

Papers

The Planning Bill: Implications of the Proposals for a New Regime for Major Infrastructure for Democracy and Delivery.

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Introduction

This paper considers the implications of the Government's proposals, set out in the Planning Bill currently before Parliament, for a new planning regime for nationally significant infrastructure. In particular it considers how these proposals reflect the twin themes of this year's conference, delivery and democracy.

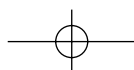
The starting point for this analysis is to challenge the presumption, implicit in the conference's theme, that the planning system must choose between effectively supporting the delivery of sustainable development, or promoting democratic engagement in that system. The recent debate about planning reform has at times become unhelpfully polarised around two extremes. So, some have sought to argue that complex consultation requirements, combined with opportunities for people to participate and challenge decisions, make it impossible for development to be delivered in an efficient way; while others have argued that any changes to existing processes for consultation and challenge represent a fundamental erosion of human rights and democracy.

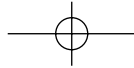
Underlying this debate about process is a deeper one about the objectives of the planning system, and whether the fundamental purpose of the planning system should be to promote development, or to protect the environment and local communities from the adverse consequences of such development.

We have seen versions of this debate played out on a number of issues recently where the role of the planning system is central: on the proposals in the Planning Bill for a new regime for nationally significant infrastructure; on the Government's national and regional housing targets; on proposals for up to 10 new eco-towns as part of the means of achieving an enhanced level of housing provision; and on proposals, also contained in the Planning Bill, to simplify and streamline the process for local-plan making.

The reality is more balanced than the polarised debate would suggest. It is not possible for the planning system—or the Government in creating the legislative and policy basis for planning decisions—to choose between delivery and democracy, or trade-off the need for growth against the need to ensure the environment is protected.

¹ This paper reflects Government policy but is a draft and is presented on a personal basis; it should not therefore be quoted as a formal statement of Government policy.





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Of course planning must mediate between potentially competing interests, including between national and local interests. But the system for making planning decisions cannot simply choose between competing interests; rather it must achieve a sensible balance between them. The twin pillars of the planning system are that it must support sustainable development; and that it must do so in a way which commands legitimacy. We must have a planning system that is capable of ensuring that the development needed to support our society, our growing population and our quality of life—the houses, workplaces, hospitals, public spaces, roads, energy generation and water supplies—is delivered in a way that is sustainable. At the same time, we must have a planning system which ensures that this development is delivered in a way which is democratic, which respects the private property and human rights of individual citizens, and which involves citizens and communities in the decisions which affect them.

The key challenge for the Planning Bill is to transform the regime for major infrastructure projects in order to achieve outcomes that are both faster and fairer; both more efficient and more accountable; and which both ensure more timely delivery, and improve the ability of communities and individuals to participate in the system.

Major Infrastructure Planning—Costs and Challenges

The proposals in the current Planning Bill have their origins in three separate policy reviews which were reported in 2006. The reports by Kate Barker on Land Use Planning² and by Rod Eddington on Transport³ both concluded that the planning processes for major infrastructure were failing to deliver effective outcomes, on a timely basis. At the same time, the then Department for Trade and Industry's Energy White Paper⁴ concluded that improving the planning system for major energy infrastructure was a key element for strengthening the policy and regulatory framework governing energy in order to face the twofold challenges of tackling climate change by reducing carbon dioxide emissions.

Kate Barker found that over half of power station applications that went to inquiry took over two and a half years to gain approval; Rod Eddington analysed a range of transport projects and found many including the West Coast Mainline, the M6 Toll Road, Dibden Bay and Bathside Bay Ports, London International Freight Exchange took over two years from start of inquiry to determine. In some of the best known cases the time taken to decide these applications has been much longer; over seven years for Heathrow Terminal 5, over six years for the North Yorkshire Grid Update. These timescales exclude the time taken before a planning inquiry on preparation of an application, which may add months or years to the total timescale associated with major projects.

The failure of our current consent systems to deliver more timely outcomes has huge costs. The ports industry has put a price tag of £45 million on the Dibden Bay application process.⁵ Communities suffer if they are blighted by years of uncertainty; the economy suffers if beneficial investment is delayed or deterred; and quality of life for all may be diminished if vital infrastructure needed to deliver energy, improve transport and support water supplies and waste disposal is not provided.

