



HM Treasury

National Infrastructure Commission:

response to the consultation



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response to the consultation

Presented to Parliament by
the Chief Secretary to the Treasury
by Command of Her Majesty

May 2016

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Contents

		Page
Chapter 1	Introduction	3
Chapter 2	Government response	5
Annex A	Consultation questions and responses	13

1 Introduction

Purpose and objectives

1.1 The provision of new infrastructure in the UK has historically relied heavily on an often fragile and incomplete political consensus. This has led to changes of direction and a lack of certainty. Until now there has been no overarching and independent process for assessing the long-term needs of the nation.

1.2 The National Infrastructure Commission will provide expert, independent advice on pressing infrastructure issues, and produce an in-depth assessment of the UK's major infrastructure needs on a 30-year time horizon. Its objectives will be to:

- foster long-term and sustainable economic growth across all regions of the UK
- improve the UK's international competitiveness
- improve the quality of life for those living in the UK

Consultation

1.3 The government held a 10 week consultation on the governance, structure and operation of the commission between 7 January and 17 March 2016. Alongside the public call for evidence the government held a series of discussions with infrastructure experts, including investors, academics, lawyers, planners, asset owners, network operators, representatives from the supply chain and economic regulators.

1.4 The government has now considered the evidence it received. The vast majority of responses were highly supportive of the creation of the commission, particularly the aim of improving long-term infrastructure planning. This document summarises the evidence obtained and sets out the government's response.

1.5 Annex A contains a detailed breakdown of responses. Respondents did not typically answer all the questions and the number of responses varied for each question. The percentage level of agreement and disagreement is expressed throughout this document as a percentage of those respondents that answered the question.

Next steps

1.6 The government intends to introduce legislation to place the commission on a permanent, independent footing as soon as parliamentary time allows.

2 Government response

Status and governance

Background

2.1 The commission's legal form will be central to ensuring its independence and credibility, and will also have implications for its powers, funding and staff. The commission should be able to work independently of government departments, within its remit and subject to guidance issued by the government.

2.2 The consultation proposed that the government should seek to create a non-departmental public body (NDPB) through primary legislation. Its chairs and commissioners would be appointed by the Chancellor, and the CEO by HM Treasury with the approval of the commission chair. The consultation also confirmed that the commission would be subject to the Freedom of Information Act 2000 and Environmental Information Regulations 2004.

Analysis and summary

2.3 An overwhelming number of responses agreed that the commission should be established as a NDPB via primary legislation (Question 1). Respondents stressed that the commission's status must enable it to act independently and without political interference, but also in accordance with an agreed remit and set of objectives. The Committee on Climate Change and the Office for Budget Responsibility were frequently identified as potential governance models.

Government response

2.4 The consultation has provided strong support for the government's proposed approach to establish the commission as an NDPB independent from government. Its classification will ultimately be a matter for the Office of National Statistics and the Cabinet Office, but the government will work towards ensuring the relevant criteria are met so that the commission will achieve NDPB status. The government intends that the chair, commissioners and CEO will be appointed by the Chancellor. The CEO will be a person suitable to be appointed as an accounting officer, and the appointment will be subject to the approval of the commission chair. The Chancellor will consult with the commission chair before appointing commissioners.

Outputs

Background

2.5 The consultation proposed that the commission would deliver a long term needs assessment once in every parliament and complete specific studies on the most pressing and significant infrastructure challenges. The government would be responsible for laying National Infrastructure Assessments (NIAs) before parliament, setting out a response and taking recommendations forward.

2.6 The government also proposed that the terms of reference for specific studies would be set by the government, and the commission's long-term needs assessment would be a significant consideration in identifying them. It suggested that the government would have discretion over whether to lay recommendations following specific studies before Parliament. The consultation set out that the precise timing of reports would not be set in legislation, but agreed on a rolling basis by the commission and the Chancellor.

2.7 The consultation anticipated that recommendations accepted by the government would become Endorsed Recommendations, and that Endorsed Recommendations and the government's response to NIAs and specific studies would become government policy. It indicated that the commission would hold the government to account for the delivery of Endorsed Recommendations, and that legislation would place an obligation on regulators to 'have regard' to them.

Analysis and summary

2.8 There was strong agreement to the proposals that:

- NIAs should be laid before Parliament and the government must respond within a specified timeframe (Question 2, 94%)
- the government should legislate to oblige the commission to produce a NIA once in every Parliament (Question 5, 81%)
- the precise timing of reports and interim publications should be a matter for the commission in consultation with relevant departments (Question 6, 89%)

2.9 There was a range of views as to what would be an appropriate timeframe for the government to respond to NIAs. Three and six months were the most frequently suggested, but responses highlighted a trade-off between responding quickly and fully considering recommendations to provide certainty.

