EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (DETERMINATION OF APPEALS BY APPOINTED PERSONS) (PRESCRIBED CLASSES) (AMENDMENT) (ENGLAND) REGULATIONS 2009

2009 No. 380

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

2. Purpose of the instrument

2.1 The Regulations amend the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 (S.I. 1997/420) ("the main Regulations") to give appointed persons (planning inspectors) the power to determine additional classes of appeal instead of the Secretary of State.

2.2 The Regulations transfer jurisdiction to determine:

- appeals relating to old mining permissions under the Planning and Compensation Act 1991;
- certain appeals by statutory undertakers under section 78 or 174 of the Town and Country Planning Act 1990 ("the Act"), in relation to their operational land or potential operational land.

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

3.1 None.

4. Legislative Context

4.1 Paragraph 1 of Schedule 6 to the Act enables the Secretary of State to make regulations to allow various categories of planning and enforcement appeal to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State, unless she prescribes or directs otherwise.

4.2 Section 198 of the Planning Act 2008 amended paragraph 1 of Schedule 6 to the Act to enable appeals under paragraph 5 of Schedule 2 to the Planning and Compensation Act 1991, which relate to old mining permissions, to be determined by appointed persons. In addition, section 195 of the Planning Act 2008 amended section 266 of the Act to provide that applications or appeals made by statutory undertakers, under Part III of the Act, in relation to operational land, or prospective operational land should be dealt with by the Secretary of State and the appropriate Minister only if the Secretary of State or Minister has given a direction to that effect and the direction has not been revoked. In the absence of such a direction, regulations may now prescribe that such appeals shall be determined by an appointed person.

4.3 The main Regulations were amended by the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 2006 (S.I. 2006/2227) and the other regulations identified in paragraph 7.1 below. In addition, regulation 8 of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (S.I.1992/2832) prescribes appeals under section 106B of the Act, concerning the modification or discharge of planning obligations.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 For the majority of categories of planning appeals, the Secretary of State has powers to transfer the decision to a planning inspector but, for no obvious historical reasons, certain categories of appeal remained excluded until identified in the context of the Planning White Paper 2007[1]. Appropriate regulations have since been made, namely, the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Amendment) (England Regulations 2008 (S.I. 2008/5950 and regulation 12 of the Town and Country Planning (Environmental Impact Assessment((Amendment) (England) Regulations 2008 (S.I. 2008/595). However, primary legislation was required before the appeals of the description set out in these Regulations could be transferred.

7.2 The objective of the policy is to simplify the appeals process in order to speed up decisions, make more efficient use of resources and ensure that all decisions are taken at the appropriate level. There is no change to the Secretary of State's power to recover any planning appeal for her own consideration if she considers it appropriate.

- ***Consolidation***

7.3 Not relevant

8. Consultation outcome

8.1 A consultation exercise was undertaken between 13 August and 5 November 2007 on the whole package of proposals to complete the transfer of appeal decisions to planning inspectors. The consultation paper was placed on the Departmental website, and e-mails/letters were sent to a large number of bodies with potential interests in the proposals, drawing their attention to it. 34 responses were received, all of which were broadly supportive of the proposals. A detailed Response document has been placed on the Departmental website. These two remaining changes had to await changes to primary legislation in the Planning Act 2008.

9. Guidance

9.1 Not considered necessary.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal but, to the extent that it arises, will be beneficial as a result of speeding up the planning appeal process.

10.2 The impact on the public sector is small, but beneficial in that the planning appeal process will be speeded up with associated savings of staff costs.

[1] The Planning White Paper: "Planning for a Sustainable Future" (ref: CM7120) is available from: http://www.communities.gov.uk/publication/planningandbuilding/planningsustainablefuture

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation is unlikely to affect small business. Regulation 2(2) applies only to minerals operators in relation to quarries which started operation in the 1940s in response to wartime needs and which therefore carried few, if any, working and restoration conditions. We do not know how many, if any, such cases are still outstanding but, given the amount of investment likely to be required to reopen such a quarry, we anticipate that any such application would be made by a large and well-established minerals operator. Regulation 2(3) will apply solely to statutory undertakers.

