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Department for Levelling Up, Housing & Communities

Consultation outcome

# Consultation on operational reforms to the Nationally Significant Infrastructure Project (NSIP) consenting process

Updated 6 March 2024

**This was published under the 2022 to 2024 Sunak Conservative government**

**Applies to England and Wales**

Contents



This publication is available at https://www.gov.uk/government/consultations/operational-reforms-to-the-nationally-significant-infrastructure-project-consenting-process/consultation-on-operational-reforms-to-the-nationally-significant-infrastructure-project-consenting-process

# Scope of the consultation

## Topic of this consultation:

This consultation seeks views on the details to the operational reforms which the government is looking to make to the Nationally Significant Infrastructure Projects (NSIP) consenting process.

## Scope of this consultation:

Following the publication of the NSIP Action Plan in February 2023, the government has committed to bringing forward reforms to ensure the existing system can support our future infrastructure needs by making the NSIP consenting process better, faster, greener, fairer and more resilient by 2025. The key operational changes we are consulting on will make the system work more effectively for applicants, local authorities and communities. The proposals fall broadly into 3 reform areas:

1. Operational reform to support a faster consenting process
2. Recognising the role of local communities and strengthening engagement
3. System capability - building a more diverse and resilient resourcing model

## Geographical scope:

These proposals relate to England, Wales and Scotland (to a limited extent) only.

## Impact assessment:

The government is required under section 149 of the Equality Act 2010 (“the Public Sector Equality Duty”) to have regard to the actual or potential impact/s

(if any) of any new policy proposals on ‘equality’. This means in summary, addressing 3 needs: eliminating discrimination, promoting equality of opportunity and fostering good relations between different groups. This applies in relation to protected characteristics; sex, race, disability, age, etc. We will refer to this broadly as the ‘equality’ impacts. In each part of the consultation we invite any views on any perceived equality impacts. We are also seeking views on the potential impacts of the package as a whole on equality. We need to understand who this policy may affect and how it may affect them.

# Basic Information

## Body/bodies responsible for the consultation:

Department for Levelling Up, Housing and Communities (DLUHC)

## Duration:

This consultation will open on 25 July 2023 and will close at 11:59pm on 19 September 2023.

## Enquiries:

For any enquiries about the consultation please contact: infrastructureplanning@levellingup.gov.uk

## How to respond:

We strongly recommend that responses are submitted through the Citizen Space online survey (https://consult.levellingup.gov.uk/planning/nsip-reform-

consultation/).

Citizen Space is an easy-to-use, digital tool that will significantly aid the process of analysing responses, and respondents are encouraged to use this avenue to send responses.

Using the online survey greatly assists our analysis of the responses, enabling more efficient and effective consideration of the issues raised.

If you are unable to access the link you may email your response to: infrastructureplanning@levellingup.gov.uk.

If you are responding in writing, please make it clear which questions you are responding to.

Written responses should be sent to:

> Nationally Significant Infrastructure Planning Team
> Planning Directorate
> 3rd Floor, Fry Building
> 2 Marsham Street
> London
> SW1P 4DF

When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name
- your position (if applicable)
- the name of organisation (if applicable)
- an address (including postcode)
- an email address
- a contact telephone number

Please also confirm whether you agree to be contacted in relation to any of the answers you have provided.

Please make it clear which question or paragraph number each comment relates to, and also ensure that the text of your response is in a format that allows copying of individual sentences or paragraphs, to help us when considering your view on particular issues.

Thank you for taking time to submit responses to this consultation. Your views will help improve and shape our policies.

# Foreword

The provision of new infrastructure is becoming ever more important as this country faces some of the biggest policy challenges for decades. We need new and improved infrastructure if we are to realise energy security, tread more lightly on the Earth and deliver the transport connectivity, water, waste water and waste infrastructure this country needs. New infrastructure is also vital for growing the economy, creating new jobs and promoting new opportunities as well as levelling up our communities.

We must continue to have a planning system fit to enable and deliver it, while keeping communities and the environment at the heart of decision-making.

The Nationally Significant Infrastructure Project (NSIP) process is the route to consent for many of our large infrastructure projects and has served us well for more than a decade. Since the first projects were considered under the Planning Act process in 2011, 118 have received consent resulting in a 94% consenting rate. Major projects which have benefitted include Hinkley Point C, the first nuclear power station to be built in this country for 30 years, the flagship Thames Tideway Tunnel (a major upgrade to London's Victorian sewerage network) and 18 offshore wind farms.

However, the demands on the system are changing, and its speed has slowed. The government set out its ambition in the National Infrastructure Strategy (https://www.gov.uk/government/publications/national-infrastructure-strategy) in 2020 to make the infrastructure consenting process better, faster and greener and these ambitions were reinforced in the British Energy Security Strategy (https://www.gov.uk/government/publications/british-energy-security-strategy) (April 2022).

That is why we published our Nationally Significant Infrastructure Projects Reform Action Plan in February, to improve the flexibility and resilience of the system to handle the increasing pipeline of energy and infrastructure projects which are essential to our national growth and security. Key to this is ensuring that communities and councils remain at the heart of the decision making process. These reforms are aimed at making the process more transparent and easier for all stakeholders to navigate and to; ensure that consultation and environmental requirements are proportionate, and clearly understood.

I am now pleased to announce the publication of a consultation focusing on key operational changes that are intended to make the system work more effectively for applicants, local authorities and communities. These proposals include:

- strengthening the role of pre-application and ensuring consultation is effective and proportionate
- operational reforms to support faster and more proportionate examinations
- establishing a fast-track route to consent
- streamlining the process for post consent changes to a development consent order
- ensuring the system is adequately resourced through:
  - resourcing the Planning Inspectorate and updating existing fees
  - strengthening performance of government's expert bodies
  - improving engagement with local authorities and communities
  - building the skills needed to support infrastructure delivery
- updating national infrastructure planning guidance

We all have a role to play in ensuring new infrastructure projects are planned for and delivered for the benefit of the country. I hope you will respond to this consultation to help us make sure national infrastructure projects that come forward are of the highest quality and work for the benefit the local communities that host them as well as for the whole country.

**Lee Rowley MP**
**Minister for Local Government and Building Safety**

# 1. Introduction

## 1.1 Background

In February 2023, the government published the Nationally Significant Infrastructure Projects Reform Action Plan (https://www.gov.uk/government/publications/nationally-significant-infrastructure-projects-nsip-reforms-action-plan) setting out the reforms we will implement to ensure the system can support our future infrastructure needs. These reforms are intended to deliver on the

commitments first announced as part of Project Speed in the National Infrastructure Strategy (2020) (https://www.gov.uk/government/publications/national-infrastructure-strategy) and developed through the British Energy Security Strategy (2022) (https://www.gov.uk/government/publications/british-energy-security-strategy) and the Powering Up Britain (2023) policy papers (https://www.gov.uk/government/publications/powering-up-britain).

This consultation sets out our proposed reforms to the operation of the Nationally Significant Infrastructure Project (NSIP) system through the Planning Act 2008 consenting process and outlines how we intend to bring these measures forward through secondary legislation and guidance changes over the coming months. This includes measures to:

- strengthen the role of pre-application and ensure consultation is effective and proportionate
- support faster and more proportionate examinations
- establish a fast-track route to consent
- review the process for post consent changes to a Development Consent Order
- and ensure the system is adequately resourced through:
  - resourcing the Planning Inspectorate and updating existing fees
  - strengthening the performance of government's expert bodies
  - improved engagement with local authorities and communities
  - building the skills needed to support infrastructure delivery

The measures set out in this consultation build on the powers already being taken forward through the Levelling Up and Regeneration Bill. This includes powers to enable the Secretary of State to set shorter statutory timeframes for examination, as well as the ability for the Secretary of State to make provision by regulations for the decision making on non-material change applications. The measures also include a power to introduce, through regulations, provision for cost-recovery for prescribed statutory consultees providing services in connection with Development Consent Order applications.

This consultation focuses on operational reforms to the NSIP consenting process and does not cover strategic aspects of the Nationally Significant Infrastructure Project reform programme, such as updating the existing National Policy Statements, proposals for Biodiversity and Marine Net Gain and changes to environmental assessment which are being progressed separately.

The National Infrastructure Commission (NIC) has made a number of recommendations for government (https://nic.org.uk/studies-reports/infrastructure-planning-system/delivering-net-zero-climate-resilience-growth/) to consider on the

infrastructure planning system and the role of National Policy Statements. These recommendations build on the reforms that were set out in the Nationally Significant Infrastructure Project Reform Action Plan and are being progressed, in part, through this consultation. The government is considering the National Infrastructure Commission's recommendations separately and will respond in due course.

## 1.2 Our vision for Nationally Significant Infrastructure Project reform

The Nationally Significant Infrastructure Project regime has been operating successfully since its introduction in 2010 significantly speeding up the consenting time for major infrastructure projects. The consenting process was amended with the abolition of the Infrastructure Planning Commission in 2012 to bring decisions into the remit of central government, ensuring democratic accountability.

The Planning Act 2008 consenting process has been kept under review with amendments to regulations to improve the consenting process being brought forward as needed. However, the needs of the system are changing and we are already seeing an increase in the number of infrastructure projects being progressed through the system in order to meet our energy security and net zero ambitions.

The types of projects entering the system are also increasingly complex as new and emerging technologies come forward. These changes mean the cumulative impacts of such projects are becoming more challenging to assess. However, our ambition is to reduce the time taken for all projects entering the system, reduce the need for extensions to statutory timeframes and provide more certainty for applicants and others on the timescales for reaching decisions.

In order to meet our objectives of making the Planning Act 2008 consenting process better, faster, greener, fairer and more resilient, the Nationally Significant Infrastructure Projects Reform Action Plan identified 5 reform areas:

**1. Setting a clear strategic direction**, where National Policy Statements and wider government policy reduce the policy ambiguity faced by individual projects.

**2. Bringing forward operational reforms to support faster consenting** with an emphasis on delivering proportionate examinations for all projects,

strengthening pre-application section 51 advice[footnote 1] and introducing a fast-track consenting timeframe for projects that meet the proposed fast track quality standard.

**3. Realising better outcomes for the environment** replacing the cumbersome environmental assessment processes with new Environmental Outcomes Reports; reviewing the protected sites and species policy framework (including Habitats Regulations Assessment (HRA)); and introducing biodiversity net gain and developing principles for marine net gain for Nationally Significant Infrastructure Projects.

**4. Recognising the role of local authorities and strengthening community engagement with Nationally Significant Infrastructure Projects**, with greater support and measures to embed community input and benefits much earlier in the process.

**5. Improving system-wide capacity and capability**, including through developing skills and training and extending proportionate cost recovery by the Planning Inspectorate and key statutory consultees to support effective preparation and examination of Development Consent Order applications and build resilience into the system.

**This consultation focuses on the measures needed to deliver against reform areas 2, 4 and 5.**

**How the operational system will change:**

From spring 2024 – we want all projects entering the pre-application stage of the Planning Act 2008 consenting system, to go through the process within the overall statutory timeframes and many should be able to progress more quickly. To support this, we will bring forward a number of changes to the existing process, that will lead to more effective pre-application discussions, more flexible and proportionate examinations and a more efficient process for post consent changes to Development Consent Orders (DCO).

There will also be a new fast track route to consent available for projects capable of meeting the proposed fast track quality standard. These projects will be supported to progress through the process with a non-statutory 12 month target timescale from acceptance to decision, including a shorter maximum examination timescale.

All projects will have the opportunity to benefit from improved pre-application services and advice from the Planning Inspectorate. This will include where appropriate, a new enhanced pre-application service for the

most complex projects or those seeking a faster examination through the new fast track route to consent.

The aim of these reforms is to ensure that the system works as efficiently and effectively as possible, without removing opportunities for people to engage in the process. The government recognises that local communities have an important voice in the infrastructure consenting process and can help to ensure the projects that are delivered are of the highest quality. The right to be heard is a fundamental principle of the examination process and this is reflected in both the Aarhus and the Espoo Conventions where a plan or project is likely to have a significant effect on the environment. The UK is a signatory to both of these Conventions and our reforms will continue to reflect these obligations.

**Diagram to illustrate the Development Consent Order process**[footnote 2]


Pre-application > Acceptance > Pre-examination > Examination > Recommendation and Decision > Post Decision

We will take a practice led approach to implementation of these reforms and the operational changes proposed will be tested through:

**Early adopters** – In April 2023 the 'Early adopters' programme sought expressions of interest (EOIs) from eligible projects to trial the development of components associated with the intended enhanced pre-application service (Expressions of interest open for National Infrastructure Early Adopters Programme - GOV.UK (www.gov.uk)) within the existing legislative framework. Seven expressions of interests have been received from projects including offshore wind, solar, carbon capture and an energy pipeline, and the Planning Inspectorate is currently establishing which components can be trialled with key statutory consultees with a view to covering all of the proposed elements of the enhanced pre-application service.

**Fast Track Pilots** - Building on our current work with early adopters, we will identify a number of 'fast track pilots' to test the ability of projects to meet fast

track quality standards and progress through the Planning Act 2008 consenting process to an accelerated 12 month timescale (as set out in section 4 of this document). The pilots will be identified taking into account:

- the government's view of the sector suitability for fast-track piloting;
- the project being at a suitable stage in the pre-application process;
- the applicant providing an initial assessment of potential project issues and programme to submission, and whether achieving the proposed quality standards appears realistic;
- a commitment from the applicant to resource the activities needed (for example provision of information and expertise at regular meetings) to benefit from the Planning Inspectorate's enhanced pre-application service.

Learning from the early adopter and pilot projects will help inform new services and approaches at the Planning Inspectorate which we will bring forward from spring 2024.

### Resourcing

Our reforms will also seek to ensure the Planning Act 2008 consenting process is better resourced in order to provide more effective and efficient services that can support an increase in volume and complexity of applications. To do this, we will support the Planning Inspectorate and certain statutory consultees (referred to throughout this document as government's expert bodies) to move towards full cost recovery for their services with associated performance monitoring arrangements.

We also recognise the important role that local authorities and communities can play in improving the quality of Development Consent Order applications and supporting the delivery of this important infrastructure. We will therefore publish new guidance on the use of 'planning performance agreements' with local authorities in order to ensure their role is properly resourced and to provide greater clarity on effective community engagement expectations throughout the consenting process.

## 1.3 What changes are already underway

### The Planning Inspectorate

The Planning Inspectorate is committed to continuous improvement of its services and has been testing and implementing a substantial programme of

improvements since 2021 including; improved ways to track principal areas of disagreement; new options for the presentation of section 51 advice and procedural decisions; new options for the standardisation of evidence; and various methods to optimise the sequencing of examinations on within the existing statutory framework.

The Planning Inspectorate has recruited and trained 2 new cohorts of Inspectors to be ready for the new ways of working and is in the process of recruiting new case team members and specialist support staff to support current and expected changes in systems and roles and to manage the ongoing expansion and increase in complexity of applications.

The National Infrastructure Planning website is being reconstructed with recent examinations moving over to the new format which aims to improve accessibility especially for users who have less experience of the Planning Act 2008 process. The Planning Inspectorate has also begun to review the format of recommendations to reflect their use online and move to shorter and more accessible text, which is easier for everyone involved to use.

The Planning Inspectorate will continue this work on the standardisation and digitalisation of information flows to support the Nationally Significant Infrastructure Project Reform ambitions and to improve parties' experience of the process as a whole. Some of the proposed reforms to secondary legislation and guidance in the later sections will enable these to progress further and faster.

**NIPA Insights Programme**

There has also been work across the sector to identify best practice and share learning. The National Infrastructure Planning Association (NIPA) has a long-running 'Insights' programme (https://www.nipa-uk.org/news/nipa-insights-ii), with NIPA's stated objective being to establish how to achieve a balance between flexibility and detail in a Development Consent Order application. The National Infrastructure Planning Association has issued 2 reports, one to establish whether the level of detail in applications was proving effective, and one to make detailed recommendations to practitioners and government on how to ensure the appropriate level of detail is provided at each stage of the project lifecycle. The National Infrastructure Planning Association is now conducting more detailed research on post-consent implementation stages.

