EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE PLANNING (INTERESTED PARTIES) REGULATIONS 2010

2010 No. 102

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

2010 No. 103

THE INFRASTRUCTURE PLANNING (COMPULSORY ACQUISITION) REGULATIONS 2010

2010 No. 104

THE INFRASTRUCTURE PLANNING (MISCELLANEOUS PRESCRIBED PROVISIONS) REGULATIONS 2010

2010 No. 105

AND

THE INFRASTRUCTURE PLANNING (FEES) REGULATIONS 2010

2010 No. 106

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government ("CLG") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

2.1. This Explanatory Memorandum deals with a suite of statutory instruments that, together with statutory and non-statutory guidance documents, implement the Planning Act 2008. These statutory instruments-

- set out the procedures which applicants for nationally significant infrastructure projects will be required to follow after submitting an application to the Infrastructure Planning Commission ("IPC") under the Planning Act 2008 ("the Act");
- detail the procedure for the examination of such applications by the IPC;
- detail the procedure for the examination of such applications by the Secretary of State, including where the Secretary of State has made a direction restricting the disclosure of evidence on grounds of national security;
- set out the procedure to be followed where it is proposed to include in an order granting development consent a provision authorising the compulsory acquisition of land, which was not included in the application for the order;
- prescribe the forms which must used in connection with the compulsory acquisition of certain kinds of land;

- specify who are "statutory parties" for the purposes of section 102(3) of the Act and prescribe the form and manner in which representations must be made in order to be "relevant representations" for the purposes of section 102(4) of the Act;
- specify certain consents and licences etc, the requirement for which may be removed in a development consent order under the Planning Act, but only if the relevant consenting body agrees;
- prescribe a number of miscellaneous matters such as the duration of a development consent order and the exclusion of certain actions from the definition of "material operation"; and
- set out what fees may be charged by the IPC.

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

3.1. This is the first time statutory instruments have been made under these provisions in the Planning Act 2008. The power to make Rules and Regulations came into force on the day on which the Act was passed – see section 241 of the Act.

4. Legislative Context

4.1. The Planning Bill was introduced in Parliament on 27 November 2007, and received Royal Assent on 26 November 2008 as the Planning Act 2008. The Act (Parts 1 to 8) replaces a number of existing regimes for consenting nationally significant infrastructure projects (including the construction of certain generating stations, pipelines, highways, airports, harbours, railways, waste water treatment plants and hazardous waste facilities as defined by projects that exceed a series of thresholds set out in Part 3 of the Act) ("NSIPs"). Where development consent is required under the Act, there is no need for certain other consents to be obtained – such as planning permission, pipeline authorisation, an order under the Transport and Works Act 1992, consent under the Electricity Act 1989 or listed building consent. The Act also provides for the establishment of the IPC which will examine and, where a national policy statement ("NPS") has been designated, determine applications for development consent.

4.2. Part 1 of the Act, establishes the IPC and gives the Secretary of State the power to make regulations providing for the charging of fees by the IPC in connection with the performance of any of its functions. The Infrastructure Planning (Fees) Regulations set out the fees that the IPC can charge in respect of applications.

4.3. Part 6 of the Act describes in broad terms the procedure by which an application for an order granting development consent will be handled by the Commission. This Part is divided into chapters that specify the processes which will apply when an application is to be examined and decided by a Panel comprising several Commissioners (Chapter 2) or examined by a single Commissioner (Chapter 3). The examination of an application will be conducted primarily through written representations, but there will an open floor stage and where necessary other oral hearings. A timetable is set for examining, and reporting on or deciding, an application. The Infrastructure Planning (Examination Procedure) Rules 2010 and the Infrastructure Planning (Interested Parties) Regulations 2010 contain more detailed provisions in respect of these matters. The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 set out the procedure which applies where it is proposed to include in an order granting development consent

authorisation for the compulsory acquisition of land which was not included in the original application.

4.4. Chapter 6 provides that the Secretary of State may direct the Commission to suspend consideration of an application while the Secretary of State reviews the relevant national policy statement. Chapter 7 gives the Secretary of State a power to intervene and direct that an application for an order granting development consent be referred to the Secretary of State in specified circumstances. The Infrastructure Planning (Examination Procedure) Rules 2010 set out the procedure for the examination of applications for order granting development consent by the Secretary of State in these circumstances. They also set out the procedure that applies where the Secretary of State receives a request for a direction under paragraph 2(6) of Schedule 3 to the Act that representations of a specified description should only be made to persons of a specified description and where the Secretary of State makes such a direction.

4.5. Part 7 of the Act describes the provisions which may be included in an order granting development consent. These include requirements corresponding to conditions under the current legislation, matters ancillary to the development, the authorisation of the compulsory acquisition of land, and the application, exclusion or modification of legislation. In respect of the authorisation of compulsory acquisition this Part sets out additional provisions which apply, for example, regarding certain types of land such as land owned by the National Trust and statutory undertakers and land forming part of a common, public open space or fuel or field garden allotment. The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 prescribe the forms which should be used in connection with the authorisation of compulsory acquisition. The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 specify certain consents and licences and other authorisations, the requirement for which may be removed in a development consent order under the Act if the relevant consenting body agrees. They also prescribe other miscellaneous matters including the duration of development consents.

4.6. Part 8 of the Act sets out the enforcement provisions for the new development consent regime. Section 170 deals with the execution of works where there has been unauthorised development; the Regulations apply the relevant sections of the Public Health Act 1936, which facilitates the execution of those works.

4.7. This is the first time that statutory instruments under these powers have been made. These statutory instruments are needed to give full effect to the new consent regime established by the Planning Act 2008, without which the IPC and interested parties would not have a full legislative basis within which to operate.

4.8. This is the third package of statutory instruments in a series which will implement Parts 1 to 8 of the Act. The previous set came into force on 1 October 2009 and covered:

- environmental impact assessment (SI 2009/2263);
- pre-application procedure (SI 2009/2264);
- model provisions to be included in an order granting development consent (SI 2009/2265); and
- natural habitats (SI 2009/2438).

4.9. Related regulations setting out statutory consultees for consultations on NPSs came into force on 22 June 2009 (SI 2009/1302). An affirmative instrument (the Infrastructure Planning (Decisions) Regulations 2010 was also laid before Parliament on the 5th January 2010. Future regulations will be made that deal with procedures to be followed when applying to modify or revoke an order granting development consent, and any fees that might be charged for such applications. The Government has published an IPC Implementation "Route Map" which sets out in detail how the IPC regime is being implemented[1].

4.10. During the passage of the Planning Bill, a number of specific undertakings relevant to these statutory instruments were made. The Hansard references are as follows;

Commitment made	Hansard Reference	
New clause 24 [now section 150] makes it clear that the IPC cannot use the powers in the Bill to override the requirements of operational consents unless the relevant consenting body agrees. We drew the measure from the operation of the Transport and Works Act 1992 and the orders that have been put in place under it. Experience tells us that it can be of benefit to promoters to incorporate certain operational consents into the original authorisation to proceed. However, the position and rights of the bodies that grant operational consents, a leading example of which is the Environment Agency, must be protected. Under the new clause, they must therefore agree to provisions in the development consent order that would override a requirement otherwise to seek operational consent from them. That is what happens under the Transport and Works Act with authorisations for the discharge of water, for example. Several operational consents are devolved matters, and we intend to preserve the devolution settlement, so there is a similar provision in relation to the Welsh Assembly Government.	2 June 2008 Commons Report	Col 546
…we intend that written representations should be made available to interested parties: that, after all, is the key to the process. I am not sure that we should necessarily publish all the material or circulate it to all parties. There could be a huge amount of material, which might come in different formats and so on	10 Nov 2008 Lords Report	Col 494
We envisage that these rules might provide, for example, a power for the Examining authority to call witnesses where it considers that that is necessary for the adequate examination of an application or so that an interested party has a fair chance to put its case and to respond to requests from interested parties that it should do so. I hope that this also meets the noble Viscount's concern in Amendment No. 90 to provide that it is for the Examining authority to decide whether a witness may be questioned at a hearing by another person	10 Nov 2008 Lords Report	Col 502

[1] http://www.communities.gov.uk/documents/planningandbuilding/pdf/routemap.pdf

Commitment made	Hansard Reference	
Therefore, the procedural rules made pursuant to Clause 96 [now section 97] will set out in greater detail the general requirements on how examinations are to be conducted. …We envisage that these rules might provide for example, a power for the Examining authority to call witnesses where it considers that that is necessary for the adequate examination of an application or so that an interested party has a fair chance to put its case and to respond to requests from interested parties that it should do so.	10 Nov 2008 Lords Report	Col 501
The Bill provides strong controls for Parliament and the Secretary of State over the use of the powers set out in Clause 118 [now section 120]. These are, first, that the IPC can use powers under Clause 118(5) only where a promoter has applied for this and the issue has been considered in public at the examination….It cannot be a decision of the IPC without public scrutiny and consultation.	10 Nov 208 Lords Report	Col 538

5. Territorial Extent and Application

5.1. These instruments apply to England, Wales and Scotland (see section 240 as to the extent of the Act).

5.2. The Infrastructure Planning (Examination) Procedure Rules 2010 do not apply to the examination of an application if the development is the construction of an oil or gas cross-country pipe-line one end of which is in England or Wales and the other end of which is in Scotland.

6. European Convention on Human Rights

6.1. As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1. Before the enactment of the Planning Act 2008 consent for nationally significant infrastructure projects was provided for in various pieces of legislation. Some decisions (e.g. airports) were taken under the town and country planning system, but there were special statutory regimes for particular types of infrastructure, such as power stations and electricity lines, some gas supply infrastructure, pipe-lines, ports (where development extends beyond the shoreline), roads and railways. Applications under the latter regimes needed be made to the relevant Minister and, although applications under town and country planning legislation are made to the relevant local planning authority, major schemes would also normally be called in for determination by Ministers.

7.2. The procedures for determining applications varied, but a local public inquiry was generally conducted by a planning inspector who examined the project in detail and considered objections. Evidence was typically tested by the cross-examination of witnesses. The inspector then wrote a report, including recommendations, which was submitted to the Minister, who considered it and decided whether the project should be granted the consents and powers needed to allow it to proceed. In doing this the Minister had to have regard to relevant Government policies.

7.3. In 2006 the Government commissioned Kate Barker to consider how planning policy and procedures could better deliver economic growth and prosperity in a way that is integrated with other sustainable development goals. The Government also

asked Sir Rod Eddington, who had been commissioned to advise on the long-term links between transport and the UK's economic productivity, growth and stability, to examine how delivery mechanisms for transport infrastructure might be improved within the context of the Government's commitment to sustainable development.

7.4. Sir Rod Eddington and Kate Barker published their findings in December 2006 (see *The Eddington Transport Study* and *Review of Land Use Planning*, HMSO). On 21 May 2007 the Government published its response; the White Paper, *Planning for a Sustainable Future*, Cm 7120, and consulted on the proposals for 12 weeks. The White Paper set out proposals to reform the regime for development consent for nationally significant infrastructure, and other measures to change the town and country planning system.

7.5. Following assessment of consultation responses, the Planning Act was introduced to implement proposals in the Planning White Paper to amend the planning regime, including introducing a single consent regime for nationally significant infrastructure projects, establishing an independent Infrastructure Planning Commission and making changes to the town and country planning system.