12. Monitoring & review

12.1 None required.

13. Contact

Jean Nowak at the Department for Communities and Local Government. Tel: 020 7944 3958 or email: jean.nowak@commumities.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title:	
Communities and Local Government	**Impact Assessment of Regulations to secure the transfer of further planning appeals to Inspectors**	
Stage: Final	**Version:** v1	**Date: 1 April 2009**
Related Publications: Consultation paper on Transfer of Appeals to Inspectors; Government Response to Consultation on Transfer of Appeals to Inspectors		

Available to view or download at:

http://www.communities.gov.uk/documents/planningandbuilding/pdf/transferplanningappeals.pdf

http://www.communities.gov.uk/documents/planningandbuilding/pdf/transferappealsresponse.pdf

Contact for enquiries: Jean Nowak **Telephone:** 020 7944 3958

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

For most types of planning appeals, the Secretary of State (SoS) has powers to transfer the decision to the Planning Inspectorate. However, for historical reasons, the SoS currently has no power to do so for the categories included in the SI to which this impact assessment relates. It has first been necessary to secure the necessary powers in sections 195 and 198 of the Planning Act 2008 in order to be able to make regulations to facilitate the transfer of these categories of appeal, and the terms of this impact assessment reflect the relevant powers in the 2008 Act.

What are the policy objectives and the intended effects?

The policy objective of the regulations is to simplify the appeals process by completing the scope for transferring appeals for decision by Planning Inspectors. The ability of the Secretary of State to recover individual appeals will be maintained.

The intended effects are to speed up the decision-making process, make more efficient use of resources and ensure that all decisions are taken at the appropriate level.

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

The options are: (i) to do nothing; or (ii) to make the appropriate adjustments to secondary legislation by means of the amending SI to facilitate the transfers.

The proposed action will reduce direct Ministerial involvement in the determination of planning appeals to a level which is proportionate to the significance of the proposals, thereby making best use of time and resources and saving the need for officials to go over work already done by the Inspector (who is likely to be more knowledgeable about the particular specialisms covered by the proposed regulations).

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

The proposals would need to have been in place for at least a year to measure their efficacy.

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

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

Signed by the responsible Minister:

Iain Wright

.....Date: 25th February 2009

Summary: Analysis & Evidence

Policy Option: ii	Description: **Implement regulations to secure the transfer of further planning appeals to Inspectors**

COSTS

ANNUAL COSTS	Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition) **Yrs**	No costs have been identified.
£ None	
Average Annual Cost (excluding one-off)	
£ None	**Total Cost** (PV) **£ 0**

Other **key non-monetised costs** by 'main affected groups'
There are no other non-monetised costs.

BENEFITS

ANNUAL BENEFITS	Description and scale of **key monetised benefits** by 'main affected groups'
One-off **Yrs**	Benefits have not been monetised due to the very small number of cases which will be affected by the policy change and the variable complexity of those cases.
£ None	
Average Annual Benefit (excluding one-off)	
£ Negligible	**Total Benefit** (PV) **£**

Other **key non-monetised benefits** by 'main affected groups' The savings will be small as only a small number of cases will be involved. However, there will be a time-saving of up to 9 weeks per case for the appellant, and staff savings for the Government Departments involved.

Key Assumptions/Sensitivities/Risks Savings likely to be small as few cases will be involved and will also depend on how far the Other Government Departments involved will be willing to relinquish their direct input to decisions on joint cases.

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

What is the geographic coverage of the policy/option?			England	
On what date will the policy be implemented?			6 April 2009	
Which organisation(s) will enforce the policy?			no enforcement	
What is the total annual cost of enforcement for these organisations?			£ N/A	
Does enforcement comply with Hampton principles?			No	
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?			£ nil	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

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

Increase of £ N/A Decrease of £ N/A **Net Impact** **£** N/A

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

Currently the majority of planning appeals are decided by planning inspectors, although the Secretary of State has the ability to recover individual appeals. However, for historical reasons, the SoS currently has no power to transfer decisions to inspectors in certain cases. There are two types of cases affected: appeals involving statutory undertaker's operational land where decisions are made jointly by CLG and the Department responsible for sponsoring the statutory undertaker; and appeals against the determination of conditions for old mineral workings.

Under the current system, a Planning Inspector considers the evidence and holds an inquiry before writing a report containing recommendations which are then considered by the Secretary of State or, in the case of statutory undertaker's land, by two government departments. The Planning Act 2008 secured the necessary powers to facilitate the transfers of these categories of appeal to the Planning Inspectorate.

Rationale for change

The current system uses staff resources within CLG and Other Government Departments to duplicate work which is already being done by Planning Inspectors which could otherwise be used for more significant cases or other high priority work. It also means that officials can sometimes be faced with working on types of cases for which they have no expertise as they relate to matters which do not arise very frequently and on which they are therefore heavily dependent on the report written by the Inspector when recommending an appeal decision to Ministers. Officials are currently required to analyse the Inspector's report, write a submission to Ministers and draft a decision letter. Savings in terms of time and resource will be made under the proposal.