2.10 About half of responses (46%) agreed with the proposal that the government should have discretion over whether to lay recommendations from specific studies before Parliament (Question 3). Many responses suggested that not laying specific studies before Parliament might lead to them being ignored, especially if there was no set deadline for responding.

2.11 There was support for the suggestion that economic regulators should 'have regard' to Endorsed Recommendations (Question 4). Some responses suggested that 'having regard' was too stringent a duty on regulators, but others argued that the provision was too weak, and that Endorsed Recommendations should be given greater prominence in terms of regulators' statutory obligations. Furthermore, respondents stressed that the government should not undermine regulators' independence.

Government response

2.12 As proposed in the consultation, the government will set the specific studies undertaken by the commission, taking into account the commission's own proposals and suggestions from a wide range of stakeholders. In light of concerns raised by respondents about the status of specific studies, the government will commit to laying them before Parliament.

2.13 The government will endeavour to respond to all of the commission's recommendations made in both the NIAs and in specific studies within six months, and will set a statutory deadline of 12 months for responding to all recommendations.

2.14 As set out in the consultation, commission recommendations that the government intends to take forward will be accorded a special legal status, becoming 'Endorsed Recommendations' and government policy. The government intends to give the commission a duty to report annually on the government's progress in delivering Endorsed Recommendations. This will draw on data collected by the Infrastructure and Projects Authority.

2.15 The government notes the range of views expressed in terms of whether regulators should 'have regard' to Endorsed Recommendations. In the spirit of creating a transparent system for

taking forward the commission's recommendations, the government proposes to create a requirement for regulators to 'have regard' to Endorsed Recommendations and to explain how they will 'have regard' to the recommendations. The government will work closely with individual economic regulators to ensure consistency with existing legal frameworks.

The commission's remit

Background

2.16 In the consultation document, the government suggested that the commission should work in the context of a broad remit set by the Chancellor, which would have three complementary objectives:

- set a fiscal envelope to enable the commission to make realistic and affordable recommendations
- ensure that the commission acts transparently regarding the impact its recommendations would have on consumer bills. The consultation invited views on whether to also introduce an 'economic envelope' which would impose a constraint on maximum bill increases stemming from the commission's recommendations
- highlight pressing objectives, such as supporting regional economic growth

2.17 The consultation document reflected the government's view that setting these remits openly and transparently via a letter from the Chancellor would enable the commission and the government to work together effectively while respecting the commission's independence.

2.18 The government also set out that the commission should have a mandate to examine all areas of economic infrastructure, including (but not limited to) energy, transport, water and sewage, waste, flood defences and digital communications. It suggested the commission should also consider the potential impact of infrastructure decisions on housing supply.

2.19 The consultation document made clear that the commission will not re-open decision-making processes where programmes and work have been decided, or will be decided in the immediate future. It will not re-open closed price control settlements in regulated utilities, nor revisit government decisions on airport capacity in the South East.

Analysis and summary

2.20 Respondents agreed that some sort of fiscal remit was appropriate (Question 7), primarily as a means of ensuring value for money and affordability within commission recommendations. There were differing views on whether the government should provide a single envelope or a series of scenarios, though the majority favoured the former.

2.21 An overwhelming majority of respondents agreed that a transparency requirement should be placed on the commission in relation to the potential impact its recommendations would have on consumer bills (Question 8). Responses to Question 9, which invited views on whether any additional constraints would be necessary to protect consumers, highlighted the practical difficulties of setting an 'economic envelope' due to differences across sectors and regulators.

2.22 Consultation responses reflected a range of views on whether the remit should be set via a letter from the Chancellor (Question 10). While 50% of respondents agreed, others suggested that the remit should be set by Parliament or by another Minister. Some respondents considered that setting a remit was a helpful way for the government to sanction the commission's activities, while others argued that a poorly designed remit could compromise the commission's independence.

2.23 Beyond this, there were calls for greater clarity on the precise scope of the commission's remit, and suggestions for what else might fall under it. Some respondents suggested that it would be too restrictive and proposed additional objectives. A common suggestion was that the commission should not just consider the potential impact of infrastructure decisions on housing supply, but should also make direct recommendations on improving housing supply.

Government response

2.24 The government intends to enshrine in legislation the main aspects of the commission's duties, to provide certainty and continuity in terms of the commission's core purpose.

2.25 The legislation will also impose a duty on the government to issue a remit letter to the commission once in every Parliament. The remit letter will be a public document.

