Department for Transport

Major Infrastructure Planning Reform – Amendments to the definitions for Highways and Rail Nationally Significant Schemes in the Planning Act 2008

December 2012

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Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website https://www.gov.uk/dft
General email enquiries FAX9643@dft.gsi.gov.uk

Contents

Executive summary

1. On the 6th September this year the Prime Minister and the Deputy Prime Minister set out a major package of reforms to housing and planning to help create conditions for growth. Included in this announcement was a commitment to review the thresholds for nationally significant infrastructure schemes within the Planning Act 2008 ("the Planning Act") in an effort to speed up delivery of schemes that support growth.

2. To support this commitment and to ensure that the most appropriate planning regime is used to deliver these schemes in the most efficient and timely way, the Government has considered the need for including thresholds in the Planning Act. This will allow those transport schemes which would not, in relation to their size and nature be considered nationally significant to proceed without being overburdened with disproportionate processes.

3. Therefore this consultation is seeking views on the following proposals:

   - to introduce new thresholds for road and rail schemes to be considered to be of national significance for the purposes of the Planning Act so as to ensure that only schemes which are genuinely nationally significant have to proceed through the Planning Act development consent process;
   - amend the Planning Act to exclude all local major road schemes and the delivery of development mitigation highway works from the mandatory requirement to use the Development Consent Order under the Planning Act;
   - to exclude from the threshold highway schemes that have already been through the Highways Act process but which, within 7 years of the orders being made for that scheme by the Secretary of State, nonetheless require further Highways Act orders; and
   - transitional and savings provisions.

4. While the Planning Act Development Consent Order (DCO) regime has shown that it can deliver planning decisions for large and complex transport schemes within its set timescales, the new proposals will ensure that the following types of schemes currently caught by the Planning Act DCO will now proceed instead under the alternative planning procedures (i.e. planning permission under the Town and Country Planning Act 1990, the Highways Act 1980 or an order under the Transport and Works Act 1992):

   - the construction or alteration of roads for which the Secretary of State is the highway authority which are below specified size limits, due to their small scale and limited impact on third parties;
   - all local highway authority schemes which previously were caught because they were constructed for a purpose connected with a highway for which the Secretary of State is the highway authority ("local major schemes");
   - all works carried out on a developer's behalf which previously were caught because they were constructed for a purpose connected with a highway for which the SoS is the highway authority
   - highway schemes which, despite having gone through the Highways Act process and having had their orders made, require further orders;
   - railway schemes which consist of, or include the construction or alteration of a continuous route length of railway track up to 2kms outside operational land, or which do not involve track at all; and
   - to the extent that any railway development takes place on operational land, that part will be wholly excluded from the Planning Act/DCO regime. Work covered by permitted development rights will continue, as now to be exempt from the Planning Act regime.

5. Developers of road and rail schemes which are no longer subject to the Planning Act DCO regime as a result of these changes will still need to comply with relevant procedural requirements under the alternative regimes. These will include carrying out necessary environmental impact assessments. There will also continue to be consultation requirements and/or scope for interested parties to raise objections and make representations and for those objections and representations to be considered

in accordance with the relevant procedures for local authority planning permission (under the Town and Country Planning Act 1990, the Highways Act 1980 and the Transport and Works Act 1992).

6. The purpose of these changes is to deliver these types of schemes in a proportionate way, to increase choice and flexibility in the planning system, to provide greater clarity in using the most appropriate planning regime and to reduce planning costs to developers for mitigation works on trunk roads. This will also provide wider benefits for delivering economic growth both locally and nationally.

How to respond

The consultation period began on 18th December 2012 and will run until 22nd January 2013. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at https://www.gov.uk/dft or you can contact Maureen Pullen if you would like alternative formats (Braille, audio CD, etc).

Please send consultation responses to

Maureen Pullen
Department for Transport,
Great Minster House,
33 Horseferry Road,
London, SW1P 4DR
ltfgd@dft.gsi.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Introduction

7. This consultation is on proposals to amend the definitions of “nationally significant infrastructure” rail and highways projects set out in the Planning Act 2008 in order to speed up delivery and reduce the costs of transport projects. The Planning Act, along with the Regulations made under it, set out the planning process for “Nationally Significant Infrastructure Projects” (“NSIPS”). This is intended to provide a planning regime for “nationally significant” development.

8. The Planning Act was set up to consider large complex schemes which are nationally significant. It sets down very clear timescales for receipt, consideration and recommendation of applications by the Planning Inspectorate which leads to a more certain timetable for the application process. This increases certainty and therefore boosts developer confidence in the Planning Act system.

9. However, the pre-application requirements for a Planning Act DCO whilst compatible with these large schemes, does not seem proportionate for those smaller schemes which are not in fact genuinely national significant schemes, even though they currently fall within the statutory definition for that purpose.

10. Disproportionate processes create unnecessary time, resource and cost implications for developers and can impact on the timely and efficient investment in road and railway infrastructure, meaning delay in the delivery of benefit to the end user and tax payer.

