

Procedure for Varying Development Consent Orders

1. In the event that Covanta received a Development Consent Order ("DCO") for the Rookery South Resource Recovery Facility consideration can be given to an application to vary any requirements attached to the DCO.
2. The Planning Act 2008 ("PA 2008") provides at Section 153 and Schedule 6 that changes and revocations can be made to orders granting development consent. This mechanism would in principle, for example, allow Covanta to vary the approved delivery hours by HGV. However, the regulations and prescribed forms applicable to an application made under Section 153 and Schedule 6 have not been drafted or published. Therefore, the precise details of the procedure for an amendment to a DCO are yet to be revealed.
3. It is anticipated that the procedure for an amendment to a DCO will be analogous to the procedures under the Town and Country Planning Act 1990 and Covanta has set out a response, as far as it is able to, with regard to both non-material and material changes below.

Non-material Changes

4. Schedule 6 provides under paragraph 2 (1) that the appropriate authority (the Secretary of State or the Commission, depending on who made the Order) may make a change to the DCO if it is satisfied that the change is not material. It would be necessary to convince the relevant authority at this point that the change was not material and that, for example, changing the delivery hours would not have material consequences.
5. Paragraph 2 (2) of Schedule 6 provides that in assessing whether the change is material, the appropriate authority must have regard to the effect of the change, together with any previous changes on the DCO as originally made. The power under paragraph 2 (3) includes a power to impose new requirements in connection with the development for which consent is granted by the DCO and to remove or alter the existing requirements.
6. Covanta could apply at a later date to the Commission or Secretary of State in order to remove or alter the existing requirements under paragraph 2 (2) of Schedule 6. The variation procedure will be prescribed, in accordance with paragraph 2 (5). There are also consultation provisions that must be complied with in accordance with paragraph 2(8) but the full requirements will not be clear until the relevant regulations are published.

Material Changes

7. Schedule 6 paragraph (3) (1) provides that the appropriate authority may by order make a change to, or revoke, a DCO.
8. Schedule 6 paragraph (4) (1) outlines that an application for a material change must be made in the prescribed form and manner; and it must be

- accompanied by information of a prescribed description. Paragraph 4 (4) explains that the Secretary of State may by regulations make provision about the procedure to be followed before an application is made and the decision making process in relation to the exercise of the power conferred by paragraph 3 (1). In the absence of published regulations or guidance, the extent of the consultation required is not yet known. It is likely to be significantly more onerous than for non-material changes.
9. There are also limitations with regard to material changes to be made to the DCO at this stage. Paragraph 5 (2) of Schedule 6 provides that this power may not be exercised after the end of a period of 4 years, beginning on the date on which the relevant development was substantially completed. Paragraph 5 (4) (d) also explains that the powers include the ability to both impose new requirements in connection with the relevant development; and (e) to remove or alter existing requirements.
 10. Compensation provisions are contained in Schedule 6 (1) (c) and (d) which allows a claim to be made where it can be shown that a person with an interest in the land, or for whose benefit the development consent order has effect, has incurred expenditure in carrying out the works which are rendered abortive by the change or revocation; or has otherwise sustained loss or damage which is directly attributable to the change or revocation. The claim must be made to the appropriate authority in the prescribed manner before the end of the prescribed period. Therefore a material change to the DCO may be costly in terms of the procedure to be undertaken, information to be provided and any potential claim for compensation.

Enforcement

11. As a final point, non-compliance with the DCO requirements, once granted, would be unlawful. Section 161 of the PA 2008 explains the consequences with regard to any breach of terms. A person found guilty of a breach under this section is liable on summary conviction to a fine not exceeding £50,000, or on indictment to an unlimited fine.