EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) (AMENDMENT) RULES 2024

2024 No. 317

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Alex Chalk KC MP, Secretary of State for Justice and the Lord Chancellor at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Claire Porter, Deputy Director for Planning-Infrastructure, at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Josh Wainman, Senior Policy Lead (Nationally Significant Infrastructure Projects) at the Department for Levelling Up, Housing and Communities Telephone: +44(0) 303 444 9022 or email: infrastructureplanning@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Infrastructure Planning (Examination Procedure) Amendment Rules 2024 ("the amending instrument") amends The Infrastructure Planning (Examination Procedure) Rules 2010 ("the 2010 Rules").

4.2 The amending instrument provides that the date, as specified by the Examining Authority under the 2010 Rules, by which a Written Representation must be received by the Examining Authority is no longer subject to a 21-day minimum period.

4.3 The amending instrument provides that when fixing a deadline by which an Interested Party of Affected Person must notify the Secretary of State that they wish a compulsory acquisition or open floor hearing to be held, the Examining Authority no longer has to ensure that they give at least 21 days' notice. The Examining Authority now has to give *reasonable* notice of the deadline.

4.4 The amending instrument provides that the Examining Authority no longer has to provide at least 21 days' notice when notifying Interested Parties or Affected Persons of the date, time and place of a compulsory acquisition or open floor hearing. The Examining Authority now needs to give reasonable notice of the hearing.

4.5 The amending instrument provides that applicants must now fulfil the aspects of Rule 13(6)(a)-(c), which relate to publishing site notices, public notices and notice by local

advertisement, as soon as practicable after being informed of the date fixed for a CA or OF hearing. There is no longer a requirement to fulfil these aspects not later than 21 days before the date of the hearing.

4.6 The amending instrument expands the definition of "by local advertisement" for the purpose of publishing notice of any compulsory acquisition or open floor hearing so that this means by publication in a newspaper circulating in the locality *or* on a website maintained by or on behalf of the applicant.

4.7 The amending instrument also removes the requirement for consent to be given by the recipient to the use of electronic transmission for any representation, notice or other document required or authorised to be sent under any provision of the 2010 Rules.

Where does the legislation extend to, and apply?

4.8 The territorial extent of the Amending Instrument is England and Wales.

4.9 The territorial application of the Amending Instrument is England and Wales.

5. Policy Context

What is being done and why?

5.1 The amending instrument forms part of a package of reforms to the Nationally Significant Infrastructure Projects (NSIP) consenting process as detailed in the government's NSIP Action Plan[1] (published in February 2023). These amendments bring forward certain operational reforms to support faster consenting where appropriate, with an emphasis on delivering proportionate examinations for all projects and supporting fast-track applications.

5.2 The amending instrument amends the 2010 Rules as follows:

Removing the requirement for the date specified by the Examining Authority for receipt of Written Representations to be at least 21 days

5.3 Before this amendment was made, the 2010 Rules, provided that the Examining Authority was required to give at least 21 days when specifying the date for receipt of Written Representations.

5.4 The amending instrument enables the Examining Authority greater flexibility to fix a date for receipt of Written Representations that is less than 21 days, where appropriate, and allows a more proportionate approach to be adopted for individual applications. This will contribute to supporting Examining Authorities to carry out examinations in a period shorter than the maximum six months, where it is appropriate to do so, and to support applications that are proceeding through a new NSIP fast track process, which will comprise four month examinations for applications that meet the required quality standard.

5.5 Removing the requirement to provide 21 days for the receipt of Written Representations will in turn enable the Examining Authority to set its own deadlines for the receipt of Written Representations, in addition to the deadlines for comments on Written Representations, and answers to Examining Authority questions which it is currently already able to do.