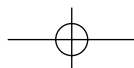
And the long-term challenges facing the United Kingdom mean these wider costs are set to increase. As the UK population grows and becomes more affluent, there will be increasing demands on

² Barker Review of Land Use Planning: Final Report and Recommendations (published December 2006).

³ The Eddington Transport Study: Transport's role in sustaining the UK's productivity and competitiveness (published December 2006).

⁴ Meeting the Energy Challenge: A White Paper for Energy. CM 7124, DTI, May 2007.

⁵ Associated British Ports Annual Report, 2005 quoted a cost of £44.9 million for the cost of the Dibden Bay application process.



infrastructure. Recent figures from the Office of National Statistics suggest the UK population will be over 70 million by 2030. Household projections from the Department of Communities and Local Government show that between 2004 and 2026 we expect an additional 4.9 million households, or 223,000 additional households a year.

Climate change means we must speed up the shift to low and zero carbon forms of energy. The Stern Review⁶ found that the overall costs of climate change could be equivalent to losing between 5 per cent and 20 per cent of global GDP each year. The Government is committed to the United Kingdom's role as a leader in the global drive to combat the effects of climate change, and to making the United Kingdom a low-carbon economy. But in order for the United Kingdom to meet its target of generating 15 per cent of energy from renewable sources by 2020, we could need to see a tenfold increase in renewable generation, including wind generation, over 12 years.

At the same time, concerns about energy security of supply have increased. As North Sea production capability declines, so the United Kingdom will become more dependent on gas imports and gas storage. The United Kingdom also expects to lose around a third of its present electricity generating capacity over the next few years as plants which are unable to meet new environmental standards, or which have reached the end of their design lives, have to close. While renewable electricity generating capacity and energy efficiency will play an increasingly important role, these will not be sufficient to meet the resulting gap in supply. Some new conventional, and in due course nuclear, capacity will also be needed.

Exactly what this means for infrastructure development will depend on how rapidly new renewable capacity is deployed, and how much electricity it produces, as well as how energy demand develops. Modelling suggests however it could mean the United Kingdom will need to build in the region of 3,000 new off-shore wind turbines and 4,000 new on-shore turbines, plus between 10 and 20 new power stations by 2020.⁷

Globalisation and increasing cross-border competition is a further key long-term challenge. The rapid growth of developing countries and especially Brazil, Russia, India and China is expected to continue.⁸ This creates opportunities for UK exporters but also challenges for UK firms who have to compete in an increasingly competitive global market place. High quality infrastructure can play a key part in reducing costs for UK business and attracting inward investment capable of generating jobs and prosperity. For example, the Shellhaven Port development in the Thames Gateway includes a logistics centre which will generate over 12,000 jobs and bring huge regeneration benefits to the Gateway. It will also reduce by 40 million kilometres a year the distance travelled by heavy goods vehicles on UK roads, with consequent benefits for reduced carbon emissions and traffic congestion.

The Planning White Paper and the Planning Bill—Principles of and Proposals for Reform

The Planning White Paper⁹ published in May 2007 set out the Government's proposals for addressing the problems inherent in the existing consent systems for major infrastructure, and creating a regime

⁶ The Stern Review on the Economics of Climate Change, HM Treasury, October 2006—ISBN 0-521-70080-9.

⁷ Renewable Energy Strategy, May 2008.

⁸ A report by Goldman Sachs in 2003 projected that Chinese GDP would increase by seven times between 2000 and 2020, with the BRIC countries growing to more than four times their current size.

⁹ Planning for a Sustainable Future: White Paper. Joint DCLG, Defra, DfT publication. CM7120, May 2007.

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capable of responding effectively to these long-term challenges. It identified a number of key principles for planning:

- (i) It must be responsive, particularly to longer term challenges such as increasing globalisation and climate change, and properly integrate economic, social and environmental objectives to deliver sustainable development;
- (ii) It must be streamlined, efficient and predictable, with decisions taken in a timely fashion;
- (iii) It must be open and accessible, and build in full and fair opportunities for public consultation and community involvement. People must be able to have their say on proposals for infrastructure development which affect them;
- (iv) Decisions should be taken in a fair way and reasons for decisions should be clear, with Ministers responsible for policy, and an Infrastructure Planning Commission responsible for decisions within a clearly accountable framework;
- (v) Decisions should be taken at the right level—whether national, regional or local.