The Insights II report is an example of the value of practical recommendations that do not need government interventions to make a significant difference to practice. It includes a number of recommendations for applicants and practitioners including on themes of building trust and providing evidence, with emphasis on commitment registers and consenting strategies, identifying

potential issues early and areas of disagreement.

### Supporting local authority engagement with Nationally Significant Infrastructure Projects

Through Department for Levelling Up, Housing and Communities funding, the Planning Advisory Service has been developing knowledge on the Planning Act 2008 consenting process and starting to support local authorities to engage better. They have established a Local Authority Nationally Significant Infrastructure Projects Network, now chaired by Suffolk County Council, that has enabled local authorities to learn more about, and improve, their engagement on Nationally Significant Infrastructure Projects, with regular engagement from experts and opportunities to learn from each other.

They have worked with authorities to identify their principles for ‘planning performance agreements’, to support improved local authority engagement in future, and to share learning across the network from the Innovation and Capacity projects funded by the Department for Levelling Up, Housing and Communities. The network and the Innovation and Capacity fund are ongoing.

# 2. Strengthening the role of pre-application and ensure consultation is effective and proportionate

The pre-application stage of the Development Consent Order process is the period during which applicants prepare their application, including their statutory requirements for consultation with the public and statutory bodies. These requirements are set out in the Planning Act 2008 and secondary legislation, but there is no set timeframe for how long an applicant should take to prepare and carry out all the necessary consultation activities on their proposal during the pre-application stage, as this is dependent on the project’s scale and complexity.

The pre-application stage should be used to ensure projects are formulated by applicants in line with relevant national and local policies and with the appropriate input of ‘interested parties.’ It provides opportunities for the likely effects of any proposal to be discussed in an open and transparent way, with the design evolving up to the point of application submission. Evidence suggests that the pre-application stage is taking more time but failing to adequately identify and resolve key issues prior to application submission and

the subsequent examination. We therefore propose to improve the pre-application process by:

- revising the pre-application service offering of the Planning Inspectorate, including the introduction of a new enhanced pre-application service
- enabling the Planning Inspectorate to provide merits and procedural section 51 advice whilst maintaining impartiality
- providing greater clarity for applicants on who to consult and when
- ensuring more effective and proportionate consultation through an early 'adequacy of consultation' milestone
- revising and updating pre-application guidance concerning certain consultation requirements and providing greater clarity about what is required for an application to be accepted

## 2.1 Current requirements

The Planning Act 2008 introduced a statutory duty for applicants to carry out pre-application consultation prior to an application being submitted to the Secretary of State for consideration. This process was intended to ensure the system was front loaded to support identification and resolution of issues early on in a project lifecycle.

Part 5, Chapter 2 of the Planning Act 2008 sets out what an applicant needs to do when preparing a Development Consent Order (DCO) application, particularly in respect of consultation requirements. Applicants are required to;

- consult with specified consultees, including prescribed bodies, local authorities and persons with an interest in land affected by the project
- prepare and implement a Statement of Community Consultation with regard to consultation responses from host local authorities and publicise the application locally
- demonstrate in their application how they have had regard to relevant responses received during statutory consultation

Existing guidance (Planning Act 2008: guidance on the pre-application process for major infrastructure projects (2015) (https://www.gov.uk/government/publications/guidance-on-the-pre-application-process-for-major-infrastructure-projects)) sets out the necessary requirements and procedures that an applicant should follow and gives guidance on the scope and scale of consultation required at the pre-application stage. There is a statutory requirement[footnote 3] for applicants to

have regard to this advice.

## 2.2 What changes are being proposed?

### 2.2.1 A new approach to pre-application services from the Planning Inspectorate

The Planning Inspectorate is developing a new chargeable approach to its pre-application services. In order to ensure that all applicants are effective in bringing parties together to identify and address potential examination matters, proportionate to the circumstances of the project, the Planning Inspectorate is developing 3 levels of service offer for their pre-application service for applicants. The services will range from basic, which focuses on statutory minimum procedural section 51 advice on applying for or making representations on an application for Development Consent Order, and updates at main milestones, to enhanced which supports applicants of very complex projects to identify and tackle complex issues.

The pricing of each level will be designed to achieve cost recovery reflecting the amount of resource input required from the Planning Inspectorate to deliver the respective services. More information on how this service will be charged for is set out in section 6 of this document. No changes are planned to the service which the Planning Inspectorate provides to statutory consultees and others, who will still receive advice without charge.

Services should start to be available to meet expected demand from April 2024 as follows:

**Box 1 – proposed new pre-application services from the Planning Inspectorate**

**Tier 1: A new basic pre-application service**

**What applicants will receive**:

- Reactive section 51 advice, with Planning Inspectorate focus largely being on statutory minimum procedural advice;
- Limited number of meetings, only to be held at key milestones as advised by the Planning Inspectorate e.g. at inception and close to submission;
- Engagement of government's expert bodies in line with those bodies'

cost recovery frameworks;
- No access to Planning Inspectorate advice on draft application documents.

**Most suitable for**

- Low complexity, uncontroversial projects with no or limited compulsory acquisition, and / or where the potential examination issues are frequently considered by Examining Authorities.

**Expectations of applicants**

- Transparent Programme Plan and adherence to it, including prompt updates regarding slippage and regular informal written project updates;
- Specifically that the applicant submits the application within a 3 week window, advised 6 months in advance;
- Applicant-driven programme;
- Applicant-owned risk register;
- Pro-active and responsive engagement with statutory consultees and those potentially affected by the proposals.

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**Tier 2: A new standard pre-application service**

**What applicants will receive:**

- Programme- and issues-based section 51 advice aimed at facilitating an effective acceptance, examination and decision-making process;
- Support with the preparation of documentation to satisfy pre-application guidance;
- Merits advice in addition to procedural advice, to support the resolution of potential examination issues. (Merits advice from the Planning Inspectorate will be provided by professional staff, including input of Inspectors/ specialists where the Planning Inspectorate considers this proportionate for this service level);
- Meetings will be held at key milestones (as requested/required by applicant);
- Scope for a small number of multi-party forums (virtual) for complex cases;
- Engagement of government's expert bodies in line with those bodies' cost recovery framework agreements

**Most suitable for**

- Potentially any project, not suitable for projects seeking fast-track.

**Expectations of applicants**

- Transparent Programme Plan and adherence to it, including prompt updates regarding slippage and regular informal project updates;
- Specifically that the applicant submits the application within a 3 week window, advised 6 months in advance;
- Applicant-driven programme;
- Applicant maintenance of a transparent risk register, that is periodically shared with the Planning Inspectorate and relevant statutory consultees, to identify and action issues that could delay the programme;
- Pro-active and responsive engagement with statutory consultees and those potentially affected by the proposals.

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**Tier 3: A new Enhanced Pre-application service**

**What applicants will receive**:

- Support from the Planning Inspectorate in maintaining pace on the applicant's programme;
- Proactive and reactive section 51 advice aimed at facilitating an effective pre-application and acceptance, smoother examination and decision-making process;
- Acceptance risk review;
- Potential for regular topic-led meetings, in addition to meetings at key milestones
- Where requested by the applicant, support to help demonstrate how a proposal satisfies the proposed fast track quality standard [see section 4] and may qualify for a shorter examination where appropriate;
- Establishment of multi-party forums, including appropriate Planning Inspectorate representation and attendance as part of the Evidence Plan process;
- Specialist / Inspector resource at appropriate stages (including as part of the draft documents review service);
- Draft documents review service as a recommended option for applicants, particularly on key aspects of an application for example. Development Consent Order, Explanatory Memorandum, Plans, Habitats Regulations

Assessments etc;
- Support from the Planning Inspectorate in engaging with relevant government's expert bodies particularly to facilitate resolution of, or clear positions on potential examination issues, including proposed mitigation, and if required enhancement and compensation measures.

**Most suitable for**

- Those seeking shorter examination through fast track;
- Novel, highly complex/cross sectoral, controversial projects not seeking shorter examination but requiring or benefitting from system-wide co-ordination/support.

**Expectations of applicants**

- Provision of transparent Programme Plan and adherence to it, including prompt updates regarding slippage and regular informal project updates;
- Applicant-driven programme;
- Applicant engagement with a transparent risk register, with greater engagement from the Planning Inspectorate and relevant statutory consultees to identify and drive actions on issues that could delay the programme;
- Production of documents associated with fulfilling the proposed fast track quality standard;
- Proportionate engagement with relevant Statutory Environmental Bodies potentially including Service Level Agreements;
- Proactive and responsive engagement with statutory consultees and those potentially affected by the proposals.

Applicants will be able to select which support package is most suitable for their project, subject to advanced discussion with the Planning Inspectorate on need and resource availability. The support package will run for a fixed period of time in order help the applicant and the Planning Inspectorate manage resources. The Planning Inspectorate is currently considering a 12 months subscription (with the option for subscriptions to be renewed at the end of that period) with the option for projects to switch between the levels of service at the end of the subscription period.

It is proposed that all applicants who wish to use the Planning Inspectorate's pre-application services will be required to subscribe to one of the above options. The provision of these services will be monitored on an on-going basis by the Department for Levelling Up, Housing and Communities as the

responsible department for the Planning Inspectorate. More information about the level of cost associated with these new services is set out in section 6.

**Question 1**: Do you support the proposal for a new and chargeable pre-application service from the Planning Inspectorate?

**Question 2a**: Do you agree with the 3 levels of service offered?

**Question 2b**: If you are an applicant, which of the 3 tiers of service would you be most likely to use and for how many projects?

Please explain your reasons for choosing this tier / these tiers.

**Question 3**: Would having the flexibility to change subscriptions as a project progresses through pre-application be important to you?

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## 2.2.2 Enabling the Planning Inspectorate to provide merits and procedural section 51 advice whilst maintaining impartiality

The Planning Inspectorate's role during the pre-application stage is currently determined in response to the approach sought by the applicant and to issues raised by consultees. The Planning Inspectorate is not required to play a proactive role but does respond to requests for advice from applicants and consultees and, under section 51 of the Planning Act 2008, may give advice about applying for an order granting development consent or making representations about an application or proposed application. The Planning Inspectorate currently focuses its advice on procedural matters and responds to applicant requests for meetings through a free service provided by professional staff.

To facilitate the Planning Inspectorate's proposed new pre-application services set out in section 2.2.1, we propose to amend existing guidance to make clear that the Planning Inspectorate has a role to provide an impartial view on questions of a planning nature ('merits advice') relating to potential examination issues and the potential for the application to proceed beyond the pre-application stage, as part of its enhanced pre-application service. This advice will seek to identify potential examination issues much earlier in the process

and with greater clarity, to enable consultees to engage more meaningfully in the pre-application stage and to make the most of Examining Inspector and professional expertise at the Planning Inspectorate in shaping the quality of applications.

Any merits or procedural advice given would be provided on a ‘without prejudice’ basis in that it would be the professional view of the Planning Inspectorate based on the information at the time. The Planning Inspectorate will not be able to give a view on the merits of any potential application being granted or refused development consent, as this is a matter for the Examining Authority alone to recommend and the Secretary of State to determine.

To maintain the integrity of any examination, the Planning Inspectorate will also not be able to represent the view of any Examining Authority, nor bind the Authority in any way in considering an application once submitted and making its recommendations. It would remain for any applicant or consultee to take their own view on a course of action and it would remain for the Examining Authority to make any procedural decision or recommendation it considers appropriate. The Planning Inspectorate will continue to develop its services to quality assure the merits and procedural advice it issues so that advice has the intended impact proposed in this consultation.

> To illustrate how this change is proposed to work in practice, the box below sets out what the Planning Inspectorate currently provides section 51 advice on, what new advice it proposes to provide and what it will not be able to provide advice on.

**Box 2 – Current and proposed arrangements for section 51 advice**

| What the Planning Inspectorate will continue to do | What the Planning Inspectorate will do differently with subscribers of standard and enhanced pre-application service | What the Planning Inspectorate will not do |
|---|---|---|
| Issue robust advice on procedural elements of Pre-application (and later stages) | Frame ‘merits advice’ from the perspective of a future Examining Authority (without prejudice) | Prejudge acceptability of applications, qualification for shorter examination, (Initial Assessment of |

| What the Planning Inspectorate will continue to do | What the Planning Inspectorate will do differently with subscribers of standard and enhanced pre-application service | What the Planning Inspectorate will not do |
|---|---|---|
| | | Principal Issues (IAPI) etc |
| Maintain a transparent and impartial service | Offer evidenced opinion (without prejudice) on how a future Examining Authority might weigh issues in the planning balance (informing recommendation) | Replace or compete with services of applicant-employed planning consultants |
| Approach Pre-application interactions inquisitively | Consistently align advice according to requirements of National Policy Statements | Provide definitive advice about project design/ design options |
| Be committed to smoothing examinations for all stakeholders | Provide focused advice on development of the application against future satisfaction of Quality Standards (in relevant circumstances) | Be available to be commissioned to undertake planning work on behalf of applicants |
| Offer insight and experience from decided applications and keep Advice Notes (or updated/ equivalent format) up to date, providing sector focus where appropriate | | Provide individual professional views on planning matters |

| What the Planning Inspectorate will continue to do | What the Planning Inspectorate will do differently with subscribers of standard and enhanced pre-application service | What the Planning Inspectorate will not do |
|---|---|---|
| Commit appropriate resources (including inspectors) to milestone engagements e.g. draft documents | Assertively assess feasibility of applicant Programme Plans at the outset (with Arms Length Bodies agreement) and monitor progress | Schedule/ administer multiparty meetings (role of applicant) |
| Provide consistent/ clear advice on Pre-application issues and implications, if sustained, for examination | Actively seek evidence on design approach to seek to achieve clarity for all on what level of maturity/ detail will be available for examination | Be involved in preparation of Planning Performance Agreements (beyond procedural advice concerning ‘pinch points’ etc) |
| Provide clear advice on impact of key consultees/ stakeholders not being engaged | Provide assertive advice on ways forward where disagreements/ stalemates concerning key issues | Guarantee engagement of other consultees/ stakeholders (e.g. Arms Length Bodies) |
| Attend and engage appropriately at multiparty meetings | Provide assertive opinion on main residual issues for the examination/ testing of applicant’s opinion on matters agreed in PADS | |
| | Establish greater Pre-application emphasis on status of assembly of Order lands | |

Our policy objective is: To make the pre-application stage more effective in identifying and resolving, or reaching clear positions on potential examination issues

**Question 4:**To what extent do you agree that the overall proposals for merits and procedural advice will enable the policy objective to be met?

**Question 5:** Do you have any specific comments on the proposals in the Table above?

## 2.2.3 Providing greater clarity for applicants on who to consult and when

Statutory consultees are pivotal in shaping development proposals and the early identification and mitigation of impacts associated with water, waste water, waste, energy, and transport infrastructure projects. Applicants must write to a list of expert and specialist bodies (called “prescribed” or “statutory” consultees) and send them information about their proposal. They must give the consultees at least 28 days to respond. These bodies have various roles ranging from protecting and conserving the environment to public safety including the provision of emergency services, and applicants are required to have regard to any relevant consultation responses.

