

EXPLANATORY MEMORANDUM TO
THE CROSSRAIL (FEES FOR REQUESTS FOR PLANNING APPROVAL) REGULATIONS
2008

2008 No. 2175

1. Introduction

1.1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

1.2. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1. The Crossrail (Fees for requests for Planning Approval) Regulations 2008 (the “Regulations”) specify fees for Crossrail-related planning applications submitted by the Crossrail project nominated undertakers. The nominated undertakers are Cross London Rail Links Limited (“CLRL”) and – for two underground stations – London Underground Limited (“LUL”) to local planning authorities. Section 12 of the Crossrail Act 2008 (the “Act”) disapplies existing Communities and Local Government legislation on planning fee regimes used by local planning authorities to charge for planning applications. Section 12 of the Act however gives Ministers authority to make provisions about fees for requests for relevant planning applications. The Regulations therefore reintroduce a fee regime.

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

3.1. It is proposed that the Regulations come into force immediately following the period of 21 days after laying before Parliament. LUL’s programme of works requires that LUL make the first of their submissions for planning approval at the beginning of September 2008. If the Regulations are not made in a timely fashion, there will not be an agreed fee regime covering all the local planning authorities. Further, the early applications for planning consent could be delayed while authority-specific fees are negotiated. Potentially this could increase the risk of delay to the Crossrail project.

3.2. CLRL estimate that the cost of delaying the project is approximately £60m in outturn costs per month. Accordingly, the Department for Transport is keen to avoid this additional expenditure by including in the 21 day rule those calendar days on which Parliament is not sitting.

4. Legislative Background

4.1. The Regulations are based on the CTRL fees regulations (The Channel Tunnel Rail Link (Fees for Requests for Planning Approval) Regulations 1997 (SI 1997/822)) and the Town and Country Planning Act (Fees for Applications) (Amendment) (England) Regulations 2008 (SI 2008/958).

5. Territorial Extent and Application

5.1. The Regulations are made under the Act which, like the Channel Tunnel Rail Link Act 1996 (and other Hybrid Bills) does not expressly limit the Act's territorial extent. The land and works provisions within the Act are local but the provisions under the heading 'Railways matters' relate to matters which are the subject of a common regime under the law of England and Wales and Scotland and will extend accordingly.

5.2. Because the Sewel Convention provides that Westminster does not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

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

7.1. There are no policy issues in relation to the Regulations.

7.2. The Regulations have been developed in consultation with the Planning Inspectorate and Department for Communities and Local Government. The Regulations were the subject of consultation with the Crossrail qualifying authorities (local authorities who gave the Secretary of State satisfactory undertakings on arrangements to handle Crossrail planning). Only two qualifying authorities made comments. The wording in the proposed Regulations was revised to reflect consultation responses that when calculating floor space the scale of fee should be rounded up to the nearest unit to ensure that a fee is payable for the total floor space. This was the case with the CTRL Regulations and aligns with the Town and Country Planning Act. .

8. Impact

8.1. An Impact Assessment is attached to this Memorandum.

8.2. The Impact Assessment concludes that the Regulations do not create net costs. Instead, the Regulations transfer costs of handling a planning application from local planning authorities to the Crossrail project nominated undertakers (CLRL and LUL). Being able to levy such fees will enable local planning authorities to resource the consideration of planning applications properly, thereby reducing the chances of delay and giving the nominated undertakers better predictability of costs. The fees are relatively small and are in line with current planning charges. An early estimate of total fees during the lifetime of the project is £700,000 to 750,000. CLRL has allowed for these costs in the total estimated project cost.

8.3. A value for money test, approved by Transport Analysis Review, demonstrated that there will be minimal costs resulting from the Regulations. The main impact will be a cost transfer, as stated in paragraph 8.2 above.

8.4. There are no competition impacts, impacts on small firms, race, gender or disability equality impacts, or legal aid, sustainable development, rural proofing, carbon, other environment, human rights or health impacts associated with the Regulations.