The key proposals set out in the White Paper subsequently formed the basis for the detailed clauses in the Planning Bill. These are as follows:

- (i) The Bill replaces the eight consent regimes currently operating for major infrastructure with a single consent regime in which there are three key stages;
- (ii) In the first stage, the Government will produce National Policy Statements in which the responsible Secretary of State will set out the objectives for infrastructure development, including in relation to need.¹⁰ National Policy Statements will need to balance and integrate the range of economic, environmental and social objectives on which infrastructure development is likely to impact. In some cases they may be locationally specific, although the degree of specificity will vary between sectors and National Policy Statements. National Policy Statements will be subject to public consultation,¹¹ Parliamentary Scrutiny¹² and appraisal of sustainability.¹³
- (iii) The second stage relates to pre-application. Under the provisions in the Bill developers will be under a duty to consult those directly affected¹⁴ and the local authority¹⁵ and to take account of responses to consultation.¹⁶ The Commission may only accept an application if these duties have been complied with.
- (iv) In the third stage, applications will be considered and determined by the Infrastructure Planning Commission. The Bill includes provisions for a single Commissioner to report on more technical applications (for example some electricity transmission projects might be considered in this way).¹⁷ Most large and complex projects will however be determined by a Panel of Commissioners.¹⁸ The Bill proposes a statutory six-month limit for examination of an application,¹⁹ and a further three months for a decision, though this

¹⁰ Clause 5.

¹¹ Clause 7.

¹² Clause 9.

¹³ Clause 5.

¹⁴ Clauses 42 and 43.

¹⁵ Clause 47.

¹⁶ Clause 47.

¹⁷ Clauses 77 to 84.

¹⁸ Clauses 63 to 76.

¹⁹ Clause 97.

could be extended for the most complex cases where special circumstances applied, in which case the Secretary of State would need to be notified and reasons given.²⁰ The Bill also proposes that, wherever possible, the examination of applications by the Commission²¹ is to take the form of the consideration of written representations. This will speed up the process of considering an application because it will reduce the need for often lengthy and repetitious oral evidence giving. It will improve the analysis of evidence, because it will allow technical questions to be tested in greater depth. It will also make the process much more accessible to members of the public because it would be easier to understand the issues without having to attend, or be represented at, an often lengthy public inquiry. However, I want to stress here that the Bill sets out very clear and explicit rights to be heard. The Bill is clear that the Commission must hold an open floor hearing if any interested party requests it (at which all interested parties can make oral representations), and it also sets out provisions requiring the Commission to hold hearings on specific issues,²² and hearings for those whose rights are affected by compulsory purchase orders.²³

The Bill has also set out a range of more detailed provisions for example on thresholds for projects which are nationally significant and so should be considered by the Commission²⁴ and on opportunities for legal challenge to National Policy Statements²⁵ and decisions of the Infrastructure Planning Commission.²⁶

These proposals aim to improve the ability of the planning system to deliver major infrastructure in a number of ways:

- first, by ensuring that applicants need only apply for a single development consent under a single regime rather than many as can be the case at present for more complex infrastructure projects;
- secondly, by ensuring there is a clear framework of national policy, against which developers can consider their investment options, and decisions-makers can determine applications;
- thirdly, by ensuring developers consult communities and statutory consultees early, and to consistently high standards;
- fourthly, by ensuring the Commission—which may refuse to accept an application which does not meet prescribed standards, for example in relation to consultation—has the information necessary to enable its consideration before it begins its inquiry;
- fifthly, by ensuring that the inquiry is not required to consider matters such as the need for development, as these will have been determined in the National Policy Statement, and is run in accordance with statutory timetables;
- and finally, by creating a single point of decision, rather than a two-part decision as at present, whereby the results of an inquiry are subsequently considered by Ministers.

²⁰ Clause 105.

²¹ Clause 89.

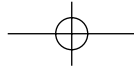
²² Clause 90.

²³ Clause 91.

²⁴ Part 3.

²⁵ Clause 13.

²⁶ Clause 116.



