



Planning Act 2008

**The Infrastructure Planning (Fees) Regulations 2010:
Guidance**



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Guidance**

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Aim

1. This note provides (non-statutory) guidance and worked examples to aid interpretation of the Infrastructure Planning (Fees) Regulations 2010.

Introduction

2. The Planning Act 2008 establishes a new system for the consenting of nationally significant infrastructure projects 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 Statements, set by Government.
3. As with other planning systems, applicants will pay fees to cover the IPC's costs of processing casework and these are set out in the Infrastructure Planning (Fees) Regulations 2010. These regulations do not alter the need to pay fees for any operational consents¹ not contained in a Development Consent Order granted by the IPC.
4. All section references relate to sections of the Planning Act 2008.

Summary of fees

5. Fees are charged at different stages in an application's consideration:
 - fee when submitting an application for development consent to the IPC
 - fee 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")
 - fee when the IPC commences its formal examination of an application, based on a system of day-rates and how many Commissioners are handling the case
 - fee when the IPC completes its formal examination of an application; and
 - fee for any venue costs i.e. where one is not provided by the applicant.
6. Where applicants are unable to acquire information about interests in land, or access land for the purposes of surveying and taking levels, they can request that the IPC authorise them to service a notice requiring such information to be provided or access granted. Such requests should only be made as a last resort and will incur a fee.

¹ Such as permits granted by the Environment Agency.

7. The fees are summarised in the following table:

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)		£1,000 per request		
Request to authorise right of entry to land (section 53)		£1,000 per request		
Fee when submitting an application to the IPC		£4,500 per application		
Fee once application accepted		£13,000	£30,000	£43,000
Examination	<i>Daily fee (per working day²)</i>	£1,230	£2,680	£4,080
	<i>(Typical length of examination)</i>	<i>(47 working days)</i>	<i>(65 working days)</i>	<i>(85 working days)</i>
	<i>Typical overall fee³ (rounded)</i>	£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

8. While fees for “Large Panel” cases are relatively significant, we would expect only the most controversial or complex cases to require this level of resource. The vast majority of cases are expected to be handled by a Single Commissioner or Panel of three Commissioners (i.e. a “Normal Panel”).
9. The methodology and underpinning assumptions used to generate the above fees (including what costs they recover) are set out in the accompanying impact assessment to the regulations⁴.

Interpretation of the regulations

10. Attached to this note (see Annex) is a table which sets out the policy intention and interpretation of each regulation. While there is a general presumption that payment of fees should be fully enforced, most of the regulations have been drafted to permit the IPC some discretion when unforeseen circumstances arise e.g. where they are assured that non-payment is simply due to administrative error.

² Every day in the period from the start of formal examination to its end, normally excluding weekends and public holidays.

³ This fee is paid in two stages – 50% of the estimated fee at the start of examination (based on the expected number of days in formal examination), with any remaining fee paid at the end of examination (based on actual number of days in formal examination).

⁴ www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/planningbill/

Worked examples of how fees work in practice

11. Below are some examples of how and (in bold) when fees would be paid in practice. These are for *illustrative purposes only* – how a case progresses and the IPC's decisions in relation to it will vary from one application to another.

(A) Surveying land for potential project

Applicant action / process	IPC action / decision	Fee to be paid
Work begins on potential project	N/A	N/A
IPC notified that application for development consent is being considered	IPC publishes notice of potential project on website	N/A
Applicant is unreasonably refused access to land for the purposes of surveying and taking levels (in relation to the proposed application)	If requested, IPC can provide advice on the scope of any request under section 53 (see commentary on regulation 3 in the enclosed Annex).	N/A
If access to land is genuinely needed for the purposes of the proposed project, applicant submits request to IPC under section 53 (Rights of Entry)	Upon receipt of request under section 53 and relevant fee, the IPC will determine whether to grant authorisation for the applicant to enter the land.	£1,000

(B) Application for development consent for a simple highways scheme and where a relevant National Policy Statement is in place

Stage of process / applicant action	IPC decision or action	Fee to be paid
Application for development consent for highways scheme submitted to the IPC. No compulsory acquisition of land is required.	Upon receipt of application and relevant fee, the application is assessed against the criteria at section 55 (e.g. whether the applicant has met their duty to carry out effective pre-application consultation with the local community) and hence if it can be accepted for further consideration.	£4,500
Applicant notifies relevant persons (section 56) and provides the IPC with confirmation of this (section 58). As the application doesn't contain provision requesting compulsory acquisition of land, a notice under section 59 is not required.	Application meets criteria and is therefore accepted for consideration.	N/A
Applicant notified of Chair's decision and pays relevant fee within 28 days.	Relevant notices are received (under section 58). As it is a simple case, the Chair appoints a Single Commissioner to handle it.	£13,000
<i>continued</i>		

