



HM Treasury

National Infrastructure Commission:

consultation



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consultation

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

January 2016

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Subject of this consultation	The design specifications of the National Infrastructure Commission.
Scope of this consultation	The governance, structure and operation of the National Infrastructure Commission.
Who should read this	This consultation is open to everyone. We would particularly welcome views from regulators, lawyers, infrastructure experts and investors.
Duration	The consultation will run from 7 January 2016 to 17 March 2016.
Enquiries	For general enquiries, please contact the Treasury Correspondence and Enquiry Unit on 020 7270 5000 or by email to public.enquiries@hmtreasury.gsi.gov.uk .
How to respond	Responses to this consultation should be sent by 17 March 2016 either by email to: NICconsultation@hmtreasury.gsi.gov.uk or by post to: National Infrastructure Commission consultation 2 Orange HM Treasury 1 Horse Guards Road London SW1A 2HQ
After the consultation	The government will publish a summary of responses. It will then decide what steps, if any, to take in relation to the draft legislation which it will lay before Parliament when Parliamentary time allows.

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1 Introduction

1.1 High-quality infrastructure boosts productivity and competitiveness, allowing businesses to grow and enabling them to reach suppliers, deepen labour and product markets, collaborate and innovate and attract inward investment.

1.2 The choices that we make about infrastructure enable us to shape the type of economy we want for the future. Investment in infrastructure helps to unlock economic potential in individual regions and ensure that growth and opportunities are distributed across the country; it also helps the government to deliver new housing and business development where it is most needed.

1.3 The provision of new infrastructure in the UK has historically relied heavily on an often fragile and incomplete political and public consensus. This has led to changes of direction and a lack of certainty. In the past, individual infrastructure proposals were discussed and assessed at length. The UK's strategic infrastructure has suffered over recent decades from a legacy of under-investment and a poor record of long-term planning. To address these weaknesses, and to move away from stop-start investment to a coherent long-term strategy, a new approach is needed.

1.4 In spite of recent improvements there is still no overarching and independent process for assessing the long-term infrastructure needs of the nation. A lack of consensus on the need for specific projects has slowed down delivery of the productivity gains that more efficient infrastructure systems can bring to the economy, meaning that the full economic and welfare gains potentially deriving from infrastructure investments are often not fully realised or understood.

1.5 This consultation therefore sets out the key design specifications of a new National Infrastructure Commission, which will provide expert, independent advice on pressing infrastructure issues. The commission will set out a clear picture of the future infrastructure we need, producing an in-depth assessment of the UK's major infrastructure needs on a 30-year time horizon. The commission will build on the work of individual actors, including government departments, sub-national and regional bodies and regulators, using a robust, common methodology to develop needs assessments that take account of strategic cross-sector considerations. The recent devolution agreements with City Regions and local areas has given local leaders the power to drive growth in their areas, and will support the delivery of infrastructure projects.

1.6 The work of the commission will also fill a significant void by helping to make planning policy more responsive and effective, supporting efficient decision-making and delivery. The independent status of the commission will promote a more consensual approach to policy making and create a co-ordinated structure for an ongoing dialogue between politicians, government, industry and the public.

1.7 This consultation sets out some practical suggestions for the governance, structure and operation of the commission, as well as its interactions with various government and public sector stakeholders.

2 Objectives and scope

2.1 The purpose of the National Infrastructure Commission is to identify the UK's strategic infrastructure needs over the next 10 to 30 years and propose solutions to the most pressing infrastructure issues, in order to:

- foster long-term and sustainable economic growth across all regions of the UK
- improve the UK's international competitiveness
- serve the well-being of UK citizens

2.2 The commission will be independent of government. Unlike individual government departments, it will be able to look at infrastructure needs in the round, and give clear advice on issues that are complex, long-term, or affect a number of different types of infrastructure. While the commission will not have executive responsibilities, its work will facilitate a better quality of discussion on future infrastructure projects, and ensure decisions are made in a timely fashion and on the basis of robust analysis and evidence.

2.3 The commission's independence will also enable it to make recommendations on potentially controversial issues, and bring stability to long-term infrastructure plans, which will increase the likelihood of its recommendations attracting a political consensus. This consensus will come from a clear, transparent analysis of what infrastructure is needed; what the key trade-offs and dependencies are; and how these needs can best be met.

The principal activities of the commission

2.4 The commission will analyse the UK's strategic infrastructure needs and priorities over a long-term horizon (generally expected to be around 10 to 30 years), and then articulate those needs in a National Infrastructure Assessment.

