

2010 No. 106

INFRASTRUCTURE PLANNING

The Infrastructure Planning (Fees) Regulations 2010

Made - - - - 25th January 2010

Laid before Parliament 1st February 2010

Coming into force - - 1st March 2010

The Secretary of State, in exercise of the powers conferred by sections 4 and 232(3) of the Planning Act 2008(a), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Infrastructure Planning (Fees) Regulations 2010 and shall come into force on 1st March 2010.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Planning Act 2008;

“applicant” means an applicant for an order granting development consent or a person who proposes to apply for such an order;

“application” means an application for an order granting development consent;

“Examining authority” means the Panel or single Commissioner appointed to examine the application;

“hearing” has the same meaning as in section 95(2);

(2) In these Regulations any reference to a section is a reference to a section of the Act.

(3) In these Regulations any reference to the receipt by the Commission of a payment by way of a fee is a reference to the Commission having received cleared funds in respect of the full amount of the fee.

(4) In these Regulations any reference to a failure to pay a fee is a reference to the Commission not having received cleared funds in respect of the full amount of the fee or having received payment of the full amount by cheque which has subsequently been dishonoured.

Fee in respect of authorisation under sections 52 and 53

3.—(1) The Commission must charge a fee of £1,000 in relation to each of the following requests—

- (a) a request for authorisation under section 52(2) (obtaining information about interests in land);
 - (b) a request for authorisation under section 53(1) (rights of entry).
- (2) The fee must be paid at the same time that the request is made.
- (3) If the applicant fails to pay the fee the Commission need not consider the request until payment is received by the Commission.

Fee in respect of venue costs

4.—(1) Where the applicant does not provide a venue for a hearing the Commission may charge a fee in respect of the venue costs.

(2) In paragraph (1) “venue costs” means—

- (a) where the Commission causes a hearing to be held, the costs reasonably incurred by the Commission in respect of that hearing; or
- (b) where the Commission makes arrangements for a hearing to be held but it does not take place, the costs reasonably incurred by the Commission in respect of those arrangements.

(3) The Commission must notify the applicant in writing of the amount of the fee.

(4) The fee must be received by the Commission within the period of 28 days beginning with the date of the notice referred to in paragraph (3).

(5) If the applicant fails to pay the fee within the period specified in paragraph (4), the Commission need take no further steps in relation to the application until payment has been received by the Commission.

Fee to accompany an application

5.—(1) The Commission must charge the applicant a fee in respect of the decision by the Commission under section 55 (acceptance of applications) whether or not to accept the application.

(2) The fee payable is £4,500.

(3) The fee must be paid at the same time that the application is made.

(4) If the applicant fails to pay the fee, the Commission need not consider the application until payment is received by the Commission.

Fee in respect of the initial decision

6.—(1) Following a decision under section 61 (initial choice of panel or single commissioner) the Commission must notify the applicant in writing, as soon as reasonably practicable, of the pre-examination fee.

(2) The pre-examination fee is—

- (a) where a single Commissioner will handle the application, £13,000;
- (b) where a Panel of three Commissioners will handle the application, £30,000;
- (c) where a Panel of more than three Commissioners will handle the application, £43,000.

(3) The pre-examination fee must be received by the Commission within the period of 28 days beginning with the date of the notice referred to in paragraph (1).

(4) If the applicant fails to pay the pre-examination fee within the period specified in paragraph (3), the Commission need take no further steps in relation to the application until payment has been received by the Commission.

Fee in respect of handling an application

7.—(1) The Commission must charge the applicant a fee in respect of the Examining authority's handling of the application.

(2) The fee payable is—

- (a) an initial payment calculated in accordance with regulation 8; and
- (b) a final payment calculated in accordance with regulation 9.

Initial payment in respect of the handling of an application

8.—(1) Following the preliminary meeting under section 88 (initial assessment of issues, and preliminary meeting) the Commission must, as soon as reasonably practicable, give the applicant notice in writing of—

- (a) the number of estimated relevant days;
- (b) whether the application is to be handled by a Panel or a single Commissioner, and if a Panel, the number of Commissioners who are to be appointed; and
- (c) the initial payment.

(2) In this regulation—

“estimated relevant day” means a day estimated by the Examining authority as required for examining the application;

“initial payment” in relation to a notice under paragraph (1) means—

- (a) where the examination is to be handled by a single Commissioner, £615 for each estimated relevant day;
- (b) where the examination is to be handled by a Panel or three Commissioners, £1,340 for each estimated relevant day;
- (c) where the examination is to be handled by a Panel of more than three Commissioners, £2,040 for each estimated relevant day.

