Ministry of Housing, Communities & Local Government

PLANNING REFORM WORKING PAPER
STREAMLINING INFRASTRUCTURE PLANNING

The Government is committed to getting Britain building again. This paper forms part of a series of working papers on different aspects of planning reform, designed to inform further policy development in collaboration with the wider sector.

Summary

This paper invites views on further action the Government could take through the planning system to streamline the development of critical infrastructure, in particular Nationally Significant Infrastructure Projects (NSIPs), across England.[1] It focuses specifically on potential legislative changes, principally to the Planning Act 2008. In doing so, it proposes options for:

a. reviewing National Policy Statements (NPSs) on a more regular basis and making it easier to update them in the interim;
b. protecting the role of consultation in the consenting process but making it less burdensome;
c. supporting delivery of infrastructure post-consent;
d. allowing for appropriate flexibility in the process applied to projects where this is merited; and
e. strengthening statutory guidance to ensure clarity over what is and is not required.

The objective of these reforms is to deliver a faster, more certain, and less costly NSIP regime, thereby ensuring it can deliver high quality infrastructure and drive forward the growth and clean power commitments set out in the Government's Plan for Change. If taken forward, the Planning and Infrastructure Bill would be used to implement the legislative reforms outlined in this paper. We are seeking views on these proposals from stakeholders including communities, infrastructure and clean power developers and local authorities. Feedback from the working paper will inform the next stage of policy development.

Introduction

1. Sustained economic growth is central to this Government's Plan for Change and is the only way to increase the prosperity of our country and improve the living standards of working people. Upgrading the country's major economic infrastructure – including our electricity networks and clean energy sources, roads, public transport links and water supplies – is essential to delivering basic services, growing the economy, supporting the UK's transition to clean power by 2030, and enabling 1.5 million homes to be built over this Parliament.

[1] The NSIP regime also applies in some circumstances to Wales and in very limited circumstances to Scotland.

2. If we are serious about getting Britain building to drive greater economic growth, we must first acknowledge that we perform poorly on infrastructure delivery against comparator countries. The limitations of our system adds real-world costs to working people's lives, including in the following areas.

    a. **Increased bills** – a lack of investment in electricity networks meant constraint costs added £2 billion to bills per year in 2022, with this expected to increase to £8 billion in the late 2020s, which is equivalent to £80 per household.[2]

    b. **Longer commuting times** – England's largest regional cities are congested, and their public transport networks underperform relative to comparable European cities. Only 40% of people are able to travel to English city centres by public transport within 30 minutes, compared with 67% in Europe.[3] Better connected transport networks also unlock land for development, with National Highways facilitating the delivery of 45,000 homes and 44,000 jobs between 2015 and 2020.[4]

    c. **Increased risk of drought, water supply and scarcity** – the expected shortfall in water supply by 2050 is five billion litres per day, which is more than a third of the 14 billion litres of water currently put into the public water supply.[5] Scenarios where severe drought restrictions are imposed are estimated to lead to a loss of 37% for non-household Gross Value Added across England and Wales, equivalent to £1.3 billion per day.[6]

3. Since 2010, most major economic infrastructure projects have been consented through the NSIP system under the Planning Act 2008. It gained an early reputation for delivering fair and timely consents, and to date has consented over 130 projects (with 95% of projects being approved). However, the system's performance has deteriorated in recent years. In 2021 it took on average 4.2 years for a project to secure development consent, compared to 2.6 years in 2012.[7] The documentation underpinning consents has been getting longer and in too many instances now runs to tens of thousands of pages.[8] Alongside increased uncertainty that statutory timescales will be met, increased litigation has caused further delays and introduced additional risk and costs for developers. These challenges led the National Infrastructure Commission (NIC) to conclude recently that the inefficiencies in the planning system were one of the key drivers of high infrastructure costs.[9]

[2] Clean Power 2030 Action Plan - GOV.UK
[3] Second National Infrastructure Assessment - NIC
[4] Designated funds - National Highways
[5] A summary of England's revised draft regional and water resources management plans - GOV.UK
[6] National Policy Statement for Water Resources Infrastructure
[7] Infrastructure planning system - NIC
[8] Nationally Significant Infrastructure: action plan for reforms to the planning process - GOV.UK
[9] Cost drivers of major infrastructure projects in the UK - NIC

4. The Plan for Change, published in December 2024, sets out the Government's commitment to determine at least 150 major infrastructure projects by the end of this Parliament.[10] This would be almost tripling the 57 decisions made in the previous Parliament, and more than the total number of decisions made under the NSIP regime since 2011.[11]

5. There is no silver bullet for improving the system and achieving our goal of determining at least 150 national infrastructure projects in this Parliament. Instead, decisive action is required on several fronts. The Government has already acted swiftly by: ending the effective ban on onshore wind in England; announcing plans to amend legislation to increase the thresholds for large-scale onshore wind and solar developments to enter the NSIP regime; better enabling data centres, gigafactories and laboratories to be directed into the NSIP regime; announcing plans to enable cost-recovery for local authorities when dealing with Development Consent Order (DCO) applications; consenting almost 2GW worth of solar projects, which is more capacity than was installed in the last year; and launching the Clean Power 2030 Action Plan, which sets out how Government plans to deliver on its clean power mission. Looking ahead to later this year, the Government will also publish its 10-year Infrastructure Strategy alongside the Spending Review in June; a working paper setting out how the Government intends to frame this strategy has been published in parallel with this paper.[12] This strategy will provide certainty and stability for the supply chain and help unlock private investment by setting out the Government's vision, objectives, and priorities for infrastructure for the next decade in major economic as well as social infrastructure, such as schools, colleges, hospitals, and prisons.