To support the streamlining of existing processes and help applicants engage with the right statutory consultees, at the right time, we will update and consolidate the list of prescribed bodies. This will help to effectively shape development proposals and proactively identify and resolve issues as early as possible. A consolidated list of the current prescribed statutory consultees as identified in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended in 2013 and 2021) is set out in the table below:

**Table 2.1: Consolidated list of prescribed statutory consultees**

Civil Aviation Authority
Forestry Commission
Health and Safety Executive
Integrated Transport Authorities (ITA) and Passenger Transport Executive (PTE)
Marine Management Organisation
Maritime and Coastguard Agency
National Health Service Commissioning Board and the relevant clinical commissioning group

National Health Service Trusts (Wales)
Natural England
Natural Resources Wales
Relevant AONB Conservation Boards
Relevant Fire and Rescue Authority
Relevant Health Board (Scotland)
Relevant Highways Authority
Relevant Internal Drainage Board
Relevant local health board (Wales)
Relevant Northern Ireland Department
Relevant Parish Council or Community Council
Relevant Police Authority
Relevant Statutory Undertakers
Royal Commission on Ancient and Historical Monuments of Wales
Scottish Natural Heritage
Secretary of State for Defence
The British Waterways Board
The Coal Authority
The Crown Estate Commissioners
The Environment Agency
The Highways Agency
The Historic Buildings and Monuments Commission for England
The Joint Nature Conservation Committee
The Scottish Environment Protection Agency
The Scottish Executive (Scottish Government)
The Welsh Ministers (Welsh Government)
Transport for London
Trinity House
UK Health Security Agency

We are proposing to amend the list of prescribed bodies set out in Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (https://www.legislation.gov.uk/uksi/2009/2264/contents/made) by updating those whose names have changed, removing those who no longer exist and adding others that are essential to the delivery of quality national infrastructure. Following this we will prepare a consolidated list that will be easily accessed by applicants. Specific amendments we are considering include;

- Updating references to National Highways, Historic England and NatureScot
- Replacing the British Waterways Board with ‘The Canal and River Trust’ (for England and Wales) and ‘The Scottish Canals’ (for Scotland)
- Adding ‘Neighbourhood Planning or Development Groups’ to ‘The relevant

Parish Council or community council'

- Adding the Office for Health Improvement and Disparities to enable consideration of all health impacts

**Question 6:** Do you agree with the proposed changes to the consolidated list of statutory consultees outline above?

**Question 7:** Are there any other amendments to the current consolidated list outlined in table 2.1 that you think should be made?

## 2.2.4 Encouraging more effective and proportionate consultation

Early involvement of local communities, local authorities and statutory consultees can bring about significant benefits for all parties involved in major infrastructure projects. Consultation on development proposals allows consultees and local communities to influence how infrastructure that meets a national need will be accommodated in their area, and enables developers to more effectively shape proposals. Many developers will consult widely as part of the initial development of a proposal, such as options on route alignment. Applicants are specifically required to undertake statutory pre-application consultation activities as stipulated in the following legislation:

- Sections 42, 43 and 44 of the Planning Act 2008 requires applicants to identify and consult statutory consultees, local authorities, and others with an interest in the land or who may be significantly affected by development proposals prior to the submission of an application.
- Section 47 of the Planning Act 2008 requires applicants consult local authorities on their Statement of Community Consultation setting out how applicants intend to consult the local community on the proposed Development Consent Order application.
- Section 48 of the Planning Act 2008 requires applicants to publicise the proposed application in the prescribed manner as set out in Regulation 4 of the Infrastructure Planning (Applications: Prescribed Plans and Procedures) Regulations 2009.
- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 set out requirements in preparing Environmental Statements to prior to the submission of a Development Consent Order application, including consultation requirements in engaging with statutory consultees and local

authorities in relation to the screening and scoping of environmental impacts prior to formal pre-application activities under section 42 of the Planning Act 2008.

Our engagement with stakeholders suggests that over time, the amount of consultation that developers expect to need to do, and the number run, has increased[footnote 4]. We are keen to understand the reasons behind this, and whether the current level of consultation and engagement is optimal to support the process. However, it is clear that, with more than a decade of experience of consultation on NSIPs, and over 8 years since it was last updated, the guidance on pre-application consultation is out of date[footnote 5].

While developers will take individual decisions based on the project, risk and their business model, the burden of disproportionate consultation impacts applicants, local communities and other consultees, and can increase costs, risk delay to projects and create consultation fatigue in communities. This is especially apparent in communities who host a large number of Nationally Significant Infrastructure Projects. We know that just 10% of local authorities have handled the vast majority of development consent order applications and looking forward there is no reason to believe this pattern will change. Communities in these areas have been faced with responding to multiple consultations on complex schemes to tight timescales with limited resource and support to do so.

Clear strategic direction through up to date National Policy Statements can mitigate the risk of over-consultation on the need case for infrastructure on a project by project basis[footnote 6]. Our reforms will build on this, and existing legislation, to provide greater clarity over proportionate consultation, seeking to reduce the burden on communities and those responding to consultations, and to reduce the time taken for all projects entering the system.

In order to encourage more effective and proportionate consultation, with early engagement from all ‘interested parties’, we intend to introduce an early ‘adequacy of consultation milestone’ linked to sections 47 and 48 of the Planning Act 2008 and embedded in the Planning Inspectorate’s pre-application services. Through this applicants, local authorities and the Planning Inspectorate will assess the adequacy of proposed consultation arrangements early in the pre-application process. This will provide greater clarity over consultation that is proportionate to the scale and likely impact of a project, giving developers more certainty of what will be considered acceptable in later tests of adequacy, and ensuring consultation is carried out efficiently and effectively to limit the burden on local communities.

This will be supported by new and updated government guidance which is clear that consultation should be proportionate, while meeting statutory requirements.

This includes guidance on expected levels of engagement, including for statutory consultees and local authorities, which will be assessed at the early 'adequacy of consultation' milestone. This guidance will be informed by evidence of good practice, and input from members of the Planning Advisory Service Local Authority Network. To ensure communities have the support they need to engage effectively in the development consent order process, we will build on good practice by introducing an expectation on applicants that, where appropriate, they should make use of independent community liaison chairs / forums.

**Question 8:** Do you support the proposed introduction of an early 'adequacy of consultation' milestone?

**Question 9:** Are there any additional factors that you think the early 'adequacy of consultation' milestone should consider?

**Question 10:** Our evidence shows that there is a substantial amount of community consultation that happens during the lifetime of an NSIP. To guide our reforms, and to ensure that reforms support faster consenting, preventing consultation fatigue, more proportionate community consultation, with clearer tests for adequacy, it is important to gather further information about the causes for multiple consultations. What are the main reasons for consulting with communities multiple times during the lifetime of an NSIP application?

- What constitutes adequate consultation is not clear from legislation.
- What constitutes adequate consultation is not clear from guidance.
- What the Planning Inspectorate will accept as adequate consultation is not clear.
- It is challenging to get the right level of information from consultations.
- The age of the National Policy Statements means more consultation is needed than before.
- It is the main way to update a community on changes that are made to a project.
- It is hard to engage with the correct communities.
- It is a means to mitigate legal challenge for the project.
- It is part of how to build enthusiasm for a project over time.
- It is a helpful way to develop the project.

Are there any other factors that play a part in multiple consultations seen to be required by developers?

**Question 11:** Are there any other measures you think that government could take to ensure consultation requirements are proportionate to the scale and likely impact of a project?

## 2.3 Revising and updating pre-application guidance

The existing departmental guidance on the pre-application process was published in 2015 and is significantly out of date. To support a shift to greater emphasis on identifying and resolving key issues early in the pre-application process we will strengthen the existing pre-application guidance to;

- emphasise the importance of proportionate consultation, while meeting statutory requirements
- provide greater clarity on the expected content of applications, including the treatment of alternatives, environmental assessment and submission of a shadow appropriate assessment where 'likely significant effects' cannot be ruled out in applying the Habitats Regulations
- provide greater clarity on the standard of application required to comply with the 'Acceptance' tests (section 55 of the Planning Act 2008) including the clarity of information that Examining Authorities will need from an application in order to enable applications to be determined within statutory timescales
- encourage publication of application documents on the applicant's own website on submission of the application to the Planning Inspectorate

# 3. Operational reform to support faster and more proportionate examinations

At the pre-examination stage individuals and organisations register with the Planning Inspectorate as an 'interested party' by providing a relevant representation. In addition, the Examining Authority comprising appointed persons, normally specially trained Examining Inspectors is appointed by the Planning Inspectorate, on behalf of the Secretary of State. The Examining Authority reviews the application and all the relevant representations and prepares an Initial Assessment of Principal Issues (IAPI); may make early procedural decisions and will give notice of the preliminary meeting and matters to be discussed including the draft Examination timetable. The Examining

Authority then holds a Preliminary Meeting to hear any procedural matters, comments on the draft Examination timetable and arrangement for future Examination events.

At the Examination stage, the Examining Authority undertakes independent inquisitorial scrutiny of the proposals, including considering evidence and representations presented during that examination, to inform their consideration and recommendation to the relevant Secretary of State. At present, the examination process is often taking the full 6 months provided for by section 98 of the Planning Act 2008 to complete, regardless of the interest, scale and complexity of the projects that are seeking consent.

We propose to make a number of changes to the pre-examination and examination stages which will help achieve more flexible and proportionate examinations. These are:

- removing the prohibition on an Inspector who has given section 51 advice during the pre-application stage from then being appointed to examine the application, either as part of a panel or a single person
- requesting more detailed relevant representations, rather than receiving detailed information at the later written representations stage, to enable the Examining Authority to understand the key issues of the application and optimise preparation for the examination earlier on and thus create a robust examination timetable earlier in the process
- introducing greater discretion for the Examining Authority to set flexible deadlines during the examination
- enabling the use of digital tools for notifications to avoid delays associated with paper notices and letters
- updating guidance to provide greater certainty on the information requirements to support a robust and efficient examination

## 3.1 Current requirements

As set out in the previous section, applicants must be prepared to carry out a rigorous pre-application process in order to ensure that the application is of a sufficient standard to be accepted for examination.

### Pre-examination

Following the acceptance of an application by the Planning Inspectorate, on behalf of the Secretary of State, the pre-examination stage of the application

commences and the Examining Inspector(s) comprising the Examining Authority are appointed. Stakeholders are given the chance to register as an ‘interested party’ by, presenting their reasons in writing for supporting, or objecting to, the proposals in question. This is referred to as a “relevant representation”. It is for the applicant, not the Examining Authority, to determine the deadline for people to register as an ‘interested party’, with a minimum time of 28 days.

This is a crucial stage in the process as it directly informs the Examining Authority’s Initial Assessment of Principal Issues (IAPI). Currently, relevant representations are only required to contain an outline of the stakeholder’s submissions on the application, with an opportunity to provide more detailed submissions later in the process through the submission of a written representation. However, there is no restriction in the legislation on more detailed submissions being provided in a relevant representation if ‘interested parties’ wish to do so.

**Examination**

The pre-examination stage concludes with the Examining Authority’s preliminary meeting to which all ‘interested parties’ are invited to attend. The preliminary meeting is where the applicant, ‘interested parties’ and others are able to make oral submissions to the Examining Authority on how they believe the application should be examined, and particularly the timetable and deadlines for submission of written evidence and whether hearings will be held.

Either at the preliminary meeting, or as soon as practicable afterwards, the Examining Authority will confirm its timetable for examining the application and will inform all interested and statutory parties.

The Examining Authority has up to 6 months to carry out its examination of the application, beginning on the day after the close of the Preliminary Meeting. During the examination stage ‘interested parties’ can supplement their initial relevant representations with more detail through submitting written representations. Examinations under the Planning Act 2008 are established as an inquisitorial process, meaning Examining Inspectors ask questions in writing or, where required, at hearings which can be open floor, issue specific or concerned with the compulsory acquisition of land and/ or rights over land.

**Post-examination**

Following the close of the examination, the Examining Authority is required to produce its recommendation report to the relevant Secretary of State. Having regard to the application and all submission made during the examination, the Examining Authority will make a recommendation on whether to grant or refuse

Development Consent (and any associated powers of compulsory acquisition) and must do so in a period of up to 3 months. The Secretary of State then has up to 3 months to decide the application.

The main legislative requirements that govern the pre-examination and examination processes are set out in the following regulations:

- The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
- The Infrastructure Planning (Examination Procedure) Rules 2010.
- The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015

Existing guidance (Planning Act 2008: guidance for the examination of applications for development consent (March 2015) (https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent)) sets out guidance on the examination process principally for the Examining Authority and aims to promote best practice, ensure consistent application of examination procedure and promote fairness, transparency and proportionality.

## 3.2 What changes are being proposed?

### 3.2.1 Enabling flexible and focused deployment of Examining Inspectors during pre-application and examination

At present, the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations (2009) preclude an Examining Inspector who has been involved in giving section 51 pre-application advice from being appointed onto the panel, or as single person, responsible for examining the application.

We propose to amend these Regulations to remove this preclusion. This is to enable the Planning Inspectorate to have increased flexibility to deploy more expertise at pre-application, and the circumstances under which Examining Inspectors are appointed to Examining Authorities will remain a matter for the Planning Inspectorate on a case-by-case basis.

**Question 12**: To what extent do you agree with the proposal to remove the prohibition on an Inspector who has given section 51 advice during the pre-application stage from then being appointed to examine the application, either as part of a panel or a single person?

Please provide your reasons

## 3.2.2 Requiring more detailed relevant representations

Relevant representations provide a key opportunity in the application process as they enable stakeholders to register as an ‘interested party’ and set out which aspects of an application the individual supports, or objects to, and the reasons for this. This information is then used by the Examining Authority to develop its initial assessment of principal issues. It is most helpful to the Examining Authority to have as detailed submissions as possible from ‘interested parties’ early in the pre-examination stage, rather than waiting for written representations submitted well into the examination itself.

At present, the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 and supporting guidance require relevant representations to contain only an outline of the principal submission which a person proposes to make about an application, and often these are very brief. In turn this makes it difficult to ascertain the substance and/or extent of the key issues for examination until the receipt of the full written representation, later in the process. This makes preparing the examination timetable a challenge and inhibits the preparation of proportionate examinations.

Several statutory consultees, most notably Natural England, have adopted the practice of submitting more detailed material during the relevant representations stage however this is not standard practice. We propose to change the regulations to require the frontloading of information that is submitted by stakeholders and ‘interested parties’, unless there are sufficient reasons for not being able to do so (i.e. limited access to application information or engagement from the applicant).

It is recognised that not all ‘interested parties’ will be able to do this, but this provision is particularly relevant for statutory consultees who will have had greater involvement in the project through their discussions with the applicant during the pre-application stage. The proposed changes will therefore include

requiring detailed relevant representations from all parties, particularly by statutory consultees, as far as they are able to do so. This will be subject to the engagement the applicant has had with them during the pre-application stage and the provision of draft information before submission of the application to the Planning Inspectorate. We will set out further detail in guidance as to how this will be assessed. The written representations stage will remain in place, but these will be encouraged to be kept concise and prepared when there is a need to do so, for example, to comment on new application information.

It is acknowledged that for stakeholders to provide a detailed submission, they will need access to information about the project and application in question. To support this, we will also introduce updated guidance on the preparation of relevant representations, including advice on areas such as how applicants can provide stakeholders with information about the content of the application earlier on, and how to ensure that the input provided by statutory bodies during pre-application is reflected in their relevant representation.

**Question 13**: To what extent do you agree that it would lead to an improvement in the process if more detail was required to be submitted at the relevant representation stage?

