

## Insights

# NSIP REFORMS: NEW PRE-APPLICATION PROCEDURE AND DOCUMENT REQUIREMENTS

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## SUMMARY

As part of the ongoing Government reforms to the consenting process for Nationally Significant Infrastructure Projects (“NSIPs”), PINS has launched its [2024 Pre-Application Prospectus](#). The Prospectus sits alongside a suite of other newly-published Guidance, which we have [discussed in previous Insights](#), providing [updated guidance on the DCO pre-application stage](#) and new guidance on the new Fast-track process.

The Prospectus implements expected reforms to the NSIP application process and provides important detail which all promoters should familiarise themselves with. In this Insight we summarise the key changes, which includes a:

- new tiered Pre-application service and associated costs;
- new and increased documentation and procedural requirements;
- Fast-track procedure; and
- transitional arrangements for projects already in the system.

## TIERED PRE-APPLICATION SERVICE

All NSIP applicants must subscribe to one of the new three-tiered Pre-Application service, and pay the associated fees.

The appropriate tier for a project will depend on a number of factors including the complexity of the project, the applicant’s and relevant stakeholders’ experience, the level of agreement on potential issues, the local and national interest in the project, the novelty of the project/consenting approach and the designation and status of any relevant National Policy Statement. The tiers increase in both cost and PINS’ involvement at each level.

The table below summaries the key features of each tier of service available and its cost. A [more detailed description](#) of each is contained in the Prospectus.

The fees for pre-application services are a new feature, and are part of the Government's push for full cost recovery for PINS' services. The Prospectus indicates that invoices will likely be raised twice a year, in April and October, and will be charged on a whole month basis. Where an application joins the service part-way through an invoicing period charges will be applied pro rata for that period on a whole month basis.

## **TIER 1: BASIC SERVICE**

### **Description of service**

- Minimum level of pre-application engagement required to discharge PINS' statutory duties.
- Section 51 advice provided will be in most cases limited to signposting to existing resources and precedents.
- Limited meetings at essential milestones (inception; post-section 42 consultation; and pre-submission).
- No draft document review service available.

### **Suitability**

- Recommended for experienced applicants and less complex projects (e.g. with limited compulsory acquisition powers sought).
- This is a higher-risk consenting strategy which could result in a more challenging and lengthy examination.

### **Cost to applicant**

£62,350 per year

## **TIER 2: STANDARD SERVICE**

### **Description of service**

- Increased PINS' support in preparing applications capable of being accepted for examination and examined within the six month maximum statutory timeframe

- Section 51 advice to include procedural advice to support the programme and assist potential resolution of likely examination issues prior to submission.
- Meetings include those available under the basic service and additional meetings relating to consultation, the EIA process and review of draft documents.
- Greater PINS involvement for other aspects of pre-application procedure, including Evidence Plans (described below).
- The standard document review service (including review of the draft DCO and Explanatory Memorandum) available.

### **Suitability**

- Appropriate for all applications.
- Opting for Tier 2 means that an application cannot qualify for the formal Fast Track procedure, but an examination may, if considered proportionate at the discretion of the Examining Authority, be decided in a shorter period than the six-month maximum.

### **Cost to applicant**

£126,050 per year

## **TIER 3: ENHANCED SERVICE**

### **Description of service**

- In addition to discharging statutory requirements and providing the Tier 2 services, increased involvement of the Examining Inspector in the pre-application advice;
- PINS' support of supplementary pre-application components designed to facilitate a smoother post-submission process (listed in the Annex to the Prospectus);
- PINS' providing a 'facilitative and pre-emptive' role, advising applicants on project and programme risks and setting up multi-party forums.

### **Suitability**

- Appropriate for projects of a greater degree of a complexity and giving rise to numerous and/or uncommon examination issues OR
- Applicants seeking to use the formal Fast Track procedure.

### **Cost to applicant**

£208,850 per year

## DOCUMENTATION AND PROCEDURAL REQUIREMENTS

All applicants, regardless of the service tier they subscribe to, must engage with the five primary service features, which are described in more detail in the Prospectus and essentially require the preparation of more documents. There are also 'supplementary pre-application components', described in detail in the Annex to the Prospectus, which can feed into some of the mandatory service features.

The mandatory primary service features are:

1. **The Programme Document:** setting out the proposed main steps during the application preparation from the Inception Meeting until submission, including required/requested interactions with statutory bodies and local authorities. Applicants must submit an early draft to PINS in advance of the Inception Meeting, and must maintain the Programme Document throughout the pre-application period.
2. **Issues Tracker:** designed to highlight key issues (e.g. around environmental effects, Habitats Regulations Assessments etc) and the relevant stakeholders affected, this document must be updated regularly by the applicant throughout the pre-application process and will inform the application document, the Potential Main Issues for the Examination. It should be made available to stakeholders and PINS on a regular basis, and should consolidate issues raised by consultees in any **Principal Areas of Disagreement Summary Statements** ("PADSS") that consultees may produce, but a pre-requisite for promoters wanting to apply for the fast track process.
3. **Advice Log:** all advice given by PINS to applicants will be consolidated in the Advice Log, which will be publicly available.
4. **Adequacy of Consultation Milestone (AoCM):** introducing yet another acronym, the promoter must set the AoCM in the Programme Document at a point after which consultation has been carried out, but prior to the submission of the application, to address adequacy of consultation carried out by the promoter. The promoter is required to submit a written document setting out the consultation undertaken to date, confirming the Statement of Community Consultation approach and summarising responses received.
5. **Demonstrating regard to advice:** promoters must include in the Consultation Report submitted with their application evidence of how they have had regard to advice given by PINS and statutory bodies, describing how the application has been amended in light of the advice and justifying where the application has not been amended.