6. We are also acting to address the delays caused by judicial review challenges against NSIPs. In October 2024, the Government published the report of the independent review into this matter by Lord Banner KC, which identified a range of potential reforms to the judicial review process for NSIPs. Having considered the recommendations made in that review, as well as the views of stakeholders who responded to our further call for evidence, the Government announced on 23 January that we will work with the Courts and introduce the primary legislation necessary to implement the review's key recommendations. These include introducing target timeframes for deciding cases in the Court of Appeal and the Supreme Court and reducing the number of permission attempts for NSIP judicial reviews from three to two. For those cases which are deemed 'totally without merit' by the High Court, we will legislate to remove the right of appeal to the Court of Appeal, meaning just one attempt at legal challenge for those cases deemed to be without merit that are lodged purely to cause delay, rather than three as at present. Ensuring meritless claims are only given a single permission attempt will facilitate quick decisions while maintaining access to justice.

[10] Plan for Change - GOV.UK

[11] For the purposes of this target, major economic infrastructure is defined as projects (from 4 July 2024) classified as Nationally Significant Infrastructure Projects (NSIPs) under the Planning Act 2008.

[12] Chief Secretary to the Treasury sets vision for future of Britain's infrastructure - GOV.UK

7. However, meeting the goal of 150 major infrastructure decisions by the end of this Parliament is going to require our NSIP system to be firing on all cylinders. Turning the system around, and restoring the confidence that developers and investors had in it a decade ago, is a journey that was started in the NSIP Action Plan, published in 2023.[13] This plan, broadly welcomed at the time of publication, focused on putting in place the foundations for a more resilient system and the implementation of a number of its proposed changes is already underway. The Government will therefore not start from scratch. We will build on this plan – but we intend to go further and faster.

Our objectives

8. Feedback from users of the NSIP system is that the process requires evolution, not revolution, to ensure it is capable of responding to changes in technology, Government policy, the wider operational context, and to drive continuous improvement over time. We want to remove unnecessary barriers and reduce the uncertainty that increases cost and undermines investment. But we recognise that upending the system and restarting now is not only unnecessary, but would make the system less predictable and ultimately undermine the Government's broader objectives to deliver infrastructure in this Parliament – driving growth, supporting 1.5 million new homes and underpinning our transition to clean power.

9. The NSIP system should provide swift decisions through an integrated process that is easily understood, and which minimises bureaucracy in favour of the right outcomes. Delivering on that goal means implementing and building on the ambition of the NSIP Action Plan, but evolving that into six key pillars of NSIP reform which account for new priorities, including the Clean Power Action Plan.

    a. **More strategic** in planning ahead to identify opportunities and increase certainty and investment infrastructure. We will do this through the 10-year Infrastructure Strategy and the creation of the National Infrastructure and Services Transformation Authority (NISTA), which will set the Government's long-term infrastructure priorities at a national level.

    b. **Better** at updating policy to deliver certain, robust and timely decisions, with greater certainty from Government. We will do this though clearer and stronger national planning policy.

    c. **Faster** at handling applications and ensuring statutory timelines are met. We will do this by streamlining and simplifying the system and prioritising the most critical economic infrastructure projects, where necessary.

[13] Nationally Significant Infrastructure Projects (NSIP) reforms: action plan - GOV.UK

d. **Greener** in using development to drive nature recovery and streamlining burdensome processes. We will do this by taking a more strategic and outcomes-focused approach to environmental protection and enhancement, as outlined in a separate working paper in this series, *Development and Nature Recovery*.

e. **Fairer** to communities, ensuring a transparent and accessible process. We will do this by setting out the national case for infrastructure and improving consultation.

f. **More resilient**, with sufficient capability and capacity in the system such that it can support delivery of major economic infrastructure. We will do this by ensuring the system is adequately resourced, so that we have the right skills and tools to meet future needs.

Our proposals

10. Work is underway across all of these pillars, including through the updating of guidance and secondary legislation. This paper now focuses on options for potential primary legislative changes, to test views ahead of the introduction of the Planning and Infrastructure Bill in the coming months. The proposals in this paper relate to three areas:

    a. better, clearer and stronger NPSs to create a more certain system;
    b. faster decisions under the NSIP system; and
    c. related improvements to transport specific consenting regimes.

Better, clearer and stronger National Policy Statements

11. National Policy Statements (NPSs) set out the needs case, general policies, assessment principles and generic impacts against which applications for particular types of NSIPs are assessed. There are currently 13 designated (i.e. published) NPSs covering specific types of national infrastructure, including energy, transport, water, waste water and waste.

12. NPSs provide the policy framework for planning decisions on NSIPs, and may be a material consideration in preparing Local Plans and making decisions on planning applications under the Town and Country Planning Act (TCPA) regime. The function of an NPS is to:

    a. clearly establish the need for a particular type of infrastructure;
    b. set out any general policies and assessment principles relating to that type of development which are to be considered in the assessment of an application for development consent; and
    c. identify the approach to consideration of certain generic impacts to ensure that environmental, community, safety and other impacts are properly assessed.

13. NPSs are the primary policy framework within which the Examining Authority (appointed by the Planning Inspectorate) makes its recommendations to ministers on individual NSIP applications, and against which the Secretary of State is required to determine an application.[14] As a matter of law, the Planning Act 2008 requires an application to be determined in accordance with the relevant NPS unless one of the limited statutory exemptions applies. It is vital therefore that the policy position in each NPS is clear and up to date. Until the end of last year, many NPSs had not been updated since the NSIP regime was introduced in 2011. Where there is no relevant NPS in effect, or the policies in the NPS are out of date, this adds significant time and uncertainty to the consenting process.