2.5 Assessments produced by the commission will be laid before Parliament and HM Treasury will be required to respond on behalf of the government, detailing how the government will take the recommendations forward. Where the government disagrees with a recommendation on how to meet identified needs, its response will set out the reasons for this disagreement, and outline what other measures it proposes or what its alternative assessment is.

2.6 The commission will also take forward high-profile priority studies that examine the most pressing and significant infrastructure issues. These may be identified through the commission's own assessment or by the government. These may vary in their range and scope, but will usually:

- establish a particular need in a transparent way and build toward a consensus on a solution
- assess the strategic and economic case (including a value for money assessment) for different options and assess the effects on other parts of the infrastructure system

2.7 The commission – or the government – may sometimes want work completed to a greater level of detail, for example examining regulatory, financial or other barriers to infrastructure planning and delivery. This will make it possible to implement the commission's recommendations with the minimum of delay.

2.8 The commission will not be responsible for delivering the infrastructure it recommends, and the government will continue to decide and approve what should be built. However, the

commission will hold the government to account for taking forward the plans that result from its work by monitoring implementation of the government's infrastructure programme, and publish an assessment regularly.

2.9 The commission will have a mandate to examine all sectors of economic infrastructure – including energy, transport (roads, rail, ports and airports), water and sewage, waste, flood defences, and digital communications. The commission should not disrupt well-functioning, competitive markets that are delivering high levels of private investment in infrastructure, but it may advise the government on improving the ways in which markets deliver private infrastructure investment.

2.10 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 impact of infrastructure decisions on housing supply. Alongside this, the commission will consider the impact of the provision of infrastructure on other key economic objectives, including employment and productivity. It will not make recommendations on social infrastructure, such as hospitals, schools and prisons.

2.11 The commission will not re-open decision-making processes where programmes and work have been decided, or will be decided in the immediate future, for instance the Smart Metering programme, the Roads Investment Strategy, or Control Period 5 in rail. Neither will it re-open closed price control settlements in regulated utilities such as energy and water. The commission will not revisit government decisions on airport capacity in the South East following the final report of the Airports Commission.

3 Status and governance

3.1 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 the guidelines set by the government. The commission's legal form must therefore:

- provide the right degree of separation from its sponsor department (HM Treasury)
- allow it to carry out independent analysis
- ensure the right level of accountability for its duties and performance

3.2 The proposed approach is to create a non-departmental public body (NDPB) through primary legislation. NDPBs can be established to provide independent expert advice to the government. Legislating for the creation of a NDPB would mean that the commission could be established as a body corporate separate from the Crown.

3.3 As an NDPB the commission would be accountable to HM Treasury for its performance as a body and its allocation and use of public funds. However, it would be independent of government in the pursuit of its duties, and would be accountable to Parliament for any of its outputs, i.e. when conducting an assessment of long-term infrastructure needs.

3.4 As a body corporate separate from the Crown, the commission would take its own decisions on staffing and recruitment, as its employees would not be civil servants. The commission would also be responsible for managing its own spending and publishing an Annual Report.

3.5 As an NDPB in a member state of the European Union (EU), the commission would need to be mindful of EU obligations and rules, and how legally-binding targets might apply to infrastructure, for example, long-term climate targets set out in the Climate Change Act requiring an 80% reduction in emissions on 1990 levels by 2050. The commission should also be aware that decisions taken at a European level have a direct impact on infrastructure requirements in certain sectors, for example digital communications and waste.

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

Governance

3.6 Governance arrangements will help ensure effective management of the commission and of its staff, funding and operations. The commission's primary duties will be set out in legislation. Chapter 5 sets out arrangements for providing more detailed guidance to the commission.

3.7 The legislation establishing the commission will set out its form. It is expected to have a chair and a group of commissioners. The chair and the commissioners will be responsible for the overall development of the commission's output, and accountable to Parliament for it. The commission will have permanent staff who will carry out the research and analysis for its products, including the needs assessment and specific reviews. Where the commission identifies a need to draw on outside expertise from government departments, regulators or the private sector, it may meet this need either by procuring consultancy services, or by seconding staff in from these organisations on a temporary basis.

3.8 The chair and the commissioners will be supported by a Chief Executive Officer (CEO) who will be responsible for the operational management of the commission and will be the

commission's accounting officer. The CEO will also be responsible for the day-to-day management of the commission's activities.