Stage of process / applicant action	IPC decision or action	Fee to be paid
Initial stages of examination; applicant provides a venue for the preliminary meeting.	After making its initial assessment of the principal issues arising on the application, the Single Commissioner schedules its preliminary meeting under section 88 and sets out its proposed approach to examination.	N/A
Applicant (and other interested parties) make representations at the preliminary meeting as to how the application ought to be examined and the timetable for doing so.	Single Commissioner considers any representations made and makes procedural decisions about how the application is to be examined.	N/A
Formal examination commences and applicant notified of relevant fee, which is paid within 28 days.	Single Commissioner makes a decision to programme a formal examination period of 40 working days (approx 2 months).	£24,600 [40 days × £615]
Written representations made; applicant provides venue for hearing.	Single Commissioner conducts site visits, examines written representations and (as appropriate) schedules hearings.	N/A
Applicant notified of end of examination and relevant fee, which is paid within 28 days.	Formal examination completed after 42 working days. Interested parties are notified of the completion of examination under section 99.	£27,060 [(42 days × £1,230) – £24,600]
N/A	Single Commissioner makes report to IPC Council, which then makes final decision on application and (if no fees are outstanding) notifies interested parties.	N/A
TOTAL FEES PAID		£69,160

(C) Application for development consent for a complex generating station scheme and where a relevant National Policy Statement is in place

Stage of process/applicant action	IPC decision or action	Fee to be paid
Application for development consent for generating station scheme submitted to the IPC , including provision for the compulsory acquisition of land.	Upon receipt of application and relevant fee, the application is assessed against the criteria at section 55 (e.g. whether the applicant has met their duty to carry out effective pre-application consultation with the local community) and hence if it can be accepted for further consideration.	£4,500
Applicant notifies relevant persons (section 56) and provides the IPC with: <ul style="list-style-type: none"> confirmation that all relevant persons have been notified (section 58); and as the application requests the compulsory acquisition of land, a notice of the persons affected by this (section 59). 	Application meets criteria and is therefore accepted for consideration.	N/A
Applicant notified of Chair's decision and pays relevant fee within 28 days.	Relevant notices are received (under sections 58 and 59). As it is a complex case, the Chair appoints a Panel of three Commissioners (i.e. a "Normal Panel") to handle it.	£30,000
Initial stages of examination; applicant provides a venue for the preliminary meeting.	After making its initial assessment of the principal issues arising on the application, the Panel schedules its preliminary meeting under section 88 and sets out its proposed approach to examination.	N/A
Applicant (and other interested parties) make representations at the preliminary meeting as to how the application ought to be examined and the timetable for doing so.	Panel considers any representations made and makes procedural decisions about how the application is to be examined.	N/A
Formal examination commences and applicant notified of relevant fee, which is paid within 28 days.	Panel makes a decision to programme a formal examination period of 70 working days (approx 3½ months).	£93,800 [70 days × £1,340]
Written representations made; applicant decides not to provide venue for hearings . Applicant pays relevant fee (in respect of the venue costs) within 28 days of notification.	Panel conducts site visits, examines written representations and (as appropriate) schedules hearings.	Relevant fee in respect of venue costs.
<i>continued</i>		

Stage of process/applicant action	IPC decision or action	Fee to be paid
Applicant notified of end of examination and relevant fee, which is paid within 28 days.	Formal examination completed after 70 working days. Interested parties are notified of the completion of examination under section 99.	£93,800 [(70 days × £2,680) – £93,800]
N/A	Panel makes decision on application and (if no fees are outstanding) notifies interested parties.	N/A
TOTAL FEES PAID		£222,100 + venue fee

(D) *Application for development consent for a very complex airport scheme and where **no** relevant National Policy Statement is in place*