14. That is why within a week of taking office, the Government committed to updating relevant NPSs by July 2025, ensuring that they reflect the Government's priorities for infrastructure delivery.[15] This will give more certainty to investors, developers and communities, and will support individual NSIP applications being considered in a timely manner. The update will target NPSs covering the types of national infrastructure which are critical to achieving the Government's missions, with further announcements being made in the coming months.

15. This rapid update cannot however be a one off. The Government wants to make sure that NPSs do not again become outdated, and so committed in the King's Speech to provide for new and improved NPSs with a regular review process. To deliver on that commitment, we are therefore proposing to use the Planning and Infrastructure Bill to make two changes to the Planning Act 2008:

    a. first, requiring each NPS to be updated at least every five years so that they reflect the Government's priorities and ambition; and
    b. second, introducing a more streamlined process for making changes to NPSs.

16. Requiring each NPS to be updated at least every five years will ensure that they accurately represent the latest needs case, Government policy and guidance to support applicants and decision makers. It will also help make sure that NPSs reflect wider Government strategies, such as the 10-year Infrastructure Strategy and any forthcoming sectoral spatial infrastructure plans, such as the Strategic Spatial Energy Plan. The Government will retain its existing power to review and update NPSs in between these five-year periods where the relevant statutory criteria are met, but this backstop will ensure that no more than five years can pass between updates to ensure that NPSs are kept up to date.

17. Policies affecting infrastructure can and do change regularly. While these changes are often reflected in Written Ministerial Statements, they do not carry as much weight as NPSs in decision-making. Therefore, to support NPSs being updated more regularly, we also want to make the process for amending them more proportionate to the changes proposed.

[14] Planning Act 2008, s.104
[15] Chancellor Rachel Reeves is taking immediate action to fix the foundations of our economy - GOV.UK

18. Currently, the procedure to update NPSs where the updates are fairly substantial is the same as introducing a wholly new NPS. The Government is required to undertake the appropriate Appraisal of Sustainability and Habitats Regulations Assessment, publicise and consult on the proposed changes, and submit the draft to Parliament for scrutiny, usually in the form of a Select Committee inquiry.[16] An NPS may only be updated if the consultation, publicity and parliamentary scrutiny requirements have been complied with, and the NPS has been laid in Parliament for 21 sitting days without the House of Commons resolving during that period that the amendments to the NPS should not proceed, or approving the amendments by resolution within that 21-day window. Only for non-material changes is process more light touch – with the Government required to publish the amended NPS and lay it before Parliament.[17]

19. In order to support more regular updates of NPSs, we are proposing to introduce an additional procedure for making material amendments to NPS policy that we would consider to be 'reflective amendments'. This would include updates that respond to:

    a. **legislative changes** (enactments, amendments or repeals) which have taken effect since the NPS was last amended;
    b. **changes to published Government policy**, including on priority areas such as climate change and energy security; or spatial planning; and
    c. **relevant Court decisions** issued since the NPS was last amended.

20. Proposed changes to NPSs under the new 'reflective amendment' procedure would be subject to the same consultation and publicity requirements as the current material amendment procedure, but as the legislation and policy underpinning a reflective amendment will have been scrutinised by the public and Parliament on its own terms, we are proposing to disapply those elements of the parliamentary scrutiny requirements as set out under section 9 of the Planning Act 2008. The requirement for the amended NPSs to be laid in Parliament for 21 sitting days will be retained to preserve parliamentary oversight.

21. The combination of requiring five-yearly updates and facilitating easier 'reflective amendments' will enable more frequent and faster changes – thereby reducing the overall time taken to update an NPS from around three years to just one.

Faster decisions under the NSIP system

22. If up to date NPSs set the right framework for decisions, the other area for improvement is making sure that the process for arriving at a decision is as streamlined and as proportionate as possible. Our proposals here cover: consultation requirements; post-consent adjustments; greater flexibility to reflect the varied and often unique nature of projects; and clearer and more effective statutory guidance.

[16] Planning Act 2008 s.6(7)
[17] Planning Act 2008 s.6(8)

A. Protecting consultation but making it less burdensome

23. The pre-application stage (i.e. the period ahead of an application being submitted) is key to preparing a good quality application, and involves consultation on the likely effects of a proposed project, as well as development and refinement of the project design – all with the aim of closing down issues and reducing the examination burden for all parties.

How consultation works

24. Currently, duties set out in the Planning Act 2008 require applicants to publicise their proposals and consult specific bodies (including statutory consultees and host and neighbouring local authorities).[18] Where projects require compulsory acquisition, applicants are also required to consult owners, lessees, tenants or occupiers of land, and those with an interest in or power to sell or release the land. In addition, there is also a requirement to consult people who, if the order sought by the proposed application were to be made and fully implemented, would or might be entitled to make a relevant claim for compensation – a group known as 'Category 3'.[19]

25. The applicant's duties also include preparing a statement of community consultation (SOCC), on which they need initially to consult the local authority.[20] A SOCC sets out how an applicant will consult people living in the vicinity of the land and any community consultation by the applicant must then be undertaken in accordance with it. Applicants are required to have regard to the consultation responses and, as part of their application materials, produce a consultation report. Legislation sets requirements for this report. The Planning Inspectorate, on behalf of the Secretary of State, will then decide whether or not these statutory requirements have been complied with when determining whether to accept the application for examination. When applications are accepted for examination, applicants are required to notify many of the same bodies and people. These consultation duties are unique from those required in other infrastructure consenting regimes, such as the TCPA regime, Highways Act or Transport and Works Act.

Issues with the current consultation requirements

26. There are three main issues with how consultation operates at present.

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[18] These requirements are set out as part of the pre-application procedure at Chapter 2 of Part 5 on the Planning Act 2008.

