



**Department for Communities and Local Government  
Memorandum – Post Legislative Scrutiny  
Planning Act 2008**

Presented to Parliament  
by the Secretary of State for Communities and Local Government  
by Command of Her Majesty

October 2013





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# **Memorandum to the Communities and Local Government Departmental Select Committee**

## **Post Legislative Scrutiny**

### **The Planning Act 2008**

#### **1. Introduction**

This memorandum has been prepared by the Department for Communities and Local Government for submission to the Communities and Local Government Departmental Select Committee and is published as part of the post-legislative scrutiny process set out in Command Paper 7320, which places a requirement on Departments to review of how a piece of legislation is working in practice. This review will typically take place between 3 and 5 years after the legislation received Royal Assent. This memorandum provides the Committee with the Department's post legislative scrutiny assessment of the Planning Act 2008 which received Royal Assent on 26 November 2008.

It also includes details of the Localism Act 2011 because it made a significant change to the nationally significant infrastructure planning regime by abolishing the Infrastructure Planning Commission and restoring responsibility for making decisions back to Ministers and ensuring Parliament could vote on National Policy Statements. The Localism Act also made some amendments to the Community Infrastructure Levy, in particular to give charging authorities greater control over their charging schedules, and to provide for a proportion of the levy to be passed to bodies other than the charging authority.

Further amendments were made to the nationally significant infrastructure planning regime by the Growth and Infrastructure Act 2013, to enable business and commercial projects of national significance to be considered under the regime, to remove a number of separate consents and certificates from the legislation and allow these to be dealt with through the development consent order process; and to ensure that Special Parliamentary Procedure is fit for future operation. In 2013 changes were also made to secondary legislation made under the 2008 Act relating to consents which can be included in a development consent order and to statutory consultees, in order to streamline these regulations where appropriate. It is too early to review the effectiveness of these measures.

#### **2. Objectives**

##### **Nationally Significant Infrastructure**

The Planning Act 2008 created a new system of development consent for certain types of nationally significant infrastructure, including major energy infrastructure, railways, ports, roads, airports, water and waste projects which were deemed to be of national significance. The purpose of this new system was to simplify and speed up the authorisation process for nationally significant infrastructure by reducing the number of separate applications and permits which were required and statutory timeframes to ensure decisions are taken faster. The new system

was intended to reduce the time taken from application to decision to less than a year, responding to concerns over the lengthy delays experienced by many crucial infrastructure projects, such as Heathrow Terminal 5 which took seven years to reach a decision. At the end of the new infrastructure planning process, if a proposal was approved, the developer would receive a development consent order which would give them rights to build and operate the infrastructure which could include the right to compulsorily purchase land. It was estimated that this new process would save the country an estimated £300 million a year, by reducing planning delays and speeding up investment in new infrastructure.

The key elements of the system were:

- National Policy Statements: A series of 12 National Policy Statements which would be published and laid before Parliament and set out Government policy on the need for certain types of infrastructure and the points which any application regarding this type of infrastructure would need to cover. National Policy Statements were seen as way of speeding up decisions by removing questions about 'need' from consideration of any individual planning application and instead dealing with these at a national level. The Infrastructure Planning Commission was required to judge applications against the relevant National Policy Statement.
- Creation of Infrastructure Planning Commission: The Act created the Infrastructure Planning Commission, an independent public body which would examine and decide applications for nationally significant infrastructure projects against the relevant National Policy Statement - taking decisions out of Ministerial hands where a National Policy Statement was in place. Applications would be decided by a panel of Commissioners or by a single Commissioner, depending on the size and nature of the project.
- 'Front loading' of consultation during the pre-application period: All developers would be required to have carried out an extensive public consultation and would normally have to complete an Environmental Impact Assessment before an application could be submitted for consideration by the Infrastructure Planning Commission. This would ensure that applications had been prepared to a high standard and developers were required to demonstrate that they had taken into account responses from the consultation before their application could be accepted.
- A focus on written responses: The new regime was based upon written representations rather than public enquiry. The Infrastructure Planning Commission would make public all representations through its website and allow interested parties to comment upon them. There would be no public inquiries and only a limited opportunity for cross examination. All hearings held during the examination period would be held in public and chaired by a Commissioner, who would put questions to the applicant and others with an opportunity for a public open-floor hearing.
- Fixed timescales: The Act introduced a fixed timetable for the examining process, with six months allowed for the examination process and three

months allowed for a Council (consisting of between five and nine Commissioners), a Panel or the Secretary of State to take a decision

- A single consent: If an application was successful, the Infrastructure Planning Commission would issue a Development Consent Order which was a new single consent which replaced a range of separate consents giving planning permission, compulsory acquisition of land and other powers which had to be obtained from different government departments, agencies and local authorities.