2.26 The letter will set a fiscal remit for the commission. This fiscal remit will apply to all commission recommendations which have public spending implications, whether set out in the NIA or in specific studies. It will ensure that the commission considers the affordability of different options and delivers recommendations that are realistic, with the NIA setting the overall context for the commission's more detailed studies, which can then identify and consider any significant opportunity costs associated with their recommendations.

2.27 The Chancellor, on behalf of government, will send the remit letter to the chair of the commission at the beginning of each Parliament. This arrangement will enable the fiscal remit to be updated to reflect broader economic and fiscal developments, without the need to change primary legislation. In exceptional circumstances, the Chancellor will be able to update the fiscal remit mid-way through a parliament. The legislation will give the Chancellor flexibility over the design of the fiscal remit. For instance, the Chancellor will be able to choose whether to give the commission a single fiscal envelope or a range of scenarios.

2.28 The remit letter will set a deadline for the commission to produce the NIA. The letter will also enable the government to highlight pressing objectives, such as supporting regional economic growth. The commission will need to take into account how wider obligations apply to infrastructure, and make recommendations consistent with legally-binding targets, such as environmental targets.

2.29 The government will create a general duty in legislation for the commission to be transparent about the impact of its policy recommendations. The government may then set out details of these transparency requirements in the remit letter which the Chancellor will send to the chair of the commission at the beginning of each Parliament. It is expected that the commission will issue calls for evidence when assessing infrastructure needs.

2.30 The government has concluded that imposing a specific constraint on the commission regarding the extent to which their recommendations could impact on bills would be virtually unworkable in practice. Instead, a remit to be transparent about the impact its recommendations would have on bills should provide the best balance between simplicity, workability and consumer protection.

2.31 The government does not envisage extending the scope of the commission's remit beyond those areas of economic infrastructure outlined in the consultation document, or setting any additional objectives. The government considers that the commission's core remit to examine economic infrastructure is already far-reaching, and that adding further obligations or objectives in this area would lessen its ability to fulfil its core function.

2.32 As set out in the consultation document, the government has removed top-down housing targets, and will continue to ensure that homes are delivered through Local Plans, in

consultation with local people. However, infrastructure can affect the viability of housing projects both large and small. As such, the commission will consider the potential interactions between its infrastructure recommendations and housing supply. Information about the potential locations of strategically important housing allocations, such as new settlements and urban extensions when they come forward, will be an important component of the evidence base collected by the commission, which it may use to assess infrastructure needs and make recommendations that co-ordinate the timing and delivery of new infrastructure with the delivery of new housing.

How the commission will operate

Background

2.33 With regard to the devolved administrations, the consultation proposed that the commission's duties would only relate to areas of infrastructure that are the UK government's responsibility, and that this would need to evolve in line with any future changes to devolution settlements.

2.34 The consultation indicated that the commission should work closely and collaboratively with the devolved administrations and would need to consider cross-border issues where these affect infrastructure decisions over which the UK government has authority. It suggested that where the devolved administrations specifically request the commission to examine an infrastructure issue that is their sole responsibility, decisions on whether to accept, reject or implement any of the commission's proposals will remain with the responsible administration.

2.35 The consultation anticipated that the commission would work closely and collaboratively with the government, regulators and public bodies, and be sensitive to progress already achieved on projects which have long lead times. It envisaged the commission would be subject to new rights and duties, which would enable it to function effectively. The rights proposed included powers to request data and analysis from government departments, economic regulators and relevant public bodies.

Analysis and summary

2.36 About half of responses (46%) agreed that the commission should only review those areas of infrastructure that are the responsibility of the UK government (Question 11). Some responses suggested the commission should review infrastructure that is the responsibility of devolved administrations as part of their NIA, arguing that this would result in better recommendations. A very high proportion of responses agreed that the decision of whether to accept or reject the commission's recommendations should rest with the responsible government (Question 12).

2.37 Consultation responses showed strong support for creating a new power enabling the commission to request data and analysis from government departments (Question 13). A large proportion of responses also supported giving the commission the right to commission data from economic regulators and relevant public bodies (Question 14) and for obliging economic regulators and relevant public bodies to provide analysis to the commission (Question 15). There were, however, concerns raised over regulators' capacity to provide new analysis, the risk of shifting costs onto regulators, and potential incompatibility with their statutory independence.

