open floor’ hearings, such as when an interested party wishes to make an oral representation on a matter; and
<p><i>Continued</i></p>	
<p>Regulation</p>	<p>Policy intention and commentary</p>

	<ul style="list-style-type: none"> • 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 Examining authority has discretion to ‘down tools’ and cease work on an application. The Examining authority is not compelled to cease work on the application, for instance it may decide to continue where it is satisfied that payment has not arrived due to a simple administrative error.</p>
<p>5. Fee to accompany an application</p>	<p><i>Policy intention</i></p> <p>An initial fee of £4,500 must accompany all applications for a Development Consent Order. This recovers costs of assessing whether the application meets the criteria at section 55 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 all the required information has been provided and if the applicant has met their duty to carry out effective pre-application consultation with the local community.</p> <p><i>Interpretation</i></p> <p>(i) There is no discretion provided in relation to this fee – applicants must provide it alongside the application.</p>
<p>6. Fee in respect of the initial decision</p> <p><i>Continued</i></p>	<p><i>Policy intention</i></p> <p>Once an application has been formally accepted for consideration by the Secretary of State (i.e. it has met the criteria at section 55), the Secretary of State will make a decision about whether it will be examined by an Examining authority that consists of either a single appointed person or a Panel. This decision will reflect the Secretary of State’s expectation about how complex or controversial the case is – the more complex or controversial, the more persons will be appointed.</p> <p>Three ‘tiers’ of resource intensity are set out in the regulations:</p> <ul style="list-style-type: none"> • cases examined by a single appointed person • cases examined by a Panel of three appointed persons (a “Normal Panel”); and • cases examined by a Panel of more than three appointed persons (a “Large Panel”).

Regulation	Policy intention and commentary
	<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 chosen (£13,000 / £30,000 / £43,000 respectively).</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 Examining authority has discretion to ‘down tools’ and cease work on an application. The Examining authority is not compelled to cease work on the application, for instance it may decide to continue where it is satisfied that payment has not arrived due to a simple 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 (at the start of formal examination); and • regulation 9 (at the end of formal examination). <p>These fees will recover costs of the examination and making of the report recommendation for the Secretary of State, based on a system of day-rates applied over the formal 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 during the Examining authority’ formal examination of an application (as set out in Chapter 4 of Part 6 of the Planning Act 2008). The day-rates aim to recover the costs of examining <i>and</i> making the report and recommendation to the Secretary of State.</p> <p>As set out in the commentary on regulation 6 there are three ‘tiers’ of resource intensity:</p> <ul style="list-style-type: none"> • cases examined by a single appointed person • cases examined by a Panel of three appointed persons (a “Normal Panel”); and • cases examined by a Panel of <u>more</u> than three appointed persons (a “Large Panel”). <p>Accordingly three tiers of day-rate have been set – £1,230 / £2,680 / £4,080 per ‘working day’ respectively. A ‘working day’ (defined in the regulations as a “relevant day”) is each day in the period from the start of formal examination to its end, normally excluding weekends and public holidays.</p> <p><i>Continued</i></p>

Regulation	Policy intention and commentary
	<p>The fees in this regulation are 50% of the full day-rates. The intention is that, following the Examining authority’s programming of its formal examination at the “preliminary meeting” (see section 88 of the Planning Act), it will charge 50% of the expected fee based on the estimated overall length of the examination period. Remaining fees will then be paid at the end of examination based on actual days taken (see regulation 9).</p> <p>The methodology for how the fee levels were calculated (including what costs they recover) is set out in the Impact Assessment that accompanied the regulations⁵.</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 Examining authority has discretion to ‘down tools’ and cease work on an application. The Examining authority is not compelled to cease work on the application, for instance it may decide to continue where it is satisfied that payment has not arrived due to a simple administrative error.</p> <p>(ii) The regulations have been drafted such that they are triggered whenever the Examining authority begins a formal examination i.e. after holding a preliminary meeting under section 88 (which is when the timetable for the forthcoming examination is discussed with interested parties). This means that in the rare circumstance that an examination must be re-opened for a particular reason e.g. where new evidence comes to light, the applicant will still pay fees for that aspect of the examination.</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 formal examination until its end (excluding weekends and public holidays). However, 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 examination (see commentary for regulation 9).</p>

<p>9. Final payment in respect of the handling of an application</p> <p><i>Continued</i></p>	<p><i>Policy intention</i></p> <p>See the commentary under regulation 8. This relates to the final payment after the end of the formal examination.</p>
<p>Regulation</p>	<p>Policy intention and commentary</p>
	<p>This fee is calculated by determining the total number of actual ‘working days’ needed for the formal examination, which will normally be every day in the period from the start of formal examination to its end (excluding weekends and public holidays), multiplied against the full day-rate in regulation 9 and deducting the fee paid under regulation 8.</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 sections 98) 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 examination to make the report and recommendation to the Secretary of State.</p> <p><i>Interpretation</i></p> <p>(i) Regulation 9(3) defines “relevant day” as a day on which the Examining authority examined the application. The day-rate will normally be expected to be charged for every working day in that period, i.e. every day except weekends and public holidays. However, there is discretion not to charge for certain days where there are good reasons to do so e.g. where the person that is examining a single appointed person 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, the Examining authority can delay making its report and recommendation to the Secretary of State until payment has been made. The statutory deadline to make the report and recommendation within three months (see section 98) is extended in such circumstances by the number of days delay in the payment.</p>

<p>10. Direction made under section 35</p> <p><i>Continued</i></p>	<p><i>Policy intention</i></p> <p>The Planning Act includes a power at section 35(4B)(a) for the Secretary of State to direct an application (or a group of applications) that had already been made to a ‘relevant authority’, to be determined under the Planning Act 2008.</p> <p>In order to offset fees that would have already been paid to the relevant authority alongside the initial application(s), 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 when submitting an application to the Secretary of State (£4,500); and
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Regulation	Policy intention and commentary
	<ul style="list-style-type: none"> • the fee normally paid when the application had been accepted for examination (£13,000 or £30,000 or £43,000). <p>Other fees paid to the Secretary of State will continue to apply as normal.</p> <p><i>Interpretation</i></p> <p>(i) 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 35(4B)(a). However, those regulations will apply in the case of applications that are transferred under section 35(4B)(b), i.e. where a person proposes to make, but has yet to make, an application to a relevant authority.</p>