11. They can also mean that small schemes which are subject to time constraints but which require a DCO to deliver them, are engineered on a less than best basis to enable delivery to timetable. This can include phasing of schemes into separate work packages between works requiring DCO approval and works falling in the category of “permitted development” under the Town and Country Planning Act regime. This allows some schemes to fall outside the scope of the Planning Act altogether under the existing criteria. This creates associated inefficiencies.

12. Alternative planning regimes are already in place under the Highways Act 1980 for roads and the Transport and Works Act 1992 for rail and the Town & Country Planning Act 1990 for both sectors. These regimes applied to all of these schemes prior to the Planning Act coming into force in March 2010. They can offer more flexibility in how the pre application process can be undertaken and can therefore provide a scalable response to planning requirements.

13. The Government considers that it would be more proportionate for certain small schemes and minor works in relation to the rail and strategic road networks to proceed under the above alternative planning procedures.

14. Since the Act came into force on 1 March 2010, it has become very apparent that there is a lack of clarity and certainty in the thresholds for road and rail sectors to be deemed nationally significant development (as exist for other sectors). In relation to roads, a lack of clarity exists, in particular, when a road scheme which would not have the Secretary of State as the highway authority, falls within the remit of the Act. The result is that some of the flexibility which existed before the Planning Act came into force has been lost. Also, such a lack of clarity is having a deleterious impact on developers and planning authorities in terms of time and cost.

15. These amendments will provide greater flexibility around the planning regime that will be most suitable for various schemes. Should a scheme developer consider that their scheme would be of national significance even where it is below the new thresholds or is excluded by the new criteria, they may apply to the Secretary of State (under section 35 of the Planning Act) to direct a scheme into the DCO process. This introduces even more flexibility into the planning process.

16. This consultation is to ask for your views on the following proposed amendments to the Planning Act to allow a proportionate, more flexible and certain approach to delivery of transport schemes.

17. Section 5 set out the proposals in detail, compared to the ‘do nothing’ scenario. An impact assessment is attached.

Scope

18. This consultation is on whether applications for development consent for some highway schemes, both those promoted by local authorities for developers or those promoted by the Strategic Road Network Operator and some rail schemes should be determined in accordance with the Planning Act regime or under other appropriate processes as set out above.

19. The proposed amendments are not intended to change the policies that would respectively be applied in determining applications for consent under the Act, the Highways Act, the Town and Country Planning Act or Transport and Works Act. Individual projects will still continue to be considered on their merits in accordance with relevant policies and interested parties will continue to have opportunities to make their views known and have these taken into account as part of the relevant process. Decision-makers will continue to have to take into account the impacts of any specific application, for example on the environment.

20. Relevant transport policies (including those relating to the delivery of development), appraisal and evaluation of impacts and provisions for consultation and other criteria such as Environmental Statements which apply to schemes promoted by means of a Development Consent Order application, would continue to apply to all schemes when determining applications under the alternative existing planning processes.

Background

21. At present, subject to certain exceptions and certain conditions being met, all highway schemes which consist of construction of or alteration to the Strategic Road Network and all rail schemes consisting of construction to or alteration of the national railway network in England must receive development consent under the Planning Act 2008. The Act covers a wide range of infrastructure types, including transport, water and waste water projects as well as energy infrastructure projects. The important point is that schemes which proceed under the Planning Act are intended to be “nationally significant”.

22. A further potential consideration is the extent of the environmental and other effects that a project might have. In the same way that, at a certain point, the magnitude of a development’s potential benefits may be such that it merits consideration at a national, rather than just a local level, so when the potential adverse impacts of a major project reach a certain scale they may need to be considered at a national level.

23. The intention of the Act is to provide clarity from the outset whether or not a project falls within the scope of the Act. The approach it takes is to set precise criteria on the assumption, (based on practical experience) that these will result in the Act applying to the kind of projects which are in practice “nationally significant”. The key questions therefore are (a) whether the existing definitions in the Act mean that all schemes that sensibly do require authorisation by DCO are included and those which do not are excluded and (b) whether the current definition is sufficiently clear and precise.

24. Due to the lack of any thresholds under the Act in relation to size or scale for rail and highways projects, schemes such as siding improvements of 500 meters and a local trunk road improvement have had to be dealt with in the same way as new motorways and railway lines.

Issues

25. Part 5 of the Planning Act outlines the processes to be followed or a Development Consent Order (DCO) application. This includes a pre-application process (set out in Chapter 2 of that Part) which may take a year or more to complete depending on the complexity of the scheme. It includes agreement of a consultation plan with relevant local authorities, consultation according to the plan with Statutory Consultees and interested parties, followed by a report to the Secretary of State showing how the consultation has been taken into account in the application. This procedure ensures that rigorous consultation on NSIPs is carried out.

26. This rigour which is proportionate for infrastructure schemes which are genuinely nationally significant, has been found to be a burden on smaller schemes which fall within the scope of the Planning Act definitions whilst not in reality having that wider significance.