7.6. The Act makes provision for the creation of a new independent body, the IPC, which will be responsible for examining applications for NSIPs and, where an NPS has been designated, deciding applications; and for the Government to produce NPSs which will provide clarity on what the national need for infrastructure is and set the policy framework for IPC decisions. The new regime established by the Act is intended to introduce a faster and fairer planning regime for determining applications for NSIPs by:

- overcoming unnecessary delays caused by lack of clarity over Government policy, and the consequent need to debate policy and the need for infrastructure at the planning inquiry stage;
- introducing a single consent regime for major infrastructure projects so that the promoter of an NSIP only has to make one application;
- providing for a greater focus on pre-application consultation, to ensure that promoters address the specific issues raised by each particular NSIP proposal before submitting an application; and
- establishing new procedures for the examination of applications for an order granting development consent, which include a timetable for the examination of applications and decisions.

7.7. The Government is committed to implementing the new regime as soon as practicable in order to deliver the full benefits of the new regime, and provide certainty, to promoters considering investing in nationally significant infrastructure development, and to the communities affected by such proposals, about which regime will apply and the processes that will be followed. The IPC was established on 1 October 2009 and a Commencement Order[2] has been made alongside this package of secondary legislation to bring into force relevant sections of the Planning Act 2008, such that the IPC will begin to receive applications (for the energy and transport sectors) from 1 March 2010.

[2] The Planning Act 2008 (Commencement No 4 and Saving) Order 2010 /101 (C.11)

The Infrastructure Planning (Interested Parties) Regulations 2010

7.8. Part 6 of the Act provides that "interested parties"[3] have a right to take part in the examination process. The Act specifies that a person becomes an "interested party" by making a "relevant representation". The Act also provides that "statutory parties" are interested parties and that the bodies that are statutory parties in relation to a specific application should be set out in regulations.

7.9. "Interested parties" participate in the examination of an application for an order granting development consent. They have the right to request the Examining Authority to arrange an open-floor hearing so that they can make oral representations, and are entitled to make oral representations at any issue-specific hearing arranged by the Examining Authority. The Infrastructure Planning (Examination Procedure) Rules 2010 contain detailed provisions in this respect.

7.10. The purpose of the Infrastructure Planning (Interested Parties) Regulations 2010 is to prescribe-

- which bodies are statutory parties for the purposes of section 102(2) of the Act; and
- the form and content of "relevant representations".

7.11. This will ensure that it is clear which bodies are statutory parties, give certainty as to the format for relevant representations, and ensure that they are made in a consistent format.

7.12. These Regulations should be considered alongside the guidance from the Secretary State on examinations.

7.13. Regulation 3 (and the Schedule to the Regulations) contains a list of organisations which should be considered as "statutory parties", and the circumstances in which they are to be treated automatically as being "interested parties" in the examination of a particular application.

7.14. Regulation 4 prescribes the format and content for "relevant representations". In order for a representation to be considered a "relevant representation", it must be made on a registration form (which would be available from the IPC) and contain specified information, such as contact details and the content of the representation the person wishes to make. The registration form will also ask whether the person wishes to take part in any hearings that may be held to examine the application.

7.15. The purpose of the registration procedure is to allow the Examining Authority to gather information on the likely participants to allow it to better plan the examination and set a timetable. The use of a standard registration form for making "relevant representations" is intended to assist those wishing to make representations and also facilitate the administration work of the IPC and make the process clearer and more certain.

The Infrastructure Planning (Examination Procedure) Rules 2010

7.16. These Infrastructure Planning (Examination Procedure) Rules 2010 are intended to expand on the procedure already laid out in the Planning Act and provide a level of detail that would not have been suitable for primary legislation. The Rules will

[3] The term "interested party" is defined in section 102(1) of the Act.

ensure that examinations are conducted in a way that delivers the specific improvements which were outlined during the passage of the Planning Bill.

7.17. In particular, they provide a framework for the examination process which will be streamlined compared to current practice in several of the existing consent regimes – with the result that applications for nationally significant infrastructure will in future be determined in a more timely and efficient manner for the benefit of all parties, while retaining the existing high standards of fairness and impartiality. The rules refer to the "Examining Authority", who would be the IPC in most cases, but would be the Secretary of State where a direction has been made restricting the disclosure of evidence on grounds of national security. The rules will also ensure that the Examining Authority follows a consistent procedure when examining applications and that all those who wish to participate in the process are clear about the procedure to follow and what is expected of them. This approach is consistent with existing consent regimes such as:

- Transport and Works (Inquiries Procedure) Rules 2004 [SI 2004/2018]; and the
- Town and Country Planning (Major Infrastructure Project Inquiries Procedure)(England) Rules 2005 [SI 2005/2115].

7.18. In particular, the new Rules set out procedures which:

- Harmonise and simplify the process by which applications are handled, as this will be the same irrespective of the type of NSIP being applied for. Currently such projects are examined according to different rules depending on the regime under which the proposed development falls.
- Provide for front loading of the process by requiring the Examining Authority and interested parties to meet in order to agree the issues which will need greater examination, and to agree how this examination should be conducted. [Rules 5,6, 7]
- Require the Examining Authority to set a timetable for the examination at or immediately after the preliminary meeting, thereby giving greater certainty to all interested parties. [Rule 8]
- Explain in greater detail how the procedures for written representations will work in practice. These Rules explain how exchanges of written evidence will be used to examine and decide issues, particularly technical issues. [Rule 10]
- Explain in greater detail how it will normally be the Examining Authority who will take charge of questioning persons making oral representations at hearings. [Rule 14]
- Explain how a site inspection of the land to which an application relates is to be carried out by the Examining Authority. [Rule 16]
- Where the Examining Authority does not have the function of deciding an application, provide the procedure to be followed where the decision-maker differs from the conclusion reached by the Examining Authority. Rule 19 requires that the parties to the examination are to be given a further opportunity to make written representations before a decision is made which is different from that recommended by the Examining Authority.
- Provide the procedure to be followed where the decision on the application is quashed. Rule 21 requires that the parties to the examination are to be given a further opportunity to make written representations about the further consideration of the application.

7.19. These Rules are accompanied by a guidance document which sets out principles to assist the IPC in the examination process (see paragraph 9.1 below).

The Infrastructure Planning (Compulsory Acquisition) Regulations 2010

7.20. Our policy aim in these Regulations is to ensure that no-one is prejudiced where the applicant seeks provision authorising the compulsory acquisition of additional land subsequent to the application being accepted by the IPC. The Regulations also reflect section 92 of the Planning Act, confirming that the IPC must hold a compulsory acquisition hearing to discuss any additional provision relating to compulsory acquisition.

7.21. Regulation 3 and Schedule 1 specify the forms that must be used in connection with notices that must be given in connection with the compulsory acquisition of certain types of land (statutory undertakers' land or land forming part of a common, open space or fuel or field garden allotment) and the notice that must be given when an order authorises the compulsory acquisition of land. The use of standard forms is intended to ensure clarity and certainty.

7.22. Regulations 4 to 18 set out the procedure to be followed where the applicant requests authorisation for the compulsory acquisition of land that was not included in the application for an order granting development consent at the time it was accepted by the IPC and not all persons with an interest in the land consent to the request.

7.23. These Regulations provide that:

- the applicant must comply with the requirements to notify and publicise the proposed provision and that the notification must state the deadline by which relevant representations relating to the proposed provision must be made [Regulations 6, 7 and 8];
- parties who make such relevant representations relating to the proposed provision will be treated as interested parties, as are persons whose rights in, or over the land are affected by the proposed provision [Regulation 10]; and
- the Examining Authority is to offer interested parties the opportunity to participate in the examination of the application as affected by the proposed provision, that is, allow them the opportunity to make written representations. Those with an interest in land affected by the provision can request that a compulsory acquisition hearing be held at which they may make oral representations [Regulations 11, 12 and 13].

7.24. Where the Examining Authority has already held hearings (issue-specific, compulsory acquisition or open-floor) relating to the application, then another must be held if requested by a person with an interest in land affected by the proposed provision, or where the IPC consider it necessary for the adequate examination of an issue or to enable an interested party a fair chance to put its case [Regulations 12 and 13].

The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010

7.25. In addition to the main development for which consent is sought, an order granted by the IPC may, under section 115 of the Planning Act, authorise associated development to take place and, under section 120(3), make provision for "matters ancillary to the development" (which may include any of the matters set out in part 1 of schedule 5 of the Act).

7.26. It may also, occasionally, be of benefit to all parties to incorporate certain other regulatory consents, licences or other authorisations (for example those related to the use or operation of infrastructure) into a consent order.

7.27. In such cases, the decision-maker may use the power in section 120(5)(a) of the Act to exclude in its order the need for the consent to be obtained.

7.28. However, this provision should only be used with the agreement of the relevant consenting body, who will be able to advise as to what protections and conditions should be included in the order. Ministers made firm commitments during the passage of the Bill through Parliament that this power would only be used if contained in the promoter's draft order, and was therefore subject to the pre-application requirements set out in Chapter 2 of Part 5 of the Act.

7.29. The regulation making power in section 150 was included in the Act to ensure the role of the relevant consenting bodies was protected. This power enables the Secretary of State to specify consents for which agreement from the relevant body must be obtained before a provision could be included in a development consent order that would override a requirement for the promoter to seek consent from them.

7.30. Overall, the aim of these Regulations is, given the powers in section 120 of the Act, to ensure that the consents listed are protected, and cannot be removed by a Planning Act consent order without the permission of the consenting body. These Regulations are not intended to imply that it would be appropriate in any particular case for the requirement for a certain consent to be removed, nor are they intended to imply that a consenting body will ever agree to the removal of a requirement.

7.31. Many of the consents and other permissions which fall within the terms of these Regulations are devolved matters in Wales, and the consents listed in Part 2 of the schedule are included to help ensure the preservation of the devolution settlement. It would be disproportionate to list every devolved consent in these Regulations, and therefore only those likely to be engaged by an application under the Planning Act have been included. However, it is the clear policy intention that no devolved consent should be included in a draft development consent order without the explicit agreement of the relevant consenting body in Wales.

7.32. These Regulations also specify that (in the absence of different provision in an order) development must begin, and any compulsory purchase order exercised, within five years of the order being made. Regulations 5 and 6 apply certain provisions of the Public Health Act 1936 to cases of unauthorised development (the Town and Country Planning (Scotland) Act 1997 in Scotland). It provides that a local authority may remove materials from a site and in certain circumstances may sell them to recover their enforcement costs. Regulation 5 is unchanged from the draft on which we consulted. Regulation 6 applies the equivalent Scottish provision.

7.33. In preparing these Regulations, the Government has reflected on the views expressed during the consultation on the Planning White Paper, during the passage of the Planning Bill through Parliament, and the responses to the formal public consultation.

The Infrastructure Planning (Fees) Regulations 2010

7.34. The Planning White Paper *Planning for a Sustainable Future* (paragraph 5.65) made clear that Government intends to apply the well established principle of applicants paying fees to cover the IPC's costs of processing applications, rather than funding it through taxation. This reflects the fact that applicants stand to gain financially from the award of development consent.

7.35. This instrument will enable the IPC to recover costs incurred in the processing of casework (including any related overheads such as accommodation), via the charging of fees to applicants. The policy aim is to:

- introduce a charging scheme that is fair in the sense of charging fees broadly in proportion to the resource cost incurred in processing applications;
- create a transparent fee structure that is both simple to understand and administer; and
- maximise, so far as is reasonable and practicable, recovery of costs associated with the processing of applications.