Please provide your reasons

## 3.2.3 Enabling the Planning Inspectorate to set more flexible notification periods

To streamline the examination process, we want to build in greater flexibility to enable the Examining Authority to respond to the specific circumstances of an application more efficiently, and therefore to take a more proportionate approach to the scale and complexity of each project. The Infrastructure Planning (Examination Procedure) Rules 2010 contain fixed minimum timescales that govern the examination process including but not limited to:

- preparation of an initial assessment by the Examining Authority of the principal issues arising from the application **within 21 days** of the deadline for receipt of relevant representations (Rule 5)
- the Examining Authority must give **at least 21 days'** notice of the preliminary meeting (Rule 6 (1))
- **at least 21 days** must be given for any 'interested party' to notify the

Examining Authority that they wish a compulsory acquisition hearing or open floor hearing to be held (Rule 13 (1))

- the Examining Authority must give 'interested parties' **at least 21 days'** notice of any compulsory acquisition, open floor or issue specific hearing (Rule 13 (3))
- the Examining Authority must give **at least 21 days** for the receipt of written representations (Rule 10 (2)), and the opportunity for any 'interested party' to comment on such written representations which is interpreted by virtue of Rule 10 (2) as requiring a further 21 days (Rule 10 (5)
- similarly, the Examining Authority must give the opportunity for any 'interested party' to comment on any responses to written questions (Rule 8 (1)(c)(ii)) which is also interpreted as requiring a further **21 days** (Rule 10 (2 and 5)

In practice, this means that, when constructing an examination timetable, we believe that the latter two of these deadlines make it difficult to streamline the examination and conduct them in a period significantly shorter than 6 months. This is because, to satisfy these requirements, a deadline of **at least** 3 weeks into the examination must be given for the submission of written representations, though in practice this often much longer. This is then coupled with a brief period to enable these responses to be published and so made available for all other 'interested parties' to have what is normally provided as a minimum of 3 weeks comment on them. Overall, this results in a significant period (about 2 months) just to conclude the written representation stage.

To enable the Examining Authority to carry out an examination in a shorter period, we are seeking to introduce greater flexibilities in Rule 10 of the Infrastructure Planning (Examination Procedure) Rules 2010 on the need to provide 21-days' notice and provide greater discretion for the Examining Authority to set deadlines, including shorter ones, for the receipt of written material during the examination. Rather than specifying a minimum period, we propose to leave it to the discretion of the Examining Authority to adopt a proportionate approach to setting deadlines. This level of discretion by the Examining Authority would then be consistent with other deadlines the Examining Authority is able to specify[footnote 7].

As is the case now, the Examining Authority will continue to set out publicly the timetable for the examination including opportunities for 'interested parties' to input as is enabled through Rule 6 and Rule 8 of the Examination Procedure Rules. Interested Parties will continue to be notified of the preliminary meeting with at least 21 days' notice and will also continue to be notified about the timetable, and importantly when they can engage with the application through written representations and questions, hearings and any accompanied site inspection under Rule 8. We therefore consider this will not affect the

engagement of those impacted by the application

By amending secondary legislation to allow the Examining Authority to set more flexible deadlines for notifications for the submission of written evidence, where it is deemed appropriate to do so, this will enable a more tailored examination timetable to be produced which reflects the specific circumstances of the application in question. The need for a more proportionate approach is also supported using digital communication which allow for a much more rapid response from recipients shortly after receiving such a notice. The current framework is setup on the premise of using postal and written communication and thus instils precautionary behaviour by embedding additional time into notification periods.

**Question 14**: To what extent do you agree that providing the Examining Authority with the discretion to set shorter notification periods will enable the delivery of examinations that are proportionate to the complexity and nature of the project but maintain the same quality of written evidence during examination?

Please provide your reasons

## 3.2.4 Moving to more digital processes in infrastructure planning

In 2020, the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 were amended[footnote 8] to make permanent changes that were temporarily introduced during the COVID-19 pandemic. This included removing the requirement for documents associated with applications to be made available for inspection at specific locations and instead enabling material to be made available online. This proved successful, and we believe that changes to regulations can go further to capitalise on the benefits available through digital means.

Our aim is to reduce the administrative burden on all stakeholders associated with paper-based requirements, encouraging the digital handling of applications as a default position, and enabling the use of electronic tools for notifications throughout the application process. Digital tools will enable greater transparency and engagement for all parties involved in the Development Consent Order process when used in conjunction with more traditional means. Therefore, where this is reasonably justified, it will still be expected that hard

copies of material submitted during the application and examination processes will be made available in appropriate locations to the benefit of those parties who may not be able to access material digitally.

We propose to:

- **Enable the digital handling of examination materials**: The Infrastructure Planning (Examination Procedure) Rules 2010 currently allow for the electronic transmission of representations, notices, and other documents, but this is only deployed at the agreement of the recipient. We propose to amend the Rules to make the digital handling of all examination materials the default position, removing the obligation to obtain the recipient's agreement to do so. However, providing assistance for those who are unable to access information through electronic means is considered best practice and will continue to be encouraged for example, by requiring where reasonably practicable, copies of documents to be made available for inspection free of charge where a person is unable to access the documentation electronically or finds it difficult to do so.
- **Enable the submission of planning data to enable digital applications**: Alongside notifications, there is also a need for the legislative framework to reflect the means of preparing applications digitally. At present, Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations (as amended) set out the detailed plans, documents, and reports that a Development Consent Order application must contain to be accepted for examination. The working assumption is that this information is submitted as documentation either in hard copy or electronic format, however, the data contained in these documents is still inaccessible as it is provided in print format.

Subject to Parliamentary approval, Part 3, Chapter 1 of Levelling Up and Regeneration Bill will introduce new powers to regulate the processing and handling of planning data[footnote 9] by planning authorities. This will apply to a panel or person appointed as the Examining Authority for development consent applications made pursuant to the Planning Act 2008. In light of this, we will seek to capitalise on these powers, if approved, to allow for the submission of planning data, in addition to the already prescribed documents needed to support an application for development consent. This will allow items such as survey data to be submitted electronically and independently to the document in which it is usually contained (i.e. in the Environmental Statement) and provide better access to such data for stakeholders, the Planning Inspectorate, Examining Authority and consenting departments.

**Question 15**: To what extent do you agree that moving to digital handling of examination materials by default will improve the ability for all parties to be

more efficient and responsive to examination deadlines?

**Question 16**: To what extent do you agree that the submission of 'planning data' will provide a valuable addition as a means of submitting information to the Planning Inspectorate?

Please provide your reasons

**Question 17**: Are there any other areas in the application process which you consider would benefit from becoming 'digitalised'?

## 3.3 Updating planning guidance to strengthen the examination stage

To complement our proposed changes to secondary legislation, we intend to revise the existing guidance on what information is needed during both the pre-application and examination stages. We will strengthen existing guidance to;

- encourage 'interested parties' to submit the full content of their representations at the relevant representations stage where possible
- promote early identification of the key issues which need resolution during the examination through reaffirmation of the role of the initial assessment of principal issues by the Examining Authority, and the early submission of principal areas of disagreement (PADS) by 'interested parties' in the examination
- enable Examining Authorities to focus questions posed during the examination to these key issues, and publish these as early as possible in the examination

We are also considering whether to prepare a new guidance document covering the preparation of the Development Consent Order. Several responses to the operational review noted the gap in advice since the Localism Act 2011 removed the requirement for the decision-maker to have regard to prescribed model provisions in deciding an application for development consent.

**Box 3 – the Model Provisions Order 2009**

The Model Provisions Order 2009 was intended as a guide for applicants in drafting the Development Consent Order rather than a rigid structure, but

aided consistency, and assisted applicants in constructing a comprehensive set of lawful provisions. The Order included elements of a Development Consent Order which could be common to all NSIPs, others which relate to particular infrastructure development types, in particular railways and harbours, and model requirements. Whilst the Localism Act 2011 removed the statutory requirement to use the Model Provisions Order, it continues to be used by most applicants as the basis for the preparation of the draft Order, supplemented by the Planning Inspectorate's Advice Notes 13 and 15.

We do not consider it appropriate to update and reinstate the Model Provisions Order, however we recognise that there is a role for guidance covering drafting of the Development Consent Order and the Explanatory Memorandum. The Planning Inspectorate has recently reviewed examples of documentation, environmental commitments and Development Consent Order provisions in a selection of projects with a view to standardising approaches to information handling. Drawing upon this work, we propose that new guidance on the content of a Development Consent Order could include matters such as:

- standardised clauses (both generic or sector based)
- approach to regular matters such as the definition of maintain and commencement
- transfer of the benefit of the Order
- flexibilities sought in limits of deviation, application of the Rochdale Envelope and variations within the limits of the environmental assessment
- the approach to the framing and discharge of requirements
- the role and content of protective provisions

# 4. Establishing a fast-track route to consent

The changes set out in this consultation are intended to ensure that the consenting process works efficiently and effectively for all projects and participants, so that schemes can be decided within the statutory timescales. In addition, we are introducing a new fast track route to consent for certain projects that are deemed capable of progressing through the process more quickly.

Pre-application services will provide targeted support for fast-track applicants,

backed by clear guidance to ensure effective engagement with and from consultees. Services will be geared towards identifying and practically resolving potential examination and decision issues at the pre-application stage, all within a timeframe established through the applicant's programme.

The suitability of an application for a shorter examination will be determined against the quality standards. The Planning Inspectorate, on behalf of the Secretary of State, would then set a statutory shorter examination timeframe of up to 4 months (subject to review of relevant representations and any proposed changes to the application), as part of a non-statutory target of 12 months from acceptance to decision.

Fast track projects will be delivered through:

- participation in the enhanced pre-application support service from the Planning Inspectorate
- a new quality standard, set by the Secretary of State, governing entry into a fast track examination
- a decision by the Planning Inspectorate, on behalf of the Secretary of State, to set a 4 month examination period

## 4.1 Current requirements

The Levelling Up and Regeneration Bill contains an amendment to the Planning Act 2008, which subject to parliamentary approval, will enable the Secretary of State to set a shorter examination deadline. To enable the Secretary of State to exercise this power in a manner that supports the end-to-end process and be fair to participants in the process, we will introduce a framework to govern how projects can apply for a shorter examination time and the standards that a project needs to meet to be eligible.

## 4.2 What changes are being proposed?

### 4.2.1 Participation in the enhanced pre-application support service from the Planning Inspectorate

We propose that applicants who wish to proceed through a fast track route to consent will be required to take up the enhanced pre-application service offered by the Planning Inspectorate as detailed in section 2. This is important to ensure that all potential participants in the Development Consent Order process can engage meaningfully and effectively to facilitate a shorter examination time for fast track projects. The applicant's intention to apply for a fast track programme should be clear in consultation documents so that all those affected by the project are aware of the ambition to progress to a shorter timescale.

**Question 18**: To what extent do you agree that projects wishing to proceed through the fast track route to consent should be required to use the enhanced pre-application service, which is designed to support applicants to meet the fast track quality standard?

Please provide your reasons

## 4.2.2 A quality standard for fast track applications

Applicants wishing to put their projects forwards for the new fast track route to consent will need to demonstrate that their scheme meets the proposed fast track quality standard set out below.

**Box 4 - Proposed Fast Track Quality Standard**

**Main test**

1. **Principal areas of disagreement** - that, in the view of the Planning Inspectorate, the principal areas of disagreement between parties have been clearly articulated by the applicant at the conclusion of the pre-application stage, are limited in number and scope such that the application is capable of being examined and/or disagreements being resolved in a maximum 4 month period.

**Supplementary tests**

2. **Procedure**: that the applicant has undertaken the pre-requisite pre-application steps for fast track projects [to be set out in supporting text in guidance] by preparing a programme management document to guide the pre-application stages and using the premium enhanced pre-application

service from the Planning Inspectorate

3. **Regard to advice** - that the applicant has had regard to section 51 advice to enable application documents to be of a high standard clearly demonstrating:

a. Consultation and engagement with consultees
b. Pre-application procedure
c. Documentation clarity
d. Potential examination matters

1. The 'Principal Areas of Disagreement' test allows the Planning Inspectorate to determine the likely complexity of the examination and the time needed to interrogate evidence on points of difference. It also allows applicants and consultees to target their engagement during pre-application and work towards a common outcome.

2. The 'Procedure' test and proposed additional guidance set out below are designed to help applicants put together and deliver a fast track pre-application programme that can achieve the main test.

We propose that applications will need to demonstrate the following in order meet the Procedure test. This is to enable effective participation for consultees in fast track projects from the start of pre-application:

**2a. A fast track programme document**

For the start of pre-application, the applicant should prepare a Fast Track Programme Document to address the main matters that an applicant will need to cover in addition to the normal requirements for appropriate consultation. These are:

i. A programme for the preparation of the application to the point of submission
ii. The policy context for the application
iii. Potential issues that require statutory consultee input, including 'Evidence Plan' timetable and issues
iv. For relevant projects, the preparation of a shadow appropriate assessment, with endorsement by the relevant statutory nature conservation body
v. A clear position on, and activities to support the intended design approach and level of detail likely to be provided in the final application
vi. Activities relating to the development of and engagement on the draft Development Consent Order and Explanatory Memorandum

### 2b. Fast track procedural steps

The applicant must have discharged the following procedural steps to enable its application to be eligible to request a shorter examination:

i. Within its section 42, section 47 and section 48 statutory consultation materials[footnote 10], provided written confirmation/ notification of its intent or potential to request a shorter examination
ii. Entered into a formal agreement to use the Planning Inspectorate Enhanced Pre-application Service
iii. Prior to statutory consultation[footnote 11], publicise a fast track programme document, which includes relevant milestones and dependencies, ensuring transparency and meaningful engagement in progress towards meeting the fast track quality standard
iv. provided evidence accompanying the application submission, in a format advised by the Planning Inspectorate, setting out how in the applicant's view the application complies with the relevant procedural steps

3. The 'Regard to advice' test is to enable the Planning Inspectorate to support applicants in preparing documentation that facilitates an effective faster examination and in the preparation of evidence to the standard that an Examining Authority expects, to support a faster examination.

To enable the Planning Inspectorate to reach a decision within the Acceptance period, we propose that the application should contain a document setting out how the application complies with these tests, including the applicant's view and any supporting evidence on the principal areas of disagreement that may need consideration in any examination. The conclusion of these fast track steps, detailing how any commitments set out in the initial programme document have been met and explicitly identifying those key issues which are outstanding for resolution during the examination, should be incorporated in the fast track submission document.

The applicant will be expected to track compliance with relevant policy frameworks (in particular the National Policy Statements), and the evolution of the main issues throughout the course of the pre-application period, through a summary / schedule of compliance being within the fast track submission document.

Where the applicant concludes that a matter has been resolved this will require to be evidenced by a statement from the appropriate statutory body or consultee.

**Question 19**: To what extent do you consider the proposed fast track quality standard will be effective in identifying applications that are capable

of being assessed in a shorter timescale?

Please provide your reasons

**Question 20**: On each criteria within the fast track quality standard, please select from the options set out in the table below and give your reasoning and additional comments in the accompanying text boxes. Please also include any additional criteria that you would propose including within the fast track quality standard?

| **Quality standard specific criteria** | **Strongly agree** | **Agree** | **Neither agree/ disagree** | **Disagree** | **Strongly disagree** | **Rea** |
|---|---|---|---|---|---|---|
| 1. Principal areas of disagreement | | | | | | |
| Procedure | | | | | | |
| 2a Fast track programme document | | | | | | |
| 2b(i) include fast track intention in consultation material | | | | | | |
| 2b(ii) formal agreement to use enhanced pre-application | | | | | | |
| 2b(iii) publicise fast track programme | | | | | | |

| Quality standard specific criteria | Strongly agree | Agree | Neither agree/ disagree | Disagree | Strongly disagree | Rea |
|---|---|---|---|---|---|---|
| 2b(iv) provide evidence at submission of 2a – 2c | | | | | | |
| 3. Regard to advice | | | | | | |

## 4.2.3 Decisions for entry into the fast-track process

The Planning Inspectorate acting on behalf of the Secretary of State will make the decision on whether an application meets the fast track quality standard, and whether to set a shorter maximum examination time of 4 months.