[19] Under the Planning Act 2008, a relevant claim refers to a claim for compensation that might arise if a DCO is made and fully implemented. Specifically, a relevant claim can be made under the following provisions: Section 10 of the Compulsory Purchase Act 1965 - compensation for injurious affection, which occurs when the value of land is reduced due to the compulsory acquisition of nearby land; Part 1 of the Land Compensation Act 1973 - compensation for physical factors such as noise, vibration, smell, fumes, smoke, artificial lighting, and the discharge of any solid or liquid substance onto land; and Section 152(3) of the Planning Act 2008 - compensation in cases where the implementation of a DCO causes loss or damage. These provisions ensure that individuals who suffer losses or damages due to significant infrastructure projects are compensated appropriately.

[20] Section 47, Planning Act 2008

a. First, the way consultation requirements are set out in the Act, and uncertainty around meeting requirements, can lead applicants to gold plate consultation by doing more than is required. In practice, this means that some projects undertake additional consultation (and re-consultation) to the same statutory standards as were applied to previous non-statutory consultations, extend formal consultation periods, and consult more people than may be necessary. Over time, and in combination with other factors, this has meant average timelines for statutory pre-application (from inception meeting to submission of an application) have almost doubled, from 14 months in 2013 to 27 months in 2021.[21] The NIC's report on the NSIP regime highlighted that uncertainty around the time and volume of consultation required had resulted in the doubling of the pre-application period for Hinkley Point C to Sizewell C from three to seven years.[22] This is in addition to the positive approach many take to non-statutory engagement with local communities, consultees and stakeholders.

b. Second, there is little incentive for statutory consultees, local authorities and applicants collectively to resolve issues proactively and early. The NIC noted that stakeholders, statutory consultees and developers see the consultation as a negotiation "*with neither side willing to back down on what standards a scheme should meet until examination stage"*. This ultimately delays decisions, as issues are left unresolved at the examination stage, meaning that ministers need to extend their decision-making timeframes to seek further information.[23]

c. Third, there are unique and, in some respects, disproportionate statutory requirements on applicants in the NSIP regime that extend the process. Unlike other regimes such as the Acquisition of Land Act 1981 (which also deals with compulsory acquisition of land), under the Planning Act 2008 applicants are additionally required to consult 'Category 3' persons before the application is submitted.[24] This leads to extensive work in identifying and contacting people, and keeping this list up to date, even though proposals and impacts are very likely to evolve during the pre-application period.

[21] MHCLG data collected from past projects on the Planning Inspectorate's website. Note: this data includes projects now archived on the Planning Inspectorate's website.
[22] Infrastructure planning system - NIC
[23] Ibid
[24] Category 3 includes all persons that the applicant thinks, if the order sought by the application for development consent were made and fully implemented, would or might be entitled to make a relevant claim for compensation under section 10 of the Compulsory Purchase Act 1965 (Ref 7), Part 1 of the Land Compensation Act 1973 (Ref 8) or section 152 of the Planning Act 2008. This comprises persons with land interests within and outside the development area ('Order Limits'). Due to the absence of final Order Limits, or survey information identifying where any significant effects might be felt, land referencing limits for the Proposed Development were set to the widest extent that the applicant considered parties may have a relevant claim for compensation.

Our proposed interventions

27. The previous government put in place a new pre-application service to strengthen early planning advice to applicants under section 51 of the Act, and enable more intensive input and support for those projects that require it. The previous government also updated statutory pre-application guidance, setting clearer expectations that consultation should be effective and proportionate, and that there should generally not be a need to re-consult with the community, unless a very significant change to the application is proposed.

28. However, following a review of all consultation requirements, the Government considers that further action is required to tackle the three issues identified above. All the below changes would require amendments to the Planning Act 2008.

    a. First, **amending the Act to change the application acceptance requirements in a way that supports taking more outcomes-based judgements**. We want to ensure that in making decisions on acceptance, the Planning Inspectorate is able to take into account the Government's wider infrastructure objectives, guidance and the way in which applicants have responded to advice provided by the Planning Inspectorate at the pre-application stage.

       This change has two objectives. First, enabling the Planning Inspectorate, on behalf of the Secretary of State, to take an outcomes-based approach in testing compliance with pre-application requirements so that consultation can be undertaken in a proportionate way. This would, for example, enable a more targeted approach where any re-consultation or further engagement is required, and enable the Planning Inspectorate to factor in non-statutory engagement which has shaped the application. Second, allowing the Planning Inspectorate to consider whether minor changes or updates may be required during the post-acceptance period, where currently it would be required to seek the applicant to withdraw their application or reject it – reducing risk and burden for applicants. These changes would be supported by revisions to guidance and to the acceptance checklist used by the Planning Inspectorate when deciding on acceptance of applications for development consent.

    b. Second, **introducing a new duty on all parties to identify and narrow down any areas of disagreement during the pre-application stage**. This will include setting clear expectations on: applicants to communicate openly and transparently, providing enough information to enable substantive responses to be given by consultees; and consultees to provide substantive responses, which enable progress to be made. The duty will apply to applicants, those statutory consultees which are able to recover costs under section 54A of the Act, and host local authorities, for which the Government will enable statutory cost recovery. This should help to reduce the substantive issues that remain unresolved going into examination and

decision-making, and support the use of new statements required under recent guidance updates ('principal *areas of disagreement* statements'). As a consequence, the Planning Inspectorate will be able to consider the duty in making a decision on acceptance, and the Examining Authority and the determining Secretary of State should have greater clarity as to the issues that remain unresolved in the application, where matters have already been discussed between relevant agencies at an early stage, and how any lack of engagement should be taken account of in accepting, examining and determining the application. As part of the next stage of policy development, we intend to consider ways to monitor or review compliance with this duty.

