**Considerations and Implications of DCO Amendments**

A Development Consent Order (DCO) grants development consent for Nationally Significant Infrastructure Projects (NSIPs) under the Planning Act 2008. An amendment to the DCO is dealt with under Schedule 6 of the Planning Act 2008 (“the 2008 Act”). Depending on whether a change to a DCO is material or non-material, the procedure for obtaining the amendment differs. This is outlined in Part 2 of the Infrastructure Planning (Changes to, and revocation of, Development Consent Orders) Regulations 2011 (as amended). There are no prescribed timescales for decision making and the timescales for determining a material change could be prohibitive for a project.

There is no statutory definition of what constitutes a material or non-material amendment for the purposes of Schedule 6 to the Planning Act 2008 and Part 1 of the 2015 Regulations. The Government has however confirmed that it will be issuing guidance. Criteria for determining whether an amendment should be material or non-material is outlined in the Department for Communities and Local Government (DCLG’s) “Government response to the consultation on making changes to Development Consent Orders”. This document sets out three characteristics which the Government has confirmed will be contained in future guidance to indicate whether a proposed change is material or non-material. The following characteristics are stated to indicate that an amendment is more likely to be considered ‘material’:

- When the impact of the development to be undertaken as a result of the proposed change introduces the need for a new Habitats Regulations Assessment (HRA), or the need for a new or additional licence in respect of European Protected Species (EPS) (in addition to those at the time the original DCO was made); or

- Where the change would involve compulsory acquisition of any land that was not authorised through the existing DCO.

The Government indicated in the original consultation document, that it is not possible to set out prescriptive, comprehensive and exhaustive guidance on whether a change is material or non-material, as this will depend on individual circumstances. However an amendment is more likely to be considered material if:

- changes relate to the red line application boundary;
- changes require an amendment to the Rochdale parameters/worst case scenario assessment (although not exclusively);
- changes which give rise to new, previously unassessed, impacts in the Impact Assessments.
- changes which result in a requirement for additional or new consents;
- changes which would result in new parties being affected by the project;
- particularly complex or controversial changes which might require examination at a hearing rather than through the written representations procedure (the non-material change process envisages examination by written representations rather than a hearing).

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>At the point where any new or significant effects on the environment as a result of the change mean that an update to the original Environmental Statement (from that at the time the original DCO was made) is required (to take account of those effects);</td>
<td></td>
</tr>
</tbody>
</table>
There have been no material amendments to DCOs to date. One example of a recent non-material amendment application pertains to the Galloper Offshore Wind Farm (GOWF). The GOWF applied for a non-material amendment to authorise an increase in the diameter of monopole wind turbine foundations from 7m to 7.5m. Although this was a change to one of the Rochdale parameters, the Secretary of State (SoS) was satisfied that would not give rise to new, previously unassessed LSE and wouldn’t affect the Habitats Regulation Assessment previously undertaken. The application was determined within five months.

The Planning Inspectorate (PINS) have advised that applicants consult informally with key stakeholders before submitting their application and to include confirmation of no concern the stakeholders alongside the application. Pre-application consultation will help reduce timescales for determination, especially where any statutory consultee concerns can be resolved prior to submission. It is also advised that changes to DCOs are limited as far as possible and that clear explanation of the nature of the changes, and the need for them, is provided. A track changes version of DCO and an accompanying explanatory memorandum is useful to include. The formal consultation and publication requirements for non-material amendments now also rest with the applicant, and not PINS.

Changes to DCOs can result in lengthy project delays. Emphasis should be placed upon getting the DCO accurate the first time, through close collaboration with the whole project team, and ensuring sufficient flexibility is included within the worst case parameters assessed. Wherever possible, consider amendments pre-determination of the DCO, when changes can be made as ‘minor corrections’.

Ashley Carton, Royal HaskoningDHV, November 2015.