The decision at acceptance to set a 4 month maximum timescale for the examination will be a provisional one. This will be confirmed by the Planning Inspectorate, acting on behalf of the Secretary of State, taking into account any advice by the appointed Examining Authority once the relevant representations have been received on whether additional time might be needed to address specific considerations such as:

a) where there are changes to the accepted application proposed by the applicant before the examination has commenced that cannot be accommodated by the examination timetable but are in the interests of the examination to accept, and / or

b) where issues have arisen from relevant representations that were not contained in the fast track submission document for the Planning Inspectorate to assess against the quality standards.

The Examining Authority will proceed to construct an examination timetable and set this out in its ‘Rule 6 letter’[footnote 12] which formally advises all parties of the Examining Authority’s proposed timetable, initial assessment of principal issues and arrangements for the Preliminary Meeting.

The Planning Inspectorate, acting on behalf of the Secretary of State may confirm the shorter date once it has considered Examining Authority advice. If the Planning Inspectorate does not confirm its provisional decision in the light of the advice from the Examining Authority and other considerations highlighted, then the full 6 month examination is required.

Following acceptance of an application, and decision to set a shorter examination timescale, the Planning Inspectorate will also set out a projected 12-month timescale for the whole of the consenting process.

The timescales for specific stages will vary from project to project, but in order to set clear expectations for all parties, we propose to set out a benchmark timescale in revised examination guidance:

- Pre-examination – 12 to 14 weeks or ‘3 months’ (no current statutory timeframe)
- Examination – up to 18 weeks or ‘4 months’ (current statutory maximum 6 months)
- Recommendation – 10 weeks or 2 and a half months (current statutory maximum 3 months)
- Decision – 10 weeks or 2 and a half months (current statutory maximum 3 months)

Once the Preliminary Meeting has been held, the examination timetable will be published under Rule 8 of the Examination Procedure Rules. Should the Examining Authority find it becomes impossible to complete the examination within the shorter 4 month period, then it will need to ask the Planning Inspectorate to request the Secretary of State to agree an extension of the timetable.

**Question 21**: To what extent do you agree that the proposals for setting the fast track examination timetable strike the right balance between certainty and flexibility to handle a change in circumstance?

Please provide your reasons

## 4.3 Publishing new guidance to support the fast track route to consent

We propose to support the fast track consenting route by updating guidance to;

- provide detail on the types of applications that may be suitable to enter the fast-track route
- clarify pre-application expectations, including a requirement that fast track schemes take advantage of the enhanced pre-application service
- support applicants to demonstrate that the fast track quality standards have been met
- set out the Quality Standards and the decision making process
- set out the information required by the applicant in its fast track submission document
- clarify how the 12-month non-statutory timeframe should operate in practice and what is expected of applicants
- set out how the fast track examination process will handle changes in circumstance during pre-examination and examination

# 5. Reviewing the processes for making changes to Development Consent Orders post consent

Following the 6-month Examination period, the Examining Authority has up to 3 months to prepare a recommendation report for the relevant Secretary of State to consider, setting out a recommendation on whether the application should be granted or refused consent. On receipt of the report, the Secretary of State has a further 3 month period to decide whether to approve or refuse the application.

Whilst it is strongly encouraged that applications should be robust at the time of submission and contain a clear plan and schedule for the works that are to be built, it is inevitable that some changes may be required after a Development Consent Order is granted. Such changes will either be material or non-material, with the Planning Act 2008 providing separate processes for seeking approval for changes. It is important that any changes proposed undergo the appropriate process to ensure that they are given the scrutiny that is proportionate to the scale of the change in question. At present, applications for non-material changes are taking between 2 and 16 months to determine. There has only been one application for a material change to a scheme since the Planning Act 2008 consenting process was introduced, however evidence indicates that considerable time is being spent questioning the materiality of proposed

changes (before the change itself is considered), suggesting that reforms are needed to the Development Consent Order change process.

We propose to review the process for seeking changes to Development Consent Orders post consent by:

- considering whether additional support is needed for applicants to ensure that changes are better directed through either the material or non-material change process to avoid delays associated with materiality taking place after the submission of an application
- exploring the potential to introduce a statutory timeframe for decisions on non-material change applications

## 5.1 Current requirements

When applying for development consent, it is crucial to prepare the application carefully to ensure that the Development Consent Order accurately reflects the project's works. However, it is acknowledged that circumstances can change both before and after obtaining consent and that post-consent changes may be necessary to achieve innovation, cost savings, or time savings. Such changes may not have been possible to anticipate during the application process and may arise before or during construction.

Depending on whether a post-consent change is considered material or non-material, the process for seeking approval for the change will vary. Material changes are subjected to more rigorous scrutiny by the Secretary of State, and an examination may be necessary. On the other hand, non-material changes do not require an examination, but require notification to the public before the Secretary of State can make a decision.

Current guidance on the process for post consent changes is provided in Planning Act 2008: Guidance on changes to Development Consent Orders (December 2015) (https://www.gov.uk/government/publications/changes-to-development-consent-orders) which provides advice mainly for applicants and covers the 2 types of changes that may be made to a Development Consent Order (non-material or material) and advises on the procedures for making such changes.

## 5.2 What changes are being proposed?

### 5.2.1 Improving support for applicants on the materiality of a proposed change application

At present, discussions on the materiality of a proposed change to a Development Consent Order take place between the relevant consenting department and applicant. There is no statutory requirement to do this but doing so provides useful information on the proposed change before an application is submitted and allows departments to provide an informal view on the materiality of the change in question.

We will standardise and improve the advice given to applicants about the likely materiality of a change so that advice on the appropriate approval process can be given as early as possible. Furthermore, we will seek to ensure that advice takes into account responses received during the applicant's consultation on the proposed changes.

**Question 22**: To what extent do you agree that there is a need for new guidance on which application route proposed changes should undergo?

Please provide your reasons.

**Question 23**: In addition, what topics should new guidance cover that would help to inform decisions on whether a proposed change should be considered as material or non-material?

### 5.2.2 Introducing a statutory timeframe for the decision making on non-material change applications.

One of the key advantages of the development consent regime is the provision of statutory timeframes throughout the application and post-consent change process. This provides certainty to applicants, stakeholders, local authorities, and the communities involved regarding the timely outcome of the proposals. Although statutory timeframes are in place for the consideration and determination of Development Consent Order applications and material change

applications, they are absent for non-material change applications. This is because the consultation required for Development Consent Order applications and material change applications is not a requirement of the non-material change route and therefore a judgement must be made about the sufficiency of consultation. Nonetheless, the absence of a statutory timeframe for the determination of non-material change applications introduces an element of uncertainty into this part of the change process.

This can discourage applicants from making potentially innovative changes to their projects or implementing cost and time savings due to changes in construction practices. To ensure certainty throughout the entire system, we are seeking to introduce a legislative timeframe for the determination of non-material change applications, which will provide confidence to applicants seeking to make a change to their Development Consent Order but on the premise that consenting departments are content that sufficient consultation has been undertaken and adequate information has been provided.

In the Levelling Up and Regeneration Bill, government is currently seeking to include powers which will enable the Secretary of State by regulations to make provision about the decision-making process of non-material change applications. This power, subject to Parliamentary approval, will enable government to introduce regulations which will implement a statutory timeframe for the determination of non-material change applications.

Current guidance states that determination of a non-material change application is expected within 6 weeks of the closing date for responses to publicity and consultation. Any statutory timeframe would need to reflect a realistic, yet proportionate time needed to make a decision on applications and would need to commence once the Secretary of State is satisfied that the change in questions has adequately been consulted on, without any additional consultation required at the request of the Secretary of state.

**Question 24**: To what extent do you support the proposal to introduce a statutory timeframe for non-material change applications?

What do you consider is a reasonable timeframe for determining non-material applications? Please note, determination is referred to as the time it takes for the relevant department to make a decision on an application once the appropriate consultation has been undertaken. Any timeframe included in legislation would need to provide a specific timescale for determination.

- 6-8 weeks
- 8-10 weeks

- 10-12 weeks
- Other - Please justify your selection

Your feedback will help us to develop a specific timeframe that will be implemented in legislation.

## 5.3 Revising and updating guidance

The sole act of setting a legal timeframe may not be sufficient to ensure the prompt and efficient processing of non-material change applications. To ensure timely decision-making, government plans to update its guidance on changes to Development Consent Orders. For non-material change applications, the revised guidance will outline the responsibilities of the applicant, stakeholders, the Planning Inspectorate, and the Secretary of State in facilitating prompt decision-making. Furthermore, the guidance will provide clearer advice on the procedure for assessing the materiality of a proposed change prior to submitting an application, undertaking adequate consultation on non-material changes, as well as the essential supporting documentation for non-material change applications.

# 6. Resourcing the Planning Inspectorate and updating existing fees

The Planning Inspectorate plays a fundamental role in operating the NSIP planning system, and consenting departments[footnote 13] decide Development Consent Order applications and operate the process for post-consent changes to Development Consent Orders. As we expect an increasing number and complexity of projects to enter the system, these bodies will face increasing financial and resource pressures. This combined with additional pressures in implementing planning reforms, will create additional burdens on already constrained services.

We therefore propose to address these issues and help to resource the Planning Inspectorate by:

- enabling the Planning Inspectorate to recover costs for the pre-application

services it provides to applicants
- ensuring current fees accurately reflect the work undertaken by the Planning Inspectorate in its work during the statutory stages of the Development Consent Order application process, and the work undertaken by consenting departments in determining non-material change applications

## 6.1 Current requirements

The Planning Inspectorate is the government agency responsible for operating the planning process under delegated powers in relation to the Planning Act 2008. It currently provides services to applicants at different stages of the application process ranging from pre-application advice to the handling of examination procedures and plays a critical role in delivering a streamlined application service.

The capacity, capabilities and skills of the Planning Inspectorate's workforce will be critical in meeting the increasing demand for Planning Act 2008 services. A significant number of additional staff (likely between 40-50), ranging from Examining Inspectors and case workers to environmental specialists, this will require an additional £3.5 million of funding to enable the Inspectorate to continue to effectively undertake its role across the Planning Act 2008 consenting system over the next financial year (2024/25). The ability to access the required level of technical and specialist skills is limited by current strategic labour market challenges across the planning, engineering, and environmental professions which is discussed further in section 9.

The Infrastructure Planning (Fees) Regulations 2010 makes provision for the Planning Inspectorate to recover costs for the services it provides to applicants at different stages of the application process. As such, fees, payable to the Planning Inspectorate currently include:

- a fixed acceptance fee that is the same for all projects
- a fixed pre-examination fee that is dependent on and proportionate to the size of the Examining Authority
- an examination fee which is based on a day rate proportionate to the size of the Examining Authority and the number of working days during the examination

Applicants are also required under Schedule 6 of the Planning Act 2008 and the Infrastructure Planning (Changes to, and Revocation of, Development Consent Order) Regulations 2011 (as amended 2015) to apply to the relevant Secretary

of State for any changes to be made to a Development Consent Order. Changes may be 'non-material' or 'material'. Schedule 2 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Order) Regulations 2011 (https://www.legislation.gov.uk/uksi/2011/2055/contents) sets out the fees payable to the relevant Secretary of State for the handling of such applications. Fees payable include:

- a fee to accompany an application
- a pre-examination fee
- a fee in respect of handling an application
- fees at the start and end of the process in handling an application
- a fee in respect of venue costs

As an example of existing planning costs, the proportion of cost for development and consenting services (which includes environmental impact assessments) for a typical offshore wind farm makes up 1% of the total costs of a project over its life[footnote 14]. Analysis has also shown that Planning Inspectorate fees account for 0.1%-0.3% of total project costs[footnote 15]. Fees are charged at a number of points in the process. This includes pre-examination fees, which currently vary between £24,000 and £79,000, and fees split between initial and final handling of an application, with final payments ranging from £2,250 per day to £7,500 per day. These are set out on the Planning Inspectorate website (https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/). However, it is estimated that existing fees only enable the Planning Inspectorate to recover less than 70% of the statutory process costs for Development Consent Order applications – the proportion recovered varies year on year[footnote 16].

DLUHC guidance (Planning Act 2008: application form guidance (2013) (https://www.gov.uk/government/publications/planning-act-2008-application-form)) sets out advice to developers on the fees payable to the Secretary of State for the costs of processing an application for a Development Consent Order under the Planning Act 2008. Additionally, DLUHC guidance (Planning Act 2008: changes to Development Consent Orders (2015) (https://www.gov.uk/government/publications/changes-to-development-consent-orders)) sets out advice to applicants on procedures for making a change to a Development Consent Order including non-material and material changes. Fees for non-material change applications fund consenting department's work in determining these.

## 6.2 What changes are being proposed?

## 6.2.1 Charging for pre-application services

As set out in section 2.2.1 the Planning Inspectorate is proposing to introduce a new approach to its pre-application services, including an enhanced preapplication service for the most complex projects or projects seeking a shorter examination through the new fast track route to consent. The Planning Inspectorate does not currently charge for its pre-application services which are designed to help applicants in planning and carrying out their pre-application duties and are based on project need and available resource. The Nationally Significant Infrastructure Project Reform Action Plan sets out that government will move towards full cost recovery across the Planning Act 2008 consenting system. In order to enable this and for the Planning Inspectorate to more effectively resource and deliver the new pre-application services, we propose to enable the Planning Inspectorate to set charges to recover costs for the pre-application services provided to applicants.

Charges will be set at a level that enables the Planning Inspectorate to recover their costs across their pre-application services for applicants and as such consultation on the level at which they are set is not required. As work to define the pre-application services is underway and will be informed by consultation, cost ranges are not yet confirmed, but current estimates based on data provided by the Planning Inspectorate suggest that the service could cost between £50,000 and £200,000 per application for a 12 month period. The fee set would cover provision of the pre-application service to an applicant for a fixed period (the Planning Inspectorate are proposing a 12-month period). Final decisions of the level at which charges will be set will be made in accordance with the cost of the service provided to the applicant.

**Question 25**: Taking account of the description of the services in section 2.2.1 to what extent do you believe a cost-recoverable pre-application service will represent value for money in supporting applicants to deliver higher quality applications with minimal residual issues at submission?

Please provide your reasons

**Question 26**: To what extent do you agree with the proposal to charge an overall fee (appropriate to the tier of service that will cover the provision of the service) for a fixed period?

Please provide your reasons

### 6.2.2 Review of existing charges

We will also review the costs of resource requirements associated with the service and update fees so that they recover reasonable costs This may include changes to the application, pre-examination, examination and final handling fees and we are considering whether it is necessary to introduce additional fee points. We will do this by:

- reviewing existing fees, taking account of resource requirements for which costs will be recovered, taking account of guidance on Managing Public Money
- updating fees related to non-material changes to support consenting departments in achieving the level of service expected for non-material changes (set out in section 5), this could include separating the fee for acceptance of a non-material change application ahead of its consideration by the Secretary of State
- introducing a fee for 'an extended pre-examination period' which may become necessary where changes to a Development Consent Order are proposed by the applicant ahead of examination or additional time is needed to resolve some matters ahead of examination. This is to take account of the additional resource requirements such time extensions have for the Planning Inspectorate
- introducing a fee for the 'late submission' of an application once the applicant has an agreed submission date

As referred to in section 6.1, the Planning Inspectorate only recovers a proportion (less than 70%) of the costs of providing their statutory services for Development Consent Order applications. It is reasonable to assume that revised fees, together with charges for Planning Inspectorate pre-application services as set out in section 6.2.1, will lead to no more than a doubling of total fees for applicants. Given that Planning Inspectorate fees account for 0.1%-0.3% of total project costs, revised charges will continue to represent a very small proportion of project costs overall.

**Question 27**: The government has set out an objective to move to full cost recovery for the Planning Act 2008 consenting process. To what extent do you support the proposal to support the Planning Inspectorate to better resource their statutory work on consenting by reviewing and updating existing fees, and introducing additional fee points?

Please provide your reasons

**Question 28**: To what extent do you support the proposal to review and

update existing fees in relation to applications for non-material changes to achieve cost recovery and support consenting departments in handling these applications?