3.9 Additionally, in line with the principles set out in *Managing Public Money*¹ and the *Corporate Governance Code*,² the commission will have a Board that will review and approve decisions regarding the operational management of the commission, such as remuneration of staff.

3.10 The commission will not have its own estimate and will instead be funded within the estimate of HM Treasury. The commission will be financed via a grant-in-aid from government. This grant will be provided on a rolling basis and set for several years at a time to give the commission funding certainty. Parliamentary approval will be necessary to provide continuous funding, so this will be envisaged in the legislation that creates the commission.

3.11 The commission will have the authority to use its grant-in-aid however it feels is appropriate in pursuit of its duties, subject to the principles laid out in *Managing Public Money*. The commission will, however, be required to publish an Annual Report, including accounts, detailing how it has performed its duties over the past year and how the commission has been managed, including accounts.

Appointments

3.12 Chairs and commissioners will be appointed by the Chancellor. An interim chair has been appointed by the Chancellor to set up the commission in shadow form. When making appointments the Chancellor will follow the Code of Practice of the Commissioner for Public appointments.

3.13 The chair and commissioners will be appointed for an initial term of up to 5 years, after which they may be reappointed for one more 5 year term.

3.14 All appointed chairs and commissioners should have knowledge and expertise that is relevant to the duties of the commission. The pay of the chair and commissioners will be decided by HM Treasury, and will reserve the normal right to intervene in the commission's leadership if it drifts significantly off track, as set out in *Managing Public Money*.

3.15 The CEO of the commission will be appointed by HM Treasury with the approval of the chair following an open competition for the position. The CEO will not be a member of the commission but will be a member of the commission staff.

Freedom of information

3.16 As a public body, the commission will be subject to the Freedom of Information Act 2000 (FOI) and Environmental Information Regulations (EIR). To perform its work effectively the commission may need access to sensitive information, particularly data held by regulators. As part of the consultation process, the government will give careful consideration to the FOI and EIR implications of the commission handling confidential or commercially sensitive information.

¹ *Managing Public Money*, HM Treasury, <https://www.gov.uk/government/publications/managing-public-money>

² *Corporate Governance Code*, HM Treasury and Cabinet Office, <https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments>

4 Outputs

4.1 The two principal types of commission outputs will be long-term needs assessments that look across economic infrastructure systems, and detailed reports that address specific infrastructure questions.

Needs assessment

4.2 The commission will analyse the UK's long-term infrastructure needs over a 10 to 30 year horizon, and then articulate a vision for addressing those needs in a National Infrastructure Assessment (NIA). Production of the NIA is a primary function of the commission and will be enshrined in legislation. As part of the NIA, the commission will also produce a high-level commentary on how those needs may be met and identify key strategic projects, and priorities for the next 5 to 10 year period as needed. The NIA will:

- set a long-term context for decisions that will affect the UK's infrastructure for many years to come, developing a clear and shared understanding of what outcomes will support the UK's economy into the future
- examine the potential impact of technological innovation as far as is reasonably possible, and how that may affect infrastructure needs
- enable better decisions to be made at a system level, taking account of interdependencies within and between sectors, looking at how the infrastructure system as a whole supports economic and social activity, and how individual projects contribute to the whole
- be transparent, well-founded and independent, and so stimulate debate and build consensus around the action needed to meet the real needs identified, working in close cooperation with government departments, sub-national, regional and local bodies and consulting external expertise where necessary

Specific commissions

4.3 Legislation will enable the commission to examine the most pressing and significant infrastructure challenges; these could be sector specific or technology-based and cross-sectoral. The terms of reference for these studies will be set by the government, and the commission's long-term needs assessment will be a significant consideration in identifying these studies. As well as defining the issue to be addressed, the terms of reference may provide fiscal and economic guidance within which the commission should make its recommendations.

4.4 The commission's priority infrastructure studies will usually seek to:

- establish a particular need in a transparent way and build toward a consensus on a solution
- assess the strategic and economic case (including a value for money assessment) for different options and assess the effects on other parts of the infrastructure system.
- The government may ask the commission to complete its work in such a way that its recommendations feed into national policy for the land-use planning system, including appropriate consultation and environmental assessment – chapter 7 provides more detail on this

Taking forward recommendations

4.5 The NIA will assess strategic infrastructure needs and priorities, generally looking 10 to 30 years ahead. It will inform government policy and generate specific future areas of work for the commission itself. The NIA will be published and subject to Parliamentary scrutiny. The government will be obliged formally to respond to its recommendations.