7.36. A guidance note has been prepared to aid interpretation of the Fee Regulations (see paragraph 9.1 below). As a general overview, fees are charged at different stages in an application's consideration:

- fixed fee when submitting *any* application for development consent to the IPC;
- differential fees when an application is accepted for consideration by the IPC, based on whether case is handled by a Single Commissioner, Panel of three Commissioners (a "Normal Panel"), or Panel of more than three Commissioners (a "Large Panel");
- differential fees at the start and at the end of the main examination, based on a system of day-rates; and
- any venue costs (for hearings etc.) to be re-charged to the applicant, where such facilities are not provided by the applicant.

7.37. As well as helping the IPC and applicants manage their cash-flows (as fees are recovered on a phased basis), this will increase transparency and enable fees to vary depending on the complexity and interest in each particular application.

7.38. Minor fees are also set for instances where applicants are unable to acquire information about land, in which case they can request that the IPC require such information to be provided (or access to land granted). Such requests are expected to be rare and only used as a last resort.

7.39. The fees are summarised in the following table:

APPLICATION STAGE		FEES		
		Cases handled by a Single Commissioner	**Cases handled by a "Normal Panel" (3 Commissioners)**	**Cases handled by a "Large Panel" (4+ Commissioners)**
Request for authority to serve a notice requiring information to be provided on interests in land (section 52 of the Act)		£1,000 per request		
Request to authorise right of entry to land (section 53 of the Act)		£1,000 per request		
Fee when submitting an application to the IPC		£4,500 per application		
Fee once application accepted (pre-examination costs)		£13,000	£30,000	£43,000
Examination	Day rate	£1,230 per working day[4]	£2,680 per working day	£4,080 per working day
	Typical overall fee (rounded)	£58,000	£174,000	£347,000
Decision		Costs incorporated into examination day-rates		
Total fees paid for typical case		**£75,000**	**£209,000**	**£394,000**
Estimated overall increase in fees to business (relative to the current regime)		**£4.6m per year**		

7.40. The methodology and underpinning assumptions used to generate these fees (including the costs being recovered) are set out in the accompanying Impact Assessment to the Regulations (see paragraph 10.1 below). While there is an increase in fees to business of £4.6m per year (relative to the current regime), this is more than offset by the wider benefits of the new regime of up to £300m a year – which includes £20m in administrative savings to scheme promoters (see the Planning Act Impact Assessment[5]). These benefits include:

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

[5] http://www.communities.gov.uk/publications/planningandbuilding/planningbill

- replacement of multiple and overlapping consent regimes with a new single consent regime, thus in most cases enabling scheme promoters to submit just one application for consent rather than numerous applications;
- increased certainty for scheme promoters from having a clear statement of Government policy (National Policy Statements) on the national need for infrastructure; and
- faster decisions, with applications being determined in most cases within a year where a National Policy Statement is in place (applicants would therefore not face the kind of significant costs incurred during the existing and often lengthy inquiries e.g. costs of legal representation).

8. Consultation outcome

8.1. A 12 week consultation on the draft instruments was carried out between 14 July 09 and 5 October 09[6], and amendments made in light of the consultation responses. Where requested amendments were not accepted, the consultees will be able to see the reasons for this on our general consultation response on the CLG website[7].

The Infrastructure Planning (Interested Parties) Regulations 2010

8.2. The consultation generated 52 responses to the interested parties regulations, including from:

- Local Authorities
- Regional Assemblies
- Industry
- Conservation organisations
- Heritage organisations
- Transport representatives

8.3. The bodies which are listed in the Schedule to the instrument are either bodies which have a relevant statutory duty, or bodies to which a commitment was made during the passage of the Act.

8.4. The consultation responses were generally favourable, with some minor amendments suggested. Where possible, and in keeping with the criteria above, CLG took account of these requests for amendment by adding some bodies (for example, some relevant bodies in Scotland) to the list in the Schedule and removing others, and by clarifying the circumstances in which they are to be treated automatically as interested parties.

The Infrastructure Planning (Examination Procedure) Rules 2010

8.5. The consultation generated 60 responses to the examination procedure rules, including from:

- Local Authorities
- Regional Assemblies

[6] http://www.communities.gov.uk/archived/publications/planningandbuilding/consultationexaminationnsips
[7] http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/planningbill/

- Industry
- Conservation organisations
- Heritage organisations
- Transport representatives

8.6. The consultation responses were generally favourable, although there were some concerns raised around the timescale planned for the new process, and the availability of suitable expert and impartial assessors during the hearings process. We have taken account of these concerns raised. The main change was that the general Examination Procedure Rules and the National Security Examination Procedure Rules were combined.

The Infrastructure Planning (Compulsory Acquisition) Regulations 2010

8.7. The consultation generated 38 responses to the compulsory acquisition regulations, including from:

- Local Authorities
- Regional Assemblies
- Industry
- Conservation organisations
- Heritage organisations
- Transport representatives

8.8. Consultation responses were positive and generally favourable. Some concerns were raised around the five year deadline in which a notice to treat (in relation to the proposed compulsory acquisition) must be executed. However, given that the decision-maker can specify a different period (either longer or shorter) in the order itself, we believe a five year period to be appropriate for these regulations.

The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010

8.9. The consultation generated 12 responses on the miscellaneous provisions regulations, including from:

- Local Authorities
- Industry
- Public Bodies

8.10. This instrument was generally welcomed by respondees. Half of those who responded believed that the list of consents was appropriate and did not suggest changes. Several bodies felt that the list was, in general, either too long or too short, and a number also made specific suggestions regarding the inclusion or removal of consents. We considered these responses carefully and determined that, broadly speaking, the length of the list and the sorts of consents captured was appropriate. In response to the specific suggestions, and after further discussions with the relevant consenting bodies, we have removed one item and added two to the list.

8.11. A five year time limit for the commencement of works set out in development consent orders was widely welcomed, given that this does not prevent a different period being specified in individual consent orders.

The Infrastructure Planning (Fees) Regulations 2010

8.12. The consultation generated 35 responses to the fee regulations and Impact Assessment, including comments on the question of fees for the recording of hearings. Most responses fell into three broad categories:

- Local Authorities
- Public Bodies
- Industry.

8.13. There were varied views on fees which reflected the range of interests involved. A summary of the main points is as follows:

- concern about impact on low value projects e.g. small highway schemes, short electricity lines and hazardous waste facilities;
- a need to control IPC costs, with arguments for (from a large number of business organisations and one conservation group) and against (from a mixture of public sector, independent and business organisations) a cap on fees;
- questions about how statutory bodies and local authorities would fund their involvement in the new regime; and
- wide recognition of the need to record IPC hearings, though views were split on the most appropriate type of recording (as costs to applicants could be significant).

8.14. After reflecting on these issues and holding discussions with the newly formed IPC (established 1 October 2009), a number of changes were made to the fees. These were:

- introduce a new charging point that enabled pre-examination costs to be split based on the complexity of the project – this balanced the fees out more fairly, with less complex projects seeing an overall reduction and larger projects an increase;
- for the most complex projects[8], examination fees were increased to pay for recording facilities at hearings i.e. stenographers – with Government funding recording costs (as appropriate) for hearings of smaller projects; and
- assumptions used at consultation (such as salary levels) were updated to reflect the IPC's actual running costs – which overall are lower than consulted upon and so helped reduce fees.

8.15. Relative to the *overall* typical fees published for consultation on 14 July 2009, this resulted in a *reduction* for less complex cases of £21,000 (22%), a *reduction* for average cases of £12,000 (5%), and an *increase* for the most complex cases of £23,000 (6%). Fees for requests under section 52 and 53 of the Planning Act (relating to authorisation to obtain information about interests in or access to land) have increased slightly (by £50) as the estimated resource requirements used at consultation were based on the simplest of cases rather than using average resource requirements.

8.16. A cap on fees was not introduced for three reasons. First, it might incentivise some applicants to submit cases which have been inadequately prepared or consulted

[8] Cases handled by a Panel of more than three Commissioners i.e. a "Large Panel" case

upon and instead, as fees are capped, leave the IPC to deal with problems. Second, it would go against the stated aim of full cost recovery. And third, Government felt that a *de-facto* cap already existed as there is a statutory deadline for the IPC to complete its examinations within six months[9].

8.17. Additional funds have not been provided to local government as, under the current regime, they already look closely at any major infrastructure projects proposed in their area, engage with developers on potential applications, and bear their own costs for their involvement in any inquiry held by the Planning Inspectorate. Similarly, statutory bodies also already engage with major infrastructure projects as appropriate. Government does not therefore intend to change the funding arrangements at this time.

8.18. Further detail can be found in the summary of responses to consultation.

9. Guidance

9.1. Guidance has been prepared to accompany the Infrastructure Planning (Examination Procedure) Rules 2010 and the Infrastructure Planning (Compulsory Acquisition) Regulations 2010. Non-statutory guidance has also been prepared to aid interpretation of the Fee Regulations. Copies can be obtained from CLG (see contact below) or online[10].

10. Impact

10.1. An Impact Assessment has been prepared for the Infrastructure Planning (Fees) Regulations 2010 and Infrastructure Planning (Examination Procedure) Rules 2010, which is enclosed as an annex to this Explanatory Memorandum.

10.2. For the other statutory instruments an Impact Assessment has not been prepared, as the policy options do not have an additional impact on business, charities or the public sector beyond that examined in the Impact Assessment that accompanied the Planning Act 2008.

11. Regulating small business

11.1. The legislation does not apply to small business.

12. Monitoring & review

12.1. These instruments will be updated (as appropriate) over time. The Fee Regulations will be subject to annual review and will be updated in light of how the new regime operates in practice.

12.2. In relation to the consents prescribed under section 150(1) of the Act, because the principal purpose of these Regulations is to protect consenting bodies, the government will listen carefully to advice from the relevant bodies as to the effectiveness of these Regulations. Government may seek to revise this instrument if concerns arise that promoters are seeking to include unlisted consents without first obtaining permission from the consenting body.

[9] See section 98 of the Planning Act 2008.

[10] http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/planningbill/

13. Contact

13.1. Linda Rawlings at the Department for Communities and Local Government (Tel: 030 3444 1609 or email: linda.rawlings@communities.gsi.gov.uk) can answer any queries regarding these instruments.

Summary: Intervention & Options

Department /Agency:	Title:	
Communities and Local Government	**Impact Assessment of fees to be charged by the Infrastructure Planning Commission, and the examination procedure rules**	
Stage: Final	**Version:** 9	**Date:** 25/01/10

Related Publications: (i) Planning Bill Impact Assessment (Nov 2007); (ii) Annex to the Planning Bill Impact Assessment - Royal Assent (Jan 2009)

Available to view or download at:

www.communities.gov.uk/publications/planningandbuilding/planningbill

Contact for enquiries: Adam Bond **Telephone:** 0303 444 1613

What is the problem under consideration? Why is government intervention necessary?

The Planning Act 2008 establishes a new system for the consenting of nationally significant infrastructure projects (NSIPs) i.e. major transport, energy, water, waste water and waste projects. An independent body – the Infrastructure Planning Commission (IPC) – will take decisions on applications for development consent within a framework of national policy set by Government.

As part of this new system regulations are needed to enable the recovery of costs incurred by the IPC in the performance of its functions. This follows the well-established principle of applicants paying fees to cover such costs. New rules are also needed to govern the procedures for the examination of applications for development consent for NSIPs by the IPC.

What are the policy objectives and the intended effects?