c. Third, **revising requirements around the contents of consultation reports so that they can report on the themes and issues raised across consultation responses.** Applicants will still have a duty to report on how they have consulted, but the revised requirements will support much more concise and thematic summaries of the feedback received, with simple explanations of how responses have or have not influenced the project. This will help applicants to reduce their length and make them more accessible. The consultation report will also enable applicants to summarise how they and consultees, in their view, have met the duty to narrow areas of disagreement.

d. Fourth, **removing the requirement to consult 'Category 3' persons during the pre-application stage**. People who may be impacted by a project will continue to be made aware through wider community consultation and notices, and the requirement to 'notify' them once the application is accepted under section 56 of the Planning Act will remain. While this will still mean applicants need to identify 'Category 3' persons ahead of submitting an application, and notify them on acceptance, applicants will only need to undertake this work once the final scope of the development is known. This will reduce the need to identify people at the early stages of a project where an applicant is consulting on options which may lead to identifying and consulting significantly more people than the final proposal; avoid the need to keep detailed lists of large numbers of people up to date over the entire pre-application period; and reduce the number of people who will be consulted but not impacted by the final proposal. Those individuals will then still be able to engage in pre-application community consultation and examination of the project, and the procedure for claiming compensation where appropriate would remain unchanged. This will bring the NSIP regime in line with similar regimes such as the Acquisition of Land Act 1981.

29. Taken together, these changes are intended to provide more clarity about how the acceptance test will be applied, and introduce a more proportionate and flexible approach to how consultation requirements are met. They will drive improved joint working to address issues before an application for development consent is submitted by ensuring key

parties work constructively together, and make consultation and reporting requirements more proportionate, so people are properly informed and clear about the outcomes of consultation. The changes will operate alongside guidance, which will be strengthened, to ensure good quality engagement with communities and consultees.

B. Supporting delivery of infrastructure post-consent

30. In addition to improving the process to get to a decision on an NSIP application, we also want to make sure that as many associated permissions and consents are secured in parallel rather than sequentially in order to accelerate delivery, and allow for common sense corrections and amendments to DCOs once a decision has been reached.

Associated permissions and consents

31. The NSIP regime was originally intended to operate as a 'one-stop-shop' for applicants to secure all the permissions needed to undertake construction. Section 150 of the Planning Act 2008 sets out that an NSIP application may remove the requirement for further prescribed consents or authorisations, subject to the consent of the relevant body that would otherwise grant that consent or authorisation. The aim of this provision was to avoid delays from consents being sought post-DCO. However, section 150 is rarely exercised by applicants, meaning we are losing time to processes happening sequentially rather than in parallel. There are likely various reasons for this behaviour: consenting authorities typically prefer to retain decision making functions after a DCO is approved, due to the potential risk that the full amount of information required to assess a permit request may not be available at the pre-application stage; and applicants want assurance that they are likely to secure the required consents before devoting the effort needed to apply for them in the DCO process.

32. The Government wants to deliver on the original 'one-stop-shop' vision for the NSIP process, and to that end will be encouraging use of section 150, including through clearer guidance and support to applicants and to consenting authorities. In addition, the Government is considering the potential merit of extending to other licences the approach taken with respect to marine licences under section 149A, which enables deemed marine licences to be granted as part of a DCO. Under this approach, a set of conditions would be set out in legislation for when a deemed licence can be sought. If a project meets those conditions, the applicant and consenting authority would be expected to engage early and agree on provisions to be set out in deemed licences. Under such an arrangement, the incentives for both applicant and consenting body will be to cooperate through early engagement and information sharing, certain in the knowledge they will receive all licences required for the project and assured that the environment will not be negatively affected. We are exploring the operability of deemed licences and whether they would be more appropriate for specific permits and or sectors. Subject to further work, and views expressed in response to this working paper, one approach could be to take a power in the Planning

and Infrastructure Bill to extend the use of deemed licences to other permitting regimes frequently required by NSIPs. We will explore opportunities for permitting regimes which could operate in a deemed consent framework (including maintaining existing quality safeguards which underpin them), and assess whether further permitting regimes could be added in the future as and where justified.

DCO corrections

33. At present, the Secretary of State publishes the decision on an NSIP application and at the same time releases a final DCO. Changes made to the DCO from this point forward involve a convoluted process, but in practice, the DCO often needs to be corrected immediately following a decision. This is because it is common for minor typographical or referencing errors to arise during the decision-making stage where adjustments away from the Order as provided by the applicant are made by the decision-making department or, for example, to reflect changes to plans or document numbers that only emerged late in the examination process.

34. We are therefore exploring what steps consenting teams and applicants can make to improve this. Alongside seeking views on how problematic this issue is, we would like to explore whether there would be merit in enabling the Secretary of State to publish a 'draft order' alongside their decision letter and allow for a two-week window for applicants to propose any necessary minor corrections (restricted solely to typographical and referencing errors) to the DCO before it is published.

DCO changes

35. If an applicant wants to amend their DCO post-consent, they can request an amendment under either the 'material' or 'non-material' change process. While guidance exists regarding this change process, it does not prescribe whether any particular types of change would be material or non-material. Originally intended to provide flexibility, in practice too much time is spent in discussions to determine which route should apply to a requested change, before the application is made. As a result, delays in the change process can lead to lost opportunities to improve consented schemes as they progress through detailed design to delivery and have a knock-on impact on cost, including by holding up construction while a change is being considered.