4.6 In identifying specific challenges, the commission should not be restricted to 'infrastructure solutions' that recommend infrastructure should be built or renewed. Nor should it assume the appropriate solution is government-led as opposed to market-led. The commission may recommend options which involve a mixed model of financing or a rebalancing of costs between taxpayers and consumers. Behavioural, economic or regulatory solutions may be preferable or complementary. For example, greater efficiency would reduce infrastructure requirements in the energy sector. Similarly, it is expected the commission should not have a bias toward building new infrastructure over renewal or repurposing options for providing a service outcome. There will be instances where a new project would provide worse value for money or be less affordable than alternatives.

4.7 Information about the location of strategically important housing allocations, such as new settlements and urban extensions and when they will come forward, will be an important component of the evidence base collected by the commission. The commission may use this information to make recommendations that co-ordinate the timing and delivery of new infrastructure with the delivery of new housing.

4.8 The government intends to legislate that it must lay NIAs before Parliament, and to place a duty on HM Treasury to respond on behalf of the government within a specific timeframe. In this response, agreed collectively by ministers, HM Treasury would have to detail how the recommendations will be taken forward or, in areas where the government disagrees with the commission, what other measures it proposes to meet the identified needs or what its alternative assessment is.

4.9 The recommendations from specific infrastructure studies will be published and made available to Parliament. It will be open to the government to lay these recommendations before Parliament if it feels there is a case for doing so, and the legislation will therefore anticipate a means for the government to do this.

4.10 Those recommendations accepted by the government would become Endorsed Recommendations. The government's response and the Endorsed Recommendations would be considered to be government policy.

4.11 Responsibility for taking decisions on what infrastructure needs to be built, and for delivering or facilitating the delivery of the infrastructure itself, will remain with the government or regulator depending on the issue and legal framework. The commission will not re-open decision-making processes where programmes and work have been decided, or will be decided in the immediate future. The government should use the levers at its disposal to deliver Endorsed Recommendations – whether through spending, regulation, deregulation, market stimulation, or by setting strategic priorities for regulators as appropriate. The government will continue to update the infrastructure pipeline setting out future work on a regular basis.

4.12 Currently, about two thirds of infrastructure is privately financed, and commission recommendations may bear on these sectors, in particular where the government or regulators act to determine what gets built. In the private utility sector, certain decision-making rests with independent regulators, such as Ofwat and Ofgem. Endorsed Recommendations will not change decisions that have already been taken or impact on closed price controls. The legislation will

place an obligation on regulators to 'have regard' to Endorsed Recommendations. This would not, however, be an overriding duty, and would have to be balanced against regulators' other duties and interests.

4.13 The commission will hold the government to account for delivery of Endorsed Recommendations and the progress of individual projects. The Infrastructure and Projects Authority will support a pipeline of projects and collate data that shows how its pipeline of projects, including those in the private sector, is progressing. The commission will have access to that data and will be able to comment on progress. It may also comment more extensively on how the outcomes identified are being achieved.

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

Timing

4.14 The government anticipates setting out in legislation that the commission should produce a NIA once in every Parliament. The timing of the assessment will be important, both to ensure that the government is able to endorse and deliver on the commission's recommendations, and so that it can influence decision-making processes on large scale infrastructure programmes. The government does not, however, intend to set in legislation the precise timing of reports, which will be agreed on a rolling basis by the commission and the Chancellor. In addition, the commission may choose to publish interim documents, such as notes on methodology or audits of current capability, although the timing and nature of these will be a matter for the commission itself.

4.15 It is also anticipated that the government's delivery plan will come through existing statutory investment frameworks or, where these do not exist, through a delivery plan specific to the project in question. The preparation of the next iterations of some statutory investment plans is already under way, or will be starting shortly, and will therefore be proceeding in parallel with the commission's preparation of its first NIA. In order to avoid delaying delivery, the relevant government departments will discuss with the commission how they will work together.

- 5 Do you agree that government should legislate to oblige the commission to produce National Infrastructure Assessments once in every Parliament?
- 6 Do you agree that that the precise timing of reports and interim publications should be a matter for the commission in consultation with relevant departments?

5 The commission's remit

5.1 The commission will operate independently of government and develop its own methodologies and approaches to deliver its outputs. However, it is vital that the commission recommends infrastructure that is sustainable and affordable, and delivers real economic benefits. The commission will therefore work within a broad remit set by the Chancellor.