8.5. The impact on public sector bodies has been considered as part of the Impact Assessment completed in conjunction with the Act.

9. Contact

9.1. Nick Denton at the Department for Transport Tel: 020 7944 2504 or e-mail: Nick.Denton@dft.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

| | | |
|---|---|--------------------------|
| Department /Agency: Department for Transport | Title: Impact Assessment of Introducing Crossrail Fees for Relevant Planning Applications by Statutory Instrument | |
| Stage: | Version: 1 | Date: 1 June 2008 |
| Related Publications: Crossrail Bill Clause ref 12(1) & Schedule 7; CLG IA & Explanatory Memorandum to the TC&P Act (Fees for Applications) (Amendment) (England) Regulations 2008 | | |

Available to view or download at:

Contact for enquiries: Nick Denton

Telephone: 020 7944 2504

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

Section 12 of the Crossrail Bill disapplies regulations issued under the Town and Country Planning Act 1990 section 303, which set out fees normally charged for planning applications. Schedule 7 of the Bill gives rise to a regime for considering planning applications and enables us to establish a charging regime. These powers in the Bill gives us authority to introduce a charging regime that allows local planning authorities to charge for planning applications for works submitted by the Crossrail project nominated undertakers.

What are the policy objectives and the intended effects?

The intended objectives are to provide local planning authorities with an income to enable them to meet the costs of processing relevant Planning Applications specified under Section 7 of the Crossrail Bill and to have a clear and fair basis for charging. The proposed Crossrail planning fee regulations are based on Town and Country Planning Act (Fees for Applications) (Amendment) (England) Regulations 2008 and should be fair and relatively easy for local planning authorities to use than any introduction of new fee regulations.

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

- 1) A Crossrail fee structure that refers to the T&CPA (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2008, which recently underwent public consultation and option appraisal - the preferred option.
- 2) An Arups report examined a fixed fee per element option: rejected for producing substantially less income for LPAs & was deemed unjustifiable in the light of the T&CPA regime & CTRL precedent.
- 3) Another option would be to negotiate on an individual basis with every LPA – potentially time consuming, costly, not very clear and potentially unfair.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? We will review the charging regime for the Crossrail project when CLG review the Town and Country Planning Act (Fees for Applications) (Amendment) (England) Regulations 2008- likely several years away

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

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Tom HarrisDate: 23rd July 2008

Summary: Analysis & Evidence

Policy Option: A

Description:

| | | | |
|--|---|------------------------|---|
| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' The proposed legislation does not create net costs, but a transfer of the costs of handling a planning application from LPAs to Crossrail project nominated undertakers. An early estimation of fees are £300- 350k for central section and about £400k for on network, resulting in an estimated transfer of £700k - £750k total. |
| | One-off (Transition) | Yrs | |
| | £ None | | |
| | Average Annual Cost (excluding one-off) | | |
| | £ None | Total Cost (PV) | £ None |
| Other key non-monetised costs by 'main affected groups' | | | |

| | | | |
|--|------------------------|------------|--|
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups' |
| | One-off | Yrs | |
| | £ N/K | | |
| Average Annual Benefit (excluding one-off) | | | |

| | | |
|---|---------------------------|-------|
| £ N/K | Total Benefit (PV) | £ N/K |
| <p>Other key non-monetised benefits by 'main affected groups'</p> <p>Benefits arise as a fixed fee system will help to facilitate an efficient, adequately resourced local planning service. In turn this helps Crossrail project delivery by reducing costs, delay and increasing predictability of costs, thereby facilitating planning approval for delivery of Crossrail on time and budget.</p> | | |

Key Assumptions/Sensitivities/Risks

If the Statutory Instrument to introduce Crossrail fees that align with TCPA Fees Regulations as introduced April 2008 is not passed, local planning authorities cannot charge fees for Crossrail, leading to a deficit, and potentially a decline in service, and risk of delay to Crossrail.