Stage of process/applicant action	IPC decision or action	Fee to be paid
Application for development consent for airport scheme submitted to the IPC , including provision for the compulsory acquisition of land.	Upon receipt of application and relevant fee, the application is assessed against the criteria at section 55 (e.g. whether the applicant has met their duty to carry out effective pre-application consultation with the local community) and hence if it can be accepted for further consideration.	£4,500
Applicant notifies relevant persons (section 56) and provides the IPC with: <ul style="list-style-type: none"> confirmation that all relevant persons have been notified (section 58); and as the application requests the compulsory acquisition of land, a notice of the persons affected by this (section 59). 	Application meets criteria and is therefore accepted for consideration.	N/A
Applicant notified of Chair's decision and pays relevant fee within 28 days.	Relevant notices are received (under sections 58 and 59). As it is one of the most complex cases, the Chair appoints a Panel of five Commissioners (i.e. a "Large Panel") to handle it.	£43,000
Initial stages of examination; local authority hosts preliminary meeting at its local offices.	After making its initial assessment of the principal issues arising on the application, the Panel schedules its preliminary meeting under section 88 and sets out its proposed approach to examination.	N/A
Applicant (and other interested parties) make representations at the preliminary meeting as to how the application ought to be examined and the timetable for doing so.	Panel considers any representations made and makes procedural decisions about how the application is to be examined.	N/A <i>continued</i>

Stage of process/applicant action	IPC decision or action	Fee to be paid
Formal examination commences and applicant notified of relevant fee, which is paid within 28 days.	Panel makes a decision to programme a formal examination period of 100 working days (approx 5 months).	£204,000 [100 days × £2,040]
Written representations made; applicant provides venue for hearings.	Panel conducts site visits, examines written representations and schedules (as appropriate) hearings.	N/A
Applicant notified of end of examination and relevant fee, which is paid within 28 days.	Formal examination completed after 95 working days. Interested parties are notified of the completion of examination under section 99.	£183,600 [(95 days × £4,080) – £204,000]
N/A	If no fees are outstanding, Panel makes report to the Secretary of State who then makes final decision on application and notifies interested parties.	N/A
TOTAL FEES PAID		£435,100

Annex: Interpretation of Infrastructure Planning (Fees) Regulations 2010

Regulation	Policy intention and commentary
1. Citation and commencement	<p>This provides that the regulations come into force on 1 March 2010.</p> <p>The regulations have the same extent of the Planning Act 2008 and apply to England, Wales and Scotland (see section 240). They also apply in territorial waters adjacent to England and Wales, and any Renewable Energy Zone (except those where Scottish Ministers have functions).</p>
2. Interpretation	<p>This provides for interpretation of various terms used throughout the regulations.</p>
3. Fee in respect of authorisation under sections 52 and 53	<p><i>Policy intention</i></p> <p>Sections 52 and 53 relate to obtaining information about interests in land or entering it for the purposes of surveying or taking levels.</p> <p>Where an applicant is 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 an up-front fee of £1,000 must be made with any request.</p> <p>However we wish to ensure that the use of these powers (and the applicable fees) is proportionate, such that:</p> <ul style="list-style-type: none"> • the ability to enter / acquire information about land cannot be unduly frustrated e.g. by objectors buying up plots of land and then selling small amounts on to different people, with the aim of requiring an applicant to submit potentially hundreds of requests for each 'parcel' of land (each costing £1,000); • applicants do not submit a single request for the whole project (or large sections of it) e.g. the entire length of a proposed 100 mile pipeline. <p>Applicants are expected to act reasonably, first seeking to obtain relevant information or permission to access land directly before seeking authorisation under these provisions. Specifically, applicants should only submit requests for</p>

Regulation	Policy intention and commentary
	<p>those aspects of information, or access to parcels of land, where they consider they have been reasonably refused that information or access.</p> <p><i>Interpretation</i></p> <p>(i) The regulation has been specifically drafted wide enough to allow the IPC to decide whether, in each particular case, one or several requests for authorisation under section 52 or 53 are required. This will also ensure that the £1,000 fee approximately covers the resource cost involved.</p>
4. Fee in respect of venue costs	<p><i>Policy intention</i></p> <p>This adopts the widely used policy of applicants providing the inquiry venue (such as for inquiries held under the Harbours Act 1964, Electricity Act 1989 and Transport and Works Act 1992). Applicants should provide the hearing venue bearing in mind what type of facilities the IPC needs to undertake its examination. This approach gives the applicant greater control over venue costs.</p> <p>Where the applicant does not provide a hearing venue the IPC will need to do so, and regulation 4 provides power to recover any costs incurred. When providing a venue, consideration should be given to public sector organisations in the locality that might have suitable facilities available.</p> <p><i>Interpretation</i></p> <p>(i) The power is permissive and does not <i>require</i> the IPC to charge, but this is only expected where a venue can be provided free of charge.</p> <p>(ii) As set out in regulation 2, “hearing” has the same meaning as section 95(2) and in this context particularly relates to:</p> <ul style="list-style-type: none"> • the “preliminary meeting” where discussion takes place on how the application should be examined • hearings to examine a specific issue • hearings to examine the compulsory acquisition aspects of an application • ‘open floor’ hearings, such as when an interested party wishes to make an oral representation on a matter; and • any other meeting or hearing that the Examining authority causes to be held for the purposes of the Examining authority’s examination of the application. <p>It is a decision for the IPC as to how many hearings are required, bearing in mind the need to undertake an efficient but thorough examination of the issues (and the rights of interested parties to make representations orally).</p>