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Overall, the Government has estimated that, once National Policy Statements are in place,²⁷ these measures should reduce by about a half the average time taken for planning decisions on most large applications (from around two years from the point of application, to about one year).

This in turn should result in substantial savings to business and benefits for the economy more widely as necessary infrastructure is delivered. The Impact Assessment published alongside the Bill estimated that the proposals would reduce costs to the wider economy to nearly £300 million per year (or nearly £5 billion over 20 years).²⁸

Responses to White Paper and the Planning Bill

The White Paper generated a high level of public debate and extensive public response—in total over 32,000 responses were received, a large proportion of which were part of organised campaigns. Debate has continued as the Bill has proceeded through Parliament.

Some of the proposals in the Bill have been widely welcomed. In particular proposals to create a single consent regime, to produce National Policy Statements and to streamline decision-making have attracted general support. However other elements remain controversial. It is perhaps helpful to summarise some of the key issues of concern on the Bill, and how the Government has responded to these.

Many respondents have sought greater *clarity about what form National Policy Statements would take*. The Government therefore set out its proposed “suite” of National Policy Statements when the Bill was published. This made clear that there would be an overarching energy policy document, supported by technology specific statements on fossil fuels, renewables, gas, nuclear etc. The proposed progress report on the Air Transport White Paper (ATWP), expected between 2009 and 2011, would provide a good opportunity to designate the ATWP in conjunction with that report. Rail and road will be dealt with together in a policy statement on strategic networks. The Ports National Policy Statement is expected to be published in 2009. The water NPS will be informed by the Government’s new water strategy for England “Future Water” published by Defra in February 2008²⁹ and a Waste National Policy Statement expected during 2009.

Strong concerns were raised in response to the White Paper that *sustainable development should be at the centre of the new regime*, as it is for planning under the Town and Country Planning Act. This reflects the wider concern that the aim of the new regime should be to integrate economic, social and environmental objectives, not to elevate economic objectives over others. In response to this the Bill makes it clear that all National Policy Statements should be drawn up with the objective of contributing to sustainable development³⁰ and should be subject to appraisal of sustainability.³¹

Other key issues raised in response to the White Paper and Bill reflect different aspects of the debate about democratic accountability:

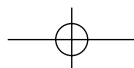
²⁷ Clearly, the qualification “once National Policy Statements are in place” is critical. The lead time for these documents—allowing for effective consultation, sustainability appraisal, Parliamentary scrutiny, and time for the Government to respond—will be significant; and the new regime will not be able to operate until National Policy Statements are in place. Work on National Policy Statements is therefore underway now in Departments, to ensure that NPSs can be designated before the new regime becomes fully operational and the IPC can begin accepting applications.

²⁸ Planning Bill - Impact Assessment published alongside the Planning Bill on November 27, 2007, available online from <http://www.communities.gov.uk/documents/planningandbuilding/pdf/561912.pdf> [Accessed October 29, 2008].

²⁹ Government’s water strategy for England “Future Water”. Defra, February 7, 2008. ISBN 978-0-10-1731928 obtainable for download at <http://www.defra.gov.uk/environment/water/strategy/pdf/future-water.pdf> [Accessed 14/10/2008].

³⁰ Clause 10.

³¹ Clause 6(3).



- (i) The need to ensure *effective public participation* in the new regime;
- (ii) Concerns especially from the local government sector that *Local Authorities should have a strong and clearly defined role* in the process;
- (iii) The need to ensure the *IPC is properly accountable for its decisions*;
- (iv) The *wider democratic accountability of the new regime*, where final decisions are taken by an unelected body.

These issues and others relating to the debate about democracy and accountability are addressed in the following section of this paper.

How do these proposals meet the tests of delivery and democracy?

Debate on the Planning Bill has seen a large measure of political consensus emerge around the central proposition that the current multiple regimes are failing to ensure effective delivery of infrastructure. While some have sought to argue for example that the objective of more speedy decisions could be delivered through a more incremental approach based on using the recently reformed procedure rules for Major Infrastructure Projects introduced in August 2005,³² combined with tighter timetabling of Ministerial decisions, parliamentary debate to date suggests there is growing support for the argument that the problems inherent in the current system, and hence the solutions needed, are fundamental, and require fundamental reform.

