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Insights

PLANNING AND INFRASTRUCTURE BILL – NSIP CHANGES

Mar 26, 2025

SUMMARY

The infrastructure measures in the Planning and Infrastructure Bill introduce amendments, principally to the Planning Act 2008, that aim to make the NSIP regime faster and more flexible to support the Government's major infrastructure ambitions. In the second Insight in our series on the Bill, we discuss what changes to the NSIP regime have and have not been included and the implications for those navigating the system.

The changes to the NSIP regime included in the Planning and Infrastructure Bill build on existing reforms introduced through the NSIP Reform Action Plan and the Levelling Up and Regeneration Act 2023 and were trailed in the Planning Reform Working Paper: Streamlining Infrastructure Planning published in January 2025 (the Working Paper).

THREE CHANGES TO THE CONSULTATION REQUIREMENTS

A NEW STATUTORY DUTY FOR CONSULTEES TO HAVE REGARD TO GUIDANCE ON RESPONDING TO CONSULTATIONS

The Working Paper anticipates this guidance (which has not yet been published) will set clear expectations on open and transparent communication and require consultees to provide substantive responses (and for enough information to be provided to enable this) to help to reduce unresolved substantive issues going into examination. Whilst the Bill stops short of requiring parties to identify and narrow down areas of disagreement during the pre-application stage, as was considered in the Working Paper, it may be that this expectation is set out in the guidance.

SHORTER CONSULTATION REPORTS

Applicants are required under the 2008 Act to produce a consultation report as part of their application materials. The Bill amends how 'consultation report' is defined to strip back the level of detail required. At present, these reports can be sizeable, reflecting the quantum of consultation and feedback on a major scheme. Instead the broad approach taken to consultation with an explanation

of how responses have or have not influenced the project must be reported on, to enable shorter, more concise and more accessible reporting.

REMOVING THE REQUIREMENT TO CONSULT 'CATEGORY 3' PERSONS DURING THE PRE-APPLICATION STAGE

This measure seeks to introduce a more proportionate and flexible approach to consultation and align with similar regimes such as the Acquisition of Land Act 1981. By removing the requirement to consult people who may be impacted by a project ('Category 3' persons, being those likely to have a 'claim' for land compensation), whilst retaining the requirement to notify them after acceptance of an application for examination, the burden for applicants having to identify people before the final project scope is known and keep detailed lists up to date over the pre-application period of people who may not ultimately be impacted by a project will be removed.

MANDATORY PERIODIC UPDATES TO NPSS

Currently reviews of NPSs are carried out at the Secretary of State's discretion, either in full or part when appropriate. This discretion is retained but subject to a new proviso that a full review must be carried out within 5 years from when this provision comes into force and every 5 years thereafter (unless exceptional circumstances exist justify a delay). Further, removal of the requirement to lay the amended NPS before Parliament aims to speed up parliamentary approval.

POWER TO DIRECT AN ALTERNATIVE CONSENTING REGIME

To increase flexibility of the NSIP regime the Bill provides a power for the Secretary of State to direct on a case-by-case basis, before submission of a DCO application, that the requirement for development consent is disapplied and an alternative consenting regime (for example the Town and Country Planning Act 1990, Highways Act 1980 or Transport and Works Act 1992) is to apply instead – effectively a reversal of the existing s35 procedure that allows the Secretary of State to direct projects below the NSIP thresholds to enter the DCO regime. This could be useful particularly for schemes that sit on the margins of the NSIP thresholds or where, on balance, an alternative regime would provide a more proportionate and faster route to consent.

ACCEPTANCE OF DCO APPLICATIONS

Changes to the acceptance stages will require PINS to apply a more proportionate approach in determining whether to accept an application. Instead of DCO applications needing to be of a 'satisfactory standard', acceptance must be of a 'standard that is suitable to proceed to examination' which allows PINS more flexibility. Further, a new provision will allow limited minor changes to bring an application up to the required standard, and will remove binary decisions on whether applications are accepted or not.

COSTS

Current costs provisions allow Examining Authorities to make costs orders for parties at a DCO examination. The Bill extends this power to costs incurred by an interested party in relation to the DCO application, which means promoters are at greater risk of costs, for example if a DCO application is submitted but withdrawn before the start of the examination.

LEGAL CHALLENGES

As expected, and following the recommendation in the Banner review on legal challenges to NSIPs, the Bill introduces an amendment to the Senior Courts Act 1981 and the Civil Procedure Rules to reduce the number of attempts claimants have to secure permission to legally challenge a DCO from 3 to 2 in all cases, by removing the 'paper permission stage' so that all applications for permission to challenge will instead be decided at an oral hearing, and from 3 to 1 in cases certified as 'totally without merit'.

WHAT'S NOT INCLUDED

The Working Paper also considered a range of other measures, mostly relating to post-consent adjustments, that have not been taken forward in the Planning and Infrastructure Bill. In advance of a published response we do not yet know whether they are still under consideration or whether they have been dropped, but they included consideration of:

- **A power to extend the use of deemed licences to other permitting regimes** in a similar way to how marine licences can be deemed granted as part of a DCO under section 149A of the 2008 Act.
- **A window after a DCO is made to allow for corrections.** Currently NSIP decisions are published at the same time the final 'made' DCO is released. Corrections are commonly needed straight away for example to amend plan or document references or typographical errors. The Working Paper considered whether a draft DCO should be published alongside the Secretary of State's decision letter with a short period in which applicants could propose minor corrections before publication of the final DCO.
- **A single process to amend DCOs.** The 2008 Act and the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 provide separate procedures for making non-material and material changes to DCOs. Removal of the legislative distinction between material and non-material changes on post-consent DCO changes and introduction of a new single change process was considered in its place to speed up and improve this part of the consenting process.

- **A new power for the Secretary of State to make statutory guidance across the whole consenting process** under the Planning Act 2008 to support other changes introduced and improve the operation of the system overall with more clarity over expectations for those involved in the consenting process at all stages.

COMMENT

Depending on where in the project programme a particular project is, these changes will need to be considered for major infrastructure projects already in the pipeline. In particular those that are working towards application submission will need to consider the changes to the pre-application consultation which will come into force within either two or six months from the date the Planning and Infrastructure Act comes into force.

The changes taken forward in the Bill are welcomed and seen as a helpful evolution, rather than revolution, of the existing process which may deliver marginal, rather than a significant acceleration of the NSIP consenting regime. The measures around pre-application consultation and application acceptance should simplify and reduce some of the resource burden on promoters, but will need to be supported by clear and detailed guidance to ensure they deliver the desired outcomes. Further, mandatory updates to NPSs and a lighter touch parliamentary process for their approval will provide greater policy certainty for schemes.

However, some of the other changes considered in the Working Paper that sought to tackle other long-standing issues which are perhaps more complex to deliver but could potentially deliver further improvements, have not come forward. We will await to hear if and how the Government intends to take forward these measures with interest.

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