### **Community Infrastructure Levy**

The framework for the levy is set out in Part 11 of the Planning Act 2008, and it was implemented through the Community Infrastructure Levy Regulations 2010.

The Community Infrastructure Levy was created to provide a fairer and more transparent way for local communities in England and Wales to benefit from the increase in land values when planning permission is granted and development is undertaken. It allows charging authorities (usually the local planning authority) to place a charge on the development of most buildings in their area. Where it is adopted, the levy applies to new buildings, or extensions of existing buildings, that people normally go into such as houses and offices. Certain development is excluded from the levy, for example minor development and social housing.

The funds raised are used in two ways. The majority of the funds are kept by the charging authority to contribute to the provision, improvement, replacement, operation and maintenance of infrastructure for their communities, such as schools and roads. A proportion of the funds are given to the parish or community council for the area where the development took place to be spent on anything to mitigate the impact of development in that area. Where there is no such council, this proportion is kept by the charging authority to be spent for the same purpose.

When implementing the levy, authorities are required to produce a charging schedule setting out the rate or rates that they will charge across their area in pound sterling per square metre of development. In setting these rates, charging authorities must balance the need for infrastructure against the impact of the levy on the viability of development in their area. The charging schedule is subject to public consultation and an independent examination to ensure that the proposed charges are appropriate.

Developers and other interested parties have the right to have their views on the charging schedule heard during the examination process. To ensure transparency, charging authorities are required to publish annually what funding has been received from developers and how this had been spent.

### **Welsh Powers**

In addition, the Act gave the National Assembly for Wales legislative powers in relation to plans covering the development and use of land in Wales and allowed

the Welsh Assembly Government to improve the development control system in Wales following consultation.

### **Part 9 Changes to existing planning regimes**

Chapter 2 of Part 9 of the Act, made a number of changes to the Town and Country planning regime which were not linked to the creation of a nationally significant infrastructure regime or the implementation of the Community Infrastructure Levy.

#### ***Marine and Coastal Access Act 2009***

In 2009, the Marine Management Organisation was created through the Marine and Coastal Access Act 2009. This Act made minor amendments to the Planning Act 2008, in order to take account of the responsibilities of the new organisation.

#### ***Localism Act 2011***

In 2011, the Government introduced some significant changes to the nationally significant infrastructure system and the Community Infrastructure Levy through the Localism Act. The biggest change was the abolition of the Infrastructure Planning Commission, which returned decision making back to Ministers. This directly addressed the criticism that the regime lacked democratic accountability.

A separate directorate was established within the Planning Inspectorate to consider major infrastructure proposals such as offshore wind farms and nuclear power stations and provide a recommendation to Ministers. In addition, the Localism Act provided for all National Policy Statements to be subject to consideration by Parliament.

With regard to the Community Infrastructure Levy, the Localism Act made a number of changes. These changes were implemented through Regulations in 2013. Significantly the Localism Act enabled regulations to provide for 15% (25% for areas where a neighbourhood plan has been adopted) of the levy to be passed to parish or community councils. This gives communities the resources to address the demands that development places on the local area.

It also provided for Mayoral Development Corporations to be able to charge the levy, and for levy funds to be passed from the charging authority to another body. The Localism Act also gave charging authorities greater flexibility in responding to the recommendations coming out of the independent examination of their draft charging schedules. It made some amendments to the drafting of the legislation to be clearer about how the levy could be spent on infrastructure, and to emphasise the requirement for the levy not to make development unviable in the charging authority's area.

#### ***Growth and Infrastructure Act 2013***

This year, the Government introduced further changes to the nationally significant infrastructure regime through the Growth and Infrastructure Act by allowing developers of large business and commercial developments to ask Ministers for

their schemes to be considered under the nationally significant infrastructure regime, which was intended to help to speed up the decision making process for these types of schemes.

The Growth and Infrastructure Act also removed a number of separate consents and certificates from the legislation and allows these to be dealt with through the development consent order process and made changes to ensure that Special Parliamentary Procedure is fit for future operation.

### **3. Implementation**

Some provisions of the 2008 Act were commenced immediately and the rest through a series of seven different commencement orders. The first sections of the Act came into force on 27 November 2008 and the most of the remainder of the Act was in force by 1 October 2011.

Sections 27-28 of the Act which set the thresholds for dams, reservoirs and water transfer schemes to be brought into the scope of the regime have not yet been commenced because no infrastructure of this type and scale is currently being proposed for development.