Spending and affordability

5.2 Infrastructure is ultimately financed by taxpayers and consumers. The fiscal remit will provide guidance on infrastructure spend which is part of a government programme, such as expenditure on transport and flood defence, and ensure the commission's recommendations do not place an unmanageable burden on taxpayers. The economic remit will ensure the commission works closely with economic regulators in other sectors, such as water and energy, to protect consumer bills from unaffordable increases.

5.3 Setting a remit will also challenge the commission to consider the potential opportunity costs of pursuing some solutions ahead of others. This will ensure the commission balances the expected benefits of its recommendations (such as boosting productivity or employment) against the expected impact on taxpayers and consumers.

5.4 The commission will make recommendations – particularly in its National Infrastructure Assessments – that involve long timescales, and across a broad range of sectors. The remit will therefore be able to accommodate some future uncertainty, while giving reasonable assurance that the plans set out by the commission will be affordable and good value for money.

5.5 A strong focus on transparency will underpin the remit. This will ensure that the commission makes recommendations in a clear and open way, and visibly demonstrates that it has considered the associated costs and benefits. Where the commission makes recommendations on specific projects, particularly major projects, it will be asked to include costings and assess their value for money. The assessment should have regard to established methodologies compliant with the HM Treasury Green Book,¹ but should not be taken as a precedent for the assessment of efficient investment by regulators or private companies.

5.6 Costings should cover the expected burdens on both taxpayers and consumers, including business consumers. As indicated above, the commission may recommend options that involve a rebalancing of costs between taxpayers and consumers. Where this is the case, clear reasons should be provided to support this, particularly if they increase the burden that the economy as a whole needs to bear.

Fiscal considerations

5.7 A transparent fiscal remit will ensure the commission is clear as to the cost of its recommendations to taxpayers. However, as value for money and affordability are not one and the same, the government intends to give the commission an indicative financial envelope within which to make recommendations. The government intends to enshrine its duty to set the commission's fiscal remit in legislation.

5.8 The government expects to set a single fiscal envelope within which it will ask the commission to operate. Given the distant time horizons for the commission's work, and the

¹ <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

difficulty of predicting the fiscal climate with precision, this may be done by asking the commission to assume that total UK government spending on infrastructure should be a specified percentage of gross domestic product (GDP) for the period under consideration.

5.9 In setting this envelope, the government will need to be clear what assumptions the commission should make about existing projects that are likely to incur spend during the period being considered. The government will also provide guidance to the commission as to its expectations for longer-term investment, which could include the level of expenditure proposed for ongoing programmes and the outputs that it believes will be delivered as a result. This will allow the commission to assess the extent to which those programmes would meet the long-term needs identified and the case and options for additional intervention to fill any gap. As well as identifying new projects, this could include prioritising expenditure. The commission will not re-open decision-making processes where programmes and work have been decided, or will be decided in the immediate future.

5.10 In preparing its main National Infrastructure Assessment, the commission would be expected to work strictly within the fiscal remit for the coming 5-10 years where it is recommending specific projects and programmes, and where there are costs estimates available for most aspects of government spending on infrastructure. The government will work with the commission to determine the overall cost of existing and proposed infrastructure projects and programmes.

5.11 When making recommendations further into the future, the commission will need to consider a potential time horizon of up to 30 years and provide a broad assessment of the degree to which the long-term needs identified may be met within the fiscal envelope. The commission will be expected to use the OBR's central long-term GDP projection. The commission's assessment should take account of the long-term funding guidance provided by departments, though it will be open to the commission to propose changes to these, and any additional investment that it considers necessary, for which it should provide indicative cost estimates based on the best available evidence.

5.12 There are other mechanisms through which a fiscal remit could potentially be set, such as a scenario-based approach, where individual scenarios may vary in terms of the proportion of GDP to be spent, or a hybrid option where a proportion of GDP is taken as the starting point, but where the commission could make the case for a limited percentage uplift if it could demonstrate major economic benefits. While these options are not developed in detail here, the government welcomes views on these and other potential alternatives.

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

Economic considerations and impact on consumers

5.13 An economic remit is necessary as the commission's recommendations may affect bills and charges paid by consumers. At present, economic regulators oversee the impact of spending by regulated utilities on regulated networks, as well as promoting the interests of consumers through competition. Costs are also imposed on consumers through fares, additional charges and, in energy, through levies such as those funded through the Levy Control Framework to pay for additional infrastructure.

5.14 The government intends to introduce a provision in legislation to ensure that the commission must operate transparently with respect to these costs. This consultation invites views on whether transparency alone is sufficient, or whether the legislation should also make provision for a separate economic envelope.