Government response

2.38 On the basis of the consultation responses, the government remains of the view that the commission should have a remit that, in line with UK government competence, evolves with the devolution settlements. Respecting the devolved administrations' devolved responsibilities for infrastructure, the commission will clearly have a role in relation to the UK government's

infrastructure responsibilities in Scotland, Wales and Northern Ireland. More widely, it will make sense for the commission, UK government and the devolved administrations to be aware of circumstances where respective responsibilities interact and to develop arrangements to allow for this. The government is considering options for this. In line with the commission's remit, the government considers that there is not a strong case for devolved administrations to directly request studies from the commission on devolved infrastructure issues.

2.39 The government intends to give the commission the power to access data and commission analysis from government departments, provided that these requests are reasonable and can be agreed in advance as part of a joint work programme. The government also envisages a number of measures to ensure that requests are kept reasonable, such as Memoranda of Understanding between departments and the commission, and placing an obligation on the commission to act transparently in terms of these requests.

2.40 In terms of economic regulators, the government considers that there is a strong case for the commission to access data and existing analysis held by regulators, and expects to legislate to ensure that the commission is bound by the same confidentiality agreements as regulators when handling sensitive data. The government considers that the commission should also have a right to request new analysis from regulators and public bodies, but does not intend to create an obligation for regulators and public bodies to accede to these requests.

Planning

Background

2.41 Endorsed Recommendations are likely to be material considerations for decision makers in the Nationally Significant Infrastructure Projects (NSIP) regime and under the Town and Country Planning Act 1990 (TCPA).

2.42 To help translate the commission's outputs efficiently into the NSIP regime, the consultation document proposed that the government should update National Policy Statements (NPS) to reflect Endorsed Recommendations in order to provide greater certainty to developers and investors. As such, the consultation proposed that the government could set a timetable for government departments to review a NPS.

2.43 At the local level, the consultation document acknowledged the existing duty on local authorities and other decision makers to have regard to the need for strategic infrastructure and NSIPs, set out in the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG). NPSs are material considerations for decision making at the local level.

Analysis and summary

2.44 The consultation asked whether the government should specify a timetable to review a NPS when endorsing recommendations (Question 16). Responses were very supportive, with 82% agreeing.

2.45 The consultation also asked how any work undertaken by the commission could be built on rather than repeated by the Secretary of State when preparing a NPS (Question 17). There was broad support among developers and other respondents for this principle, although some made the point that the commission's consultation could become out of date if there was a long time lag before an NPS is prepared. It was also noted by some respondents that departments already have a statutory duty to consult as part of NPS preparations and introducing a requirement to use commission consultation could add additional complexity to NPS preparation.

Government response

2.46 NPSs are already a powerful vehicle for enacting policy decisions in the planning system. Reflecting the strong support among consultation respondents, the government will set out a timetable for reviewing a NPS in its response to the commission recommendations, on a case by case basis. In setting a timetable the government will consider the extent of the work required to accommodate an Endorsed Recommendation.

2.47 The government recognises that Endorsed Recommendations and NPSs may occasionally conflict, and wants decisions to be taken forward efficiently while avoiding the uncertainty that suspending a NPS could create. A Secretary of State is required to make decisions in accordance with a designated NPS. This would represent a barrier to the delivery of Endorsed Recommendations if they conflicted with NPS policy. To ensure that decisions on NSIP applications are not delayed while a NPS is reviewed, the government will legislate to ensure that the Secretary of State can take a decision in line with an Endorsed Recommendation where there is a conflict between the NPS and the Endorsed Recommendation. For NSIP applications where no NPS is in force, the government will ensure that, where relevant, Endorsed Recommendations are taken forward as an important and relevant matter in the decision-making process.

2.48 While respondents support the principle of not repeating consultation undertaken by the commission, the government agrees that in practical terms it may not be possible for commission consultation responses to remain valid over the timescales needed to review and then amend or replace a NPS. However, the government considers that any consultation done by the commission could still provide a useful evidence base for departments preparing NPSs or developing strategies relevant to the implementation of Endorsed Recommendations. The Secretary of State will need to exercise their discretion when reviewing a NPS about how best to use any consultation undertaken by the commission.

2.49 The consultation document recognised that NPSs do not cover all types of infrastructure defined in the NSIP regime or national infrastructure delivered through the TCPA regime. To support the efficient delivery of infrastructure projects which arise from Endorsed Recommendations, the government will amend the National Planning Policy Framework as necessary following legislation to give decision makers clarity on how Endorsed Recommendations should be taken into account, and to ensure that local authorities can work together to facilitate the delivery of Endorsed Recommendations. Ministers will be able to use their powers to intervene in local decision making where there is a risk to the delivery of an Endorsed Recommendation.