- To introduce a charging scheme that is fair in the sense of charging fees broadly in proportion to the resource cost incurred in processing applications;
- To create a transparent fee structure that is both simple to understand and administer;
- To maximise, so far as is reasonable and practicable, recovery of costs associated with the processing of applications;
- To streamline the process of determining applications for development consent for NSIPs;
- To make the examination process more accessible to the public.

What policy options have been considered? Please justify any preferred option.

This Impact Assessment examines the following options:

1. Introduce fees to recover costs incurred in the processing of casework and certain pre-application functions; and new rules to govern the procedure for examining applications for development consent.
2. Do nothing / status quo (which is assumed to mean the current fee regimes and examination procedure rules apply to the IPC).

Option 1 is recommended in order to introduce a fair and transparent system, and maximise recovery of the IPC's costs of processing applications.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The fees policy and examination procedure rules will be reviewed in light of how the new regime operates in practice. Fees in particular will be subject to annual review and will be updated as soon as sufficient data has been accumulated on the actual costs of processing casework.

Ministerial Sign-off For final proposal / implementation stage Impact Assessments:

I am satisfied that (a) this Impact Assessment represents a fair and reasonable view of the expected costs, benefits and impact of the proposed policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

Ian Austin.....Date: 25th January 2010

Summary: Analysis & Evidence

Policy Option:	Description:
1. Introduce fees and examination rules	**Fees to recover costs incurred in the processing of casework and certain pre-application functions; new rules to govern the procedure for examining applications for development consent.**

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ N/A	10
Average Annual Cost (excluding one-off)	
£ 4.6m	

Description and scale of **key monetised costs** by 'main affected groups'

Additional fees paid by business estimated at £4.6m p.a.

Across 30 cases brought forward by business p.a., this equates to an average additional cost per application / organisation of circa £150,000.

Total Cost (PV) **£ 39m**

Other **key non-monetised costs** by 'main affected groups'

Minor, one-off costs as participants familiarise themselves with the new examination procedure rules.

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ N/A	10
Average Annual Benefit (excluding one-off)	
£ 4.6m	

Description and scale of **key monetised benefits** by 'main affected groups'

Additional fee income to IPC / Govt estimated at £4.6m p.a.

Total Benefit (PV) **£ 39m**

Other **key non-monetised benefits** by 'main affected groups'

While fees will be higher than at present, these will be offset by wider benefits from the new regime. The new examination rules will provide for a shorter and more efficient examination, with more predictable durations that will also significantly reduce the cost of determining applications.

Key Assumptions/Sensitivities/Risks There is uncertainty around the number of cases that would be brought to the IPC each year, as well as the precise nature and length of future examinations. This means there is a corresponding degree of uncertainty on estimates of resource costs & fee receipts. It is assumed that – in total – applicants pay average fees of £40,000 per project under the status quo.

Price Base Year 2009	Time Period Years 10	**Net Benefit Range** (NPV) **£ 0**	**NET BENEFIT** (NPV Best estimate) **£ 0**

What is the geographic coverage of the policy/option?			Britain	
On what date will the policy be implemented?			1 March 2010	
Which organisation(s) will enforce the policy?			IPC	
What is the total annual cost of enforcement for these organisations?			£ Nil	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro **Nil**	Small **Nil**	Medium **Nil**	Large **£150,000**
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ Nil Decrease of £ Nil **Net Impact** **£** Nil

Key: **Annual costs and benefits:** **(Net) Present**

Policy context and changes in light of consultation

The Planning Act 2008 provides for the replacement of multiple and overlapping consent regimes with a new single consent regime, with decisions being taken by the Infrastructure Planning Commission (IPC) within a framework of National Policy Statements (NPSs) set by Ministers. This means that developers who currently need to submit multiple applications will, in most cases, now only need to submit a single application to the IPC. Depending on the project this could yield significant savings.

The IPC will operate a streamlined examination process and, where a relevant NPS is in place, we expect that in most cases a decision will be made within a year of the application being accepted for consideration. Applicants would therefore not face the kind of significant costs incurred during the existing and often lengthy inquiries e.g. costs of legal representation.

As such, though the new regime for consenting nationally significant infrastructure projects is estimated to increase *fees* paid by business by £4.6m each year (as summarised on page 2), this must be viewed in the context of wider benefits of the new system and should not necessarily deter potential applicants (particularly as schemes captured by the new regime will generally have high capital costs e.g. a major generating station project is estimated to involve capital costs of between £500m and £1bn). This proposal is one of a package of measures that facilitate a faster, more transparent consenting regime.

The Planning Act Impact Assessment estimated that benefits of the new regime overall could be up to £300m a year, which includes £20m in admin savings to scheme promoters (which derive from the types of savings mentioned above e.g. shorter hearings leading to reduced legal costs). The costs of funding the IPC were also assessed here, and are taken to be included in the baseline used for the purposes of this Impact Assessment on fees.

In addition, this Impact Assessment examines the typical resource requirements and associated costs the IPC will incur when examining and determining applications within the framework of a relevant NPS. In some circumstances, such as when an NPS has been suspended pending review, there will not be a relevant NPS in force in relation to an application and the IPC will, following its examination, report with recommendations to the Secretary of State who will determine the application.

Where no NPS is in force, examinations may take longer than normal because the IPC may need to do more work to understand the implications of government policy and the need for infrastructure. Although in these circumstances this is likely to result in higher fees to applicants (as we are proposing fees based on a system of day-rates), we expect that there will still be significant net benefits from going through the IPC regime, specifically:

- the streamlined examination procedures are still expected to be quicker than existing inquiries
- though Ministers will need time to consider the case before making a decision, there is a statutory duty to do so in three months from receiving the IPC's report (except in exceptional circumstances); and
- where Ministers decide to grant consent, they will have access to the single consent regime and thus in most cases be able to grant all necessary consents.

Applicants will not be charged fees for the costs of Ministers' involvement in a case.

While this Impact Assessment represents our best estimate of costs going forward, we will keep the new regime under review and will revise the fee levels as necessary once sufficient data has been accumulated on how the IPC operates in practice. We are also expecting Parliament

and the public to subject the IPC and its work to considerable scrutiny, thus helping to minimise any risk of it not operating as intended.

The new procedure rules are a direct result of the implementation of the Planning Act 2008, and in particular the part of the Act which addressed the intention to streamline the handling of planning decisions on nationally significant infrastructure projects (NSIPs).

These new rules are proposed to enable the IPC to examine the applications more speedily and efficiently, in line with the recommendations made by the Barker[11] and Eddington[12] Reviews. At the same time, the proposals are framed to safeguard the quality of the decision-making and to ensure that there is adequate opportunity for the public to make their views known.

The new rules reflect the appropriate best practice from the Town and Country Planning Act inquiry rules for major infrastructure projects, and inquiry rules under other consent regimes, for example the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007.

Changes in light of consultation – fees

Below is a summary of the main responses that were made at consultation:

- concern about impact on low value projects e.g. small highway schemes, short electricity lines and hazardous waste facilities
- a need to control IPC costs, with arguments for and against a cap on fees
- questions about how statutory bodies and local authorities would fund their involvement in the new regime; and
- wide recognition of the need to record IPC hearings, though views were split on the most appropriate type of recording (as costs to applicants could be significant).

After reflecting on these issues and holding discussions with the newly formed IPC (established 1 October 2009) on resource planning, a number of changes have been made to the fees. These are:

- differentiate pre-examination fees based on the complexity of project – this will balance the fees out more fairly, with less complex projects seeing a reduction and larger projects an increase
- for the most complex projects[13], applicants will pay fees for a transcript to be provided of hearings (Government will provide funding for recording facilities as appropriate at smaller hearings, such as audio recording)
- assumptions used at consultation (such as salary levels) have been updated to reflect the IPC's actual running costs – which overall are lower than consulted upon.

Relative to the *overall* typical fees published for consultation on 14 July 2009[14], this results in a *reduction* for less complex cases of £21,000 (22%), a *reduction* for average cases of £12,000 (5%) and an *increase* for the most complex cases of £23,000 (6%). Fees for requests under section 52 and 53 of the Planning Act (see pages 11-12) have increased slightly (by £50) as the estimated resource requirements used at consultation (as set out in Annex Table C) were based on the simplest of cases rather than using average resource requirements.

[11] Barker Review of Land Use Planning, Kate Barker, December 2006
http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/barkerreviewplanning/
[12] The Eddington Transport Study, Sir Rod Eddington, December 2006
http://www.dft.gov.uk/about/strategy/transportstrategy/eddingtonstudy/
[13] Cases handled by a Panel of more than three Commissioners i.e. a "Large Panel" case.
[14] http://www.communities.gov.uk/archived/publications/planningandbuilding/consultationexaminationnsips

In relation to a cap on fees, the Government decided not to introduce a cap on fees and agreed with the points made at consultation against such provision i.e.

- a cap might provide an incentive to submit cases which have not been well prepared or adequately consulted upon, instead (as fees are capped) leaving the IPC to deal with problems; and
- it would go against the stated aim of full cost recovery.

In addition, we believe there is already a *de-facto* cap in place of six months within which the IPC needs to complete its examinations[15].

In relation to local authority costs, the Government does not believe the new regime places an increased burden on local authorities who already:

- look closely at any major infrastructure projects proposed in their area and enforce conditions
- engage with developers on potential applications; and
- bear their own costs for their involvement in any inquiry held by the Planning Inspectorate.

Similarly for statutory bodies, they also already engage with relevant projects and incur their own costs for any involvement in a planning inquiry. As such Government does not intend to provide additional funding for their involvement in the new regime. Further detail on the responses to consultation can be found on the Communities and Local Government website[16]. A guidance note has also been published alongside the fee regulations, explaining how the fee regulations operate in practice and providing some worked examples to aid interpretation[6].

Changes in light of consultation – examination procedure rules

Most respondents felt that, overall, the draft Rules provided a comprehensive set of procedures – though there were a number of points on the detail of the procedures. While minor revisions have been made in light of those comments, the principal change made was to combine the examination procedure rules with the procedure rules for the examination of applications where the Secretary of State has intervened and made a direction restricting the disclosure of evidence on grounds of national security. Combining rules will avoid duplication and reduce the number of statutory instruments needed to implement the Planning Act.

As indicated above, the summary of responses to consultation and the Government's changes in light of it can be found on the Communities and Local Government website.

Objectives of a fee regime and examination procedure rules

Fee regime

The Planning Act replaces a number of different consenting regimes, each with their own charging schedule. The policy intention has been to establish a regime that charges on the basis of resource required, rather than charge fees based on the type or physical size of a proposed development. The three other key principles that have been borne in mind during the development of this fee regime are that, as far as is possible, we end up with a charging structure that:

- is fair in the sense of differentiating project fees broadly in proportion to resource cost incurred in processing the applications
- is transparent, and simple both to understand and administer

[15] See section 98 of the Planning Act 2008.
[16] http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/planningbill/

- maximises, so far as is reasonable and practicable, recovery of costs associated with the processing of applications.

Examination rules

The principal objective of the new examination procedure rules is to deliver the specific improvements underlined during the passage of the Planning Bill to streamline the examination process so that applications are determined in a more timely and efficient way for the benefit of all parties, while retaining the existing high standards of fairness and impartiality.

The new examination procedure rules achieve this in a number of ways; for example by harmonising and simplifying the process by which applications for different NSIPs are handled, by front loading the examination process by requiring the Examining authority to hold a preliminary meeting to agree how an examination should be conducted and to set a timetable, by providing that written representations are the primary basis for examining an application and making the Examining authority primarily responsible for the oral questioning of persons giving evidence.