The current system means that appellants have to wait for a further period of approximately 9 weeks before receiving a decision (with potential opportunity costs caused by that delay).

Objective

The Regulations to which this Impact Assessment relates will simplify the process by which the following categories of appeal are determined:

- planning and enforcement appeals involving statutory undertaker's operational land where, at present, the decision has to be made jointly by both CLG and the Department responsible for sponsoring the statutory undertaker;
- appeals against the determination of conditions for old mineral workings

This completes an on-going rationalisation exercise in fulfilment of a commitment given in the Planning White Paper.

Options

Option i: Do nothing

Maintain the *status quo* with its unnecessary delay and duplication of effort, as well as running the risk of gradual loss of expertise as the number of relevant cases decreases (especially with regard to the minerals cases).

Option ii: Facilitate the transfer of all appeal decisions to Inspectors

Make the appropriate changes to the regulations, which have now been facilitated by new provisions in the Planning Act 2008, so that Ministers only get involved in appeal decisions where justified for policy reasons. These Regulations will complete the ability to transfer decisions on all planning-related appeals to Inspectors except where, on an individual case by case basis, there are specific policy reasons to justify not doing so. This will ensure that all decisions are taken at the appropriate level with no unnecessary duplication of effort between Inspectors and decision officers (sometimes requiring input from two Government Departments) and no need to put submissions to Ministers on issues which would not normally merit their direct involvement.

Benefits and Costs

Option (i)

No new or additional costs or benefits have been identified.

Option (ii)

There are no identified costs of making these changes. The benefits arise from rationalising and ensuring consistency across the planning system. It removes the necessity for work that is already done by the Planning Inspectorate to be repeated within Communities and Local Government and other Government Departments.

Benefits

Cost savings to Communities and Local Government and other Government Departments

While there will be no more work for the Planning Inspectorate in determining these cases than in preparing reports to Ministers, time will be saved by CLG and the Departments responsible for sponsoring statutory undertakers as they will no longer need to be involved in the categories of cases to which these regulations will apply, except where justified on policy grounds.

In the case of old mineral workings, there have been about 60 cases over the past 14 years, but it may well be that there will be **no** further cases in the future. However, these powers are needed as there may still be some dormant sites that could engender future conditions appeals. Appropriately qualified Inspectors will be able to deal with these cases, but reorganisations in CLG mean that there will no longer be the expertise to know whether their recommendations are appropriate or not. The changes proposed therefore may result in future resource savings within CLG but, due to the low probability of these, no attempt has been made to quantify them.

In the case of statutory undertaker's land, it is thought that an average of **4 or 5** cases a year would not merit a direction to require them to continue to be determined by the two Secretaries of State. Within CLG work on these cases is split between different grades. The amount of time spent on these cases depends entirely on the complexity of each case. In the case of statutory undertaker's land, this process will also be mirrored by the other government department involved.

Time savings to appellants

Appellants will get their decisions up to 9 weeks sooner as they will be issued directly by the Planning Inspectorate.

Social benefits

There may be some social benefits arising from quicker decisions which then facilitate the speedier provision of facilities required to assist a statutory undertaker's operations (eg a

railway footbridge or an electricity substation) or the speedier re-opening of old mineral workings for the extraction of materials.

Costs

No new costs have been identified.

Specific Impact Assessments

Competition assessment
There is no impact on competition from this proposal.

Small Firms' Impact Test
There is no impact on small firms from this proposal; this was verified through stakeholder engagement in relation to the proposals in the Planning Act 2008.

Legal Aid Impact Test
There will be no legal aid impact from this proposal.

Sustainable Development, Carbon Assessment, other Environment
This proposal will not have negative economic, environmental or social impacts and will not have a negative impact on future generations. It will not lead to increased carbon and other green house gas emissions, nor have a negative impact on the environment.

Health Impact Assessment
There are no detrimental health impacts from this proposal.

Race, Disability, Gender and Other Equality
An Equalities impact screening assessment was applied to the enabling proposals in the Planning Act 2008 and stakeholders were consulted to determine the potential for equalities impact. We do not expect any adverse impacts as a result of this proposal.

Human Rights
We do not expect a negative impact on human rights from this proposal.

Rural Proofing
We consider that this proposal would impact equally on rural and urban areas and we do not expect it to have a negative impact on rural areas.

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