Amending the requirement for at least 21 days' notice to be given by the Examining Authority a) when setting deadlines for making a request for compulsory purchase or

[1] https://www.gov.uk/government/publications/nationally-significant-infrastructure-projects-nsip-reforms-action-plan/nationally-significant-infrastructure-action-plan-for-reforms-to-the-planning-process

open floor hearings, and b) when notifying interested parties and affected persons of those hearings.

5.6 Prior to this amendment Rule 13(1) of the 2010 Rules required the Examining Authority to provide at least 21 days' notice when fixing a deadline by which an Interested Party of Affected Person must notify the Secretary of State that they wish a compulsory acquisition or open floor hearing to be held. Rule 13 also required that the Examining Authorities to give interested parties or affected persons at least 21 days' notice of the date, time and place of any compulsory acquisition or open floor hearings respectively. Finally, Rule 13 also required applicants to post a site notice, public notice and a notice by local advertisement of the hearing no later than 21 days before the date of the hearing itself.

5.7 The amendments remove the 21 days' notice periods and instead allow a reasonable notice period to facilitate the reforms set out in sections 6.2 to 6.6. This includes enabling a four-month examination for applications being considered under the fast track process, enabling appropriate approaches to be taken on individual applications and enabling the Examining Authority to have discretion over the length of time set for notification periods. This will give greater flexibility to the Examining Authority to adopt an approach which is proportionate to and reflects the complexity of the application in question.

Expanding the meaning of 'by local advertisement' to give an alternative option to publish the notice of the hearing on the applicant's website.

5.8 Rule 13 (7) sets out the meaning of "by local advertisement" in relation to the notification of compulsory acquisition and open floor hearings. The meaning of publishing 'by local advertisement' prescribed in Regulation 13(7)(a) now also includes an option to publish the notice on the applicant's website. This will allow applicants to publish such notices via a local newspaper or via the applicant's website.

5.9 The previous requirement on applicants was to publish these notices via a local newspaper. The notice would also have been published on the Examining Authority's website. However, there are sometimes circumstances whereby there either isn't a relevant local newspaper in circulation close to where the project is situated, or there isn't a local newspaper in circulation at all. This issue is very much apparent with NSIP applications which are often in rural communities where there are often no local newspapers. This, therefore, makes it difficult for applicants to meet the legal requirement. In addition, where there are local newspapers in which the applicant could publish a notice, these can be monthly or quarterly publications and can cause substantial delay to the hearing taking place whilst the applicant has to wait for the notice to be published. This can also significantly impact on the ability of the Examining Authority being able to conduct examinations shorter than the statutory maximum of six months where this would otherwise be possible.

5.10 To overcome this issue, applicants and the Examining Authority previously published one single list of all hearings once the examination timetable had been set. The Examining Authority could then cancel any unnecessary hearings at a later date if they were no longer required, as cancellations of such hearings do not require the same notice. The issue with this approach is that it requires applicants and the Planning Inspectorate to over-programme the examination to account for multiple hearings, meaning that examinations are often programmed to require the full six months provided by legislation, rather than starting from a shorter timeframe (e.g. 4 months) and then extending if and when needed.

5.11 With this change in policy, we are providing applicants with an additional option for publishing notices of open floor and compulsory acquisition hearings via their own project websites which have become useful tools for communicating to communities and stakeholders about the progress of an NSIP application. Doing so will allow applicants to publish notices instantly and ensure that progress towards holding a hearing to be made more efficiently. In addition, the applicant's website is used as a tool over the lifespan of the project (circa 5 years) and contains regular updates about the application which is a more effective form of communication with stakeholders who will be well versed in using the applicant's website, plus they can sign up to mailing lists for updates.

5.12 This change is also necessary for the operation of fast-track consenting as it will enable a more streamlined approach to be taken from the outset. It is noted that the legislation changes still allow applicants to advertise notices of hearings via a local newspaper and guidance will continue to assert that applicants should still choose to publish via this method where it is practicable to do so.