The current rules, under Town and Country Planning legislation, the Transport and Works Act 1992 and a multitude of other regimes, set out the procedures for examining applications for NSIPs, under which all parties interested in a particular proposal to construct a NSIP can be heard in a public inquiry. Following inquiry the appointed inspector then makes a recommendation to be considered by the Secretary of State to determine whether to grant consent for the proposed project.

The current arrangements for handling NSIPs through public inquiries can impose significant costs on developers and central and local government, and also on voluntary groups and others. The costs involved include the costs of delay and deferral of the benefits of proposed investment (including the perpetuation of uncertainty and property blight for local people) and the costs of preparation for and participation in the inquiry itself (such as provision of accommodation for the inquiry, the Inspector and the secretariat, reproduction of documents, participants' travelling and overnight costs, loss of earnings, preparation of cases (including professional advice) and legal representation). Therefore, shortening the examination time will decrease the costs listed above as well as creating further benefits.

Lengthy delays at the planning stage can have major knock-on effects for developers because it is at this point that large investments are required. Industry estimates that, for larger projects, these extra costs caused by delays to the inquiry can reach into the millions of pounds.

The new examination procedure rules will simplify the examination procedures as they will apply to all applications to construct nationally significant infrastructure schemes relating to energy, transport, water, waste water and waste disposal projects (as defined in the Act).

The new rules will also provide for shorter, more efficient examinations with more predictable durations, which will also significantly reduce the cost of determining applications. They are also sufficiently flexible to allow the Examining authority to plan the examination process in a way that is appropriate for the application in question, whether it is a smaller project, such as a small power station, or a proposal for a large new nuclear power station.

Summary of proposals (Option 1)

Introduce new fee regime

The Planning White Paper *Planning for a Sustainable Future* (paragraph 5.65) made clear that Government intends to apply the well established principle of applicants paying fees to cover the IPC's costs of processing applications, rather than funding it through taxation. This reflects the fact that applicants stand to gain financially from the award of development consent.

It is proposed that fees are charged at different stages in an application's consideration. As well as helping the IPC and applicants manage their cash-flow (as fees are recovered on a phased basis), this will increase transparency and enable differential rates to be set depending on the complexity and interest in each particular application (which in turn have a direct impact on the amount of IPC resources required). In addition we will review in light of experience whether it might be beneficial for the IPC to carry higher surpluses / deficits across each financial year; this would require an Order under section 102 of the Finance (No. 2) Act 1987.

As well as the staff resource and related overheads necessary to process applications submitted to the IPC, fees will take account of some costs incurred in the pre-application stage (options for which are set out below). Fees will not recover costs that do not relate to casework e.g. legal costs of defending IPC decisions; corporate support for non-casework staff; IT systems for Freedom of Information purposes etc. *Such costs will be funded by Government.*

In summary, fees are proposed at the following stages:

- fixed fee for requests to authorise the serving of a notice that requires information to be provided about interests in land, or a notice that grants access to land
- fixed fee when submitting an application for development consent to the IPC
- differential fees when application is accepted for consideration by the IPC, based on whether case is handled by a Single Commissioner, Panel of three Commissioners (a "Normal Panel") or Panel of more than three Commissioners (a "Large Panel"); and
- differential fees at the start and at the end of the main examination, based on a system of day-rates.

The fees are set out in Table 1 below – our approach and underpinning assumptions are set out further down. Given that requests under section 52 or 53 should only be made as a last resort, these relatively minor costs have not been included when determining the overall typical fee to applicants under the new regime.

Table 1 – Summary of Fees

Application stage		**Fees**		
		Single Commissioner 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 of Act)		£1,000 per request		
Request to authorise right of entry to land (section 53 of Act)		£1,000 per request		
Fee when submitting an application to the IPC		£4,500 per application		
Fee once application accepted (EIA and pre-examination costs)		£13,000	£30,000	£43,000
Examination	*Daily fee (per working day)*	*£1,230*	*£2,680*	*£4,080*
	(Typical length of examination)	*(47 working days)*	*(65 working days)*	*(85 working days)*
	Typical overall fee (rounded)	£58,000	£174,000	£347,000
Decision		Costs incorporated into examination day-rates		
Total fees paid for typical case (application, examination and decision fees) (rounded)		**£75,000**	**£209,000**	**£394,000**

Comparison with option 2 (baseline)

There are a number of different fee regimes used at present, each with their own charging schedule, and it is therefore difficult to estimate the average difference in fees that applicants will experience between the existing and new regimes. For instance – an indicative assessment over the period 2004/05 to 2006/07 estimates that, on average, applicants paid fees to the Planning Inspectorate of around £31,000 for the costs of undertaking public inquiries on major infrastructure proposals. The larger cases can pay over £100,000 and, in extreme circumstances, charges have been known to reach as much as £750,000.

These inquiry costs are in addition to the promoters' own costs e.g. costs of legal representation (which can be significant during a lengthy inquiry – as mentioned on page 3), as well as other fees paid to decision-maker(s) to cover their costs of processing applications e.g. an application for consent[17] for a nuclear power station generating over 500 Megawatts would require an up-front fee of £40,000. Where any related works to the project require other permissions (such as planning permission or an Order under the Transport and Works Act 1992), further fees would also need to accompany those applications.

[17] Section 36 of the Electricity Act 1989

Given the uncertainty over how many applications an individual project might require – and the variation in how controversial it may be (which impacts on any inquiry fees and the promoters own costs of representation) – we have made the following assumptions about fees paid under the existing regimes:

- while some decision-makers recover pre-application costs (local planning authorities for instance have a discretionary power to recover such costs[18]), it is assumed for comparison purposes that applicants do not currently pay fees for any pre-application services;
- while there is a wide range of fees that can be charged under the current regime (as set out above), it is assumed for comparison purposes that applicants currently pay an overall average fee of £40,000 per application (as was used in the Planning Act Impact Assessment); and
- while fees are not currently paid by Government for highways applications, it is assumed that the average £40,000 fee per application is equivalent to Government's costs of processing the decision (which will be saved under the new regime).

Using figures in the Planning Act Impact Assessment, and taking into account recent estimates of anticipated casework (i.e. that we expect more energy applications to come forward, but also fewer highways cases), it is assumed for the purposes of this assessment that once the IPC is operational and accepting its full breadth of 45 estimated cases a year (see page 14):

- fifteen cases per year are brought forward by Government and that – as these will be predominantly less complex than other cases – that two-thirds of these cases (i.e. 10) go through the Single Commissioner process; and
- thirty cases per year are brought forward by business and that the majority will go through the Normal Panel process.

Following discussions with the IPC we anticipate an indicative split across the overall number of cases as follows:

- 33% go through the Single Commissioner process
- 65% go through the Normal Panel process; and
- 2% go through the Large Panel process.

The above assumptions, and cost data set out in the remainder of this assessment, allow us to estimate the additional fees to applicants under the new regime (Option 1). This is set out in Table 2 (figures are rounded where appropriate) and should be considered in light of the wider benefits of the Planning Act 2008 (see page 3).

[18] Section 93 of the Local Government Act 2003

Table 2 – Estimate and comparison of overall fees paid under Options 1 and 2

	Single Commissioner cases	Normal Panel cases	Large Panel cases
OPTION 1			
Typical fees received per application	£75,000	£209,000	£394,000
Estimated number of applications from **Government** per year	10 applications	5 applications	0 applications
Total annual fees paid by **Government**	£1.8m per year		
Additional fees paid by Government[19] (relative to Option 2)	**£1.2m per year**		
Estimated number of applications from **business** per year	5 applications	24 applications	1 application
Total annual fees paid by **business**	£5.8m per year		
Additional fees paid by business (relative to Option 2)	**£4.6m per year**		
OPTION2 (BASELINE)			
Estimated annual fees paid by **Government**	£0.6m per year *(£40,000 per application)*		
Estimated annual fees paid by **business**	£1.2m per year *(£40,000 per application)*		
Additional costs to Government of running the IPC	**£5.8m per year**		

Examination procedure rules

These rules follow on from the proposals announced in the Planning White Paper that resulted in provisions in Part 6 of the Planning Act 2008 which sets out broad procedural provisions in respect of the examination of applications. Section 97 of the Planning Act 2008 gives the Lord Chancellor the power to make procedural rules which build on these and contain more detailed

[19] In the form of applications by the Highways Agency for new highways development, the costs of which were previously accounted for in the Planning Act Impact Assessment.

provisions in respect of the IPC's examination of applications for NSIPs, and paragraphs 3 and 4 of Schedule 4 give the Lord Chancellor power to make procedural rules in respect of the Secretary of State's examination of an application when they intervene. Detailed analysis of the costs and benefits of the new regime as a whole are set out in the Planning Act Impact Assessment.

We expect the benefits of the new rules to result in time savings and efficiency during the examination stage because:

- of the increased focus on the pre-examination process to resolve as many issues as possible, narrowing the areas of disagreement, leaving the smaller number of more complicated issues to be dealt with in the formal examination itself
- the Examining authority will normally be responsible for questioning persons making oral representations at hearings, thus avoiding long drawn out sessions of cross-examination and re-examination of each and every witness by opposing counsels; and
- the additional provisions for utilising written procedures in certain cases (subject to any right to make oral representations at any hearings) and for concurrent examination sessions will also benefit all parties.

Many of the new provisions are discretionary, so should the Examining authority think that their examination of the application can be concluded more efficiently without using some of these new powers, then they will not have to do so.

When and how fees are charged

Pre-application stage

To decide what pre-application costs should be recovered through fees a number of options were considered:

1. No recovery of pre-application costs
2. Recovery of costs incurred for any advice provided on a particular application (inc. to interested parties / objectors etc.)
3. Recovery of costs incurred in the giving of any advice to applicants in relation to preparing an application
4. Recovery of costs incurred for specific advice only:
    - scoping opinions on an Environmental Impact Assessment (EIA)
    - requests for the IPC to authorise a notice to be served requiring information to be provided about interests in land (under section 52 of the Act); and
    - requests for the IPC to authorise entry onto land e.g. for the purposes of surveying and taking levels (under section 53 of the Act).

Option (1) was not adopted as it would go against Government's policy of full cost recovery. Options (2) and (3) were not adopted as it was considered that general procedural advice should be funded by Government. Certain requests to the IPC however, as set out in option (4), were considered to impose significant and identifiable resource cost and would be suitable for cost recovery.

For the purposes of this Impact Assessment we have only considered option (4).

Option (4)

It is proposed that fees be paid up-front before considering requests under section 52 or 53 of the Act. These powers relate to obtaining information about land or entering it for the purposes of surveying or taking levels.

Where an applicant is unreasonably 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 IPC who can require the information or access to be provided. Only Commissioners are empowered to grant authorisation, and it is felt that the costs of making that judgement should be recovered – in the form of up-front fees – from the person making the request.

In relation to EIA scoping opinions, most nationally significant infrastructure projects will require an Environmental Statement and it is thought that a majority of applicants would seek a scoping opinion from the IPC. It is proposed to recover the costs of providing that scoping opinion within fees charged for pre-examination costs to the IPC. This is similar to the approach taken by local planning authorities, who recover EIA costs within fees paid alongside an application for planning permission.

Application fees

Applications to the IPC, even those relating to the same infrastructure type, will involve different levels of complexity and generate different levels of interest. For instance, the level of opposition to two similar wind farm projects can vary significantly depending on the geographical location. However the relative complexity or interest will only become clear later in the application process, thus *at the point of application* it is proposed that a single fixed fee is charged (rather than up-front differential rates based on the type or physical size of a proposed development).