Consultation questions and responses

Consultation questions and responses

Question	1	2	3	4	5	6	7	8	10	11	12	13	14	15	16	17
Responses (% of total)	65	61	61	65	59	56	58	59	61	59	53	62	56	67	58	56
Agree (% of responses)	83	94	46	72	81	89	62	93	50	46	83	82	80	73	82	79
Disagree (% of responses)	5	1	46	11	10	5	23	4	39	30	4	8	13	20	9	12
Ambiguous / mixed (% of responses)	13	5	7	17	9	5	15	4	11	24	13	10	7	7	9	9

Questions and responses

1. Do you agree that the National Infrastructure Commission should be established as a non-departmental public body via primary legislation?

Responses (% of total)	65%
Agree (% of responses)	83%
Disagree (% of responses)	5%
Ambiguous / mixed (% of responses)	13%

2. Do you agree that the commission's National Infrastructure Assessments should be laid before Parliament and that the government must respond within a specific timeframe? What would an appropriate timeframe be?

Responses (% of total)	61%
Agree (% of responses)	94%
Disagree (% of responses)	1%
Ambiguous / mixed (% of responses)	5%

3. Do you agree that it should not be mandatory for the government to lay the recommendations from specific studies before Parliament, but that the government should have discretion to do so where necessary?

Responses (% of total)	61%
Agree (% of responses)	46%
Disagree (% of responses)	46%
Ambiguous / mixed (% of responses)	7%

4. Do you agree that economic regulators should 'have regard' to Endorsed Recommendations?

Responses (% of total)	65%
Agree (% of responses)	72%
Disagree (% of responses)	11%

Ambiguous / mixed (% of responses) 17%

5. Do you agree that government should legislate to oblige the commission to produce National Infrastructure Assessments once in every Parliament?

Responses (% of total) 59%
Agree (% of responses) 81%
Disagree (% of responses) 10%
Ambiguous / mixed (% of responses) 9%

6. Do you agree that the precise timing of reports and interim publications should be a matter for the commission in consultation with relevant departments?

Responses (% of total) 56%
Agree (% of responses) 89%
Disagree (% of responses) 5%
Ambiguous / mixed (% of responses) 5%

7. Do you agree that a GDP envelope would provide the most effective fiscal remit for the commission?

Responses (% of total) 58%
Agree (% of responses) 62%
Disagree (% of responses) 23%
Ambiguous / mixed (% of responses) 15%

8. Do you agree that a transparency requirement should be placed on the commission with regard to its economic remit?

Responses (% of total) 59%
Agree (% of responses) 93%
Disagree (% of responses) 4%
Ambiguous / mixed (% of responses) 4%

9. Do you think that any additional constraints are necessary to deliver the commission's anticipated benefits to consumers?

No quantified analysis.

10. Do you agree that the remit should be set by a letter from the Chancellor, on behalf of the government?

Responses (% of total) 61%
Agree (% of responses) 50%
Disagree (% of responses) 39%
Ambiguous / mixed (% of responses) 11%

11. Do you agree that the commission's working assumption should be to only review those areas of infrastructure that are the responsibility of the UK government?

Responses (% of total)	59%
Agree (% of responses)	46%
Disagree (% of responses)	30%
Ambiguous / mixed (% of responses)	24%

12. Do you agree that the decision of whether to accept or reject the commission's recommendations should rest with the responsible government?

Responses (% of total)	53%
Agree (% of responses)	83%
Disagree (% of responses)	4%
Ambiguous / mixed (% of responses)	13%

13. Should departments be obliged to accede to the commission's requests for analysis?

Responses (% of total)	62%
Agree (% of responses)	82%
Disagree (% of responses)	8%
Ambiguous / mixed (% of responses)	10%

14. Do you agree that the legislation used to create the commission should place obligations on the relevant regulators and public bodies to share information with the commission?

Responses (% of total)	56%
Agree (% of responses)	80%
Disagree (% of responses)	13%
Ambiguous / mixed (% of responses)	7%

15. Should legislation also place obligations on the relevant regulators and public bodies to provide analysis for the commission?

Responses (% of total)	67%
Agree (% of responses)	73%
Disagree (% of responses)	20%
Ambiguous / mixed (% of responses)	7%

16. Do you agree that the government should specify a timetable to review or replace a National Policy Statement when endorsing recommendations?

Responses (% of total)	58%
Agree (% of responses)	82%
Disagree (% of responses)	9%
Ambiguous / mixed (% of responses)	9%

17. Do you agree that, while additional consultation may be necessary, consultation undertaken by the commission should not be repeated by the Secretary of State when preparing a National Policy Statement?

Responses (% of total)	56%
Agree (% of responses)	79%
Disagree (% of responses)	12%
Ambiguous / mixed (% of responses)	9%

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