Please provide your reasons

**Question 29**: To what extent to do you agree that the proposed review and update of existing fees and introduction of additional fee points will support the Planning Inspectorate to better resource their statutory work on consenting?

Please provide your reasons. If do not agree, are there any other ways to support the Planning Inspectorate to better resource their statutory work?

## 6.3 Revising and updating guidance

To support the resourcing of the Planning Inspectorate and consenting departments, we will publish new guidance by spring 2024 on the fees for pre-application advice and post consent changes to Development Consent Orders.

# 7. Strengthening performance of government's expert bodies

The government has a number of expert bodies which provide specialist input into the planning system, on matters such as nature conservation and environmental protection (Natural England, the Environment Agency and Natural Resources Wales), the marine environment (Marine Management Organisation), public safety (the Health and Safety Executive) – including related to former coal workings (the Coal Authority), and the historic environment (Historic England). These bodies are key statutory consultees, and early and effective engagement between them and applicants is crucial to early identification and resolution of issues with developments.

The government's expert bodies play a critical role in providing evidence and expertise. Early and effective engagement by applicants with statutory consultees will continue to be essential in meeting the demand of an increased volume and complexity of projects entering the system and delivering wider

system reforms. Effective and quality engagement from applicants will also be fundamental in supporting statutory consultees to meet increasing demand and the processes outlined are aimed at helping to address this. Evidence suggests that effective engagement with these bodies is currently hindered by significant capacity and capability challenges, the ability to predict future resource demands and access the right information from applications in order to provide informed advice early on in a project's development. These factors contribute towards the late identification of issues and duplication of work causing unnecessary delays and costs across the consenting system.

We therefore propose to address these issues and strengthen the engagement of these expert bodies by:

- working across government to define performance standards and monitoring arrangements across a number of government's expert bodies to deliver improved services
- enabling specific organisations (set out in table 7.1 below) to move towards full cost-recovery of direct project advice and engagement across the Planning Act 2008 consenting process
- revising and updating guidance concerning requirements for engaging with statutory consultees and their role across the system including requirements under the enhanced pre-application process and faster examinations

## 7.1 Current requirements

Statutory consultees (also known as 'prescribed bodies') are expert bodies that provide technical advice across the application process to ensure that infrastructure can be consented in a way that supports the wider objectives of the government, including those around enhancing the natural environment, public safety and protecting historic assets.

The Development Consent Order process was originally designed as a 'front loaded' system requiring applicants to undertake early and proactive pre-application engagement with key stakeholders including statutory consultees. Specifically, Part 5, Chapter 2 of the Planning Act 2008 requires applicants, as part of the statutory pre-application process, to consult these bodies and have regard to any consultation responses received. During this stage, statutory consultees play a pivotal role in assisting applicants with identifying and mitigating social, environmental, design and economic impacts of projects, and other important matters.

Such statutory consultees, and the circumstances to which they should be consulted and notified of a proposed application during pre-application, are listed under Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure Regulations) 2009 (https://www.legislation.gov.uk/uksi/2009/2264/contents/made). These regulations were amended in 2013 and 2021 and further updating is proposed as set out in section 2.2.3 above.

Further to pre-application procedures, the Planning Act 2008 stipulates the involvement of statutory consultees at other formal stages of the application process. Specifically:

- Part 6, Chapter 1 requires applicants to notify statutory consultees once an application is accepted and invites them to submit relevant representations giving notice of their interest, or objections, to an application prior to examination.
- Part 6, Chapter 4 invites statutory consultees to register as an 'interested party' and partake in formal pre-examination and examination activities including, but not limited to, submitting representations to the Examining Authority on how an application should be examined and on matters with which they agree or disagree, attending examination hearings, and providing written responses to the Examining Authority's written questions.
- Many statutory consultees are responsible for consent regimes, where under Section 120, decisions (such as a deemed marine licence, or on matters such as works to trees or diversion of non-navigable watercourses) can be included within the decisions of a Development Consent Order.

DLUHC guidance (March 2015) sets out further advice on pre-application consultation with statutory consultees which applicants must have regard to. The Planning Inspectorate's Advice Note 11 (and supplementary notes) sets out further information on the role of specific statutory consultees across the application process, as well as advice on working arrangements and consultation requirements.

## 7.2 What changes are being proposed?

### 7.2.1 Working across government to deliver improved services

To ensure the delivery of high quality, timely, and credible cost-recoverable service for applicants we are working across government to define and develop a set of key performance measures that specific statutory consultees (as prescribed in section 7.2.2) will report against for the statutory services they provide to applicants across the Development Consent Order application process.

Specifically, to boost the resource available to Defra Arms Length Bodies (ALBs), government has made £5.6 million available over the current financial year to increase the number of staff at Defra Arms Length Bodies, just as resource is being increased at the Planning Inspectorate. This will be supported by internal changes to improve efficiency. For example, the Environment Agency have set up a new National Infrastructure team to support local operational teams by responding in an agile way to workload peaks. Natural England will similarly ensure that resource is directed to high impact projects and is promoting Service Level Agreements to ensure complex issues are addressed before submission and reduce risk of delay. With new resource made available, government expects statutory consultees to operate efficiently and meet deadlines and this will complement work to streamline systems and increase capability.

It should be noted that this ambition comes at a time when the demand for infrastructure is increasing, and the labour market for environmental, and associated, specialists is challenging. The Key Performance Indicators (KPIs) that specific statutory consultees (as prescribed in section 7.2.2) will report against for the services statutory provide to applicants across the Development Consent Order application process will be developed to accompany the proposed charging system as outlined at section 2.2.1.

We are developing performance monitoring arrangements to accompany the charging system and we expect these arrangements to be based on the following principles:

- KPIs will be outcome and not output focused to ensure smoother routes through the consenting process
- Metrics will consider quality of customer service provision
- Metrics will cover the provision of statutory and non-statutory advice provided by the specific prescribed bodies (outlined in section 7.2.2) through Pre-application, Pre-examination, Examination and Decision
- Monitoring should be tailored to the context of each organisation, the nature of the advice it provides, and the scope of its responsibilities in decision making and regulating;
- Reporting should be timely, transparent, simple to understand and easily

accessible. Metrics should evolve over time to reflect ongoing system improvements, including improvements identified as a result of more detailed monitoring and reporting

It is very important that any KPIs are grounded in the above principles, are deliverable, and maintainable over time which is why we would welcome views on how this could be done effectively. We will engage with stakeholders as these are developed.

**Question 30**: To what extent do you agree that defining key performance measures will help meet the policy objective of ensuring the delivery of credible cost-recoverable services?

Please provide your reasons. If do not agree, are there any other mechanisms you would like to see to ensure performance?

**Question 31**: Do you agree with the principles we expect to base performance monitoring arrangement on? Please select from the options set out in the table below and give your reasoning and additional comments in the accompanying text boxes:

| | **Strongly agree** | **Agree** | **Neither agree/ disagree** | **Disagree** | **Strongly disagree** |
|---|---|---|---|---|---|
| Be outcome and not output focussed to ensure better planning outcomes | | | | | |
| Please give reasons: | | | | | |
| Consider quality of customer service provision | | | | | |
| Please give reasons: | | | | | |

| | Strongly agree | Agree | Neither agree/ disagree | Disagree | Strongly disagree |
|---|---|---|---|---|---|
| Cover the provision of statutory and non-statutory advice provided by the specific prescribed bodies (outlined in secition7.2.2) through pre-application, pre-examination, Examination and Decision | | | | | |
| Please give reasons: | | | | | |
| Monitoring should be tailored to the context of each organisation | | | | | |
| Please give reasons: | | | | | |
| Reporting should be timely, transparent, simple to understand, easily accessible and evolved over time | | | | | |
| Please give reasons: | | | | | |

**Question 32**: We would like to monitor the quality of customer service provided, and the outcomes of that advice on applicant's progression through the system where practicable. Do you have any views on the most effective and efficient way to do this?

## 7.2.2 Cost-recovery for specific statutory consultees

We recognise that the capacity, approach and capabilities of specific statutory consultees is fundamental to deliver effective and timely advice and support the delivery of wider operational reforms as outlined in section 2. It is essential that these bodies are resourced effectively so they can engage proactively with the consenting process. To do this, we are seeking to enable some public bodies, which are also statutory consultees, to charge applicants for the cost of the planning services they provide as part of the Development Consent Order application process.

### Primary legislation

Using powers in the Levelling Up and Regeneration Bill (subject to Royal Assent) we will legislate to enable specific statutory consultees to set charging schemes that allow them to recover costs for the services they provide to applicants across the whole Development Consent Order consenting process. This will cover both the statutory and non-statutory activity that they undertake in relation to consenting Nationally Significant Infrastructure Projects: from pre-application engagement with project promoters and the Planning Inspectorate to the discharge of requirements. Fees will be payable by applicants seeking development consent.

### Deliver a charging system

We have worked with specific statutory consultees to develop a to deliver a proportionate and transparent charging system that works for business, the environment, for the people, and is financially sustainable. The key principles of this system are set out in the table below:

**Box 5 – Key principles of the charging system for specific named statutory consultees**

**Who will be able to charge?**

We propose to initially limit the ability to charge to the following statutory consultees:

- the Environment Agency
- Natural England
- Historic England
- National Highways
- the Coal Authority
- the Health and Safety Executive
- Marine Management Organisation; and
- Natural Resources Wales

These expert bodies represent a group of organisations that are instrumental in the early identification and mitigation of impacts associated with water, energy, and transport infrastructure projects. These organisations are consulted on over 90% of Development Consent Order applications and already respond to 80% of formal pre-application engagement. They will continue to play a critical role across the whole Development Consent Order application process providing expert advice and input on development proposals from early pre-application engagement and formal Examination to recommendation and decision, and post-consent activities.

Introducing a new charging system for these organisations accords with guidance which recognises that charges can be a rational way to allocate resources, signalling to those who use them that public services have real economic costs. They will help to support them to secure the right resources, at the right time to meet increasing demand and deliver a more sustainable funding model for statutory consultees' role in the Planning Act 2008 consenting system and provide assurance of the quality of engagement for applications.

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**What activities will be charged for?**

We propose to enable the prescribed statutory consultees to recover costs for non-statutory and statutory services provided during the following key stages of the Development Consent Order application process:

- **Pre-application** – both early non-statutory pre-application services and, formal statutory consultation activities (for example, Environmental Impact Assessment Scoping and Section 42), as well as any non-

statutory services provided leading to the submission of an application.

- **Pre-examination** – any services provided to applicants in relation to the further development of submission documentation in preparation for Examination and undertaking pre-examination activities (for example, Relevant Representations and attendance at preliminary meetings)
- **Examination** – all services provided during the formal Examination period including attendance at hearings, any activities that fall between specified deadlines and any other requests from the Examining Authority up to formal close of Examination
- **Post-decision** – post-consent activities, that are not currently charged for.

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**Setting charging schemes**

We propose that each of the named consultees will be able to use either a standard charge specific to their own activity or to reach agreement with the project promoter to agree the level of service and associated costs (whether individually or jointly with other consultees) through a service level agreement, whether for part or the entirety of their engagement on a project. Consultees may choose to apply a standard charge for some of their work on a project and agree service level agreements for other stages of their work. Where a project is being supported by higher levels of the Planning Inspectorate's enhanced pre-application service, intending to use the fast-track route to consent, or where there are particular complexities related to the input provided by the consultee, we expect that service level agreements will be best suited.

Each named statutory consultee will be responsible for establishing their own charging schemes and setting their own fees, within the legislative framework. The government has set out the main principles for dealing with resources in the public sector in HM Treasury's Managing Public Money (https://www.gov.uk/government/publications/managing-public-money). This includes guidance on how charges for services provided by public sector organisations should normally pass on the full cost of providing them. Statutory consultees will take account of this guidance, and their own costs in providing advice, in defining charging schemes. Statutory consultees will publish their charging schemes on their own websites, update fees, and undertake necessary reporting and monitoring.

The proposed charging system will help plug existing funding gaps across these expert bodies to support them to be more self-financing and enable them to

continue to play a critical role in shaping development proposals and accelerating the delivery of quality infrastructure. It will:

- enable expert bodies to build their services to support them in providing, proactive, timely, cost-efficient advice, and resilient and effective planning services to applicants
- help them to better prepare for engaging with and providing technical advice to applicants on Development Consent Order applications
- help them to work proactively with applicants to seek opportunities for positive outcomes from major infrastructure
- help them to work proactively with applicants in the early identification and resolution of issues, improve the quality of applications and support faster applications and infrastructure projects

The charging system will result in applicants receiving quality, value for money services targeted at supporting the preparation of high quality and faster applications. Applicants will receive:

- high quality and proportionate services
- the provision of high quality end-to-end service
- an enhanced consistency, quality and certainty of timely resources dedicated to Development Consent Order proposals
- improved clarity of service offer
- early conversations on permits, other consents and licensing
- updated guidelines supporting applicants engaging with organisations

**Question 33**: To what extent do you support the proposal to enable specific statutory consultees to charge for the planning services they provide to applicants across the Development Consent Order application process?

Please provide your reasons

**Question 34**: To what extent do you agree with the key principles of the proposed charging system? Please select from the options listed in the table below and give reasons in the ‘comment’ text box.

| Strongly agree | Agree | Neither agree/ disagree | Disagree | Strongly disagree |
|---|---|---|---|---|

| | Strongly agree | Agree | Neither agree/ disagree | Disagree | Strongly disagree |
|---|---|---|---|---|---|
| Initially limit the ability to charge to the organisations listed in table 7.1 | | | | | |
| Please give reasons: | | | | | |
| Recover costs for non-statutory and statutory services provided throughout Pre-application, Pre-examination, Examination and Post-Decision | | | | | |
| Please give reasons: | | | | | |
| Setting charging schemes | | | | | |
| Please give reasons: | | | | | |

**Question 35**: Do you have any comments on the scope and intended effect of the principles of the charging system?

## 7.3 Revising and updating guidance

To support the engagement of statutory consultees, we will publish new guidance by spring 2024 on the cost recovery system for statutory consultees. We will provide clarity to applicants and statutory consultees of their roles in acquiring cost-recoverable services.

# 8. Improving engagement with local authorities and communities

Local authorities play an important role in the Planning Act 2008 consenting process by helping to ensure that local issues are considered and understood. Applicants are also required to consult directly with local communities, taking account of their views in developing proposals. The existing legislative framework seeks to make sure communities have had the opportunity to comment on proposals, and that applicants have regard to their views. When submitting an application, applicants set out how they have had regard to these views, and local authorities are invited to give their views on the statement of community consultation to shape the consultation process in pre-application and adequacy of consultation of the acceptance stage.

We propose to improve engagement with local authorities and communities through:

- Further innovation and capacity building for local authorities including launching a new round of Innovation and Capacity funding
- Supporting longer-term capacity and positive engagement between local authorities and applicants through the use of Planning Performance Agreements
- Improving local community engagement through more prescriptive guidance and an early ‘adequacy of consultation’ milestone

## 8.1 Current requirements

Hosting and neighbouring local authorities are key consultees in the development consent process helping to secure effective connections to local infrastructure, the identification and mitigation of local impacts and addressing

the impact of construction and operation of major projects on local communities and the environment. Although development consent decisions are not made by local authorities, they play a lead role in ensuring the infrastructure can be delivered in its unique local context and are often responsible for monitoring and enforcing Development Consent Order requirements and provisions and any relevant section 106 infrastructure obligations.

Applicants are required to consult local authorities at a number of stages throughout the process. Legislation requires applicants to set out in a statement how they will consult the local community, consulting any relevant host local authority in advance of this, and having regard to the comments received. Applicants are then required to:

- publicise the proposed application (section 48, Planning Act 2008)
- consult the community on their proposals (section 47, Planning Act 2008)
- and take account of responses to consultation and publicity (section 49, Planning Act 2008), local impact reports and potential section 106 obligations and requirements

Once the application has been submitted, local authorities are invited as part of the acceptance process to give their view on the adequacy of consultation, which will be considered by the Planning Inspectorate in deciding whether a submitted application should be accepted.