27. While in the main the DCO regime is a more appropriate planning regime for large and complex transport schemes which are nationally significant, there are areas where the level of flexibility that some circumstances or types of small schemes would need is not provided by the DCO regime. For example an alternative planning regime would allow a more flexible and focused approach to consultation in keeping with the scale of small schemes. Other potential areas where alternative planning regimes would be more appropriate include:

    - Where there are no objections to a scheme, an examination or inquiry would not be required thus saving costs.
    - To maintain the net benefits of small schemes as a more proportionate level of resource would be required than under the DCO regime and would lead to increased value for money.
    - To allow the most optimal small scheme to be taken forward without being restricted by having to fit Permitted Development Rights or programme timetables.
    - Promote developer confidence in timely delivery of small schemes leading to more investment.
    - Where a local major scheme may need a short link into the Strategic Road Network to couple into the larger scheme, the Act requires this small scheme to go through the full rigour of the DCO route. The proposed amended definition would remove it from the DCO to the alternative planning regime there by removing the threat of delay to the whole scheme and any development relying on it.

28. There are a number of specific but separate issues related to the operation and management of the road and rail network.

For rail these include

Less choice and flexibility

29. An NSIP has a wide and potentially far-reaching definition, being a project for the “construction or alteration of a railway” (section 14 (1) (k)), but not where the alteration of the railway is by using Permitted Development Rights (PDR) (section 25 (2) (c)). The process under the Act therefore catches schemes that previously did not have to (but could if desirable) be authorised by TWA. Unlike certain other sectors, there is currently no size threshold for rail schemes.

30. Also, the only schemes that can currently be authorised otherwise than by the DCO or PDR route are those which are of a wholly ancillary nature (e.g. car park and station approach projects) where these can clearly be said to fall outside the definition of the “construction” or “alteration” of a “railway”. Difficulties in determining when a project falls within these definitions can also cause delays and cost while advice is sought on this.

31. Before the Act, where works were outside the scope of permitted development rights ("PDRs") for railway undertakings[1], a promoter could take the decision either to apply for specific planning permission and other necessary consents independently of each other – useful for smaller projects and works where any additional land could be acquired by agreement – or seek a TWA Order as a way of obtaining all necessary consents in one application, this was the route often used for the bigger and more complex projects and those requiring new land. The introduction of the proposed threshold for railways would return these small schemes to this full scope of flexibility.

For Highways the specific issues include:

32. Due to the unclear meaning of the "for a purpose connected with" phrase, several local major schemes have been delayed while their status is decided. In some cases this has led to increased costs and time delays while lawyers and consultants determine the 'purpose' of the proposed road.

33. Under the current legislation, developer funded mitigation works which have already been examined as part of the planning process and agreed with the highways operators through s278 agreements, would still be required to use the DCO regime for the necessary scheme permissions. This can lead to the scheme and the development being examined again leading to double jeopardy for the developer. The DCO regime has a set scale of costs for its process while the Highways Act Order process is balanced between some charge to the developer and the taxpayer. Overall there would be a reduced cost to the developer to use the alternative planning regime.

34. Where the above mitigations works are subject to the DCO process there is a minimum time scale of between 14 to 18 months. Under the Highways Act process this could, where unopposed, take between 6 to 9 months

35. Where a fund is introduced with a limited time period, the time taken to complete a DCO can be the difference between schemes for growth being able to access the funding.

36. The Government also considers that small highway and railway cases and local major and mitigation schemes, which are not genuinely nationally significant, have the potential to take up resources that should more properly be used to determine consent applications for projects that do genuinely represent the type of nationally significant infrastructure projects for which the system was intended.

Q1: Do you consider that there are reasonable grounds for introducing thresholds for small highway and railway schemes into the Planning Act?

Q2: Do you consider that there are reasonable grounds to remove local major schemes and mitigation works within an existing planning permission from the Planning Act?

[1] These are permitted development rights granted under the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418) made under the Town and Country Planning Act 1990. See in particular Schedule 2, Part 17 to that Order. Under Class A of that Part certain developments undertaken by railway undertakers on their operational land are granted a general planning permission without the need for a specific application.

The proposals

Proposals for amending the Planning Act

37. The Government considers that due to the issues outlined above, there is a need for amendments to be made to the Planning Act to remove these smaller rail and highways scheme from its scope. A safeguard would still continue to exist however, so that a smaller scheme proceeding under the planning permission or TWA route could be directed by the Secretary of State[2] to be considered under the Planning Act regime if it were considered to have a national significance, either on its own or taken with other such schemes despite its small scale.

38. It should also be remembered that while the proposed amendments are to allow flexibility and choice to use the most appropriate planning regime for the type of scheme, each planning regime still requires a full consultation process and environmental assessments with supporting evidence. The Highways Act and Transport and Works Act regimes are fully compliant with Human Rights and European legislation.

39. As described above applications for consent of highway and rail schemes , whether under the Act or alternative planning regimes essentially fall into three categories: first, the applications for new/alterations to highways and railways ; secondly for highways, local major schemes which have a purpose connected to the highway and thirdly road schemes which are required to facilitate developments.

