

Insights

REFORMS TO NSIP APPLICATION PROCESS COMING FORWARD THIS SPRING

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SUMMARY

Changes to the DCO consenting process to be introduced this spring have the potential to help applicants navigate this system with more certainty and confidence. They introduce more flexibility into the process allowing the opportunity for applications to be processed in a way that is more appropriate and proportionate to its particular nature.

Reforming parts of the DCO process has been a government objective since 2020 to ensure the process works effectively to deliver the country's future infrastructure needs.

This spring (2024) will see some operational reforms to the NSIP consenting process, proposed initially in the NSIP Action Plan in 2023 and consulted on last summer, come to fruition.

The changes to the process, now confirmed in the consultation outcome published alongside the Spring Budget 2024, should give applicants navigating the DCO system more certainty and confidence, particularly those parts of it that have presented challenges and where guidance has been lacking, for example around post-grant amendments.

The forthcoming changes intend to introduce more flexibility and discretion for the Examining Authority in the way applications are handled, allowing opportunities for the system to accommodate the particular nature of an NSIP project in a way that is appropriate and proportionate. However, the overall cost for applicants will increase as cost recovery by PINS, some statutory consultees and local authorities, becomes embedded within the process.

By way of a high level summary, the key changes to the DCO process being taken forward this spring include:

- **A new three tiered pre-application service** offered by PINS to provide more support and advice for applicants preparing DCO applications, with an enhanced level of service available for complex projects and those hoping to follow the fast-track consenting route. Regulations

coming into force this spring will allow PINS to charge a rate of £2,300 for each 'relevant day' it provides this service (but it is not clear whether this is the maximum rate for the enhanced service and whether a reduced rate will apply to lower tiers). Details of the new service will be set out in a new Pre-Application Prospectus to be published by PINS in April. The differentiation between DCOs/NSIPs seems to be a positive step – as there are clearly implications in respect of those projects at the more complex / 'scaled up' end of the regime.

- **Changes to support faster and more proportionate examinations** include the removal of the prohibition on an Inspector who has given section 51 advice during the pre-application stage from then being appointed as an Examining Inspector (which would mean the benefit of early involvement carries forward into the examination). There will be more front loading, with more detailed Relevant Representations potentially being required from parties, to allow Examining Authorities to understand key issues earlier on, as well as changes that give them more discretion to set flexible deadlines during examinations that reflect the circumstances. More detail in Relevant Representations could additionally benefit all parties to the examination, as it should assist third parties in making clearer cases (in contrast to traditional inquiries where a proof of evidence is exchanged before the inquiry starts).
- **A new fast-track consenting route** with a non-statutory target of 12 months from acceptance to decision (compared to the normal 16/17 months) available with a shorter statutory maximum examination timescale of four months (rather than six). All DCO applications that meet quality standards could (in theory) follow the fast-track regardless of sector or complexity. However, whether or not it is appropriate will be determined on a case by case basis by PINS. It will be interesting to see how this develops in practice, and what it means for applicants in preparing their application (which is already a very busy time for major DCOs).
- **Changes to allow certain consultees to recover costs** for providing advice and engaging in the DCO process will be introduced via amendments to regulations from 1 April 2024. The list includes the Environment Agency, Natural England, the HSE, National Highways amongst others, but does not include local planning authorities. However, they will be able to recover their costs through planning performance agreements (which of course regularly occurs already). Anyone who has been through the DCO process will recognise the tremendous pressure on all parties, and one hopes that this move will enable resource to be deployed both to enable the process, but perhaps more importantly to protect the well-being of all involved in what on the major projects, is an intense few years.
- **Phased updates to national infrastructure planning guidance** from March 2024 starting with new guidance on the cost recovery system for statutory consultees, and further guidance to be published from April that will emphasise the importance of identifying and resolving key issues early in the pre-application process, provide further details on the information needed at each stage in the application process, on the fast-track consenting route, on changes to DCOs,

on the fees for pre-application advice and post-consent changes, and the principles for the use of planning performance agreements along with a possible template.

These changes have the potential to help DCO applicants. However, there is still more work to be done before the full suite of reforms needed are delivered, for example the process for making post-consent changes to DCOs and the introduction of a statutory timeframe for non-material changes, which are eagerly awaited

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