Fees paid at the point of application will recover the costs of assessing whether the application meets the criteria at section 55 of the Act i.e. whether the IPC will accept it for consideration ("validation").

Pre-examination fees

Once the IPC has accepted an application for consideration, one of three fixed fees will then be charged to recover costs of the pre-application EIA scoping work (see above) and the pre-examination phase (which includes the assessment of principal issues under section 88).

The relevant fee will depend on the number of Commissioners appointed to examine the application:

a) applications examined by a Single Commissioner

b) applications examined by a Panel of three Commissioners ("Normal Panel"); and

c) applications examined by a Panel of more than three Commissioners ("Large Panel").

Fees for examination and decision

Once the IPC has assessed the principal issues (during pre-examination), a system of day-rates will be used to recover the remaining costs of determining an application i.e. the examination and decision-making phases. It is proposed that three categories of day-rate be established based on the number of Commissioners appointed to examine the application:

d) day-rate for Single Commissioner

e) day-rate for Panel of three Commissioners ("Normal Panel")

f) day-rate for Panel of more than three Commissioners ("Large Panel").

This is similar to how the Planning Inspectorate calculate their costs and would incorporate average daily costs of the:

- relevant staff resources e.g. Commissioners and the amount of secretariat (and external) resource needed to support them
- associated overheads e.g. accommodation, IT and other office services; and
- other support functions e.g. corporate staff support to casework teams (HR, procurement etc.) plus their related overheads and specialist IT systems (finance systems etc.).

The day-rates will only be charged against the number of working days that a case is in examination, but it is important to note that this will recover the costs of both examination **and** decision (or recommendation to Ministers where appropriate). This is done by estimating the overall typical costs of the examination and decision phases for each 'type' of case – Single Commissioner, Normal Panel and Large Panel – and then dividing by the estimated typical length of examination for each 'type'. To illustrate:

Table 3 – How day-rates are calculated

Day-rate		How day-rate is estimated
Single Commissioner (SC) cases	=	(Typical cost of SC examination + decision) ÷ (Typical length of SC examination)
Normal Panel (NP) cases	=	(Typical cost of NP examination + decision) ÷ (Typical length of NP examination)
Large Panel (LP) cases	=	(Typical cost of LP examination + decision) ÷ (Typical length of LP examination)

Once the IPC estimates the number of "working days" (i.e. the total number of days from examination start to end, normally excluding weekends and public holidays) needed to undertake its examination, this is multiplied against the relevant day-rate to provide an estimated overall cost. The applicant pays 50% at the start of examination and the remaining costs at the end of examination – this provides a degree of flexibility, both in terms of not overcharging promoters where cases are handled quicker than expected but also for recovering additional costs where they take longer. To illustrate:

- Normal Panel is chosen to examine application and timetables an estimated 50 working days for examination
- applicant pays 50% / 25 working days of expected fee at start of examination
- upon completion of examination stage, only 40 working days (80% of the original estimate) were required and so applicant then pays for a further 15 days (rather than 25 days as originally estimated).

More worked examples are set out in guidance that accompanies the fee regulations[20]. Structuring the fees in this way yields more certainty for business over the potential costs of decision as – upon completion of examination – the costs of decision become fixed. *Fees will*

[20] http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/planningbill/

not be used to recover any decision costs of central Government i.e. where the final decision must be taken by the Secretary of State as no National Policy Statement is in effect.

In relation to refunds should an examination take less than 50% of the time estimated – discussions at the pre-examination stage should ensure that the IPC does not make such a significant timetabling error. Even where an applicant withdraws shortly into the process of formal examination, which is very rare in existing inquiries, the IPC will still have allocated various resources and potentially paid retainers for external services. As such costs for future work will have already been incurred.

Given this, no refund mechanism is proposed for examination and decision fees.

Methodology for calculating fees

Given that the IPC will be operating a different style of examination, it is difficult to compare costs directly with those incurred in existing inquiries. ***To produce our estimates we have therefore conducted resource modelling for each activity within the process and tested it with officials working on existing consent regimes for major infrastructure and the Planning Inspectorate, and then used the overall resource estimates (as set out in this Impact Assessment) to generate the corresponding fee levels.*** Discussions have also been held with the IPC since its establishment which have resulted in overall cost reductions from figures published for consultation in July 2009.

Throughout this Impact Assessment we have used:

- actual IPC salary costs (including 12.8% employer's National Insurance contributions and, for the secretariat only, 14% employer's superannuation)
- estimated overheads as provided by the IPC
- a figure of 222 for the number of working days per year (this reflects public holidays and annual leave and so recovers the full economic cost to the IPC); and
- a figure of 45 for the average number of cases per year (as estimated in the Planning Act Impact Assessment).

Further detail on the resource estimates can be found in the Annex at page 25.

We will review the fee levels annually and will update them as soon as sufficient information has been collected on how the IPC operates in practice.

IPC resource costs

Fixed and variable overheads for staff resources are set out at Annex Tables A and B. Staff resources are based on equivalent civil service grades and salary costs include employer's superannuation and National Insurance contributions (as relevant). The cost of procuring external services is based on:

- Barristers from TSol[21];
- other legal assistance from private firms (using typical city rates); and
- technical assessors similar to those used by the Planning Inspectorate.

This allows us to estimate the cost of each staff resource per annum and per working day, as set out in Table 4 below:

[21] The Treasury Solicitor's Department (www.tsol.gov.uk)

Table 4 – Overall Staff Resource Costs

Staff Resource	Annual salary / procurement costs[22]	Annual overheads[12]	Overall cost per annum	Overall cost per day (rounded)
Commissioner costs				
Chair	£259,440	£17,000	£276,440	£1245
Commissioner	£112,800	£18,000	£130,800	£589
Secretariat costs				
Grade 5 Equivalent	£117,290	£9,500	£126,790	£571
Legal (in house) – Grade 6 equivalent	£69,740	£9,500	£79,240	£357
Grade 7 Equivalent	£58,962	£9,500	£68,462	£308
HEO Equivalent	£34,236	£9,500	£43,736	£197
EO Equivalent	£28,530	£9,500	£38,030	£171
AO Equivalent	£22,824	£9,500	£32,324	£146
External costs				
Barrister	£266,400	£0	£266,400	£1,200
Legal assistance	£266,400	£16,650	£283,050	£1,275
Technical assessor	£108,780	£16,650	£125,430	£565

These estimates are multiplied later on against the estimated number of working days, per staff resource, that are needed for each chargeable element of the IPC's operations:

- pre-application (requests under s.52/53)
- application validation
- pre-examination; and
- examination and decision.

[22] All figures are based on pro-rata salaries / costs and include employer's National Insurance contributions and superannuation (as relevant)

Pre-application fees

For requests under section 52 or 53 of the Act, which relate to requests to authorise information on or access to land (see pages 11-12), **a uniform fee of £1,000 will be charged** (see Annex Table C for underpinning assumptions on resource requirements).

Costs of providing an Environmental Impact Assessment (EIA) scoping opinion will be incorporated into the pre-examination fees (see pages 11-12). The typical costs for each scoping opinion ranges from £2,000 to £3,200 (see Annex Table D for underpinning assumptions on resource requirements), and it is assumed for the purposes of this Impact Assessment that:

- 50% of Single Commissioner cases request an EIA scoping opinion
- 70% of Normal Panel cases request an EIA scoping opinion; and
- 100% of Large Panel cases request an EIA scoping opinion.

These are based on an increasing probability of an EIA scoping opinion for more complex projects, using 70% at the mid-point (as used at public consultation).

Application validation

A **uniform fee of £4,500 is proposed at the point of application** to recover the costs of validation. Annex Table E sets out the underpinning assumptions on resource requirements for this cost estimate.

Pre-examination fees

In response to consultation a new charging point was introduced in order to balance the fees more fairly. Once an application has been accepted for consideration a fee will be charged depending on the type of examining authority chosen by the IPC Chair:

- cases handled by a **Single Commissioner – £13,000**;
- cases handled by a **"Normal Panel" of three Commissioners – £30,000**; and
- cases handled by a **"Large Panel" of more than three Commissioners – £43,000**.

These figures include the costs of pre-examination and also recover the cost of providing EIA scoping opinions (see above). Annex Tables F and G set out the underpinning assumptions on resource requirements for these cost estimates.

Examination and decision fees

The following table sets out our estimated typical resource requirement for examination and decision, across each of the three 'types' of examining authority. The estimated resource costs are multiplied against the rates in Table 4 to provide a typical cost per case.

Table 5 – Typical Resource Requirement (Examination and Decision: Casework Staff)

Resource Requirement	Single Commissioner cases		Normal Panel cases		Large Panel cases	
	Days	**Cost (£)**	**Days**	**Cost (£)**	**Days**	**Cost (£)**
Commissioner costs						
Chair	0.5	£623	0.5	£623	0.5	£623
Commissioner	41.7	£24,561	175.4	£103,311	366.4	£215,810
Secretariat costs						
Grade 5 Equivalent	1.2	£685	2.1	£1,199	3.6	£2,056
Legal (in house) – Grade 6 equivalent	7.7	£2,749	12.8	£4,570	16.5	£5,891
Grade 7 Equivalent	24.0	£7,392	49.1	£15,123	59.2	£18,234
HEO Equivalent	13.2	£2,600	28.4	£5,595	28.4	£5,595
EO Equivalent	9.4	£1,607	16.9	£2,890	25.4	£4,343
AO Equivalent	7.4	£1,080	8.8	£1,285	9.9	£1,445
External costs						
Barrister	2.3	£2,760	3.4	£4,080	3.4	£4,080
Legal assistance	0.9	£1,148	0.9	£1,148	0.9	£1,148
Technical assessor	5.8	£3,277	11.7	£6,611	16.2	£9,153
Total (rounded)		£48,500		£146,400		£268,400
(Ratio used to apportion figs in Table 6)		*33%*		*100%*		*183%*

Recording hearings and other costs

Responses to public consultation widely supported the need for formal recording of IPC hearings. Views were however split on how this should be achieved, particularly given that costs would likely fall to applicants to fund.

Options highlighted during consultation were the use of stenographers or audio / video recording, with the former estimated to cost up to £1,500 a day and something that applicants have sometimes provided themselves for the largest planning inquiries under the current regime.

Bearing in mind views at public consultation on the need to minimise costs for less complex projects, Government have determined only to charge fees for the very largest projects (i.e. those examined by a "Large Panel").

To incorporate these costs we have made the following assumptions:

- similar to the very largest inquiries under the current regime, all Large Panel hearings will have a formal transcript of proceedings produced
- all Commissioners will preside over each hearing, which based on allocated costs for a typical Large Panel case gives an indicative average of 23 hearing days[23]; and
- costs of recruiting stenographers at £1,200 per day (based on a range of prices obtained by the IPC of between £900 and £1,500).

Thus for **Large Panel cases an additional £27,600** will be added to the typical costs of examining these cases – though it should be noted that we anticipate few projects to go through this process (most should be handled by a Single Commissioner or "Normal Panel").

A proportion of the IPC's other costs (e.g. corporate and support staff, specialist IT systems and other costs e.g. postage) will also be recovered through fees, for those elements that support the processing of casework. The average amount to be recovered per case has been estimated as:

- corporate and support staff – £20,000 per case
- associated specialist IT systems – £7,000 per case
- other costs – £1,000 per case.