5.13 During the pre-application stage, applicants will also continue to produce a Statement of Community Consultation (SOCC) to support their application for Development Consent which is prepared in liaison with the local planning authority. The SoCC sets out the most effective ways for communicating with local stakeholders – this can include digital means (including the applicant's website, PINS website, and local news websites) and paper means (e.g. local newspaper, mail, and site notices). A document is then published online which sets this out for the public to read and which can be used to explain that notifications of hearings will be published on the applicant's website. As a result, communities and stakeholders will be well aware of this channel of communication well ahead of an application being submitted.

5.14 For the avoidance of doubt, these changes are limited only to notices associated with compulsory acquisition and open floor hearings. The need to give notice in a local or national newspaper about the submission of an NSIP application remains in place.

Removing the requirement for consent to be given by the recipient for any representation, notice or other document sent by electronic transmission.

5.15 Currently under Rule 22, when sending representations, notices or other documents required or authorised to be sent under any provision of the 2010 Rules, a person needs the consent of the recipient to do so by electronic transmission. If not consented, documents must be sent by post or pre-paid registered letter. The process for seeking agreement from the recipient and then printing and sending paper documents takes unnecessary time. By removing this requirement and enabling documents to be sent electronically, the process will be quicker and more efficient and support broader reforms to making the process more digital.

What was the previous policy, how is this different?

5.16 There is currently a 21 day minimum time period for the date specified by the Examining Authority for receiving Written Representations and is then common practice for subsequent submissions on these to also be given at least 21 days. There is also a minimum 21 day requirement for fixing a deadline by which an Interested Party of Affected Person must notify the Secretary of State that they wish a hearing to be held, as well as for providing notice of open floor and compulsory acquisition hearings, and for publishing public notices for such hearings. However, in practice, there are often circumstances where this time period could practically be shorter, but the Examining Authority is restricted in doing so due to the legislation. Therefore, by

amending Rules 10 and 13, we are enabling a more flexible and proportionate approach to be adopted during examinations.

5.17 Previously under Rule 22, when submitting documents such as representations, notices or other documents required or authorised to be sent under any provision of the 2010 Rules, the applicant requires consent from the recipient to do so electronically. If not agreed, documents must be submitted by post or pre-paid registered letter. The process for seeking agreement from the recipient and then printing and sending paper documents takes unnecessary time and does not support broader reforms to making the NSIP process more digital. Hence, enabling electronic transmission of documents will support a faster and more sustainable means of sharing information with individuals.

5.18 In relation to notices of open floor and compulsory acquisition hearings, the previous requirement on applicants was to publish these notices via a local newspaper. The notice would also have been published on the project's webpage which is published on the Examining Authority's NSIP website, handled by the Planning Inspectorate. The policy now is that applicants will be able to choose whether to publish notices via a local newspaper or via their own project website. Notices will also continue to be published via the project's webpage on the Examining Authority's NSIP website.

6. Legislative and Legal Context

How has the law changed?

6.1 The amending instrument amends the 2010 Rules. The 2010 Rules and the amending instrument are made under the power in section 97 of the Planning Act 2008. The details of these amendments are provided below.

- Providing that the date, as specified by the Examining Authority under the 2010 Rules, by which a Written Representation must be received by the Examining Authority is no longer subject to a 21-day minimum period.
- Amending the requirement under Rule 13(1) so that when fixing a deadline by which an Interested Party of Affected Person must notify the Secretary of State that they wish a compulsory acquisition or open floor hearing to be held, the Examining Authority no longer has to ensure that they give at least 21 days' notice. The Examining Authority now has to give reasonable notice of the deadline.
- With regards to Rule 13(3), the Examining Authority no longer has to provide at least 21 days' notice when notifying Interested Parties or Affected Persons of the date, time and place of a compulsory acquisition or open floor hearing. The Examining Authority now needs to give reasonable notice of the hearing.
- Under Rule 13(6), applicants must now fulfil the aspects of (a)-(c), which relate to publishing site notices, public notices and notice by local advertisement, as soon as practicable after being informed of the date fixed for a compulsory acquisition or open floor hearing. There is no longer a requirement to fulfil these aspects not later than 21 days before the date of the hearing.
- Expands the definition of "by local advertisement" for the purpose of publishing notice of any open floor hearing or compulsory acquisition hearing so that this means by publication in a newspaper circulating in the locality *or* on a website maintained by or on behalf of the applicant.