Applicants participating in the enhanced tier and seeking admission to the fast track are encouraged to develop what the Prospectus refers to as '**supplementary pre-application**

**components**, some of which are mandatory for participation.

There is an acknowledged expectation that some of these components will evolve in practice as the new procedures are put into place and bed in. The intention behind them, the Prospectus says, is 'to assist in optimising applications for smoother and potentially faster post-submission stages', but whether they will have their desired effect will remain to be seen.

## WHICH TIER TO SUBSCRIBE TO?

Promoters will need to decide which tier of service they intend to request before the start of the Inception Meeting, with fees charged from the date of the Inception Meeting.

Before that meeting, applicants are expected to provide basic details about the project to PINS, including their initial opinion on the appropriate service tier and whether they intend to apply for Fast-track consenting. They must also have engaged with relevant stakeholders, including local authorities and statutory bodies, so as to provide PINS with relevant information needed to participate in the appropriate service tier.

And then at the Inception Meeting, the Programme Document setting out the proposed programme of pre-application activities must be provided. The tier will be agreed at, or no later than 28 days following, the meeting, and kept under review throughout the pre-application stage. If there is disagreement between the applicant and PINS as to the appropriate tier, PINS' view will be final (but the Prospectus notes that this will only be exercised where PINS considers a lower tier to be appropriate).

Applicants can request a switch to a higher-tier as the project evolves subject to PINS' capacity. If switching to a higher tier is possible, the associated tier's fees will be charged in advance on a whole month basis. If the applicant intends to switch tiers, the likelihood and timing should be identified in the pre-application Programme Document.

## FAST TRACK CONSENTING ROUTE

The new Fast-track consenting route aims to provide a decision within 12 months from submission of an application with a maximum Examination period of 4 months. Eligibility is dependent on participation in the enhanced Pre-Application Service and compliance with the relevant supplementary pre-application components. [The Prospectus includes a flowchart](#) showing a high-level overview of applying for the Fast-track process.

Participation in the enhanced pre-application service, however, is not sufficient in itself to guarantee that PINS will deem the application suitable for the Fast-track process; the application must meet the appropriate **Fast-track quality standard** and appropriate input provided from statutory consultees and stakeholders during the preparation of the application. These, as well as other factors which PINS will consider prior to making a decision that the application is suitable for the

Fast-track handling, are detailed in the newly published Guidance ([Planning Act 2008: Fast-track process for Nationally Significant Infrastructure Projects](#)).

Promoters must be aware that a significant investment of time and resources in front-loading the preparation of documentation and liaising with statutory bodies and affected parties, as well as PINS' and stakeholder's resources availability and capacity will be needed in order to apply for the Fast-track process. This is in addition to compliance with the mandatory supplementary pre-application components.

Parties wishing to apply for the Fast-track must submit a Fast Track Admission Document with their application, to demonstrate how the application satisfies the quality standard, with evidence of compliance with aspects of the supplementary pre-application components.

A preliminary decision on the application's suitability for the Fast-track procedure will be given at the same time as the decision on the acceptance of the application for Examination, 28 days after the submission of the application. The decision will be confirmed after the Examining Authority has considered all Relevant Representations received during the pre-Examination stage.

## TRANSITIONAL ARRANGEMENTS

PINS has published FAQs relating to the transitional arrangements to assist promoters whose projects are currently at the pre-application stage, which will be updated regularly.

PINS has just launched on 29 May an Expression of Interest ("Eoi") for project promoters currently in the pre-application stage to indicate which of the three tiers they would wish to engage in for their projects. Promoters of new projects who have not yet had contact with PINS can still respond to the EOI, and it is recommended that they do so if pre-application engagement with PINS is expected to start before April 2025.

The level of service tier available will be subject to PINS' capacity, and applicants are advised to consider whether relevant stakeholders (including statutory bodies and local authorities) also have sufficient capacity in order to meet requirements for higher tiers. If demand for higher tiers cannot be met then projects may be allocated to a lower tier.

Confirmation as to tier allocation is expected before the **end of August 2024**. Charging for the pre-application service will be implemented on a phased basis depending on the stage of the application, either commencing from **1 October 2024 or 1 April 2025**.

## COMMENTARY

The Prospectus forms part of operational reforms, which have been sought for many years now by those involved in the process, designed to optimise applications prior to submission and lead to smoother examination processes (such that applications are not just 'acceptance ready', but are

'examination ready'). Whether the innovations as set out will be successful, will be tested as they are put into practice.

The Prospectus itself acknowledges that "the services established within this version of the Prospectus are anticipated to evolve as they are matured and embedded in practices and procedures. On this basis the Prospectus will be a flexible resource and subject to amendment and update as we continue to learn to optimise the process together."

Promoters shaping the early stages of a project should keep a careful eye on the Prospectus, and on other newly published guidance, as it is liable to change in the near future. Promoters will need to carefully consider and plan the pre-application period, and factor in the cost of compliance with the new procedure.

Those promoters with applications already undergoing the pre-application process, and those looking to commence that process in the near future, will need to carefully consider which service tier will be appropriate for their project, and should liaise with those relevant stakeholders whose input will be needed. Promoters will need to take these steps in short order to ensure that responses to the EoI can be made by 10 July 2024 and PINS' target of confirming service tiers before the end of August 2024 can be met. Whether this is a realistic timeframe will remain to be seen.

Practitioners as well have a fair amount of homework to do, familiarising themselves with the new procedure and documents that will be required for applications going forwards. The impacts of the new Prospectus, and its efficacy in making the NSIP process more efficient, will be tested through its implementation. In that sense, all parties are going to need to 'go on the journey' with PINS and other stakeholders, as these new approaches bed down.

## **RELATED PRACTICE AREAS**

- Planning & Zoning

## MEET THE TEAM



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