However there has been extensive debate around whether the proposals are sufficiently democratic—which in turn has implications for delivery, since in order for the new regime to operate effectively it needs to be seen to operate fairly and provide effective routes to accountability.

The debate about democratic accountability has been wide-ranging. Within it however it is possible to identify three key issues.

i) National versus local democracy

The first is the relationship between national and local democracy, including whether and if so when it is legitimate for national government and institutions to place national interests above the needs and wishes of local communities.

Some have sought to present the Bill as a centralising reform, placing more decisions in the hands of national institutions and removing power from locally-elected councils. In fact the boundaries between local and national decision making will largely remain as they are at present. Decisions that will in future be taken by the Infrastructure Planning Commission—estimates suggest the Commission's workload will comprise around 40 to 45 large and complex projects per year, plus a number of smaller and more technical electricity transmission and distribution applications—are almost always taken at present nationally, by Government Ministers. There are a few exceptions—for example airport development which currently falls under the Town and Country Planning Act—but such cases are usually, in practice, determined by Ministers under existing call-in and appeals procedures. Indeed the current applications relating to the proposed construction of a second runway, and associated infrastructure, at Stansted Airport. (Applications UTT/0400/08/FUL and UTT/0401/08/OP) are the first to be called-in under the 2005 Major Infrastructure Projects procedures.

³² The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, ISBN 0110732006.

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One of the consequences of the new regime is that a number of smaller transport schemes, which are currently determined by Ministers, are more likely in future to be devolved to and determined by local authorities. The Department for Transport is exploring this potential and anticipates undertaking a dedicated consultation on the issue later this year.

As noted above, the role of local authorities has been an important issue in debate on the Bill. In order to ensure the interests of local communities are fully represented in the process the role of local authorities, as well as that of local communities, is hard-wired into the Bill at every key stage; so there are requirements for the Secretary of State to consult local authorities on locationally specific National Policy Statements, for developers to consult local authorities in preparing their applications; and for the IPC to seek and have regard to the local authority's assessment of the local impacts at the examination stage.³³

Additionally—and importantly—the decision-making framework for the Infrastructure Planning Commission makes clear that the Panel must consider the local impact report, produced by the local authority, and any other matters it considers relevant and important as well as the National Policy Statement in reaching decisions; and that, while decisions should be in accordance with the National Policy Statement, they may depart from this if the Panel is satisfied that the adverse impact of the development would outweigh its benefits.³⁴ The effect of these provisions will be that, while there is a strong expectation that decisions should reflect the National Policy Statement, it will be possible for an application which is in accordance with National Policy to be rejected on the grounds that the adverse local (or other) impacts outweigh the benefits including the national benefits which would flow from it. So it is not true, as some have argued, that National Policy Statements will effectively pre-determine decisions on the location of development.

ii) Participation and public voice

A second issue or theme in the debate about democracy has been that of public participation and involvement in decision-making. The objection here has been that citizens and others with an interest will have less of a voice in the system than they do at present.

The Government has argued strongly throughout the process of the White Paper and the Bill that the opposite is true. Public consultation and participation is integral to the regime set out in the Bill which includes: clear duties on Ministers to consult on National Policy Statements,³⁵ and in particular to ensure that, where the NPS identifies particular locations suitable for development, appropriate steps are taken to publicise this; clear legal obligations on developers to consult in advance of submitting an application³⁶; and provisions to ensure that representations can be made both in writing and in person at the inquiry stage—an open floor hearing must be held whenever an interested party asks for it.

Much of the public argument about public participation has focussed on specific aspects of the inquiry process. This however results in an argument about rights to be heard which is both highly legalistic and narrowly prescribed. The Government's aim has been to develop a regime which taken

³³ Clauses 42, 47 and 54 deal with project development; clauses 59 and 102 deal with inquiries.

³⁴ Clause 102.

³⁵ Clause 7.

³⁶ Clause 42.

as a whole provides clear, timely, transparent and meaningful opportunities for ordinary citizens to participate and be heard.