36. At other stages of the DCO, and in other consenting regimes, the process for making changes is simpler and more efficient. For example, the change process for DCOs at examination stage has removed the materiality distinction, with the Planning Inspectorate considering all change requests under one route. This allows for decisions on change requests made in a proportionate manner, be that in providing a swift decision, or through additional direction to applicants on any further evidence required.

37. We are therefore considering removing the legislative distinction between material and non-material changes on post-consent changes to DCOs, and replacing it with a single change process which sets out a clear and proportionate approach to all changes. The relevant Secretary of State would direct this, supported by clear guidance and associated timelines to further reduce delays. This should reduce the overall time taken by applicants applying for approval for a change to their DCO and improve the process by which Ministers take decisions on changes.

C. Creating a more flexible regime

38. The NSIP regime is designed to be a rigorous system for facilitating decisions in the national interest while balancing local impacts. It therefore necessarily covers a wide range of sectors and a diverse range of projects within them, each capable of raising unique issues and questions. And yet, the Planning Act 2008 stipulates a uniform approach which can serve to limit the degree to which the Planning Inspectorate and others can adapt the process to reflect the characteristics of a particular project or type of development. The Government is therefore considering whether and how to introduce greater flexibility into the regime.

39. One approach which we believe has merit would be to allow projects that would qualify as NSIPs to be taken through alternative consenting routes, where that is deemed more appropriate.

40. We are also seeking views more widely as to whether there is a case for providing the Secretary of State with the ability to adjust the DCO process for certain types of projects in instances where there may be a clear justification for doing so. We want to explore the need for such a measure, and, if such need is evidenced, to consider whether the limitations of the present regime in relation to handling such projects are best addressed through either a general process modification power, further specific changes to the Planning Act 2008, or via non-legislative interventions.

Alternative consenting routes

41. The Planning Act 2008 provides that projects within the definitions of the Act and above certain thresholds must be consented by a DCO through the NSIP regime, and that undertaking development without a DCO is an offence. Only the relevant Secretary of State has the power through secondary legislation to amend, add, remove or make further provision about which projects enter the NSIP regime because the types and thresholds of development are defined in sections 14 to 30A of the Planning Act 2008. Thresholds should ensure the regime only consents the largest and most nationally significant projects.

42. There are rare occasions where the most complex projects with multiple elements remain unclear as to whether they sit above or below the NSIP threshold or not – in these cases, there is no means of the applicant obtaining certainty until they are close to submitting an

application, and this can lead to disproportionate work and cost preparing applications for more than one consenting regime. If NSIP thresholds are set too low, the process to secure a DCO can be disproportionate to the cost and value of the project. There is evidence from the solar sector, for example, that suggests that if there is a risk that part of a project may cross the NSIP threshold, investors and developers tend to pull out or attempt to keep developments below NSIP thresholds. For example, the Government announced in December 2024 that the threshold for solar projects to enter the NSIP regime will increase from 50MW to 100MW. Due to technological advancements, solar projects are increasingly cheaper and less complex to build, and developers had therefore found the NSIP system for projects from 50–100MW disproportionate. The result was a lack of those medium sized projects coming forward, and a clustering of many 49.9MW projects in the TCPA regime.

43. While changing thresholds in the Planning Act 2008 addresses this specific problem, it may take time to gather sufficient evidence that the thresholds are incorrect or that there is a viable alternative consenting route available for a scheme. While section 35 of the Planning Act allows individual projects below the NSIP thresholds to enter the regime where the Secretary of State so directs, responses to the National Planning Policy Framework consultation noted that there is no equivalent opportunity for projects to be directed out of the NSIP regime, even in cases where they are not complex or particularly contentious and a more appropriate consenting route exists.

44. We therefore propose to correct this problem by introducing a new power for the Secretary of State to judge, on a case-by-case basis, whether a project would be more suited to be consented via an alternative regime. Similar to the existing provisions in section 35, proposed applicants would need to submit a request to the Secretary of State, demonstrating that they meet a clear set of conditions and criteria to be considered suitable for direction out of the NSIP process. The Secretary of State would prepare and publish criteria for making these decisions, which would ensure there is clarity about which projects would be considered suitable to be consented via an alternative regime. We will seek to implement cost recovery powers for public bodies on these projects, where these are needed, to support the consenting of projects through those alternative regimes.

45. Projects that seek to opt out must do so before applying for development consent. The aim is to provide as much certainty as possible to all stakeholders at an early stage about which planning regime will apply. Alternative consenting routes could include the Town and Country Planning Act 1990 (in which case the relevant National Policy Statement could be a ‘material consideration’), the Highways Act 1980, or Transport and Works Act 1992.

Going further on flexibility: varying NSIP process requirements

46. The Government is of the view that the other measures outlined in this paper will support a more effective and efficient system for infrastructure consenting – especially when combined with related measures in the Planning and Infrastructure Bill, including the Nature

Restoration Fund. Nevertheless, the complexity and the volume of projects which will need to be decided in the next five years will be unprecedented. Determining 150 DCOs by July 2029 will nearly triple the number of decisions in the last Parliament. Many sectors will be using the regime for the first time or for the first time in decades.

47. As a result, the Government would like to thoroughly test that the system is able to meet this challenge head on and has the flexibility and tools to adapt and innovate. In addition to other changes set out in this paper, the Government therefore wishes to explore whether the NSIP regime is sufficiently flexible enough to adapt to the needs of these projects and sectors, which may raise unique considerations, in order to continue to deliver robust but swift consenting decisions.

Potential limitations of a one size fits all approach

48. At present, the Planning Act 2008 handles a broad range of projects across energy, transport, waste, waste water and water sectors. Projects entering the regime differ in their complexity but are all the largest and most strategically important of their kind. The Planning Act 2008 was conceived as a means of creating greater certainty for consenting these types of major projects by introducing uniformity on what would be expected of applicants and decision makers. It has broadly achieved that objective: providing greater certainty for applicants on what are often one-off, unique and once in a generation schemes, and for this reason is widely supported by industry.