| Price Base Year | Time Period Years | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ |
|-----------------|-------------------|---------------------------|-----------------------------------|
|-----------------|-------------------|---------------------------|-----------------------------------|

| | | | | |
|---|--------------|--------------|---------------|--------------|
| What is the geographic coverage of the policy/option? | | n/a | | |
| On what date will the policy be implemented? | | | | |
| Which organisation(s) will enforce the policy? | | n/a | | |
| 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? | | £n/a | | |
| Will the proposal have a significant impact on competition? | | none | | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro n/a | Small n/a | Medium n/a | Large n/a |
| Are any of these organisations exempt? | no | 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

Evidence Base (for summary sheets)

Crossrail Fee Regulations for Submissions under Schedule 7:

The Crossrail Bill makes provision for fee regulations related to submissions for approval under Schedule 7.

The proposals are based on an Arup (consultant) review of the fee regime used by the Channel Tunnel Rail Link (CTRL) project (CTRL fee regulations were largely based on the existing TCPA regime), the current *Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989* and *The Town and Country Planning (Fees for Applications) (Amendment) (England) Regulations 2008*, and are consistent with the undertaking to the LB of Tower Hamlets (of general application) that: “(the Crossrail proposals will, where there is a direct equivalent, be based on the fees for planning applications set section 303 of the Town and Country Planning Act 1990 (fees for planning applications).” The Arups report examining a fixed fee per element option was rejected for producing substantially less income for LPAs & was deemed unjustifiable in the light of the T&CPA regime & CTRL precedent.

Another option would be to negotiate on an individual basis with every LPA – potentially time consuming, costly not very clear and unfair.

The preferred option for Crossrail Schedule 7 submission fees are based on the current TCPA, private and public consultation, and the regime used by the Channel Tunnel Rail Link (CTRL). The CTRL fee regime is used as the starting point for the formulation of the Crossrail fee regulations because the planning section of the Crossrail Bill (Schedule 7) is very similar to (almost an exact replica of) the equivalent section within the CTRL Act (Schedule 6). The CTRL fee regulations were structured to align directly with the different categories of works for approval within Schedule 6; therefore it makes sense for the Crossrail fee regulations to adopt the same approach. In addition, as the CTRL fee regulations were also largely based on the existing TCPA regime, they were on the whole easy to calculate and easy for local planning authorities (LPAs) to understand. Similarly, the preferred options Crossrail Schedule 7 Submission fee regulations align with the April 6th, 2008 CLG issue of the *Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations*. The preferred option is therefore current and should be relatively easy for LPAs to calculate.

The current fee requirements for planning applications under the Town and Country Planning Act (TCPA) are set out in *Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989* and *The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2008*. They are based on broad categories of development and are centred mainly on the notion of calculating the fee on the amount of floor space created by the proposed development:

- A current unit cost of £170 for construction arrangements in line with the current TCPA fee regime.
- In line with the current TCPA system, minor variations can be made to a planning permission without the need for a new planning application, providing that the proposed variation is not materially different from the submitted plans. Where a revision to the design would be deemed materially different, the revised submission would be subject to a full application fee based on those elements for which approval is sought.
- The current TCPA fee is £85 per request, it is therefore proposed that any Crossrail fee is in line with the current TCPA fee regime and is therefore £85.
- Where a Schedule 7 submission is refused by an LPA, no fee would be required for the revised application if it is resubmitted within a 12 month period. This also aligns with Regulation 8 of *The Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989*, and further explained in *Communities and Local Government Circular 04/2008 – Planning-Related Fees* paras 83 – 85 “where an application is withdrawn or refused...applicant may submit

without paying a fee,...and here permission was refused,...the revised application must be made within twelve months of the refusal...”

- Additionally, where it is necessary to withdraw and resubmit a submission, again no fee would be payable providing that it is resubmitted within a 12 month period and the broad principles of the proposed works remain the same.