There are clearly important challenges in ensuring effective public consultation and engagement. Consultation on National Policy Statements for example will be critical. Engaging citizens and the public on national policy is not always easy, but there is a growing body of good practice on which to draw. For instance, BERR's consultation on the future of civil nuclear power, designed with the assistance of the Sustainable Development Commission, included a written consultation process; a consultation website; a range of activities to gather views from interested parties including 12 regional meetings led by senior officials; a programme of deliberative research managed by consultants, with nine events across the United Kingdom to engage a demographically representative sample of UK citizens in an informed debate; and wider marketing measures to raise awareness.

Developers face similar challenges in ensuring that engagement with communities on development proposals is effective; but again good practice is growing and early consultation on specific projects can play a key part in ensuring community concerns are addressed well before a project reaches the point of public inquiry.

The debate about public participation has focussed in large part on the issue of rights to be heard at the inquiry stage. The Bill allows any interested party to trigger an open floor hearing at which all interested parties can make oral representations. The Bill also makes clear that, where the Commission considers it necessary to ensure adequate testing of evidence, or to ensure interested parties have had a fair chance to put their case, they must hold a specific issue hearing. At such hearings, interested parties also have a legal right to make oral representations.

During the passage of the Bill, rights for those whose land is subject to compulsory purchase have been strengthened; the Bill now makes clear that they can request a hearing into the case for the compulsory acquisition. All parties subject to compulsory acquisition request will be able to make oral representations at these hearings.

Some people have argued that the right to a hearing will not be meaningful because people will not have an automatic right to cross-examine evidence. It is true that the Bill proposes that Commissioners should test evidence themselves by means of direct questioning. But this does not mean, as has been suggested, that evidence will not be cross-examined. Evidence will certainly be thoroughly tested, including where appropriate through cross-examination, by the members of the Panel conducting the inquiry. And, where necessary to adequately test evidence or allow a party a fair chance to put their case, the IPC can allow cross examination.

These proposals reflect a strong conviction on the part of the Government that an adversarial and costly process of cross-examination is by no means the one most guaranteed to give a voice to ordinary citizens. Nor is it necessary in order to satisfy fundamental human rights to a fair hearing.

Finally, in order to support the statutory provisions set out in the Bill, and help citizens and communities to understand how and when to get involved, the Government has nearly doubled funding for Planning Aid. It also announced, in its White Paper "Communities in Control",³⁷ further funding of up to £5.5 million over three years to increase community participation in planning.

³⁷ Cm. 7427.

iii) Accountability of decision-making

The third key theme in the debate about democracy has been that of accountability of decision-making, and specifically the role of Ministers. The challenge to Government has been that, by giving decision-making to an unelected body, the proposals undermine the accountability of such decisions to the public. The further argument is that this is unacceptable because of the importance of these decisions. Lord Nolan and *Alconbury* are often quoted in support of these arguments.

These arguments would have weight if the proposal was to remove Ministers from the process for deciding infrastructure development. However, the regime envisaged in the Bill, far from reducing the responsibility and accountability of Ministers for final outcomes, clarifies and enhances this responsibility. For the first time, Ministers will need to set out a clear policy framework; they will have to make the case for their policy through public consultation; and they will be subject to Parliamentary scrutiny. They will have to set out clearly and definitively where the balance of public interest lies in terms of major infrastructure development.

Ministers will have to answer to Parliament for their proposals. Although the White Paper made clear that there would be Parliamentary scrutiny of National Policy Statements, the Bill when introduced was silent on this point—not least because it is not usual practice for the Government to direct the activities of Select Committees. Following discussions with relevant Select Committee chairs, the Government has made clear that this should be by means of Select Committee consideration and, where the Select Committee recommended it, a debate in Parliament, and this has been underpinned by a new clause on the face of the Bill.

Clearly, for independent decision-making to work, National Policy Statements must be in place, and must remain relevant. For this reason the Bill includes intervention powers under which the IPC would make recommendations, rather than determine applications, where there is no National Policy Statement³⁸ or where there is a significant and unanticipated change of circumstances which means that the NPS is no longer up-to-date, and there is an urgent need to decide an application before national policy can be reviewed.³⁹

The second key issue is that of the accountability of the IPC. The fact that the Commission is unelected does not mean it is unaccountable. It will have to operate with the clear constraints of the detailed statutory framework agreed by Parliament. It will be appointed by, and need to report on its performance to, the Secretary of State. The most senior appointments will be subject to pre-appointment scrutiny by a Select Committee—they will be among the first such appointments to be scrutinised in this way. The Commission will of course also have to give full reasons for its decisions, including to Parliament, and these will be subject to judicial review.