In addition, the Planning Act 2008 stipulates the involvement of local authorities across the development consent process. Specifically:

- Section 42 – applicants are required to consult hosting and neighbouring local authorities as part of the statutory pre-application consultation
- Section 60 – requires hosting and neighbouring local authorities (where appropriate) to prepare a local impact report detailing the likely impact of a proposed development on the local area of which the Examining Authority and Secretary of State must have regard for (section 104, Planning Act 2008)
- Part 6, Chapter 4 invites local authorities to register as an ‘interested party’ and take part in formal pre-examination and examination activities including, but not limited to, submitting representations to the Examining Authority on how an application should be examined and on matters with which they agree or disagree, attending examination hearings, accompanied site inspection and providing written responses to the Examining Authority’s formal round of written questions and requests for information

Existing guidance (Planning Act 2008: guidance on the pre-application process for major infrastructure projects(March 2015) (https://www.gov.uk/government/publications/guidance-on-the-pre-application-process-for-major-infrastructure-projects))

sets out further advice on pre-application consultation with local authorities and communities of which applicants must have regard to. The Planning Inspectorate's Advice Note 2 (https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-two-the-role-of-local-authorities-in-the-development-consent-process/) (and supplementary notes) sets out further information on the role of local authorities across the application process, as well as advice on working arrangements and consultation requirements.

## 8.2 What changes are being proposed?

### 8.2.1 Further innovation and capacity building for local authorities

Our Innovation and Capacity Fund, launched in June 2022, has already supported local authorities (or groups of local authorities working in partnership) hosting active Nationally Significant Infrastructure Projects in their areas to develop a stronger and more positive relationship with the Development Consent Order application process. A total of 31 local authorities submitted bids, and £763,656 of funding was awarded to 10 local authorities for projects ranging from the creation of a new centre of excellence for local authorities to the development of a new online workflow management dashboard creating a live and interactive flow of information between the local authority and the applicant.

Together with a new local authority network, supported by the Planning Advisory Service, the fund successfully supported local authorities to develop projects that, helped them to better engage with applicants, come together to share knowledge, ideas, and challenges, and develop best practice in handling Development Consent Order applications.

**Examples of enhanced local authority engagement supported by our Innovation and Capacity Fund**

- funding has helped Somerset Council to improve existing governance methods, enhance its engagement with the applicant and ensured better joined up working between multiple local authorities. It also provided an opportunity for the applicant to provide further funding and led to the

appointment of specialist dedicated resource which the Council consider significantly benefitted the engagement between the applicant and the authorities

- funding has helped Suffolk County Council to create a central pool of knowledge and expertise of the Planning Act 2008 consenting process, an opportunity for shared learning and good practice building on the wider ranging experience of participating local authorities, and to identify gaps and opportunities for improved learning and expertise. The Centre of Excellence supported by innovation and capacity funding gave authorities the opportunity to share best practice and a wider knowledge of how to effectively engage in the process. It funded specialist expert advice that provided valuable information for a number of authorities that have taken the opportunity to learn from the events and products developed by the council. Feedback has indicated that while many authorities had limited understanding of the Planning Act 2008 consenting process initially, confidence and knowledge increased considerably because of work of the Centre of Excellence
- funding has helped Norfolk County Council to develop an interactive dashboard to build and share a wide range of information across a number of Nationally Significant Infrastructure Projects they are engaged with. This has helped to develop a stronger collaboration between local authorities dealing with Nationally Significant Infrastructure Projects, helped streamline management of deadlines, and supported a closer working relationship with the specific developers which has built up collaboration. It has also proven benefits of early investment in systems, skills and knowledge that have leveraged further funding

Following the success of the Innovation and Capacity Fund, we have launched an additional round of funding to continue to support local authorities with testing and developing innovative solutions and/or address resourcing challenges in engaging with Development Consent Order applications. Further details can be found on GOV.UK and will be publicised through the Local Authority Network over summer 2023.

This will support local authorities engaging in Development Consent Order applications on energy, waste, wastewater and waste and a specific proportion of funding, using Department for Transport funds, will be earmarked specifically for local authorities engaging on transport-focussed projects. The Department for Energy Security and Net Zero will develop further proposals to provide support and opportunities for innovations in engagement. The local authority network to support knowledge transfer and development across authorities will be continued together with, subject to funding, the Centre of Excellence.

## 8.2.2 Supporting longer-term capacity and positive engagement between local authorities and applicants through the use of Planning Performance Agreements

Evidence from local authorities that have engaged in Innovation and Capacity projects has highlighted that engagement with the development consent process can be time consuming and resource intensive, involving tight deadlines, the need for significant coordination within and between authorities, and bespoke approaches to supporting political and local community engagement.

Authorities have limited capacity to appropriately resource the work needed for them to engage effectively and support the development of proposals that understand and respond to local needs and issues. Our Nationally Significant Infrastructure Project Reform Action Plan announced that we would like to get to a position where there is a clear expectation of how much funding local authorities can expect from the applicant for their work in supporting the Planning Act 2008 consenting process, and of the service that local authorities are expected to provide in relation to each relevant project.

To achieve this, we will use guidance to set out principles for the use of 'planning performance agreements' (PPAs) between applicants and local authorities. Fair and proportionate Planning Performance Agreements will help all parties to effectively and efficiently progress through the process. Guidance will set expectations for applicants to engage early with local authorities to seek to agree Planning Performance Agreements that enable them to fund proactive and positive early engagement with Development Consent Order applications to minimise areas of disagreement at Examination, and fund participation in Examination where areas of difference remain.

The proposed principles would include an expectation of full cost recovery for authorities covering all stages of the development consent process, in return for a commitment to agreed levels of service and without-prejudice engagement that aims to minimise areas for disagreement at examination. This may include funding for local authorities to procure technical advice to test assessments provided by the applicant.

**Question 36**: Do you support the proposal to set out principles for Planning Performance Agreements in guidance?

**Question 37**: Do you have any further views on what the proposed principles should include?

## 8.2.3 Improving local community engagement through more prescriptive guidance and an early ‘adequacy of consultation’ milestone

Early and continued engagement is critical to ensure local communities are engaged meaningfully, with their views helping to shape development proposals. While some applicants exemplify best practice in engaging communities, performance is inconsistent. Applicants already have a duty to consult the local community. To support them in doing so they are required through sections 47 and 48 of the Planning Act 2008 to consult local authorities about how they plan to consult local people about the proposal and then, taking account of local authority views, prepare a statement to set out what they propose. Applicants are then required to carry out consultation in accordance with this statement.

To enable meaningful and more collaborative engagement between applicants and communities that achieves better outcomes, we propose to revise pre-application guidance to provide greater clarity on community engagement expectations and proportionality throughout the consenting process. To better test the effectiveness of engagement earlier in a project, and support applicants to remedy issues that could otherwise affect project acceptance or risk delay through the examination process, we propose to introduce an early ‘adequacy of consultation’ milestone (set out in section 2.2.4).

We will revise pre-application guidance so that the applicant, relevant local authorities and the Planning Inspectorate collectively identify any issues related to the adequacy of consultation early in the consenting process, and so that application documents are clear how they have had regard to this. Appropriate support for this will be embedded within the pre-application services being developed by the Planning Inspectorate, proportionate to the level of service, and should be a key part of local authority engagement supported by a Planning Performance Agreement. Early discussion about Planning Performance Agreements should consider opportunities to support applicants to understand the local context and identify and work collaboratively with community groups, especially those that may be harder to reach.

Section 49 of the Planning Act 2008 requires applicants to have regard to responses to the consultation undertaken in accordance with their statements in finalising their application before submission. Building on section 49 of the Planning Act 2008 we propose to revise pre-application guidance to make it clear that responses from communities should be used by applicants to inform its programme of consultation activities, preparation of the application and assessment of potential examination issues. We also propose to make it clear that applicants should demonstrate in their application the principal issues

raised by local communities, how they have been considered and clearly establish examination issues that remain. This will help to incentivise applicants and communities to seek to address issues ahead of submission and reduce the examination burden for all parties.

Local communities may also need support to help them to input to the consenting process. We also want to build on the best practice taken by some applicants by introducing an expectation in pre-application guidance for applicants to consider how an independent community liaison chair / forum could support community and non-statutory consultees with inputs to the application, and establish a mechanism for enabling this to happen. For small schemes alternative arrangements may be appropriate and should be considered with the local authority. Building on section 49 of the Planning Act 2008 we propose to make it clear that input from chairs or forums should be taken into account in line with the expectations above, and that applicants should incorporate the position of the independent chair or forum on potential examination issues into their application.

**Question 38**: To what extent do you agree that these proposals will result in more effective engagement between applicants and local communities for all applications?

Please provide your reasons

## 8.2.4 Delivering benefits to local communities

Nationally Significant Infrastructure Projects may fund or deliver wider development such as infrastructure improvements as part of the planning process where these are directly related to and required in relation to the development itself. The way in which these are secured through the planning process is governed by clear legal framework in relation to planning decisions. These can have a positive impact for local people but are not intended specifically as a community benefits.

However, there is also a longstanding principle of securing community benefits from infrastructure projects, outside of the planning system, for local communities in relation to the very largest projects. The government announced a package of benefits for new nuclear power stations in 2013 (https://www.gov.uk/government/speeches/community-benefits-for-sites-that-host-new-nuclear-power-stations-michael-fallon) that recognise the role of communities that are being

asked to host such large infrastructure projects that will contribute significantly to national energy generation and growth, and the reduction of the UK's carbon emissions. This enabled authorities to keep a share of the business rates paid in their area, and also keep a share of any increase in business rates.

In some other cases, developers of some infrastructure projects also seek arrangements with other project stakeholders (such as local communities and local authorities), to provide financial and non-financial benefits to communities, alongside a project. For example, it is common for developers and operators of electricity transmission networks to incorporate financial packages into their proposals that make payments directly, or in kind, to local communities. Such benefits will not be an important or relevant matter in planning decisions, and not secured through those decisions. However, the National Infrastructure Commission has recognised that community benefits have tended to be allocated on a voluntary basis by industry and developers and that the level of funding and how it has been allocated has varied.

The government has already consulted on a recommended approach to community benefits for electricity transmission network infrastructure that proposes to create voluntary guidance for industry and communities when developing individual community benefit packages, including how to deliver direct benefits payments to eligible individuals and wider community benefits. The government will announce the outcome of this consultation in due course.

The National Infrastructure Commission recommended that the government should develop a framework of direct benefits for local communities and individuals where they are hosting types of nationally significant infrastructure which deliver few local benefits. The government intends that any further measures will be separate to the planning process and will not constitute an 'important and relevant matter' in relation to Development Consent Order decision making. We are considering the Commission's recommendations, including in relation to community benefits, and will respond in due course.

## 8.3 Revising and updating guidance

We will publish new guidance by spring 2024 on the principles for the use of 'planning performance agreements' with local authorities.

We will also publish new guidance by spring 2024 to provide greater clarity on community engagement expectations throughout the consenting process. This will:

- make clear that the views of local communities, and their representative, including any chairs or forums, should be taken into account by the applicant and inform applicants assessment of potential examination issues
- set an expectation that applicants demonstrate in their application the principal issues raised by local communities, how they have engaged with communities to identify these issues, how they have been considered and responded to issues in the design of the scheme and clearly establish examination issues that remain. This will help to incentivise applicants and communities to seek to address issues ahead of submission and reduce the examination burden for all parties
- ensure applicants consider and enable the use of an independent community liaison chair / forum to support local communities with inputs to the application

# 9. Building the skills needed to support infrastructure delivery

## 9.1 Current situation

Our Nationally Significant Infrastructure Project Reform Action Plan highlighted the challenges of ensuring capacity and capability in the consenting system. Workforce planning and recruitment activity underway in the Planning Inspectorate and government expert bodies, supported by cost recovery highlighted in sections 6 and 7, is already increasing resourcing to support infrastructure consenting. However, many local planning authorities, as well as the wider planning sector, are facing capacity and capability challenges, and, more broadly, research suggests that as we progress towards a net zero economy, around 20% of our workforce will need up-skilling or re-skilling.

The government's Green Jobs Delivery Group will support the delivery of up to 480,000 skilled green jobs by 2030 to support delivery of the Energy Security Strategy and Net Zero Strategy, and work is already underway to develop an action plan to address sectoral challenges in securing nature skills.

We are providing £1 million of funding to Public Practice, a social enterprise in the built environment sector, to support their work in helping local authorities to recruit and develop skilled planners, increase awareness about careers in local

government and built environment professionals. And our funding for the expanded Royal Town Planning Institute's (RTPI) Future Planners Bursary Scheme will see more than 50 young professionals offered a bursary to study an RTPI fully accredited planning masters, attracting the next generation of students aspiring to train and work in the planning sector.

## 9.2 What is being proposed?

To further support skills development in the planning sector we are developing a Planning Skills Delivery Fund, which is also part of government's wider capacity and capability programme for planning. This will help planning authorities deal with the backlog of planning applications as well as support them with upskilling ahead of the forthcoming changes to the planning system. To further skills development in local authorities to engage in Development Consent Order applications, alongside further Innovation and Capacity funding for local authorities, we are continuing to work with the Planning Advisory Service, and local authority Nationally Significant Infrastructure Project network, to support local authorities to deal with an increase in the number and complexity of Development Consent Order applications as part of the reforms set out in the Nationally Significant Infrastructure Project Reform Action Plan by:

- providing support to authorities that are new to the Planning Act 2008 consenting process
- supporting authorities to improve understanding of how to effectively engage with Development Consent Order applications by sharing learning from innovation and capacity fund projects
- developing materials to support local authorities to prepare 'planning performance agreements' (see section 8)

**Question 39**: Do you face any challenges in recruiting the following professions? Please complete the table below and give reasons.

| Standard Occupation Classification (SOC) 2020 | Profession | Yes/No | Reasons |
|---|---|---|---|
| SOC2452 | Town Planning Officers | | |
| SOC2455 | Transport Planners | | |

| Standard Occupation Classification (SOC) 2020 | Profession | Yes/No | Reasons |
|---|---|---|---|
| SOC3581 | Planning Inspectors | | |
| SOC3120 | Administrators | | |
| SOC4112 | Local government administrative occupations | | |
| SOC2451 | Architects | | |
| SOC2453 | Quantity Surveyors | | |
| SOC2455 | Construction project managers and related professionals | | |
| SOC2481 | Planning engineers (including windfarm) | | |
| SOC2151 | Conservation professionals | | |
| SOC2152 | Environmental professionals | | |
| SOC2483 | Environmental health professionals | | |
| SOC2121 | Water engineers | | |
| SOC3520 | Legal associate professionals | | |
| SOC3544 | Data analysts | | |

**Question 40**: Are there any other specific sectors (as identified above) that currently face challenges in recruiting? If so, please stat which ones and give reasons why

**Question 41**: Do you have any ideas for or examples of successful programmes to develop new skills in a specific sector that the government should consider in developing further interventions?