These figures are differentiated according to the complexity of the case (see below). Detail on the basis for the above estimates is set out in Annex Tables H, J and K.

Generating the day-rates

The day-rates can now be calculated using the above data and an estimate of the typical length of examination (see Annex Table L). Table 6 brings this together and apportions the corporate and specialist IT systems costs between the different 'types' of case; this is done by applying the ratio at the bottom of table 5 (using Normal Panel cases as a mid-point).

[23] In practice, the number of hearing days will vary depending on the case at hand – the Panel may decide to hold more hearings presided over by fewer Commissioners.

Table 6 – Typical Resource Costs (Examination, Decision and Corporate Support)

Cost element	Single Commissioner cases	Normal Panel cases	Large Panel cases
Staff resources & overheads	£48,500	£146,400	£268,400
Costs of recording hearings	No fee	No fee	£27,600
Related corporate costs	£6,600	£20,000	£36,600
Other related costs e.g. specialist IT systems and postage	£2,600	£8,000	£14,600
Typical costs per case (rounded)	**£58,000**	**£174,000**	**£347,000**
Estimated typical length of examination	47 working days	65 working days	85 working days
Examination day-rates (rounded)	**£1,230**	**£2,680**	**£4,080**

Other cost / benefit considerations

Venue costs

The draft regulations continue the widely used policy of applicants providing the inquiry venue – such as for inquiries under the Harbours Act 1964, Electricity Act 1989 and Transport and Works Act 1992. Although venues are often provided by local authorities for inquiries under the Town and Country Planning Act 1990, the fact that some applicants will now pay for these under the new regime is considered to be offset by a reduction in venue costs to other applicants as a result of shorter examinations.

As such it is proposed that where the IPC makes arrangements for a hearing to be held, it will fall to the applicant to provide the venue facilities (if not, the IPC will provide them and charge the applicant accordingly).

Transferring applications to the IPC for consideration

In general, only those projects meeting the thresholds in Part 3 of the Planning Act will fall to the IPC for determination. However the Planning Act also includes a power at section 35 for the Secretary of State to transfer a project (or a group of projects) not meeting the thresholds in Part 3 and which is under consideration by another decision-maker, but for which Ministers believe is of national significance, to the IPC for determination. This power will be exercised comparatively rarely and on the basis of clear criteria set out in a ministerial statement, or possibly the National Policy Statement. An example of its use would be situations where several projects come forward in close proximity such that they are likely to have cumulative impacts that require holistic consideration.

Before exercising this power, applications must be made (and any necessary fees paid) to the "relevant authority(s)" as set out in section 35. In order to therefore offset fees already paid alongside the initial applications, *applicants will not need to pay the following fees to the IPC*:

- fee normally paid when submitting an application to the IPC (£4,500); and
- fee normally paid once application accepted for consideration (£13,000 **or** £30,000 **or** £43,000).

Other fees paid to the IPC will continue to apply as normal.

'Section 106' agreements and the Community Infrastructure Levy

Scheme promoters and local planning authorities will often agree 'section 106' agreements[24] in order to fund local infrastructure improvements needed as a result of a proposed project. For example, such infrastructure might be an access road to the new development built by the relevant authority, and the 'section 106' agreement would set out the funding agreement between the scheme promoter and that authority.

The Government has left it at the discretion of parties involved as to whether or when such a 'section 106' agreement is made. However, we expect that applications to the IPC would contain outline details of any proposed 'section 106' agreement. This does not affect the fee proposals set out in this Impact Assessment.

The Planning Act 2008 also included enabling clauses for a Community Infrastructure Levy (CIL) in England and Wales. The Government consulted on the detail of CIL in summer 2009, including how it will relate to development consented by the IPC. Regulations to enable local authorities to begin work to implement CIL will not come into force until 6 April 2010.

Costs and benefits to Government

The new system of fees will also impact on Government expenditure. In terms of decisions on proposed projects that are currently taken by central and local government, loss of fees to those decision-makers (which is offset by savings to workload) was accounted for in the Planning Act Impact Assessment.

In relation to applications by the Highways Agency for new highway development, it will also need to pay fees to the IPC. While there is therefore an additional cost to the Highways Agency (which was accounted for in the Planning Act Impact Assessment and justified by the benefits of more transparent decisions and greater public involvement), the net cost to Government is neutral as it will effectively be a transfer of money between agencies.

The public sector should also benefit from faster decisions – such as reduced costs of preparing for and representation at hearings. These savings have not been assessed as part of this Impact Assessment.

Summary of cost/benefit analysis for the examination procedure rules

The full cost/benefit analysis of the preferred option for the examination procedure rules are provided in detail in the Impact Assessment for the Planning Act 2008.

In brief, we consider that there will be some, minor, one-off costs as participants familiarise themselves with the new system. However, these will not be significant, given the rules are based on the best practice already in operation for large infrastructure projects consented under the Town and Country Planning Act and other development consent regimes.

[24] These relate to agreements under section 106 of the Town and Country Planning Act 1990

The new procedural rules will bring economic benefits for developers bringing forward proposals. As explored in the Barker and Eddington Reviews[25], the costs of securing planning permission for nationally significant infrastructure can run into millions of pounds, and a key driver of this cost is the length of the examination of the application at a public inquiry. The new procedures will provide for shorter, more focused examinations, therefore reducing the direct costs for developers. By providing more certainty of duration they reduce the uncertainty faced by developers, which will in turn reduce the project risk and hence financing costs that they incur in funding NSIPs. Business will also be able to secure the right resources (people and materials) on more definite timescales which would have increasing significance during high demand for such specialist resource.

The increased focus on the pre-examination process to resolve as many issues as possible, narrowing the areas of disagreement, will mean that the formal examination will deal with the smaller number of more complicated issues. This will allow business to focus their attention on the key areas, preventing money and time being wasted on side issues than can be negotiated outside of the formal examination of the project, rather than being the subject of protracted cross-examination.

Small Firms Impact Test

An assessment has taken place as to whether there would be any disproportionate impact on small and medium enterprises (SMEs), such as whether the level of fees would constitute a barrier to entry for SMEs. This assessment has been informed in light of consultation, where concerns were raised about the impact of fees on short electricity lines and hazardous waste facilities. Steps have been taken to balance the fees more fairly, with less complex projects handled by a Single Commissioner seeing a £21,000 (22%[26]) reduction in fees. In addition:

- some electricity line projects could potentially be brigaded together into a single application to the IPC – such as various minor works to upgrade the network as a whole (thus resulting in only one fee for a group of projects); and
- some projects can be consented as development associated to other, larger schemes e.g. electricity lines consented as a grid connection to a new generating station (again reducing the number of applications and so fees that must be paid).

Given the above and amount of financial commitment that nationally significant infrastructure projects generally require, we continue to believe that the impacts have been minimised for the few SMEs that might be affected by these changes. The vast majority of IPC casework will relate to multi-million pound projects – for example a major generating station project is estimated to involve capital costs of between £500m and £1bn. SMEs should also benefit from the reforms contained in the Planning Act, though savings will not be as significant relative to more complex applications promoted by major business (which have generally been the ones to take many years to reach determination).

An assessment was also carried out to examine the impact of the new examination rules on SMEs. It shows that the there would be no disproportionate impact on SMEs.

These rules are intended to be fully utilised by IPC for the largest and most complex proposals, for example airports, nuclear power stations and large generating stations. Given the costs associated with such developments, we take the view that only a major developer is likely to submit an application for a development of such a scale that it would be classified as NSIP.

However, because the new rules will apply to some more modest projects, such as some renewable energy projects, there is a chance that there will be an impact on SMEs, although it is likely that for a smaller project the wide range of provisions in the rules will not need to be

[25] Ibid
[26] Relative to fees published for consultation on 14 July 2009.

used. We expect smaller firms to enjoy the benefits of tighter-run, shorter examinations, with more predictable durations. In these smaller projects the costs of the examination tend to be a greater proportion of the overall costs than for larger projects.

This will be especially important for small firms who might not have the resources to cope with continued delays. It is also expected that because the IPC will only use some of the new provisions if required e.g. hearings, smaller firms will not face over-engineered examinations of their projects.

Competition assessment

The OfT's competition assessment[27] has been carried out and it is our view that the introduction of this fee regime and examination procedure rules would not impact on the operation of any market such that competition issues arise. It is considered that any organisation that can generate the amount of capital needed to invest in major infrastructure projects would also not find the level of fees proposed in this Impact Assessment a barrier to entry.

Implementation approach

This Impact Assessment accompanies the final fee regulations and examination procedures rules which were subject to public consultation from 14 July to 5 October 2009.

The Government's response to consultation can be found on the Communities and Local Government website[28] and the final regulations from the Office for Public Sector Information[29]. The Infrastructure Planning (Fees) Regulations 2010 will come into force on 1 March 2010, at which point the IPC will begin to process applications for development consent.

Other specific impact tests

Legal aid

We would not expect any legal challenges to be brought in relation to fees charged by the IPC or examination procedure rules. As such there should be no impact on legal aid costs.

Human rights

The Minister has certified that the Planning Act is compatible with the European Convention on Human Rights.

Impacts on sustainable development, including the environmental and carbon emissions, and health

It is not thought that the fees policy or examination procedure rules would have any impact on sustainable development, environment or health issues. The IPC will be taking decisions in accordance with National Policy Statements and Ministers must take sustainable development (and other relevant Government policy including climate change) into account when developing each NPS.

[27] http://www.oft.gov.uk/shared_oft/reports/comp_policy/oft876.pdf
[28] http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/planningbill/
[29] http://www.opsi.gov.uk

Impacts on particular groups

We have considered the impacts that these fee proposals and examination procedure rules could have on:

- race equality
- disability equality
- gender equality; and
- rural communities.

We do not expect our proposals to have a differential impact on any particular group.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

Fixed and Variable Overheads

The following tables set out the estimated fixed and variable overheads for staff resources. Table A sets out the estimated *fixed* overheads per workstation per annum; Table B sets average annual estimates for the *variable* overheads i.e. travel, subsistence and training. Both tables have been informed by discussions with the IPC on budget forecasts.

When using the estimate of *fixed* overheads in the main evidence base, there are two modifications for certain staff:

- Commissioners, like planning inspectors, are assumed to work from home or at the hearing venue; as such their fixed overheads are assumed to be £1,000 per year to cover home office costs.
- Secretariat staff (excluding the Chief Executive, his/her PA and the Chair's PA) are taken to adopt a desk ratio of 8:10 i.e. overall fixed overheads of £8,000.

Table A – Fixed Overheads

Cost element	**Estimated annual cost per workstation**
Accommodation	£7,500
Basic IT services	£1,900
Office services / equipment	£600
Total:	£10,000
Fixed overheads based on desk ratio of 8:10 (used by majority of Secretariat staff)	*£8,000*

Table B – Variable Overheads

Staff Resource	Variable Overheads	
	Estimated annual T&S cost (per person)	**Estimated annual training cost (per person)**
Internal staff		
Chair & Deputy Chairs	£5,000	£2,000
Commissioners	£15,000	£2,000
CEO	£5,000	£500
Secretariat staff dealing with casework and Board / Council support	£1,000	£500
All other secretariat staff i.e. corporate operations	£500	£500
External staff		
Barristers	£0	£0
Legal assistance	£16,650 (£75 per working day)	£0
Technical assessors	£16,650 (£75 per working day)	£0

Pre-application resource breakdown

Table C sets out the estimated resource breakdown for requests under section 52 or 53 of the Act, which relate to requests to authorise information on or access to land. Table D sets out the estimated resource breakdown for providing an EIA scoping opinion.