Summary of Comments on Proposed Crossrail Fee Regulations for Submissions under Schedule 7:

Of all Qualifying Authorities to whom consultation was put through the medium of the Planning Forum, LB Ealing and Westminster City Council, were the only LPAs to respond to the proposed fee consultation. We did not find that any of the comments were significant enough to affect the proposed structure of the fees that will be laid in Parliament as regulations. Furthermore, we did not find that any of the comments on the fees themselves warrant impact assessment. We did accept Westminster City Council’s request for amendment to the proposed fees specified at the time of consultation that when calculating floorspace the scale of fee should be rounded up to the nearest unit to ensure that a fee is payable for the total floorspace. This was the case in CTRL and aligns with the Town and Country Planning Act and we have made it explicit in the explanatory note to the regulations. It will be captured in regulation 2 (2) that, where, pursuant to the proposed regulations, a prescribed fee is calculated by reference to the gross floor space to be created, the area of that space shall be ascertained by external measurement of the floor space, whether or not it is to be bounded (wholly or partly) by external walls of a building.

LB Ealing wrote to us after we issued them our response to their comments on the consultation the following: “Thank you for the detailed responses. You will have noted that I am always conscious of resource implications, but I would like to stress that our authority supports the Crossrail scheme”.

Competition Assessment

There are no competition impacts.

Small Firms Impact Test

There are no impacts on small firms.

Specific Impact Tests

There are not believed to be any race, gender or disability equality impacts. The specific impact tests in the checklist have been considered, and there are not believed to be any legal aid, sustainable development, rural proofing, carbon, other environment, human rights or health impacts.

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 | <i>Results in Evidence Base?</i> | <i>Results annexed?</i> |
|----------------------------|----------------------------------|-------------------------|
| 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

| Category of development for which approval is sought: | Fee payable |
|---|---|
| 1. PLANS AND SPECIFICATIONS FOR THE FOLLOWING WORKS | |
| A. (i) The erection, construction, alteration or extension of a building (including any transformer or telecommunications mast) (ii) The erection, construction, alteration or extension of any fences, walls or other barriers (including bunds) for visual or noise screening or dust suppression, or any other fences or walls (iii) The erection, construction or installation of lighting equipment | (a) Where no gross floor space is to be created by the development, £170; (b) where the area of gross floor space to be created by the development does not exceed 40 square metres, £170; (c) where the area of gross floor space to be created by the development exceeds 40 square metres but does not exceed 75 square metres, £335; (d) where the area of gross floor space to be created by the development exceeds 75 square metres, £335 for each 75 square metres, but does not exceed 3750 square metres £335 for each 75 square metres or part thereof of that area; and e) where the area of gross floor spaces to be created by the development exceeds 3750 square metres, £16,565 and an additional £100 for each 75 square metres or part thereof subject to a maximum of £250,000. |
| B. The erection, construction, alteration or extension of a road vehicle park. | £170 |
| C. Construction, alteration or extension of any terracing, cuttings, embankments or other earth works. | £170 for each 0.1 hectares or part thereof of the site, subject to a maximum of £1,700. |
| D. The erection, construction, alteration or extension of a pedestrian access to the railway line. | £170 |
| E. The disposal of waste or spoil or the excavations of bulk materials from borrow pits. | £170 for each 0.1 hectare or part thereof of the site area, subject to a maximum of £25,500. |
| F Additional Details Request | £85 |
| 2. CONSTRUCTION ARRANGEMENTS | |
| Road transport | £170 |
| Handling of re-usable spoil or top soil | £170 |
| Storage sites | £170 |
| Construction camps | £170 |
| Screening | £170 |
| Artificial lighting | £170 |
| Suppression of dust | £170 |
| Mud on highway | £170 |
| 3. BRINGING INTO USE | |
| Bringing into use works referred to in paragraph 9(3) or 17(3) of the Schedule. | £170 |
| 4. MITIGATION OR SITE RESTORATION SCHEMES | |
| Mitigation or site restoration schemes. | £170 |