

**EXPLANATORY MEMORANDUM TO
THE INFRASTRUCTURE PLANNING (WASTE WATER TRANSFER AND STORAGE)
ORDER 2012**

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Environment, Food, and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To enable proposed major sewers to be classed as Nationally Significant Infrastructure Projects (NSIPs) and so benefit from the same streamlined planning application process reserved for other NSIPs such as proposed major sewage treatment works.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Planning Act 2008 sets thresholds that establish certain types of major infrastructure projects as NSIPs. These undergo a streamlined planning process through a single application to the Planning Inspectorate (from April 2012), rather than require multiple applications to local planning authorities. This minimises the risk of lengthy delays in determining their applications so helping to prevent “planning blight” for local communities and minimise costs for project sponsors and investors. The Planning Act 2008 did not set thresholds for major sewer projects to be classed as NSIPs.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

Richard Benyon MP, Parliamentary Under Secretary of State for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Infrastructure Planning (Waste Water Transfer and Storage) Order 2012 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The policy objective is to streamline the planning application process for proposed major sewer developments so that project sponsors, investors, and local communities have certainty at the outset that such projects undergo the same streamlined process as other NSIPs such as major sewage treatment works. This instrument amends the Planning Act 2008 to include major sewer projects as NSIPs.

7.2 The effect of the policy is to ensure that the planning application process for proposed major sewers:

- is known to all in advance;
- avoids lengthy delays;
- is transparent;
- is democratically accountable; and
- takes account of the national need, while ensuring local communities have the opportunity to engage fully in the decision-making process

7.3 Two other options to achieve the same goal of a streamlined planning process were considered, but rejected.

7.4 First, the Secretary of State could intervene under Section 35 of the Planning Act 2008 after an application is made to local planning authorities under the Town & Country Planning Act 1990.

7.4.1 However, this would not capture the full range of consents, such as compulsory purchase orders, that can be incorporated into a single application for a Development Consent Order made directly to the Planning Inspectorate (from April 2012) at the outset. Multiple applications would still be necessary to local planning authorities, which for a large project are time consuming, complex and expensive to produce. Additionally, project promoters and investors would be uncertain about whether an application would undergo the more timely streamlined NSIP planning process until intervention by the Secretary of State. This would likely make it harder to attract initial interest or investment, as well as extend a project's timescale so making it correspondingly more expensive overall.

7.5 Second, the Secretary of State could intervene (from April 2012) under Section 35 of the Planning Act 2008 before an application is made in relation to the development.

7.5.1 However, project promoters would not know until the point the Secretary of State intervenes at the pre-application stage whether a project would undergo the streamlined NSIP planning process. This uncertainty over the planning application process is therefore likely to affect investors' initial confidence in the project and so undermine its financing.

- Consolidation

7.6 There is no consolidation associated with this instrument.

8. Consultation outcome

8.1 A 12-week public consultation was carried out between 13 July and 5 October 2011, on proposals to make an Order under Section 14 of the Planning Act 2008 to include proposed major sewer projects in England as NSIPs. The consultation document was issued by email to over 900 contact addresses, including:

- Local planning authorities in London and England;
- The Greater London Authority;
- The Mayor of London;
- London MPs;
- EFRA Committee MPs;
- Local community groups established in response to the proposed Thames Tunnel;
- The Local Government Association;
- The Royal Town Planning Institute;
- The Town and Country Planning Association;
- Water and sewerage companies in England;
- WaterUK;
- Ofwat;
- The Consumer Council for Water.

8.2 There were 44 respondents in total to the consultation, of which 27 were from individuals, 10 from local authorities or planning-related bodies and the rest from other organisations. The consultation asked three questions and generated the following responses:

- Is the proposed 350,000m³ capacity threshold for a major sewer appropriate? 13 responses, with 62% agreeing with the question.
- If not, what would be a more appropriate threshold? Nine responses, with 44% content that no other threshold was needed and 33% suggesting possible alternative thresholds.
- Are the proposed supplemental provisions in the draft Order appropriate? (These would allow pre-NSIP public consultations to be considered once a project becomes an NSIP and undergoes a planning application). 11 responses, with 73% agreeing the provisions were appropriate.

8.3 In light of the responses received to the consultation, the Department's policy response was to continue with laying a draft Order before Parliament in spring 2012 as proposed. The full Government response to the consultation is on the Defra website at <http://www.defra.gov.uk/consult/files/streamlining-planning-response-to-public-consultation.pdf>.

9. Guidance

9.1 Defra will announce the Order coming into effect in the following ways:

- by a Press Release;
- through the Twitter social network;
- an email to all the original consultees; and
- on the Defra website.

9.2 As the instrument amends the Planning Act 2008, presenting a net annual benefit to business with neither a net cost nor a requirement for enforcement, there is no need for specific guidance.

10. Impact

10.1 The impact on business is that promoters of major new sewer developments will have certainty of the streamlined planning application process for their projects, which will reduce delays and associated costs, as well as providing confidence for prospective investors in the projects. Charities and voluntary bodies will be unaffected.

10.2 The impact on the public sector of this legislation is cost-neutral.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The success criteria for this instrument will be that applications for major new sewer developments benefit from the existing streamlined planning process for NSIPs, and that associated environmental and health benefits for the target communities will be realised expeditiously.

12.2 This instrument is an 'OUT' under the current 'One-in, One-out' burden reduction policy, providing business with a net overall annual benefit of £0.6m, and as such is not required to have a formal review. However, in line with good Departmental practice, the instrument will be reviewed informally by the Department in April 2017.

13. Contact

John Manning (020 7238 2019) or **Philip Ryland Jones** (020 7238 1591) or email thamestunnelteam@defra.gsi.gov.uk at the Department for Environment, Food, and Rural Affairs to answer any queries regarding the instrument.