5.15 The commission should be as transparent as possible about the potential impact, positive or negative, of proposed infrastructure solutions on consumer bills. In regulated sectors, this will mean the commission working closely with regulators to estimate the impact of any recommendations. In these sectors, allowable investment on behalf of utility firms is only ever a fraction of an overall bill paid by a consumer, which may rise or fall for different reasons. The commission should therefore also work with departments to estimate potential impacts on the costs to consumers of changes they recommend outside the regulated sectors. Given that the commission will be looking at the infrastructure system in the round, it should be transparent about how impacts in different areas will affect consumers – whether positively or negatively.

5.16 While transparency should encourage infrastructure solutions to be identified with the least possible impact on consumer bills, an additional economic envelope constraint might be desirable – although potentially difficult to formulate. For instance, the commission might agree a figure with regulators based on what they would have allowed had commission recommendations not been included – though it would be challenging to identify and strip out overlapping investment plans. Alternatively, historic data might be used to derive an expected baseline increase.

5.17 As part of the consultation, the government will hold round-table discussions with economic regulators and other key stakeholders to consider the merits of additional economic constraints.

- 8 Do you agree that a transparency requirement should be placed on the commission with regard to its economic remit?
- 9 Do you think that any additional constraints are necessary to deliver the commission's anticipated benefits to consumers?

Setting the remit

5.18 It is proposed that the commission's remit could be set through a formal letter from the Chancellor, on behalf of the government, at the beginning of every Parliament. This letter would set the context for the National Infrastructure Assessment, and potentially also commission individual studies to be undertaken by the commission.

5.19 The letter would be published and detail the nature of the economic and fiscal remit. It would also provide a broad framework within which the commission would operate, and highlight pressing objectives, such as supporting regional economic growth or delivering sustainable infrastructure. This would enable the commission and government to work as effectively as possible together, but without impinging on the commission's independence. It is proposed that the government's ability to set the fiscal and economic remit in this way could be enshrined in legislation.

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

How the commission will operate

6

Interaction with the devolved administrations

6.1 The commission's initial working assumption will be that its duties only relate to areas of infrastructure that are the UK government's responsibility. This will evolve in line with any future changes to devolution settlements, and the commission will need to have regard to how any planned changes will affect its remit. The extent to which the commission considers areas of infrastructure in Scotland, Wales and Northern Ireland, where responsibility is devolved, will be a decision for the devolved administrations to make. For instance, it will be for the Scottish government to decide whether or not they would like the commission to review infrastructure that is responsibility of Transport Scotland rather than the Department for Transport.

6.2 The commission will work closely and collaboratively with the devolved administrations in a spirit of openness and transparency, and will need to consider cross-border issues where these affect infrastructure decisions over which the UK government has authority. It should therefore be part of the commission's duties to consider all areas of infrastructure that involve input from the UK government, even where these cross borders. For example, in some circumstances there is a degree of shared responsibility between a devolved administration and the UK government, such as water between Wales and England. Where this is the case, the commission should consult with the devolved administrations as part of its duties.

6.3 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.

6.4 Recommendations which have been endorsed by the UK government will not have a bearing on the planning systems of the devolved administrations.

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

Interaction with government departments

6.5 The commission will work closely and collaboratively with government departments and relevant agencies in a spirit of openness and transparency, consulting with departments on its work programme and, where relevant, keeping them informed of its priorities to avoid duplication of work. The commission will have sole responsibility for its recommendations and will not be required to consult government departments or any other body on them, though it may choose to do so where appropriate.

6.6 The commission is likely to need access to data or research outputs held by departments to deliver on its work programme effectively, provide accurate assessments of infrastructure needs and monitor implementation of the government's infrastructure programme. The commission may also require new analysis in areas of departmental expertise and beyond its own analytical capacity. While it is expected that departments will cooperate fully with the commission, the

government intends to legislate to provide the commission with the right to ask departments for both data and analysis.

6.7 Specific working arrangements between the commission and individual departments will be set out in a separate Memorandum of Understanding (MoU). The MoU will include, among other things, a common understanding of what reasonable and proportionate requests for data and analysis should entail, how departments are expected to meet such requests, and how the commission will use the information provided by departments. The commission will also be required to be completely transparent about the requests that it has made and the rationale for them, and to publish in its Annual Report departments' assessments of any costs it has imposed.

6.8 Reports, assessments and other publications by the commission will be published under the commission's sole responsibility and shall not require clearance from government departments or Cabinet Committee. However, the commission may choose to share drafts of its publications with departments or other organisations for fact-checking purposes.