40. We have identified three proposals to amend the Planning Act and have considered the 'Do Nothing' option below.

(i) Do not amend the Act, leaving small highways and railway schemes within the DCO/NSIP regime.

41. This option would mean that a large number of small schemes and minor works that are unlikely to be considered genuinely nationally significant would continue to require consent under a regime designed for NSIPs, a process disproportionate to the scale and impact of the works. This would continue to cause some adverse consequences.

42. The current regime is regarded by developers as disproportionate for minor works on existing highways and railways or for very short new highways and sections of railway track. This has already impacted on the way schemes are devised and designed to avoid the necessity of the costs and time taken by the Planning Act regime for small schemes. This has led in some cases to the situation that to keep to programme and spend regimes, schemes have been accepted which would not require a DCO where if the Highways Act, Transport and Works Act or planning permission routes could be used, a more optimal scheme could have been delivered.

43. There is also a potential to cause delays for schemes that depend on works requiring a DCO for small highways and rail links to support their delivery.

Government does not think that this option is reasonable given the delays which using the Act would incur with its associated costs to both the developers and to wider growth.

(ii) Introduce a threshold for highway and railway schemes.

44. This would allow promoters of small schemes which are not truly nationally significant of themselves to have the choice of using the most appropriate planning process outside the Planning Act. They would be subject to the Highways Act, Transport and Works Act and Town & Country Planning Act,

[2] Under section 35 of the Planning Act 2008

and allow a delivery mechanism and process more proportionate to the scale and impact of the scheme.

45. As already mentioned the time for a development consent order to be granted for a nationally significant scheme under the Act can typically take up to 16 months. Before that, progressing the scheme through design and consultation to application can take perhaps 18 months. A recent small rail scheme (a new rail chord comprising 1.4 km of track) took 14 and a half months to conclude from application acceptance to final decision.

46. It would also reduce the costs of the scheme to use the alternative planning regimes. The application fees are generally lower and as set out above, there is a reduced cost to the developer to use the Highways Act Orders process.

47. Alternatives to the Planning Act process are also more flexible to alterations to the scheme during the process. In the DCO regime, non-material changes can be accepted within the examination period at the discretion of the Examining Authority and do not require a fresh consultation. The HA80 process grants far greater scope for the amendment of Orders during the examination process. Also, if there should be a need to amend the DCO *after* award, the process starts again. Under the HA80 regime, an amending Order can be published for the specific change desired. This is a saving in time and costs to developers.

48. We are therefore proposing to introduce thresholds into the Planning Act at s22 and s25 respectively.

49. The thresholds for highway works would be
    - 15.0 hectares in area for motorways;
    - 12.5 hectares in area for all-purpose trunk roads with a speed limit of 50 mph or greater; and
    - 10.0 hectares in area for all-purpose trunk roads with a speed limit of less than 50mph.

50. The threshold for Railway schemes would be as follows:
    - construction or alteration of the railway which consists of or includes the construction or alteration of more than 2 continuous route km of railway track, not on operational land;
    - construction or alteration of the railway which takes place on railway operational land will not fall within the DCO regime; and
    - construction or alteration of the railway covered by permitted development rights will not fall within the DCO regime as at present.

51. This means that any development consisting of or including the construction or alteration of more than 2 continuous route kms of railway track, not on operational land, will fall within the Planning Act/DCO regime. So as an example, a development consisting of 3 continuous kms of track construction, a bridge and other works would require a DCO for the whole development (track, bridge and other works) except to the extent any works are covered by permitted development rights. Any part of the development on operational land and not covered by permitted development rights would also be excluded.

52. Two examples illustrate how this would work for a development partly on operational land and partly on non operational land:
    - In example A a track construction development 13 kms long has two continuous stretches of 1.5 kms of track at each end, separated by 10 km of operational land. This whole development would be excluded from the DCO regime as there are not 2 continuous route kms of track outside operational land.
    - In example B the track construction development is again 13 kms long. In this case there are 3 kms of track at the start on non operational land, followed by 10 kms on operational land. The first 3 kms will require a DCO. The following 10 kms will not as they are on operational land.

53. The power to direct under section 35 would still apply and an application could be made to the Secretary of State to direct that the scheme be treated as one to which the Planning Act regime should apply. This retains a further element of choice for developers.

The rationale for the size of these thresholds is set out in detail in the Impact Assessment.

Q3: Do you agree with the way in which we propose to include the thresholds? Do you consider that the specified criteria for thresholds are reasonable? If not, what other criteria do you suggest and why?

Q4: Do you agree that the area thresholds for highway schemes are the right size? Should the limit include land required for the purpose of construction?

Q5: Do you agree that the rail threshold should be based on length of track? Do you agree that the limit should be set at 2km of continuous track, and include both single and multi-track schemes?

Q6: Do you have any other suggestions for setting reasonable thresholds for these types of scheme? Please support your suggestions with appropriate evidence.

(iii) Amend the Planning Act so that local Major schemes are removed from the Planning Act regime.

54. The Planning Act contains a definition that any highway scheme constructed or altered for a purpose connected with a highway where the Secretary of State is or would be the highway authority must use the Act regime.