Regulation	Policy intention and commentary
	<p>(iii) Where a fee is charged and not received within 28 days of the date of invoice, the IPC has <i>discretion</i> to 'down tools' and cease work on an application. The IPC is not <i>compelled</i> to cease work on the application, for instance it may decide to continue where it is satisfied that payment has not arrived due to a simple administrative error.</p>
<p>5. Fee to accompany an application</p>	<p><i>Policy intention</i></p> <p>An initial fee of £4,500 must accompany <i>any</i> application to the IPC. This recovers the costs of assessing whether the application meets the criteria at section 55 and, as such, whether the IPC will accept it for further consideration. Matters that the IPC will need to consider include whether all the required information has been provided and if the applicant has met their duty to carry out effective pre-application consultation with the local community.</p> <p><i>Interpretation</i></p> <p>(i) There is no discretion provided in relation to this fee – applicants <i>must</i> provide it alongside any application for an order granting development consent submitted to the IPC.</p>
<p>6. Fee in respect of the initial decision</p>	<p><i>Policy intention</i></p> <p>This new regulation was provided in response to public consultation and aims to more fairly balance fees between the simpler and more complex types of application.</p> <p>Once an application has been formally accepted for consideration by the IPC (i.e. it has met the criteria at section 55), the Chair will make a decision about whether it will be considered by a Single Commissioner or Panel of Commissioners. This decision will reflect the IPC's expectation about how complex or controversial the case is – the more complex or controversial, the more Commissioners will be appointed.</p> <p>Three 'tiers' of resource intensity are set out in the regulations:</p> <ul style="list-style-type: none"> • cases handled by a Single Commissioner • cases handled by a Panel of three Commissioners (a "Normal Panel"); and • cases handled by a Panel of <u>more</u> than three Commissioners (a "Large Panel"). <p>Applicants must pay a fixed fee within 28 days of the Chair appointing the Examining authority, with the fee depending on which 'tier' is chosen (£13,000 / £30,000 / £43,000 respectively).</p>

Regulation	Policy intention and commentary
	<p><i>Interpretation</i></p> <p>(i) Where a fee is charged and not received within 28 days of the date of invoice, the IPC has <i>discretion</i> to 'down tools' and cease work on an application. The IPC is not <i>compelled</i> to cease work on the application, for instance it may decide to continue where it is satisfied that payment has not arrived due to a simple administrative error.</p>
7. Fee in respect of handling an application	<p>This regulation provides that two fees will be charged in accordance with:</p> <ul style="list-style-type: none"> • regulation 8 (at the start of formal examination); and • regulation 9 (at the end of formal examination). <p>These fees will recover the costs of examination and decision, based on a system of day-rates applied over the formal examination period.</p>
8. Initial payment in respect of the handling of an application	<p><i>Policy intention</i></p> <p>Regulations 8 and 9 relate to the charging of day-rates during the IPC's formal examination of an application (as set out in Chapter 4 of Part 6 of the Planning Act 2008). The day-rates aim to recover the IPC's costs of examining <i>and</i> making a final decision (or recommendation to Ministers) on an application.</p> <p>As set out in the commentary on regulation 6 there are three 'tiers' of resource intensity:</p> <ul style="list-style-type: none"> • cases handled by a Single Commissioner • cases handled by a Panel of three Commissioners (a "Normal Panel"); and • cases handled by a Panel of <u>more</u> than three Commissioners (a "Large Panel"). <p>Accordingly three tiers of day-rate have been set – £1,230 / £2,680 / £4,080 per 'working day' respectively. A 'working day' (defined in the regulations as a "relevant day") is each day in the period from the start of formal examination to its end, normally excluding weekends and public holidays.</p> <p>The fees in this regulation are 50% of the full day-rates. The intention is that, following the IPC's programming of its formal examination at the "preliminary meeting" (see section 88 of the Planning Act), it will charge 50% of the expected fee based on the estimated overall length of the examination period. Remaining fees will then be paid at the end of examination based on actual days taken (see regulation 9).</p>