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

6.9 In each sector, there are a number of existing processes that determine which infrastructure projects and investments are taken forward. These include regulatory price controls, government and agency processes such as the Roads Investment Strategy, control periods in rail etc. In developing its recommendations, the commission will need to take account of these processes, the way they gather evidence and consult, and the way in which decisions are taken. The commission will also need to be sensitive to progress already achieved by the government on projects which have long lead times. In order to avoid delaying delivery the relevant government departments will discuss with the commission how they will work together.

6.10 Given that these processes operate within different timeframes, it will not be possible for the commission to mesh its work to coincide with each individual timetable. In taking forward Endorsed Recommendations, it will be the government's responsibility to decide on the most appropriate way to sequence work.

Interaction with regulators and public bodies, including agencies

6.11 The independence from government of economic regulators and public bodies exists for good reasons and remains important. The commission will work closely and collaboratively with economic regulators and relevant public bodies, in a spirit of openness and transparency and in a way that respects their independence and that of the commission. Relevant public bodies may include NDPBs, advisory bodies, organisations with responsibility for local infrastructure decisions, government-owned companies, and sub-national authorities, such as the Environment Agency, Highways England, and Transport for the North.

6.12 The commission is expected to maintain close working relationships with the regulators and public bodies whose work impacts on that of the commission, and to keep them up to date with its work programme. Some of these bodies have a statutory remit that will overlap with the commission's, in that it concerns infrastructure in some way. It is expected that the commission would examine closely the conclusions of these bodies, but would remain independent in its own recommendations.

6.13 The commission will need access to data or research outputs held by regulators and public bodies to carry out its work effectively, provide accurate assessments of infrastructure needs and monitor implementation of the government's infrastructure programme. It is proposed that the commission should have the right to access data and analysis from regulators and public bodies, and similarly it would report on the amount of work it has commissioned. To facilitate this it may be necessary to revise the statutes governing how the relevant regulators and public bodies

function, and how information is managed. As part of the consultation process, the government will give careful consideration to the commission's handling of confidential and commercially sensitive information.

6.14 The commission will engage with private sector infrastructure owners and operators in each of the sectors that it examines, as well as with other relevant stakeholders, such as environmental and community groups. The commission may request information from regulated companies and other industry bodies. While the government does not intend to place a legal duty on those organisations to comply with such requests, it would look to them to do so where they are reasonable and proportionate and would expect regulators and other relevant organisations to facilitate the provision of such information where necessary.

6.15 The commission should aim to promote cross-party consensus with its recommendations. It will therefore need the freedom to engage, where appropriate, across the political spectrum and with relevant Parliamentary, devolved and local committees and institutions.

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

7 Planning

7.1 The process and policy for deciding large infrastructure projects has improved in recent years, following the introduction of the Planning Act 2008 ('The Planning Act') which establishes the regime for obtaining consent for Nationally Significant Infrastructure Projects (NSIP). Previously, the majority of planning decisions for infrastructure were either decided locally through the Town and Country Planning Act 1990 (TCPA) or under separate specialist regimes by the relevant Secretary of State. Most infrastructure below the nationally significant thresholds in the Planning Act is still decided locally under the TCPA. However, the process for identifying the nation's long term infrastructure needs is inconsistent across sectors and could be coordinated better in planning policy. There is a need for a more structured and efficient way for identified infrastructure needs and priorities to be reflected in planning policy. This chapter sets out the government's plans for ensuring that the planning system, both for NSIPs and other infrastructure projects is able to absorb the work of the commission and move projects forward.

7.2 For NSIPs, National Policy Statements (NPSs) will have a significant role. NPSs are already a powerful vehicle for enacting policy decisions in the planning system. Other infrastructure projects, i.e. those not covered by the Planning Act, such as digital communications, will continue to be addressed in the locally-led planning system in accordance with Local Plans. These plans are prepared in accordance with national policy as set out in the National Planning Policy Framework.

7.3 Applications for infrastructure not consented under the Development Consent process are decided by the relevant Secretary of State, devolved authorities, Marine Management Organisation (for development offshore) and local authorities. This would include infrastructure consented under, amongst others, the Electricity Act 1989 and Transport and Works Act.

Making use of the commission's output

7.4 With regard to the commission's impact on the planning system, Endorsed Recommendations are likely to be material considerations in both the NSIP and the locally-led planning regime.