Section 186 of the Act which gave the High Court powers to remit unitary development plans in Wales has not yet been commenced because there are no further unitary development plans being prepared by any local planning authority in Wales.

### **4. Secondary Legislation**

A full list of secondary legislation relating to the 2008 Act is attached at Annex A

### **5. Legal Issues**

Questions about interpretation and consistency between the 2008 Act provisions on Special Parliamentary Procedure and The Statutory Orders (Special Procedure) Act 1945 were raised by the Chair of Committees in the House of Lords, and the Chairman of Ways and Means in the House of Commons, in their report into petitions against the Rookery South (Resource Recovery Facility) Order 2011. Amendments to the 1945 Act were subsequently brought forward in the Growth and Infrastructure Act 2013 to deal with these inconsistencies.

Changes were also made to the relevant thresholds for road and rail projects and overhead electric lines, through changes to secondary legislation, during 2013, to address concerns that some of the original thresholds included in the Planning Act 2008 were capturing development that could not be considered nationally significant.

As the Community Infrastructure Levy has been adopted, a number of technical issues have arisen. Amendment regulations and supporting guidance introduced between 2011 and 2013 provided clarification and operational improvements to the levy based on early experiences in developing and implementing the levy from

both charging authorities and developers. In particular, these have related to the operation of the formulae for determining liability, the impact of the levy on applications made under section 73 of the Town and Country Planning Act 1990, clarification that councils can set a zero rate for development where considered appropriate, measures to prevent developers being double-charged for infrastructure provision and the detailed procedures relating to the levy. The Government is proposing further amendments to the regulations, to be laid before Parliament for approval in autumn 2013, to improve the administration of the levy and make its application fairer and more transparent, including exempting self-build development from being charged the levy.

## **6. Other reviews**

### **Light touch review of Guidance for Nationally Significant Infrastructure**

In 2012, the Department for Communities and Local Government undertook a light touch review of the guidance relating to the major infrastructure planning regime. The review was launched with a public consultation and focused on making changes to six Department for Communities and Local Government guidance notes with the aim of making them easier to understand, providing greater clarity over processes and addressing a number of technical issues. The guidance would also be amended to reflect changes to the legislation following the introduction of the Localism Act and the Growth and Infrastructure Act. All of the revised guidance notes have now been published.

### **Community Infrastructure Levy**

There have been no formal post legislative reviews or assessments of the levy to date. The Government currently proposes to review the effectiveness of the levy in 2015.

## **7. Preliminary Assessment of the Act**

### **Nationally Significant Infrastructure Regime**

The nationally significant infrastructure regime is still fairly new, with only 12 applications having gone all of the way through the system to completion (see Annex B). However, it is clear that the new regime is working as intended and is leading to quicker planning decisions.

This is demonstrated by the recent approval for a new nuclear power station – Hinkley Point C which was approved within the one year statutory timeframe, following 3 years of pre-application consultation by the developer which involved over 100 public meetings and responses to 33,000 comments received during the consultation phase. This is a marked improvement on the speed of decision-making under the previous regime. By comparison, the decision to build Sizewell B took 6 years and included a public inquiry which lasted 3 years.

A large part of the reason why the decision could be taken more quickly was because the Energy National Policy Statements make it clear that the construction of new low carbon electricity generation infrastructure is of crucial national importance.

Of the 12 National Policy Statements proposed in the 2008 Planning Act, 9 have been published - six energy National Policy Statements, and National Policy Statements on ports, hazardous waste and waste water. The National Networks National Policy Statement is expected to be published by the Department for Transport in draft by the end of this year. National Policy Statements are widely seen as an integral part of the system and their creation has been welcomed by applicants as they take consideration of the question of need for the infrastructure out of the examination process. The Airports National Policy Statement will be prepared following the report of Airports Commission on Airport Capacity and plans for a Water National Policy Statement are currently under review, following completion of a strategic review of the quality and capacity of water and wastewater infrastructure by Defra and the Environment Agency.

The regime has not stood still since it was introduced. It has been amended by the Localism Act and the Growth and Infrastructure Act. The changes brought about by the Localism Act – the removal of the Infrastructure Planning Commission and the restoration of Ministers as the final decision maker is seen as a significant improvement which restored democratic accountability to the regime. It is too early to judge the effectiveness of the changes introduced in the Growth and Infrastructure Act.

The Government committed to carrying out a review of the nationally significant infrastructure regime in 2014. The Department for Communities and Local Government will formally launch the review in autumn 2013 and will publish a discussion document which seeks views from users of the system. The Department expects to report in spring 2014 on a set of proposed changes and improvements to the regime which will include an action plan for delivery.