55. This mandatory definition has led to confusion for developers due to the vagueness of the meaning of 'for a purpose connected with' as it goes further than just a physical connection. While interpretation guidance has been agreed between the Inspectorate, DfT and DCLG, there is still not sufficient clarity to remove all doubt as to when a local major road scheme must use the DCO procedures under the Planning Act. Several schemes have been seriously delayed due to this confusion and in some cases leading to increased costs and delays where to avoid any doubt the developer has started the planning process again.

56. While there have been discussions to try to redraft an interpretation, there is still room for doubt as the Inspectorate are unable to advise developers when presented with conflicting but equally valid legal advice from developers and other consultees or objectors.

57. As with allowing small highway schemes to be excluded from the Act regime, there would be savings in costs to developers through time savings made possible by the certainty of the planning timetable.

58. In addition to removing doubt, removing local major schemes from the Act regime will avoid duplication of work in preparing the scheme. Usually these schemes are included in the Local Transport Plan and (if in place) the Local Plan, both of which would have gone through a full consultation process and most of the environmental assessment. Any objections and environmental issues would be heard during the Local Plan Examination in Public and developers would be aware of the work required to resolve any outstanding issues.

59. This means that when the scheme is ready to proceed, the Town and Country Planning Act regime is quicker as the merits of the scheme have already been decided through due process and the planning permission granted in a much quicker time span, to meet the 13 week requirement for major schemes.

60. Only outstanding issues such as Side Road Orders and Compulsory Purchase Orders relating to the scheme would require a Public Inquiry. The scheme itself would not be within the remit of the Inquiry. Again this could lead to a much shorter time scale than would be the case with that the Planning Act regime.

61. The power to direct under section 35 would still be open for developers to apply to the Secretary of State to direct their scheme into the Act's regime where they can show that the scheme is of national significance. This retains the element of choice for developers.

62. We therefore propose to remove the purposive requirement by stating that the Act only applies to highways where the Secretary of State is or would be the highway authority for that scheme.

Q7: Do you agree with the decision to remove the purposive requirement for the construction or alteration of a highway (i.e. that the highway must be built "for a purpose connected with a highway for which the Secretary of State is the highway authority") Do you consider this wording is still required?

Q8: Do you have any other suggestions or opinions on this proposal? Please support your suggestions with any relevant evidence.

(iv) Amend the Planning Act to remove those schemes which are highway schemes where the Secretary of State is the highway authority but which are mitigation works for developments with planning permission.

63. The Government's aim is to reduce the cost of and the overall timescale for the delivery of development.

64. Frequently, the opening of a development will be subject to the completion of certain highway mitigation works on the Strategic Road Network (SRN). Under the Planning Act developers of such sites have to secure a Town and Country Planning Act planning approval for their sites and then a further planning approval in the form of a DCO for the highway works before they can bring their developments into use. The Planning Act pre-application requirements are more onerous than those for a Highways Act Order whilst a fee must be paid for the DCO application but not for the publication of a Highways Act draft side roads order.

65. By re-introducing Highways Act Order procedures there would be a reduction of the scale of the pre-application process and reductions in costs. Additionally, in cases where there are no objections, approval would be secured to implement the mitigation works without the need for a hearing, further saving considerable time and cost.

66. This proposal also will tend to reduce the extent to which development proposals are subject to 'double jeopardy'.

67. Development proposals, which have been approved through the rigour of the local authority's planning system, may again be challenged through the development consent process on grounds that are not directly related to the merits of the highway design (on the basis that the highway impacts are not justified by the development benefits). Under the former Highways Act process only the merits of the highway works *per se* would come under scrutiny.

Q9: Do you have any views on this proposal? Are there any other suggestions you might wish to make to help resolve the issue?

The Proposed Changes

68. In order to bring these changes into effect we will need a statutory instrument, which is a form of secondary legislation. The decision on whether to make changes and (depending on that) the detailed drafting needed to give effect to these will be taken after the consultation responses have been considered However, at this stage we would suggest that the Statutory Instrument will allow for the changes by doing the following:

(a) For the construction or alteration of a highway:

69. Under the current threshold, the construction and/or alteration of a highway will be a NSIP where the Secretary of State will be the highway authority for the highway when constructed or, "the highway is to be constructed for a purpose connected with a highway for which the Secretary of State is (or will be) the highway authority."

70. The proposal is to remove the alternative which permits highways to be caught by the threshold if they are constructed for a purpose connected to a highway for which the Secretary of State is the highway authority. This has generated considerable uncertainty and has led to local authority development being caught.

71. The proposal for the construction and/or alteration of a highway is to remove that alternative provision which will confine all development to only those for which the Secretary of State is the highway authority. However, the threshold is further restricted by the imposition of certain limits on the area of the development (see below).

72. Threshold size limits*:*

    The figures below have not been finalised but we wish to get your view on whether they appear to be satisfactory or whether you foresee any issues with the use of them. Under the new proposal only development which meets the following area limits will be caught by the threshold. Where the development constitutes or takes place in any of the following the area limits are set out below:

    (a) for a motorway, 15.0 hectares in area;
    (b) for an all-purpose trunk road where the speed limit is 50 mph or greater, 12.5 hectares; and
    (c) for an all-purpose trunk road where the speed limits is less than 50mph, 10.0 hectares.