49. Nonetheless, the Government is interested in views on whether the Planning Act 2008, and its associated secondary legislation and guidance, is sufficiently flexible to adapt to the specific requirements of different sectors, unique projects in a given region, or groups of interlinked pieces of infrastructure.

50. While the Planning Act 2008 has provided certainty through its uniform approach to the NSIP application process, there is anecdotal evidence to suggest there may have been instances where the lack of flexibility provided for by the current legislative framework prevents potentially beneficial adjustments being applied. Given the volume of projects the Government expects to come through the NSIP regime in the coming years, we are therefore interested in views as to whether the current regime is too rigid.

51. We have identified several types of projects where we think there may be merit in considering varying the standard process and on which we would welcome views as to whether the case for process adjustments is robust.

    a. **Solar projects, where planning, land and environmental issues are more limited.** Solar farms tend to be single site developments which are relatively compact, they follow a standard design, and raise a relatively limited number of issues. These often relate to landscape and visual impacts, loss of agricultural land, and require no

compulsory acquisition. The Planning Inspectorate is already supporting consenting many of these projects via a specialist solar team. However, we know the volume of solar schemes is likely to grow rapidly to support the transition to clean power by 2030. While we envisage more straightforward schemes being redirected out of the NSIP regime (see section on alternative consenting routes above), it is likely that largescale solar schemes will still need to be consented via this route. Given these projects are relatively straightforward compared to other NSIPs, a more flexible regime might streamline the process for examining and determining such projects including granting greater discretion to the Examining Authority to streamline or combine written and relevant representations as part of an examination.

b. **A cluster of NSIPs in one region.** As things stand, NSIP applications move through the system independently, but this can mean that co-ordination of these schemes is difficult, to the detriment of communities and developers. Greater flexibility in the process could bring benefits to all parties by enabling projects to be jointly consulted on or examined (including for example through joint hearings or representations from stakeholders). Indeed, this has already occurred for offshore wind schemes under the existing flexibility offered by secondary legislation and guidance. However, there may be greater potential to carry out joint hearings or representations across sectors in a single area or in cases where separate DCOs interact. Further changes could also include requiring greater co-operation between applicants, to help local areas manage the cumulative impacts of multiple infrastructure projects both during and after the consenting process.

c. **Complex and lengthy linear projects, including some grid and transport schemes.** Such schemes span a significant amount of land, and often raise difficult issues as they cross multiple local authority boundaries, are built across different environmentally protected areas, and involve substantial compulsory land acquisition. Modifications to the consultation processes could be designed to support or require more strategic working between Local Authorities across the route, to simplify the process for applicants, while supporting communities to collaborate to secure optimal benefits. This could include standardising survey methodologies for the route of a proposed development, where currently there are often differences between local authorities on the approach, type of information and survey information required for issues such as archaeological assessments. The Planning Inspectorate noted that on a recent scheme, local authorities appointed the same Counsel to represent them, aiding the Examining Authority to hear submissions from a single representative, reducing the amount of hearing time that would otherwise have been needed. Greater flexibility in the requirements imposed on applicants could help ensure that projects benefit from a more proportionate and effective overall process, increasing the attractiveness of the NSIP regime for these types of projects.

A process modification power

52. Subject to views on the merits of allowing for adjustments to the standard process and the instances in which that might be merited, the Government would welcome views on whether the best means of making such adjustments would be by means of a general process modification power to be used on a discretionary case-by-case basis, or whether it would be more appropriate to make a series of specific changes to the current regime (for example, the ability to undertake joint hearings where needed) achieved either by amendments to the Planning Act 2008, changes to secondary legislation or improvements in guidance. General process modification powers do exist in other planning infrastructure regimes. For example, the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 make provision for an applicant to seek a waiver with the need to comply with certain prescribed procedural requirements from the Secretary of State. In Wales, the recently passed Infrastructure Planning (Wales) Act 2024 makes provision for Welsh Ministers by regulations to direct the disapplication of requirements imposed by the Act in a specific case or more generally, requiring that where they do so the direction setting out the disapplied requirements is published and a statement laid in the Senedd explaining its effect and why it was made. The Planning Act 2008, under section 40, already makes provision for the Secretary of State through secondary legislation to modify or exclude any statutory provision under the Act for applications made by or on behalf of the Crown. However, for different reasons (including novelty and narrowness) these powers are barely, if ever, used. It therefore begs the question as to whether it is possible to balance the certainty of a planning regime with a power to introduce flexibility where it is merited, and if so under which circumstances. Given the unprecedented pressure facing the infrastructure planning system, we are interested in understanding whether such a power could be crafted so as to achieve this end, simultaneously being *transparent* and *targeted* enough to be used in those handful of cases where it could materially improve outcomes for developers and communities at large.

53. Should feedback support increasing flexibility in the NSIP regime above and beyond changes to secondary legislation, guidance or specific measures in primary legislation to tackle the issues outlined above, a general process modification power would need to be informed by clear evidence and consultation with key stakeholders with Government committed to ensuring that decisions are subject to robust safeguards. We are therefore interested in views as to whether such a power could be targeted to focus on:

    a. particular stages of the process of consenting (e.g. limiting changes to key application stages such as pre-application, acceptance, pre-examination and examination);
    b. those types of projects that would be suitable and benefit from bespoke changes to the application process (those that are particularly complex, novel, or raise questions of geography due to the clustering of schemes near each other or their linear nature);
    c. those projects of greatest need, possibly those identified in any 10-year Infrastructure Strategy, or which have Critical National Priority status (as defined in

the suite of Energy NPSs) or which are identified in any forthcoming sectoral spatial plan (such as the Strategic Spatial Energy Plan); or

d. a combination of all of the above.