7.5 The weight that should be assigned will be for decision makers, however the Endorsed Recommendations would be expected to influence decision-making through two complementary but not mutually exclusive routes:

7.6 First, Endorsed Recommendations would be government policy. This should mean that they carry weight in the planning system, commensurate with the quality, depth and nature of the work done. This would signal that decision-makers should take appropriate account of the Endorsed Recommendations as a material consideration.

7.7 Second, where appropriate the government could signal that the Endorsed Recommendations would be transposed into or reflected in NPSs by the relevant department. Under such circumstances, departments may need to undertake further consultation and environmental assessment in accordance with European law and the statutory requirements for preparing an NPS.

7.8 Under the NSIP regime where applications are decided by the Secretary of State, there is a duty to decide an application in accordance with any relevant NPS. In the local-led planning system (TCPA), NPSs where relevant, will be material considerations that policy-makers and decision-makers will need to take into account. The National Planning Policy Framework states

that NPSs are part of the overall framework of national policy and are likely to be material considerations that must be taken into account where relevant in deciding applications for planning permission.

7.9 The government could also ask the commission to carry out further work on specific recommendations, whether endorsed or otherwise, to develop proposed solutions in more detail and therefore expedite delivery.

7.10 The government may also reject a recommendation made by the commission. In these circumstances, the recommendation would not be carried through to government policy, but the evidence base used in support of the recommendation may still be a material consideration for decision or policy making purposes.

7.11 Under all of the above circumstances, departments may need to undertake further consultation and environmental assessment in accordance with European law and the statutory requirements for preparing an NPS. It is intended that the government will issue guidance that will provide information to policy and decision makers about how to use the commission's output.

National Policy Statements

7.12 A key benefit arising from the incorporation of the commission's Endorsed Recommendations into NPSs is that the status of the Endorsed Recommendations will be enhanced. Currently, it is up to the discretion of the relevant Secretary of State to decide when to review or replace a National Policy Statement. This discretion will remain in place so that if an urgent or exceptional need arises to review or withdraw a NPS, this can be expedited promptly.

7.13 As part of its response, the government will in many cases decide that the best way to accelerate the planning process for a project or set of projects would be to revise the appropriate NPS. Where this is the case, it is proposed that legislation includes an obligation for departments to review or replace and then designate NPSs according to the timetable set out in the government's response to the commission's recommendations. This will ensure NPSs are kept as up to date as possible and allow sufficient time for departments to draft and designate the replaced or reviewed NPSs.

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

Making use of the evidence base

7.14 The assessment undertaken by the commission will need to consider the environmental, social and economic costs alongside the anticipated benefits of its policy or study-specific objectives, including looking at alternatives. In undertaking this work the commission's approach should be informed, where appropriate, by the principles of the Strategic Environmental Assessment (SEA) Directive and potentially the methodology for carrying out a Habitats Regulations Assessment.

7.15 Where it is intended that the work of the commission will be continued by a department, either through inclusion in a NPS or another policy format, it would be logical for the commission to consult departments about the evidence gathering methodology it proposes to use. This would help to smooth the process of turning Endorsed Recommendations into existing or new policy formats.

7.16 When preparing NPSs the Planning Act 2008 requires the Secretary of State to consult on and publicise their proposals before they are laid before Parliament, and prescribes how this should be done. A useful approach that the commission could take is to use the NPS

consultation and publicity requirements as a guide to inform its approach to consultation and publicity. In each case, the approach would need to be proportionate to the timescales and scope of the specific study or assessment being undertaken.

7.17 It is proposed that where the commission has undertaken appropriate consultation and publicity, such as that specified by statute, the Secretary of State should not duplicate this work and should seek to incorporate the Endorsed Recommendation into a NPS using the evidence base and background work it relies upon. The Secretary of State should, however, have the discretion to undertake any additional consultation as they see fit. The commission can provide clarity to policymakers about the scope and standard of its consultation by submitting a Consultation Statement alongside the National Infrastructure Assessment and any other report it prepares.

- 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?**

8 About this consultation

8.1 This consultation document and consultation process have been planned to adhere to the consultation principles issued by the Cabinet Office.

8.2 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.

8.3 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 the Data Protection Act 1998 and the Environmental Information Regulations 2004).

8.4 If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. 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.

8.5 HM Treasury will process your personal data in accordance with Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

8.6 When formulating policy, the government must comply with the Public Sector Equality Duty and has considered how establishing the commission could impact on groups with protected characteristics. The government would welcome views on any potential equalities impacts arising from the proposals in this consultation paper, and how they might be addressed.

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

8.8 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 at:

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HM Treasury contacts

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