The Department of Communities and Local Government review team has already had meetings with a number of users of the regime as part of the scoping phase of the review and the regime has also recently been reviewed as part of the Government's Red Tape Challenge. The consensus from this engagement has been that the regime is generally working well and delivering the expected benefits but that there are some areas, such as pre-application for example, where users would like some changes to be made to improve the overall operation and efficiency of the regime. The Department is planning to publish a discussion document in the autumn which will set out the areas where improvements could be made and will seek views from users on the best way to achieve them.

## **Community Infrastructure Levy**

The Community Infrastructure Levy is also still fairly new, with the regulations implementing it introduced in 2010. Despite this, there are clear signs that take up of the levy is moving forward with 27 authorities collecting the levy at 1 October 2013 – 16 of which had commenced since April 2013 (see Annex C), and the rate of adoption is increasing steadily. At least 26 further Draft Charging Schedules had been published by charging authorities and at least a further 51 were at the preliminary draft charging schedule stage. Building on early experiences and best practice, the time taken to produce a charging schedule is decreasing as parties become more efficient both in the production of the charging schedule and at examination.

The Government has drawn on the experience of both charging authorities and developers to refine the Community Infrastructure Levy Regulations further to improve operation of the levy and to make it more flexible, fairer and more transparent. It is expected that following the current proposed amendments to the Regulations the focus can shift to continued implementation of the levy and its effective use.

The levy is already playing an important role in London since being put in place by the Mayor as it is providing a significant element in the funding of the Crossrail project. Authorities are starting to work together locally to develop proposals for implementation of the levy, with some also considering the potential of pooling levy funds to unlock growth and development as part of a strategic investment fund. These are developments the Government will seek to encourage and support.

## **Part 9 Changes to existing planning regimes**

Unlike the other parts of the 2008 Planning Act, Part 9 did not have a single purpose but made a number of changes to the Town and Country Planning regime. Overall these have achieved what they were intended. Sections 179 and 181 have been repealed as they related to regional planning bodies which no longer exist.

## **Annex A – List of Secondary Legislation**

1. Brechfa Forest West Wind Farm Order 2013/586
2. Community Infrastructure Levy Regulations 2010/948
3. Community Infrastructure Levy (Amendment) Regulations 2011/987
4. The Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011/2918
5. Community Infrastructure Levy (Amendment) Regulations 2012/2975
6. Community Infrastructure Levy (Amendment) Regulations 2013/982
7. East Northamptonshire Resource Management Facility Order 2013/1752
8. Galloper Wind Farm Order 2013/1203
9. Galloper Wind Farm (Correction) Order 2013/2086
10. Highway and Railway (Nationally Significant Infrastructure Project) Order 2013/1883
11. Hinkley Point C (Nuclear Generating Station) Order 2013/648
12. Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009/2264
13. Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011/2055
14. Infrastructure Planning (Compulsory Acquisition) Regulations 2010/104
15. Infrastructure Planning (Decisions) Regulations 2010/305
16. Infrastructure Planning (Examination Procedure) Rules 2010/103
17. Infrastructure Planning (Fees) (Amendment) Regulations 2013/498
18. Infrastructure Planning (Fees) Regulations 2010/106
19. Infrastructure Planning (Interested Parties) Regulations 2010/102
20. Infrastructure Planning (Miscellaneous Prescribed Provisions) (Amendment) Regulations 2013/520
21. Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010/105
22. Infrastructure Planning (Model Provisions) (England and Wales) Order 2009/2265
23. Infrastructure Planning (National Policy Statement Consultation) Regulations 2009/1302
24. Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2013/522
25. Infrastructure Planning (Waste Water Transfer and Storage) Order 2012/1645
26. Kentish Flats Extension Order 2013/343
27. Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013/675
28. Local Policing Bodies (Consequential Amendments No. 2) Regulations 2012/2732
29. Local Policing Bodies (Consequential Amendments) Regulations 2011/3058
30. Network Rail (Ipswich Chord) Order 2012/2284
31. Network Rail (North Doncaster Chord) Order 2012/2635
32. North Blyth Biomass Power Station Order 2013/1873
33. Overhead Lines (Exempt Installations) (Consequential Provisions) Order 2010/29

34. Overhead Lines (Exempt Installations) Order 2010/277
35. Planning Act 2008 (Nationally Significant Infrastructure Projects) (Electric Lines) Order 2013/1479
36. Planning Act 2008 (Railways Designation) Order 2010/124
37. Planning Permission (Withdrawal of Development Order or Local Development Order) (Compensation) (Wales) Order 2012/210
38. Rookery South (Resource Recovery Facility) Order 2013/680
39. Triton Knoll Offshore Wind Farm Order 2013/1734