(3) The initial payment must be received by the Commission within the period of 28 days beginning with the date of the notice referred to in paragraph (1).

(4) If the applicant fails to pay the initial payment within the period specified in paragraph (3), the Commission need take no further steps in relation to the application until payment has been received by the Commission.

Final payment in respect of the handling of an application

9.—(1) Following notification of the completion of the examination under section 99 (completion of Examining authority's examination of application) the Commission must, as soon as reasonably practicable, give the applicant notice in writing of the final payment.

(2) The final payment is—

- (a) where a single Commissioner has examined the application, £1,230 for each relevant day;
- (b) where a Panel of three Commissioners has examined the application, £2,680 for each relevant day;
- (c) where a Panel of more than three Commissioners has examined the application, £4,080 for each relevant day;

less the initial payment referred to in regulation 8.

(3) In this regulation “relevant day” means a day on which the Examining authority examined the application, in the period beginning with the start day referred to in section 98(2) (timetable for examining, and reporting on, application) and ending with the completion of the examination.

(4) The final payment must be received by the Commission within the period of 28 days beginning with the date of the notice referred to in paragraph (1).

(5) If an applicant fails to pay the final payment within the period specified in paragraph (4) the Commission may—

- (a) extend the deadline for deciding the application by the extended period; or
- (b) where the Secretary of State is deciding the application by virtue of section 74(2) or 83(2)(b), extend the deadline for report to the Secretary of State by the extended period.

(6) Where the Commission extends the deadline under paragraph (5), the timetable under section 98(3) or 107 shall be extended accordingly.

(7) In paragraph 5(b) “extended period” means the period beginning with the day after that on which the final payment should have been received in accordance with paragraph (4) and ending with that on which the final payment is received.

Direction made under section 35

10. Regulations 5 and 6 shall not apply in relation to any application for consent or authorisation which is treated as an application for an order granting development consent pursuant to a direction made by the Secretary of State under section 35(4) (directions in relation to projects of national significance).

Intervention by the Secretary of State under section 112

11. These Regulations shall apply in relation to an application where the Secretary of State directs that the application is referred to the Secretary of State and the Secretary of State discharges the function of examining the application by directing the Commission under section 113(3)(a).

Signed by the authority of the Secretary of State for Communities and Local Government

25th January 2010

Ian Austin
Parliamentary Under Secretary of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Planning Act 2008 (“the Act”) provides for the granting of an order for development consent for development which is or forms part of a nationally significant infrastructure project. Development consent is required for certain types of energy, water, waste water, transport and waste projects. The Act also establishes the Infrastructure Planning Commission (“the Commission”) which is responsible for examining, and in most cases, determining applications for development consent. Section 4 of the Act enables the Secretary of State to make regulations for the charging of fees by the Commission in relation to the performance of any of its functions.

These Regulations make provision for the payment of fees by an applicant or potential applicant, to the Commission in respect of handling applications made under the Act. The Regulations specify the circumstances in which a fee may be charged, the amount payable and the effect where the fee is not received by the Commission. The Regulations also ensure the Commission can charge:

- fees (except for those under regulations 5 and 6) in respect of any application which is subject to a direction by the Secretary of State under section 35 of the Act (regulation 10); and
- fees where a direction is made by the Secretary of State under section 113(3)(a) of the Act (regulation 11).

Provision is made for payment of a fee in relation to requests under sections 52 and 53 of the Act (regulation 3). In relation to an application for an order granting development consent a fee is payable on submission of the application (regulation 5), once the Examining authority is appointed (regulation 6), at the start of the examination of the application by the Commission (regulations 7 and 8) and on completion of examination (regulation 9). The fees paid during examination comprise of two payments which include the cost of the examination of the application as well as the costs of the decision following the examination. The rates set out in these regulations are based on a daily rate which normally accumulates for each day in the examination period (generally excluding weekends and public holidays), with 50% of the overall estimated fee paid at the start of the examination. Further fees are payable where the applicant does not provide the venue facilities for any hearing required in relation to the application for an order granting development consent; the Regulations make provision for payment, by the applicant, of the costs reasonably incurred by the Commission (regulation 4).

An impact assessment has been prepared in relation to these Regulations. This assessment has been placed in the library of each House of Parliament and copies may be obtained from the Nationally Significant Infrastructure Division, Department of Communities and Local Government, Eland House, Bressenden Place, London, SW1E 5DU (telephone 0303 444 1613).

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STATUTORY INSTRUMENTS

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