Regulation	Policy intention and commentary
	<p>The methodology for how the fee levels were calculated (including what costs they recover) is set out in the Impact Assessment that accompanied the regulations⁵.</p> <p><i>Interpretation</i></p> <p>(i) Where a fee is charged and not received within 28 days of the date of invoice, the IPC has <i>discretion</i> to 'down tools' and cease work on an application. The IPC is not <i>compelled</i> to cease work on the application, for instance it may decide to continue where it is satisfied that payment has not arrived due to a simple administrative error.</p> <p>(ii) The regulations have been drafted such that they are triggered whenever the IPC begins a formal examination i.e. after holding a preliminary meeting under section 88 (which is when the timetable for a forthcoming examination is discussed with interested parties). This means that in the rare circumstance that an examination must be re-opened for a particular reason e.g. where new evidence comes to light, the applicant will still pay fees for that aspect of the examination.</p> <p>(iii) Regulation 8(2) defines "estimated relevant day" as a day estimated by the Examining authority as required for examining the application. The IPC will normally be expected to charge for every working or "relevant" day in the formal examination period i.e. all days less weekends and public holidays. However the IPC has discretion not to charge for certain days where there are good reasons to do so; any reduction in fees would be reflected in the final payment at the end of examination (see commentary for regulation 9).</p>
9. Final payment in respect of the handling of an application	<p><i>Policy intention</i></p> <p>See the commentary under regulation 8. This relates to the final payment after the end of the IPC's formal examination.</p> <p>This fee is calculated by determining the total number of <i>actual</i> 'working days' needed for the IPC's examination, which will normally be every day in the period from the start of formal examination to its end (excluding weekends and public holidays), multiplied against the full day-rate in regulation 9 and deducting the fee paid under regulation 8.</p> <p>Where payment is not made within 28 days, the duty on the IPC for making a decision or recommendation within three months (as set out in sections 98(3) or 107) is extended by the number of days in which payment has been delayed</p>

⁵ www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/planningbill/

Regulation	Policy intention and commentary
	<p>e.g. if payment is one month late, the IPC has four (instead of three) months from the end of examination to make a decision or report to Ministers on the application.</p> <p><i>Interpretation</i></p> <p>(i) Regulation 9(3) defines “relevant day” as a day on which the Examining authority examined the application and the IPC will normally be expected to charge for every working day in that period i.e. every day except weekends and public holidays. However the IPC has discretion not to charge for certain days where there are good reasons to do so e.g. where the Commissioner handling a Single Commissioner case falls ill and progress on the case is delayed. In such circumstances the IPC can reduce the number of “relevant days” accordingly, thus reducing the final fee paid by the applicant.</p> <p>(ii) Where a fee is charged and not received within 28 days of the date of invoice, the IPC can delay decision or recommendation on the application until payment has been made. The statutory deadline to decide or report on an application within three months (see sections 98(3) and 107) is extended in such circumstances by the number of days delay in payment reaching the IPC.</p>
10. Direction made under section 35	<p><i>Policy intention</i></p> <p>The Planning Act includes a power at section 35 for the Secretary of State to transfer an application (or a group of applications) to the IPC for consideration. Before exercising this power, an application(s) must first have been made (and any necessary fees paid) to the “relevant authority(s)” as set out in section 35.</p> <p>In order to offset fees already paid alongside the initial application(s), applicants will <u>not</u> need to pay the following fees to the IPC as part of its handling of the case:</p> <ul style="list-style-type: none"> • 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). <p>Other fees paid to the IPC will continue to apply as normal.</p> <p><i>Interpretation</i></p> <p>(i) This regulation provides that regulations 5 and 6 do not apply in the case of applications that are transferred to the IPC pursuant to a direction made by the Secretary of State under section 35(4).</p>

Regulation	Policy intention and commentary
11. Intervention by the Secretary of State under section 112	<p>Section 112 provides that the Secretary of State may refer an application to Ministers for determination. This power is limited in use, such as where there are defence or national security interests involved.</p> <p>When an application is referred to Ministers in this way, the majority of matters would be delegated back to the IPC for consideration under section 113(3)(a). Ministers would examine any sensitive aspects and use (as necessary) the procedures set out in Schedule 3 to the Act.</p> <p>This regulation makes clear that, for any matters referred back to the IPC under section 113(3)(a), fees will be charged as normal to recover the IPC's costs of examining of those matters.</p>

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