54. If introduced, we would propose being explicit in saying the power could not amend statutory requirements relating to environmental regulation or compulsory acquisition.

55. The use of such a power, if pursued, would also need to be transparent, to provide certainty and accountability to the public and Parliament that its use did not undermine the fundamental rights to access to justice and fairness secured by following due process before consent for a scheme is granted. The Government is open to hearing from industry about what an appropriate mechanism for exercising such a power would entail, but we currently consider that the following safeguards would need to be included:

    a. a statutory requirement to consult on any proposed change to requirements with key stakeholders (which could include developers, local authorities, communities and public bodies) before they are pursued and come into effect;
    b. clear and transparent decision making and ministerial accountability informed by robust evidence and needs case for making such changes; and
    c. a requirement for Parliament to approve any changes through scrutiny of the regulations before they were made, which would build on the strong and unique role Parliament already places in scrutinising and approving NPSs.

56. We would welcome views on whether the potential benefits of making process modifications via a broad power would outweigh the possible drawbacks in terms of certainty in the system and the time taken to consult on and implement changes; and whether on balance such a power would be beneficial in creating a more agile and proportionate approach to consenting in the future. If a general process modification power were not deemed appropriate or necessary, we would welcome views on what further targeted changes to the current regime would help ensure it is sufficiently flexible to efficiently deal with the diverse range projects the system will need to accommodate over the coming years.

D. Strengthening statutory guidance

57. Under the Planning Act 2008, the Secretary of State has limited power to produce statutory guidance in relation to procedures. To support the changes outlined above, and improve the operation of the system overall, the Government is proposing to introduce a new power for the Secretary of State to make statutory guidance across the whole consenting process under the Planning Act 2008. This will enable greater clarity over expectations for all those involved in the consenting process at all stages including acceptance, pre-examination and examination, and decision, and support implementation of changes to primary legislation and secondary legislation. This includes, for example, clarity about changes to consultation

requirements, by providing guidance in relation to notification of Category 3 people under Part 6 of the Planning Act 2008.

Updating transport consenting regimes

58. Finally, the Government recognises that alternative consenting regimes also need to offer a suitably streamlined and efficient process to deliver infrastructure. We are therefore also proposing to introduce the following measures including via the Planning and Infrastructure Bill to support the timely delivery of transport infrastructure projects.

    a. **Highways Act 1980** – measures to streamline and improve the efficiency of delivering road infrastructure schemes, including: powers to enable temporary possession of land for construction to better frame land negotiations; cost recovery by defined statutory consultees and local authorities when dealing with applications to support resourcing decisions; introduction of statutory deadlines for specific stages in the process and amending objection periods to align with other planning regimes to provide certainty to stakeholders; the ability to deem planning permission when sought with specific types of application to consolidate application processes and amendments to align the format and handling of orders and schemes under the Act.

    b. **Transport and Works Act 1992** – measures to streamline and improve the efficiency of delivering new transport schemes such as guided transport schemes, certain railway schemes, and tramways as well as inland waterways and works interfering with rights of navigation. Measures include: cost recovery by defined statutory consultees and local authorities when dealing with applications; introduction of statutory deadlines for specific stages in the process to provide certainty to stakeholders; ability to include additional authorisations to streamline multiple processes; moving Model Clauses to guidance so they can be better kept up to date; and points of clarification achieved by legislative amendments.

Conclusion and areas for further work

59. The legislative proposals outlined in this working paper reflect the Government's commitment to ramping up significantly the delivery of major economic infrastructure, reflecting the Plan for Change's ambition to determine 150 DCO applications by the end of the Parliament. By shifting to a more strategic and outcomes-focused system, the targeted interventions that we are proposing will build upon existing reforms introduced through the NSIP Reform Action Plan, as well as the Levelling Up and Regeneration Act 2023, to make the consenting system for major infrastructure better and faster.

60. We would welcome views on the options set out in this paper, and in particular on the following questions.

    a. Would the package of measures being proposed in this paper support a more streamlined and modernised process? Are there any risks with this package taken as a whole or further legislative measures the Government should consider?

    b. Are the proposed changes to NPSs the right approach and will this support greater policy certainty?

    c. Do you think the proposals on consultation strike the right balance between a proportionate process and appropriate engagement with communities?

    d. Do you agree with the proposal to create a new duty to narrow down areas of disagreement before applications are submitted? How should this duty be designed so as to align the incentives of different actors without delaying the process?

    e. Do you support the changes proposed to Category 3 persons?

    f. With respect to improvements post-consent, have we identified the right areas to speed up delivery of infrastructure after planning consent is granted?

    g. What are the best ways to improve take-up of section 150 of the Planning Act? Do you think the approach of section 149A has the potential to be applied to other licences and consents more generally?

    h. With respect to providing for additional flexibility, do you support the introduction of a power to enable Secretaries of State to direct projects out of the NSIP regime? Are there broader consequences for the planning system or safeguards we should consider?

    i. Do you believe there is a need for the consenting process to be modified or adapted to reflect the characteristics of a particular project or projects? Have we identified the main issues with existing projects and those likely to come forward in the near future? Can we address these challenges appropriately through secondary legislation and guidance; or is there a case for a broad power to enable variations in general? What scope should such a power have and what safeguards should accompany it? If a general process modification power is not necessary, what further targeted changes to the current regime would help ensure it can adequately deal with the complexity and volume of projects expected over the coming years?