# 10. Updates to the national infrastructure planning guidance

As detailed throughout this consultation document, we will be making updates to existing guidance and introducing new guidance to support the reforms by spring 2024. This will include;

- Strengthening existing pre-application guidance to emphasise the importance of identifying and resolving key issues early in the pre-application process (Section 2.3)
- Revising existing guidance on the pre-application and examination stages of the process to complement our proposed changes to secondary legislation and set out further detail about what information is needed at each stage (Section 3.3.)
- Publishing new guidance to support the fast track consenting route, including how applications can demonstrate compliance with the fast track quality standard (section 4.3)
- Updating existing guidance on changes to Development Consent Orders to ensure timely decision making (Section 5.3)
- Publishing new guidance on the fees for pre-application advice and post consent changes to Development Consent Orders (Section 6.3)
- Publishing new guidance on the cost recovery system for statutory consultees providing clarity to applicants and statutory consultees of their roles in acquiring cost-recoverable services (Section 7.3)
- Publishing new guidance on the principles for the use of ‘planning performance agreements’ with local authorities and providing greater clarity on community engagement expectations throughout the consenting process (section 8.3)

The national infrastructure guidance currently comprises:

- Planning Act 2008: application form (https://www.gov.uk/government/publications/planning-act-2008-application-form) (3 June 2013)
- Planning Act 2008: associated development applications for major

infrastructure projects (https://www.gov.uk/government/publications/planning-act-2008-associated-development-applications-for-major-infrastructure-projects) (26 April 2013)

- Planning Act 2008: awards of costs - examinations of applications for development consent orders (https://www.gov.uk/government/publications/awards-of-costs-examinations-of-applications-for-development-consent-orders) (12 July 2013)
- Planning Act 2008: changes to Development Consent Order (https://www.gov.uk/government/publications/changes-to-development-consent-orders) (16 December 2015)
- Planning Act 2008: examination of applications for development consent (https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent) (26 March 2015)
- Planning Act 2008: guidance on the pre-application process for major infrastructure projects (https://www.gov.uk/government/publications/guidance-on-the-pre-application-process-for-major-infrastructure-projects) (26 March 2015)
- Planning Act 2008: Infrastructure Planning (Fees) Regulations 2010 (https://www.gov.uk/government/publications/planning-act-2008-infrastructure-planning-fees-regulations-2010) (9 May 2019)
- Planning Act 2008: nationally significant infrastructure projects and housing (https://www.gov.uk/government/publications/planning-act-2008-nationally-significant-infrastructure-projects-and-housing) (21 March 2017)
- Planning Act 2008: procedures for the compulsory acquisition of land (https://www.gov.uk/government/publications/planning-act-2008-procedures-for-the-compulsory-acquisition-of-land) (3 September 2013)
- Guidance on procedural requirements for major infrastructure projects (https://www.gov.uk/guidance/guidance-on-procedural-requirements-for-major-infrastructure-projects) (31 December 2020)
- Planning Act 2008: Guidance on the process for carrying out a review of existing National Policy Statement (https://www.gov.uk/guidance/planning-act-2008-guidance-on-the-process-for-carrying-out-a-review-of-existing-national-policy-statements) (20 May 2021)

The above guidance documents are currently provided in a combination of PDF documents and HTML format (webpage). In order to simplify and streamline the existing guidance, we intend to move towards a fully HTML based format for all national infrastructure guidance which will provide greater searchability, consistency and accessibility across the full guidance suite similar to the National Planning Practice Guidance (https://www.gov.uk/government/collections/planning-practice-guidance).

**Question 42**: To what extent do you agree that updated guidance on the matters outlined in this consultation will support the Nationally Significant Infrastructure Project reforms?

Please provide your reasons

**Question 43**: Do you support a move towards a format for guidance that has a similar format to the national planning practice guidance?

Please provide your reasons

**Question 44**: Are there any other guidance updates you think are needed to support the Nationally Significant Infrastructure Project reforms?

# 11. Next steps

Earlier this year, the government confirmed its intention to reform the Planning Act 2008 consenting system and set out the timescales for implementing the reforms in the Nationally Significant Infrastructure Project Reform Action Plan which includes:

- **July 2023** – bringing forward this consultation which outlines the proposed regulatory and guidance changes needed to deliver the Nationally Significant Infrastructure Project reforms. The Planning Inspectorate has also identified a number of eligible projects to trial the development of components associated with the intended enhanced pre-application service.
- **From September 2023** – we will pilot the new fast track consenting timeframe, testing key aspects of the reforms on several projects from different sectors.
- **By spring 2024** – we will publish a government response to this consultation and aim to have brought forward the key regulatory and guidance changes needed to deliver the action plan, including to build more capacity and capability into the system and secured its sustainability by enabling the Planning Inspectorate and statutory consultees to recover proportionate costs from applicants.
- **From 2025** − we will see further improvements in performance, supported by: a more digital and agile Planning Inspectorate; the introduction of Environmental Outcome Reports; and updated National Policy Statements which are streamlined and regularly reviewed.

Following consultation, the government will consider responses before deciding how to take forward the proposals. Subject to consultation responses, the government will bring forward the secondary legislation needed to implement the required changes to deliver the reform programme. This will specifically target the changes to facilitate fast-track examinations and other operational changes.

In addition to the revisions to secondary legislation, the government intends to bring forward updated guidance to support the measures for fast-track examinations, strengthen pre-application advice with the Planning Inspectorate and statutory consultees and how applicants can commence early engagement with local authorities and communities.

# 12. Public Sector Equality Duty and Impact Assessment

We are required to assess these proposals by reference to the Public Sector Equality Duty contained in the Equality Act 2010. A Public Sector Equality Duty Assessment and an impact assessment has been prepared reflecting the detail of the policy and any changes to be made prior to any secondary legislation being laid and will be kept under review until the legislation comes into effect.

We would welcome your comments as part of this consultation on whether any of the proposed change could give rise to any impacts on people who share a protected characteristic (i.e., Age; Disability; Gender Reassignment; Pregnancy and Maternity; Race; Religion or Belief; Sex; and Sexual Orientation).

**Question 45**: Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?

## List of abbreviations

“APFP Regulations” – The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (as amended)

"PA 2008" – Planning Act 2008 (as amended)

BNG – Biodiversity Net Gain

DCO – Development Consent Order

Defra – Department for Environment, Food and Rural Affairs

DESNZ – Department for Energy Security and Net Zero

DfT – Department for Transport

DLUHC – Department for Levelling Up, Housing and Communities

EIA – Environmental Impact Assessment

ExA – Examining Authority

IP – Interested Parties

MNG – Marine Net Gain

NMC – Non-material Change

NSIP – Nationally Significant Infrastructure Project

NSP – National Policy Statement

PADs – Principal Areas of Disagreement

PINS – Planning Inspectorate

PPA – Planning Performance Agreement

SLA – Service Level Agreement

# About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation principles (https://www.gov.uk/government/publications/consultation-principles-guidance) issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 and UK data protection legislation. In certain circumstances this may therefore include personal data when required by law.

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the department is bound by the information access regimes and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Levelling Up, Housing and Communities will at all times process your personal data in accordance with UK data protection legislation and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included below.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the consultation principles? If not or you have any other observations about how we can improve the process please contact us via the complaints procedure (https://www.gov.uk/government/organisations/department-for-levelling-up-housing-and-communities/about/complaints-procedure).

# Personal data

The following is to explain your rights and give you the information you are entitled to under UK data protection legislation.

Note that this section only refers to personal data (your name, contact details and any other information that relates to you or another identified or identifiable individual personally) not the content otherwise of your response to the consultation.

## 1. The identity of the data controller and contact details of our Data Protection Officer

The Department for Levelling Up, Housing and Communities (DLUHC) is the data controller. The Data Protection Officer can be contacted at dataprotection@levellingup.gov.uk or by writing to the following address:

> Data Protection Officer
> Department for Levelling Up, Housing and Communities
> Fry Building
> 2 Marsham Street
> London
> SW1P 4DF

## 2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

We will collect your IP address if you complete a consultation online. We may use this to ensure that each person only completes a survey once. We will not use this data for any other purpose.

### Sensitive types of personal data

Please do not share special category (https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/special-category-data/#scd1) personal data or criminal offence data if we have not asked for this unless absolutely necessary for the purposes of your consultation response. By 'special category personal data', we mean information about a living individual's:

- race
- ethnic origin
- political opinions
- religious or philosophical beliefs
- trade union membership
- genetics
- biometrics
- health (including disability-related information)
- sex life; or
- sexual orientation.

By ‘criminal offence data’, we mean information relating to a living individual’s criminal convictions or offences or related security measures.

## 3. Our legal basis for processing your personal data

The collection of your personal data is lawful under article 6(1)(e) of the UK General Data Protection Regulation as it is necessary for the performance by DLUHC of a task in the public interest/in the exercise of official authority vested in the data controller. Section 8(d) of the Data Protection Act 2018 states that this will include processing of personal data that is necessary for the exercise of a function of the Crown, a Minister of the Crown or a government department i.e. in this case a consultation.

Where necessary for the purposes of this consultation, our lawful basis for the processing of any special category personal data or ‘criminal offence’ data (terms explained under ‘Sensitive Types of Data’) which you submit in response to this consultation is as follows. The relevant lawful basis for the processing of special category personal data is Article 9(2)(g) UK GDPR (‘substantial public interest’), and Schedule 1 paragraph 6 of the Data Protection Act 2018 (‘statutory etc and government purposes’). The relevant lawful basis in relation to personal data relating to criminal convictions and offences data is likewise provided by Schedule 1 paragraph 6 of the Data Protection Act 2018.

## 4. With whom we will be sharing your personal data

DLUHC may appoint a 'data processor', acting on behalf of the Department and under our instruction, to help analyse the responses to this consultation. Where we do we will ensure that the processing of your personal data remains in strict accordance with the requirements of the data protection legislation. Specific representations may also be shared with other central government departments and their agencies, such as the Department of the Environment, Food and Rural Affairs, where it is necessary to draw on their expertise and it is not possible to anonymise the data.

## 5. For how long we will keep your personal data, or criteria used to determine the retention period

Your personal data will be held for 2 years from the closure of the consultation, unless we identify that its continued retention is unnecessary before that point.

## 6. Your rights, e.g. access, rectification, restriction, objection

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

a.to see what data we have about you
b. to ask us to stop using your data, but keep it on record
c. to ask to have your data corrected if it is incorrect or incomplete
d. to object to our use of your personal data in certain circumstances
e. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at https://ico.org.uk/ (https://ico.org.uk/), or telephone 0303 123 1113.

Please contact us at the following address if you wish to exercise the rights listed above, except the right to lodge a complaint with the ICO: dataprotection@levellingup.gov.uk or

> Knowledge and Information Access Team
> Department for Levelling Up, Housing and Communities
> Fry Building
> 2 Marsham Street

London
SW1P 4DF

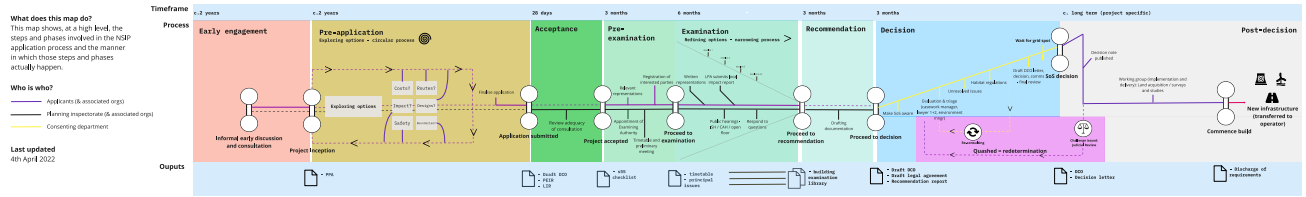
## 7. Your personal data will not be sent overseas

## 8. Your personal data will not be used for any automated decision making

## 9. Your personal data will be stored in a secure government IT system

We use a third-party system, Citizen Space, to collect consultation responses. In the first instance your personal data will be stored on their secure UK-based server. Your personal data will be transferred to our secure government IT system as soon as possible, and it will be stored there for 2 years before it is deleted.

# Annex A: Process map of the Planning Act 2008 consenting process




The figures shows the different stages of the NSIP consenting process. The table below outlines the key information

| Consenting | Length of | Key outcome | Relevant key |
|---|---|---|---|

| Stage | Stage | | documentation |
|---|---|---|---|
| Early engagement | Circa two years | Project inception | Planning Performance Agreement |
| Pre-application | Circa two years | Application submitted | Draft Development Consent Order, Preliminary environmental information report, and Local impact report |
| Acceptance | 28 days | Project accepted | Section 55 checklist |
| Pre-examination | 3 months | Proceed to examination | Timetable and principal issues |
| Examination | 6 months | Proceed to recommendation | Building the examination library |
| Recommendation | 3 months | Proceed to decision | Draft development consent order, draft legal agreement, and recommendation report |
| Decision | 3 months | Secretary of State decision | Development consent order and decision letter |
| Post-decision | Longer term (project specific) | Commence build | Discharge of requirements |

1. Advice given by the Planning Inspectorate to applicants or others on applying for or making representations on an application for Development Consent Order. Advice issued under Planning Act 2008 Part 5 Chapter 3 section 51: ‘Advice for potential applicants and others’.
2. This diagram shows the main stages of the NSIP process. A more detailed process map is set out in Annex A showing the individual steps, documents, and timelines for the NSIP consenting process under the Planning Act 2008.
3. Section 50 of the Planning Act 2008.

4. Evidence cited by Britain Remade (https://www.britainremade.co.uk/powerbook), for example, highlights that major renewable energy projects such as Hornsea 3 have held as many as 3 separate consultations to avoid legal challenges, and Lower Thames Crossing has held 5 public consultations all more than 5 weeks long.
5. Guidance on the pre-application process for major infrastructure projects (https://www.gov.uk/government/publications/guidance-on-the-pre-application-process-for-major-infrastructure-projects) was last updated in March 2015.
6. In responding to the British Energy Security Strategy, Britain Remade highlighted (https://www.britainremade.co.uk/britain_remade_responds_to_government_s_energy_security_plan) that one of the main reasons for over-consulting when it comes to clean energy planning applications is out of date National Policy Statements.
7. For example, Rule 17 of the Examination Procedure Rules 2010 offers the Examining Authority the freedom to set deadlines as it chooses for the receipt of any other information and a deadline for the receipt of comments on it from 'interested parties', if it chooses to do so.
8. Amended by the Infrastructure Planning (Publication and Notification of Applications etc.) (Amendment) Regulations 2020 (https://www.legislation.gov.uk/uksi/2020/1534/contents/made).
9. Section 79(2) of the Levelling Up and Regeneration Bill [as amended in the committee of the House of Lords] "Planning Data" in relation to a relevant planning authority, means any information which is provided to, or processed by, the authority.
10. In particular these are (1) materials provided to prescribed consultees in order to meet the duty to consult (section 42), (2) the statement setting out how the applicant proposes to consult the local community section 47 (1) and materials provided to the local community as part of subsequent consultation carried out under section 47 (7), and (3) in the publication of the proposed application under section 48.
11. At or before the inception meeting with the Planning Inspectorate, applicants should share a draft programme with the Planning Inspectorate.
12. Letter issued under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (https://www.legislation.gov.uk/uksi/2010/103/article/6/made).
13. The main infrastructure consenting departments are Department for Transport (DfT), Department for Energy Security and Net Zero (DESNZ) and the Department for Environment, Food and Rural Affairs (Defra).
14. The proportion of cost for development and consenting services (which includes environmental impact assessments) for a typical offshore wind farm

makes up 1% of the total lifecycle cost (assuming a 25 year life cycle, see Wind farm costs (https://guidetoanoffshorewindfarm.com/wind-farm-costs).

15. Analysis accompanying revised fees regulations in 2017 showed that PINS fees account for 0.1%-0.3% of total project costs see Explanatory Memorandum to the Infrastructure Planning Fees (Amendment) Regulations 2017 (https://www.legislation.gov.uk/uksi/2017/314/pdfs/uksiem_20170314_en.pdf) (PDF, 49KB).
16. As outlined in the planning inspectorates annual financial accounts. NSIP income and cost varies significantly from year to year but has between financial years 17/18-21/22 averaged 67% with a variability of 40%. It is therefore reasonable to assess that the costs to developers for PINS NSIP consenting services will increase by less than double of today's total charges.

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