Table C – Typical Resource Breakdown (s.52/53 requests)

Resource Requirement	Days	Cost
Commissioner costs		
Chair	0	£0
Commissioner	0.4	£236
Secretariat Costs		
Grade 5 Equivalent	0	£0
Legal (in house) – Grade 6 equivalent	0.4	£143
Grade 7 Equivalent	0.5	£154
HEO Equivalent	2.5	£493
EO Equivalent	0	£0
AO Equivalent	0.2	£29
External costs		
Barrister	0	£0
Legal assistance	0	£0
Technical assessor	0	£0
Total (rounded)		**£1,000**

Table D – Typical Resource Breakdown (EIA Scoping Opinions[30])

Resource Requirement	Single Commissioner cases		Normal Panel cases		Large Panel cases	
	Days	Cost (£)	Days	Cost (£)	Days	Cost (£)
Commissioner costs						
Chair	0	£0	0	£0	0	£0
Commissioner	0.8	£471	1.3	£766	1.8	£1,060
Secretariat costs						
Grade 5 Equivalent	0	£0	0	£0	0	£0
Legal (in house) – Grade 6 equivalent	0	£0	0	£0	0	£0
Grade 7 Equivalent	2.5	£770	3.5	£1078	4.5	£1386
HEO Equivalent	2.5	£493	2.5	£493	2.5	£493
EO Equivalent	0	£0	0	£0	0	£0
AO Equivalent	1.5	£219	1.5	£219	1.5	£219
External costs						
Barrister	0	£0	0	£0	0	£0
Legal assistance	0	£0	0	£0	0	£0
Technical assessor	0	£0	0	£0	0	£0
Total (rounded)		£2,000		£2,600		£3,200

[30] Costs are assumed to be proportionate to the type of examining authority, should that application be accepted by the IPC

Validation resource breakdown

Table E sets out the estimated resource breakdown for the typical costs of assessing whether an application meets the criteria at section 55 of the Act i.e. whether the IPC will accept it for consideration ("validation").

Table E – Typical Resource Breakdown (Validation)

Resource Requirement	Days	Cost
Commissioner costs		
Chair	0.5	£623
Commissioner	1.1	£648
Secretariat costs		
Grade 5 Equivalent	0.2	£114
Legal (in house) – Grade 6 equivalent	0.4	£143
Grade 7 Equivalent	1	£308
HEO Equivalent	7.9	£1,556
EO Equivalent	4.7	£804
AO Equivalent	2.8	£409
External costs		
Barrister	0	£0
Legal assistance	0	£0
Technical assessor	0	£0
Total (rounded)		**£4,500**

Pre-examination resource breakdown and fees

Table F sets out the estimated resource breakdown for the typical costs of pre-examination, which includes the initial assessment of the principal issues. Table G adds together the costs of providing EIA scoping opinions and the pre-examination stage, thus generating the fee to be paid once an application is accepted for consideration.

Table F – Typical Resource Breakdown (Pre-examination)

Resource Requirement	**Single Commissioner cases**		**Normal Panel cases**		**Large Panel cases**	
	Days	**Cost (£)**	**Days**	**Cost (£)**	**Days**	**Cost (£)**
Commissioner costs						
Chair	0.1	£125	0.1	£125	0.1	£125
Commissioner	7.6	£4,476	19.9	£11,721	32.6	£19,201
Secretariat costs						
Grade 5 Equivalent	0.4	£228	0.5	£286	0.5	£286
Legal (in house) – Grade 6 equivalent	0.1	£36	0.1	£36	0.1	£36
Grade 7 Equivalent	3.9	£1,201	6.4	£1,971	6.9	£2,125
HEO Equivalent	12.5	£2,463	30	£5,910	40	£7,880
EO equivalent	15.7	£2,685	33.2	£5,677	43.2	£7,387
AO Equivalent	8.2	£1,197	14.2	£2,073	16.5	£2,409
External costs						
Barrister	0	£0	0	£0	0	£0
Legal assistance	0	£0	0	£0	0	£0
Technical assessor	0	£0	0	£0	0	£0
Total (rounded)		**£12,400**		**£27,800**		**£39,400**

Table G – Calculation of pre-examination fee

Cost	Single Commissioner cases	Normal Panel cases	Large Panel cases
EIA scoping opinion (see Table D)[31]	£1,000	£1,800	£3,200
Pre-examination (see Table F)	£12,400	£27,800	£39,400
Total pre-examination fee (rounded)	**£13,000**	**£30,000**	**£43,000**

Corporate support to casework teams and other costs

The following tables set out the estimated corporate (Table H), specialist IT systems (Table J) and other costs (Table K), and what proportion can be attributed to casework and thus recovered through fees. These tables have been updated in light of discussions with the IPC and where possible reflect actual salaries and working patterns e.g. the Chair's salary is lower than in Table 4 because he will be working four days a week. It should be noted that these tables do not represent the final corporate structure or budget of the IPC, but are a reasonable estimate of its relevant steady state running costs that will enable us to calculate the fee estimates. These tables do not reflect costs which will be funded wholly by Government, such as costs incurred from defending IPC decisions in the Courts.

Table H – Corporate Costs and Support Staff

Staff	Annual salary costs	Annual Overheads	Total annual cost	% estimated workload attributed to cases	Amount recoverable through fees
Corporate centre					
IPC Chair[32]	£207,552	£16,000	£223,552	30%	£67,066
Deputy Chairs[33] **(x 2)**	£169,200	£30,000	£199,200	30%	£59,760
Chief Executive	£202,880	£15,500	£218,380	10%	£21,838
SEO Board and Council	£43,112	£9,500	£52,612	30%	£15,784

[31] Assumes 50%, 70% and 100% of applicants seek an EIA scoping opinion for Single Commissioner, Normal Panel and Large Panel cases respectively.
[32] Figures reflect the Chair's normal working pattern of 4 days a week.
[33] Figures reflect each Deputy Chair's normal working pattern of 3 days a week.

support					
EO Board and Council support **(X 2)**	£57,060	£19,000	£76,060	30%	£22,818
Resources					
G5 Director of resources	£117,290	£9,000	£126,290	60%	£75,774
EO support	£28,530	£9,000	£37,530	60%	£22,518
G7 Head of Finance	£58,962	£9,000	£67,962	60%	£40,777
HEO Finance	£34,236	£9,000	£43,236	60%	£25,942
EO Finance	£28,530	£9,000	£37,530	60%	£22,518
G7 Head of HR	£58,962	£9,000	£67,962	60%	£40,777
HEO HR Assistant	£34,236	£9,000	£43,236	60%	£25,942
G7 Head of IT	£58,962	£9,000	£67,962	60%	£40,777
HEO IT Manager	£34,236	£9,000	£43,236	60%	£25,942
Strategy and Pre-application Advice					
G5 Director of Strategy and Advice	£117,290	£9,000	£126,290	5%	£6,315
Head of legal & legal support services					
G5 Director of legal	£117,290	£9,000	£126,290	80%	£101,032
EO Legal PA	£28,530	£9,000	£37,530	80%	£30,024
HEO legal services assistant **(x 2)**	£68,472	£18,000	£86,472	80%	£69,178
Case Management					
G5 Director of casework	£117,290	£9,500	£126,790	100%	£126,790
G7 Casework	£58,962	£9,500	£68,462	100%	£68,462

manager					
Total (rounded)	£1.6m	£0.2m	£1.9m		**£0.9m**
Baseline amount to be added per application (45 p.a.) (rounded)					*£20,000*

Table J – Specialist IT Systems

IT System	Annual cost (inc. VAT)	% Attributable to casework and chargeable in fees	Amount chargeable in fees
Finance	£106,000	60	£63,600
HR	£33,000	60	£19,800
Payroll	£10,000	60	£6,000
Procurement	£41,000	60	£24,600
Casework and records management	£356,000[34]	60	£213,600
TOTAL (rounded)	£546,000		**£328,000**
Baseline amount to be added per application (45 p.a.) (rounded)			*£7,000*

Table K – Other Costs

Resource	Annual cost	% Attributable to casework and chargeable in fees	Amount chargeable in fees
Audit services (internal and external)	£53,000	50%	£26,500
Postage (relating to casework)	£15,000[35]	100%	£15,000
TOTAL (rounded)	£68,000		**£42,000**
Baseline amount to be added per application (45 p.a.) (rounded)			*£1,000*

[34] Includes costs of depreciation over 5 years, based on capital cost of £900,000.
[35] Estimates that 5 large cases p.a. require 1,500 letters (approximated from number of interested parties in Stansted G2 inquiry and notification requirements set out in the Planning Act) and remaining 40 cases p.a. require 750 letters. Prices based on second class large letters, using Royal Mail franked mail service (40p per letter).

Estimating the typical Length of Examination

In order to generate the day-rates used during the IPC's examination (see Tables 5 and 6 of the main evidence base), the following table sets out the breakdown of estimated working days (i.e. the total number of days from examination start to end, normally excluding weekends and public holidays) needed to process each typical case. While we cannot predict exactly how the IPC's examinations will work in practice, we can use the broad structure set out in the draft examination procedure rules and statutory duties in the Act, such as the requirement to complete examinations within six months (except in exceptional circumstances). It also assumes the regime is fully operational with a relevant National Policy Statement in place.

The principles used to inform the estimates in Table L are as follows:

- Where **no objections** are raised to an application at the pre-examination stage, and the relevant local authority indicates that it will not be submitting a local impact report, it is likely that the IPC's examination phase will be significantly quicker. It is thought that the process of formal examination would in such circumstances take around three weeks (15 working days).
- Where **objections are raised** at the pre-examination stage:
  - around three weeks would usually be allowed for written representations to be submitted to the IPC – the IPC would then probe the evidence and require responses to its questions within three weeks; in addition, written representations would be made available to other interested parties and in practice three weeks allowed for them to submit comments also;
  - where a local authority determines to submit a local impact report this is expected to be submitted no later than six weeks into formal examination – this would then be circulated to interested parties with a list of questions from the IPC, and a further three weeks allowed for responses to those questions.
- We therefore estimate that this process could take eight to nine weeks (40-45 working days), using minimum timescales and assuming local authority involvement. Any hearings would generally overlap the above processes, though would not begin for the first three weeks (until written representations have been received).
- At points throughout this process – particularly after all information has been collected (i.e. all representations and responses to questions received) – the IPC will need time to analyse the evidence and probe as necessary. We believe that this would add a minimum two weeks (10 working days) onto the process towards the end.
- **In *most* Single Commissioner** cases we have assumed that objections are raised and the above minimum timescales are followed, with a small proportion of cases occasionally involving no objections (as happens with some smaller highway schemes) and so reduced timescales.
- **In Normal / Large Panel cases,** we have apportioned additional time onto the above minimum timescales in order to recognise the increased complexity and need for more hearings e.g. specific issue hearings under section 91.

Table L – Typical Length of Examination

Activity	Estimated Number of Working Days		
	Single Commissioner Cases	**Normal Panel Cases**	**Large Panel Cases**
1. Time needed for core consideration of representations by Examining Authority i.e. examining written representations, local impact report and oral evidence at hearings	17 working days	25 working days	35 working days
2. Additional time needed beyond that available during core consideration for notification arrangements, management of hearings and other Secretariat functions	30 working days	40 working days	50 working days
Estimated typical length of examination	**47 working days**	**65 working days**	**85 working days**