- Removes the requirement for consent to be given by the recipient to the use of electronic transmission for any representation, notice or other document required or authorised to be sent under any provision of the 2010 Rules.

Why was this approach taken to change the law?

6.2 As set out in the NSIP Reform Action Plan[2], the government has been leading on five key reform areas which aim to make the NSIP system better, faster, greener, fairer and more resilient, which includes, amongst others, bringing forward operational reforms to support faster consenting.

6.3 In order to ensure that examinations can be completed to shorter timeframes where appropriate, we need to ensure that the legal framework provides that the Examining Authority may adopt a flexible and proportionate approach to its examination. To achieve this, there was a need to remove various fixed time periods in the 2010 Rules which were very prescriptive of certain deadlines and did not provide any flexibility to the Examining Authority to undertake certain activities more quickly. This resulted in inefficiency, waiting for statutory timeframes to pass before progressing with the application processes, for example, when responding to routine questions from the Examining Authority for further information.

6.4 This additional flexibility will strongly support government's new fast-track consenting process which will be an option available for projects from Spring 2024. Section 98(4A) of the Planning Act[3] which provides that the Secretary of State may set a shorter statutory timeframe for the completion of examinations of NSIP applications, and this will underpin the new fast-track route to consent.

6.5 In order to maximise efficiencies in the process, the government also wants to capitalise on the time saving benefits available through digitising parts of the NSIP process. As such, we have enabled the digital receipt of information when submitting information including any representation, notice or any other application document. To enable this, the 2010 Rules have been amended to remove the requirement for applicants to obtain consent from recipients to send over these documents electronically.

6.6 We are also allowing applicants to publish notice of open floor and compulsory acquisition hearings via their own project website to speed up the process for giving notice of such hearings. This requires amendments to the 2010 Rules in order to include by publication on the applicant's website within the definition of by local advertisement.

7. Consultation

Summary of consultation outcome and methodology

Consultation on the operational reforms to the NSIP consenting process

7.1 A consultation on the operational reforms to the NSIP consenting process[4] took place between 25th July 2023 and 19th September 2023. The consultation was published on www.GOV.uk and responses were accepted via online survey, email and written letter.

[2] https://www.gov.uk/government/publications/nationally-significant-infrastructure-projects-nsip-reforms-action-plan
[3] Inserted by section 127 of the Levelling Up and Regeneration Act 2023.
[4] https://www.gov.uk/government/consultations/operational-reforms-to-the-nationally-significant-infrastructure-project-consenting-process

7.2 The purpose of the consultation was to seek views from stakeholders on the proposed operational reforms to the NSIP process which sought to make the system work more effectively for applicants, local authorities and local communities. The consultation sought views on the following policy areas:

- Strengthening the role of pre-application and ensuring that consultation is effective and proportionate;
- Operational reforms which support faster and more proportionate examinations;
- Establishing a fast-track route to consent;
- Reviewing the process for making post-consent changes to Development Consent Orders;
- Resourcing the Planning Inspectorate and updating existing fees;
- Strengthening the performance of government's expert bodies;
- Improving engagement with local authorities and communities;
- Building the skills needed to support infrastructure delivery; and,
- Updates to national infrastructure planning guidance;

7.3 The consultation received 142 responses across a broad range of stakeholders including members of the public, local authorities, town and parish councils, project promoters, legal professionals, professional organisations and bodies, interest groups and voluntary organisations.