73. Where a development straddles two such areas, the higher limit will apply to that development.

74. The area limits include the land required to carry out construction of the land.

Development Mitigation Works

75. The proposal is to remove from the DCO process the alteration of highways where there is a planning permission for that development and where the developer has asked the highway network operator to undertake those works.

76. In relation to the alteration of a highway, highways-related development, does not fall within section 14 (1) (h) where -

    (a) planning permission has been granted for development ("the development") pursuant to part 3 of the 1990 act; and

    (b) highway works to the trunk road are necessary as a result of the development and the applicant has asked the Secretary of State to promote the highways works

77. In addition, the proposal for highways inserts a new provision into section 22. This new provision covers the situation where a scheme has already been through the alternative planning process and orders under the Highways Act have been made but, before the scheme can be confirmed, new orders are required. It is entirely sensible that those orders should follow the planning process used for the main development and accordingly the new orders will be outside the threshold.

(b) the construction and alteration of a railway

78. Amendments will be made to section 25 of the Planning Act. These will provide that railway development will only fall within the definition of a "nationally significant infrastructure project", so as to require authorisation under a DCO, if the construction or alteration of the railway consists of or includes the construction or alteration of railway track (whether single or multiple track) of a continuous length of more than 2 route kms all situated outside existing railway operational land. To the extent any construction or alteration of a railway takes place within railway operational land, this will also always be outside the Planning Act regime. Development not including any railway track work (such as station platforms, bridges etc) or being or including less than 2 continuous route kilometres of track would not require authorisation by a DCO.

79. The proposal also includes transitional provisions for both highways and rail development which will mean that where an application has been made for a development consent order for highway-related development or the construction or alteration of a railway which would no longer by virtue of the changes be a NSIP, the application will nonetheless continue to be treated as a NSIP and will be considered by the Planning Inspectorate and in due course by the Minister. Consideration will need to be given to the treatment of schemes that are being progressed as DCOs, but where an application has not been made for the DCO at the time the proposals come into force.

Government position

80. The Government considers that the proposed amendments to the Act would best meet the overall policy aim of the 2008 Act by ensuring that the Act's scope is limited to infrastructure projects which are genuinely of national significance. The Government believes that these proposals will help applications for smaller schemes and minor works in road and rail sectors to be made under regimes proportionate to the scale and impact of a scheme, whilst ensuring that safeguards providing for consultation and full consideration are maintained.

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Q10: Do you agree with the Government's assessment that the proposals meet the stated policy aims? If not, please explain how you consider other proposals would better meet those aims.

Implementation

81. Implementation of the introduction of thresholds and amendments in the Planning Act 2008 would be through a Statutory Instrument under s.14 (3) of the Act (i.e. secondary legislation) that would be laid in draft before Parliament for approval by both Houses before it was made (i.e. affirmative procedure). This would make the necessary changes to clarify the position as to which highway and railway schemes are to be considered nationally significant under section 22 and 25 of the Act.

82. It is envisaged that if, following this consultation, it is decided to go ahead, that the amendments to the Act should come into effect in June 2013.

83. The changes would apply to all projects under the threshold that had not, prior to that date, been the subject of an application for development consent under the Planning Act 2008. Any projects that had been the subject of such an application before that date would therefore remain subject to the Act.

84. The Government would welcome consultees' views as to whether projects which have progressed to a certain earlier stage under the Act should be allowed to be the subjects of applications (and to be examined and determined) under it. For example, would it be appropriate to allow projects which have been notified to the Planning Inspectorate (or, prior to 1 April 2012, the Infrastructure Planning Commission) under section 46 of the Act to remain subject to the Act, notwithstanding that their eventual application under the Planning Act is made after 6th April 2013?

Q11: Do you have any views about when any changes to the Planning Act should come into force?

Q12: Do you think projects which have started out under the Act but not been the subject of an application for development consent under the Act should be allowed to remain governed by it after the changes have taken effect, and, if so, on what basis?

Consultation questions

Q1: Do you consider that there are reasonable grounds for introducing thresholds for small highway and railway schemes into the Planning Act?

Q2: Do you consider that there are reasonable grounds to remove local major schemes and mitigation works within an existing planning permission from the Planning Act?

Q3: Do you agree with the way in which we propose to include the thresholds? Do you consider that the specified criteria for thresholds are reasonable? If not, what other criteria do you suggest and why?

Q4: Do you agree that the area thresholds for highway schemes are the right size? Should the limit include land required for the purpose of construction?

Q5: Do you agree that the rail threshold should be based on length of track? Do you agree that the limit should be set at 2km of continuous track, and include both single and multi-track schemes?

Q6: Do you have any other suggestions for setting reasonable thresholds for these types of scheme? Please support your suggestions with appropriate evidence.