But the third and perhaps most important argument is that this regime will actually provide much clearer and more transparent decision-making than the current system. The nature of Ministerial decision-making on planning applications is widely misunderstood. It is assumed to be a political act, on which Ministers may be lobbied and take account of representations from different interest groups. Even those who understand the planning system often argue that decisions are political. In practice, Ministers who take planning decisions actually do so in a quasi-judicial fashion. They have to insulate themselves from lobbying, decisions have to be clearly grounded in the evidence

³⁸ Clause 73(2).

³⁹ Clause 107.

presented at inquiry, and they cannot enter into political debate about the nature of their individual decisions as this would open them to increased risks of legal challenge.

Under the regime in the Planning Bill, the basis for decision-making in relation to nationally significant infrastructure, and the process leading to it, will be much clearer. While the TCPA works well in relation to other types of development, the evidence is that it does not do so for nationally significant infrastructure. Under the Planning Bill the boundary between Government policy in relation to this infrastructure—i.e. the relative weight to be given to different policy objectives—and decisions based on the facts and evidence of the case, will be clear and explicit. The current situation, where the Secretary of State may in some instances both promote a scheme, and determine it, will no longer apply.

Moreover the basis on which decisions are to be taken will be absolutely clear. The Commission will determine applications in accordance with NPSs and the law. While of course it will need to exercise judgement in considering the extent to which other evidence is important and relevant to its decision, it will have no discretion to apply a different policy, or a different interpretation of policy, than that set out in the National Policy Statement.

The Planning Bill clearly raises important issues about democratic accountability. It is largely in response to these concerns that the Government has committed to a review of the new regime after two years. This debate will continue as the Bill completes its passage. It is perhaps worth summarising with a few points on this issue.

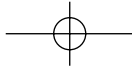
The first is that objections to the Bill on the grounds that it overrides local communities ignores a core principle of planning law that is entirely appropriate that some issues and some planning decisions are of such significance to the country as a whole, that they should be taken nationally, properly informed by a clear view about what is in national interest, as well as a clear understanding about local impacts.

The second is that arguments about participation which focus on specific aspects of the inquiry process and particular rights within this process will inevitably result in a review of engagement which is both highly legalistic and very narrowly prescribed. The Government's aim has been to develop a regime, which taken as a whole provides clear, timely, transparent and fair opportunities for ordinary citizens to participate and be heard.

Although a new departure for planning, the concept of independent decision-making is well established elsewhere. Many decisions, once routinely taken by Ministers or on their behalf, are now taken by independent bodies: decisions on interest rates by the Monetary Policy Committee at the Bank of England; decisions on competition; decisions on the regulation of utilities and the financial sector; decisions on the availability of different forms of drug treatment. While many of these decisions are controversial and have wide-ranging implications for citizens, it is not obvious that devolving them to independent bodies has led to poorer decisions, or lower levels of public confidence in those decisions.

Conclusion

There is of course a long way to go in establishing this regime, and proving its effectiveness both in terms of delivery and democracy. The Bill completed its Lords' Committee consideration on October 23, 2008.



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Subsequently, there are major challenges associated with implementing the legislation—which requires a considerable number of supplementary regulations—establishing the IPC, and producing National Policy Statements.

Recruitment to the IPC is expected to begin shortly, beginning with the Chair and Chief Executive. We expect these appointments, and those of Commissioners, to attract a high level of public interest and scrutiny. Work is well underway on National Policy Statements, with consultation on the first expected early in 2009.

We expect the IPC to begin determining applications in 2010 and we will be consulting with potential applicants about the appropriate length of time between National Policy Statements, regulations and guidance being issued and the new regime coming into effect.

Overall, this is a radical and ambitious agenda. The Government has embarked upon it because it believes the Bill will create a regime capable of reaching decisions on the major infrastructure projects vital to the future of our nation in a way that is fast, efficient and predictable; that will give individuals and local communities a fairer say in those decisions; and that will make the whole process more transparent and more accountable. In summary, this is a regime which shows that democracy and delivery can be complementary, not competing, objectives.