7.4 The government's response to the consultation was published on 6th March 2024 and sets out the policy changes that will be delivered through amendments to secondary legislation. With regards to changes associated with the amending instrument, the consultation provided responses on the following:

Amending the requirement for at least 21 days' notice to be given by the Examining Authority a) when setting deadlines for making a request for compulsory purchase or open floor hearings, and b) when notifying interested parties and affected persons of those hearings.

7.5 Respondents were asked 'To what extent do you agree that providing the Examining Authority with the discretion to set shorter notification periods will enable the delivery of examinations that are proportionate to the complexity and nature of the project but maintain the same quality of written evidence during examination?' Of the 142 respondents to the consultation, there was support for these proposed agreed with 4% strongly agreeing and 23% agreeing[5]. Developers and promoters welcomed the proposal for enabling the Examining Authority to set shorter notification periods. They responded by saying that this will support the overall principles of the NSIP reform programme, making the Examination stage more streamlined.

7.6 In addition, some stakeholders said that it was sensible to consider shorter timescales for less complex cases, but erred on the side of caution suggesting that there needs to be strong guidance in place, setting out expectations of participants and ensuring that there is consistency in how this proposal is applied across all cases. It is noted that the use of this provision and the expectation on what constitutes reasonable notice will be covered in revised guidance.

[5] 12% neither agreed or disagreed, 12% disagreed, 7% strongly disagreed and 42% of respondents didn't not answer this question.

Expanding the meaning of 'by local advertisement' to give an alternative option to publish the notice of the hearing on the applicant's website and removing the requirement for consent to be given by the recipient for any representation, notice or other document sent by electronic transmission.

7.7 Respondents were asked what extent they agreed that moving to digital handling of examination materials will improve the ability for all parties to be more efficient and responsive to examination deadlines. Respondents largely agreed with the proposals with 12%strongly agreeing and 42% strongly agreeing.[6] Stakeholders stressed that all information submitted digitally should be in a format that is easily accessible and should not require specialist software or expertise to access, to ensure that there is maximum accessibility (i.e. consistent data standards). Respondents also noted that a move to digital materials should not entitle developers/promotors to exclude people from the overall process and sought assurances that material would continue to be made available through alternative means if necessary. Furthermore, stakeholders suggested that the digitalisation of public notices and notifications should be the default position.

Engagement with devolved administrations

7.8 Details of this this amending instrument were shared with Welsh Government ahead of the SI being laid in parliament.

8. Applicable Guidance

8.1 Government is revising the suite of guidance relating to the NSIP consenting system. This will include new guidance on the examination of NSIP applications which, amongst other things, will provide guidance on the implementation of this amending instrument.

8.2 The guidance is due to be published on www.gov.uk in April 2024 when the powers in the amending instrument come into force.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument. As the amending instrument enables reasonable flexibility to reduce notice times via amendments to Rule 10(2) and Rule 13, we expect a small scale of beneficial business impacts from these changes as time periods will be set in line with the circumstances and complexity of the application. The primary benefit being in some cases, this may speed up the application process. Quantifying these impacts has not been possible due to the application specific nature of periods required.

9.2 Amendments to Regulation 13(7)(a) and Rules 22(3) to (6) relate to publication on the applicant's website and removing the requirement for consent to transmitting documents electronically. These changes have not been quantified owing to the small scale of impact per business, with potential minor administration benefits.

[6] 8% neither agreed or disagreed, 3% disagreed, 0% strongly disagreed, and 35% of respondents did not answer this question.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies as a result of this legislation.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because Examining Authorities, deployed by the Planning Inspectorate, will be given greater flexibility in how they will conduct examinations.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The impact of the changes are de minimis, as set out in the previous sections. The Department for Levelling Up, Housing and Communities will, however, continue to monitor legislation prescribing the NSIP planning system to ensure intended policy outcomes are achieved. A statutory review clause has not therefore been included for this instrument.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the amending instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").