Q7: Do you agree with the decision to remove the purposive requirement for the construction or alteration of a highway (i.e. that the highway must be built "for a purpose connected with a highway for which the Secretary of State is the highway authority") Do you consider this wording is still required?

Q8: Do you have any other suggestions or opinions on this proposal? Please support your suggestions with any relevant evidence.

Q9: Do you have any views on this proposal? Are there any other suggestions you might wish to make to help resolve the issue?

Q10: Do you agree with the Government's assessment that the proposals meet the stated policy aims? If not, please explain how you consider other proposals would better meet those aims.

Q11: Do you have any views about when any changes to the Planning Act should come into force?

Q12: Do you think projects which have started out under the Act but not been the subject of an application for development consent under the Act should be allowed to remain governed by it after the changes have taken effect, and, if so, on what basis?

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on 21st January 2013 at: https://www.gov.uk/dft

Paper copies will be available on request.

Annex A Impact assessment

Title: The Introduction of Thresholds for Nationally Significant Highways and Railways Schemes and amendments to the Planning Act 2008 to facilitate speedier delivery of road and rail schemes	**Impact Assessment (IA)**
	Date: 11/12/2012
IA No: DfT00186	**Stage:** Consultation
Lead department or agency: Department for Transport	**Source of intervention:** Domestic
	Type of measure: Secondary legislation
Other departments or agencies: DCLG, Planning Inspectorate, Highways Agency	**Contact for enquiries**: Maureen Pullen 020 7944 8016 Paul Hersey 020 7944 6334

Summary: Intervention and Options

RPC: GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
N/Q	N/Q	N/Q	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?

The definitions of Nationally Significant Infrastructure Projects (NSIP) in the Planning Act 2008 are insufficiently clear and too widely drafted. A consequence is that most local authority road schemes which connect with the Strategic Road Network, some small Network Rail projects and minor works, and all Highways Agency schemes currently fall within the definition of NSIPs regardless of their scale or scope. These requirements place disproportionate costs and timescales on promoters and give rise to uncertainty in the development process. These problems mean project efficiency is sub-optimal. As the definitions of NSIPs are set in primary legislation, the definition can only be changed by drafting an amending set of regulations.

What are the policy objectives and the intended effects?

The proposal seeks to amend the Act to remove both small scale highway and small scale national railway proposals from its scope and provide clarity on which projects are nationally significant. The proposal will ensure that schemes that are not nationally significant can go ahead via an approval process that is proportionate to the scale and scope of the proposal. This will remove burdens and ambiguity in the planning system relating to highways and railways infrastructure, contribute to a speedier development process and provide greater certainty for those delivering new infrastructure. There are likely to be economic benefits to promoters and developers through greater certainty in the planning system, greater flexibility and a more proportionate consents regime.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- Do nothing.
- Provide guidance on interpretation of the Act – this has already taken place for highways-related development and it does not achieve the policy objective. The policy objective can only be achieved by drafting an amending set of regulations.
- Preferred Option: Amend the Planning Act 2008 through legislation to include:
  1. Introduce size thresholds for highway and railway schemes.
  2. Amend the Act so that major local authority highway schemes are removed from the regime.
  3. Amend the Act to remove those highway schemes where the Secretary of State for Transport is the highway authority but which are mitigation works for developments with planning permission.

The preferred option would provide increased clarity to those planning new highway and railway infrastructure and ensure that infrastructure projects are subject to a consents regime which is proportionate to their size and scale.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 06/2016

Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes	
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A		**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence Preferred Option

Description: Amend the Planning Act 2008 through legislation

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/Q	**High:** N/Q	**Best Estimate:** N/Q

COSTS (£m)	Total Transition (Constant Price)	Yea	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	N/Q		N/Q	**N/Q**
High	N/Q		N/Q	**N/Q**
Best Estimate	N/Q		N/Q	**N/Q**

Description and scale of key monetised costs by 'main affected groups'

No significant key monetised costs have been identified for this proposal. However, there may be an increased administrative burden on the DfT's Transport and Works Act (TWA) Unit in terms of additional work. Given the uncertainties it has not been possible to quantify this, though any additional burdens may be offset by increased fee income. The Planning Inspectorate (PINS) may be affected by a loss of fee income; however this is unlikely to have a significant effect on resourcing.

Other key non-monetised costs by 'main affected groups'

There are no other monetised costs.

BENEFITS (£m)	Total Transition (Constant Price)	Yea	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	N/Q		N/Q	**N/Q**
High	N/Q		N/Q	**N/Q**
Best Estimate	N/Q		N/Q	**N/Q**

Description and scale of key monetised benefits by 'main affected groups'

The main affected groups are: the Highways Agency, local authorities, Network Rail and developers. Primarily these groups would be spared the fees that must be paid to the National Infrastructure Directorate (NID) at the Planning Inspectorate (PINS) for the processing and examination of a DCO application. These are c.£20k - £150k+, depending on the scale of proposals.