The commencement orders have been made under the Act:

- Planning Act 2008 (Commencement No. 1 and Savings) Order 2009/400
- Planning Act 2008 (Commencement No. 1) (Wales) Order 2012/802
- Planning Act 2008 (Commencement No. 1) (England) Order 2009/1303
- Planning Act 2008 (Commencement No. 2) (England) Order 2012/601
- Planning Act 2008 (Commencement No. 2) Order 2009/2260
- Planning Act 2008 (Commencement No. 3) Order 2009/2573
- Planning Act 2008 (Commencement No.4 and Saving) Order 2010/101
- Planning Act 2008 (Commencement No. 5 and Saving) Order 2010/566
- Planning Act 2008 (Commencement No. 6) Order 2011/705
- Planning Act 2008 (Commencement No. 7) Order 2011/2054

In addition to this secondary legislation there are also 6 guidance notes developed by the Department for Communities and Local Government and available through the planning portal: [www.infrastructure.planningportal.gov.uk](http://www.infrastructure.planningportal.gov.uk)

- Planning Act 2008: examination of applications for development consent
- Planning Act 2008: associated development applications for major infrastructure projects
- Planning Act 2008: guidance on pre-application process
- Planning Act 2008: Nationally significant infrastructure projects – application form guidance
- Planning Act 2008: Guidance related to procedures for compulsory application
- Planning Act 2008: The Infrastructure Planning (Fees) Regulations 2010 – Guidance

There are also 5 guidance notes developed by the Department for Communities and Local Government on CIL:

- Community Infrastructure Levy: Guidance
- Community Infrastructure Levy: Summary
- Community Infrastructure Levy: An Overview
- Community Infrastructure Levy Relief: Information Document
- Community Infrastructure Levy: Collection and Enforcement

The Planning Inspectorate has also developed 16 Advice notes which are intended to provide a range of advice and information on a range of issues which

can come up through the application process. These notes are non-statutory but developers and others are encouraged to consider them carefully.

- Advice note one: Local Impact reports
- Advice note two: Working together on nationally significant infrastructure projects
- Advice note three: EIA consultation and notification
- Advice note four: Section 52
- Advice note five: Section 53 – rights of entry
- Advice note six: Preparation and submission of application documents
- Advice note seven: Environmental Impact Assessment screening and scoping
- Advice note eight: How to get involved in the planning process
- Advice note nine: Rochdale Envelope
- Advice note ten: Habitat Regulations Assessment relevant to nationally significant infrastructure projects
- Advice note eleven: Working with public bodies in the infrastructure planning process
- Advice note twelve: Development with significant transboundary impacts consultation
- Advice note thirteen: Preparation of a draft order granting development consent and explanatory memorandum
- Advice note fourteen: Compiling the consultation report
- Advice note fifteen: Advice digest (withdrawn)
- Advice note sixteen: The developer's pre-application consultation, publicity and notification duties

## **Annex B – Nationally Significant Infrastructure Projects determined under the regime - as at 1 October 2013**

The following nationally significant infrastructure projects have been determined under the nationally significant infrastructure regime since it was introduced in the Planning Act 2008

Rookery South Resource Recovery Facility\*  
Ipswich Rail Chord  
North Doncaster Rail Chord  
Kentish Flats Extension  
Brechfa Forest Wind Farm  
Heysham to M6 Link Road  
Hinkley Point C New Nuclear Power Station \*  
Presall Saltfield (underground gas storage) \*  
Gallop Offshore Wind Farm  
Triton Knoll Offshore Wind Farm  
East Northants Resource Management Facility  
Port Blyth New Biomass Plant

\* Decision subject to ongoing Judicial Review

**Annex C – Community Infrastructure Levy - List of Charging Authorities  
Charging Schedules that have come into effect as at 1 October 2013**

Newark and Sherwood (December 2011)  
Shropshire (January 2012)  
Redbridge (January 2012)  
Portsmouth (April 2012)  
Greater London Authority (April 2012)  
Huntingdonshire (May 2012)  
Wandsworth (November 2012)  
Wycombe (November 2012)  
Bristol (January 2013)  
Poole (January 2013)  
East Cambridgeshire (February 2013)  
Croydon (April 2013)  
Elmbridge (April 2013)  
Barnet (May 2013)  
Fareham (May 2013)  
Plymouth (June 2013)  
Brent (July 2013)  
Broadland (July 2013)  
Norwich (July 2013)  
Havant (August 2013)  
Waveney (August 2013)  
Bassetlaw (September 2013)  
Chorley (September 2013)  
South Ribble (September 2013)  
Southampton (September 2013)  
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