Other key non-monetised benefits by 'main affected groups'

There will be time savings to be gained from a more proportionate and less ambiguous consents procedure and economic benefits to be gained from more efficient programming and flexibility in delivering infrastructure improvements. Businesses may also benefit from earlier delivery of infrastructure as a result of quicker decisions on proposals, enabling economic benefits to be realised more quickly. These benefits, in turn, may also create gains to the wider public.

Key assumptions/sensitivities/risks

The Planning Act 2008 has only been in force since March 2010; it therefore difficult to quantify impacts fully. There are additional risks around the number of schemes likely to be affected by the regime in future years and the nature of those schemes (although it is estimated up to half of the 19 current highways / rail schemes currently going through a DCO could fall out of scope if the proposals were currently in place). There is also a particular sensitivity around benefits that are being lost due to the difficulties faced by promoters of schemes arising from the timescale for the DCO process.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies as
Costs: N/Q	**Benefits:** N/Q	**Net:** N/Q	Yes	OUT

Evidence Base (for summary sheets)

A) Problem under consideration

The Planning Act 2008 (as amended) is intended to provide a fast stream process for determining development consent on applications for "nationally significant infrastructure projects" (NSIPs). What constitutes a highway or rail NSIP is set out in the Act. The Act covers a wide range of infrastructure types, including transport, water and waste water projects as well as energy infrastructure projects.

The Act introduced a requirement that NSIPs should be authorised by means of a Development Consent Order (DCO). This requires that an application be submitted to the National Infrastructure Directorate (NID) at the Planning Inspectorate (PINS). The application is subject to an examination process by NID Inspectors who make a recommendation to the Secretary of State for Transport who is the decision maker.

An application for a DCO incurs the payment of a substantial fee based on a scale of charges (see page 6). All applications must be subject to examination, even in cases where the proposal does not provoke any opposition. This normally takes a minimum of 16 months from the date that the application is accepted by NID, which is in addition to considerable pre-application public consultation.

Since the Act came into force on 1 March 2010 it has become apparent that the following types of road and rail projects fall within the Act definition of an NSIP, regardless of their scope or scale:

- Local road schemes that interact with the Strategic Road Network where they are constructed/altered for a purpose connected with a trunk road;
- Developer funded highway mitigation measures affecting the Strategic Road Network;
- Highways Agency schemes for the construction, improvement (which has a significant effect on the environment) or alteration of the Strategic Road Network; and
- Small scale rail schemes and minor works which are limited in scale and impact (such as a small extensions to sidings, the installation of short passing loops etc) to the extent they fall outside the scope of the Permitted Development Rights, established in the Town and Country Planning (General Permitted Development) Order 1995.

Evidence from the Highways Agency (HA), Network Rail and local authorities suggest that application procedures for small schemes and minor works under the Act may be disproportionate to some of the schemes that are caught in the definition of an NSIP[3]. Scheme promoters and developers have also suggested that this is causing delays and imposes additional burdens that may affect decisions on the timing of new infrastructure or investment decisions more generally. This indicates that the definition in the Act is too broad or unclear to allow a more proportionate approach to granting development consent.

A consequence of this is delays in delivering new road and railway infrastructure. Problems such as congestion and longer journey times are also examples of wider problems that may hinder economic growth as a result.

The Government has identified the following issues that exist as a result of the current system:

- Lack of clarity - Due to the unclear meaning of the wording "for a purpose connected with", several local authority major schemes have been delayed while their status is decided. In some cases this has led to increased costs and time delays while lawyers and consultants determine the 'purpose' of the proposed road.

[3] See examples presented in Section G of this Impact Assessment

- Increased costs and uncertainty – Developer funded mitigation works which have already been examined as part of the planning process and agreed with the highways operators through s.278 of the Town and Country Planning Act 1990 agreements would have to pay for a full examination under the requirements of the Act. Under the Orders (Highways Act 1980) process no fees are charged.
- Delay in delivering new developments – Where highway mitigation works are subject to the DCO process there is a minimum decision time of around 16 months from the point of an application being accepted by PINS. Under the Highways Act process this could, where unopposed, take between 6 to 9 months.
- Loss of opportunity to use new funding – Where a fund is introduced with a limited time period, the time taken to complete a DCO can result in a scheme losing its eligibility to access funding.

B) Rationale for intervention

The DCO process under the Act is proportionate to schemes which are of national significance. However it is not possible for any of the procedural requirements in the Planning Act 2008 to be disapplied for small schemes or those schemes caught by the Act where the processes in the Act are not proportionate. It is not, therefore, proportionate to all the cases of minor works that are currently subject to the Act under the current thresholds.

In contrast, the alternative planning regimes procedures (see Appendix 1) generally involve processes which are more proportionate to smaller schemes, with applications for these works being submitted with a proportionate level of information and public consultation.

Section 14 of the Act defines what constitutes an NSIP and included within this is "highway-related development" and "the construction or alteration of a railway". This means if a scheme falls within this definition it must be subject to a DCO as defined in the Planning Act 2008. A DCO is subject to the following process:

Table 1: Indicative timescales for development consent applications under the Planning Act 2008

Stage	Time
Pre-application consultation, including: • Notification to Local Authorities, PINS and Statutory Consultees • Consultation on proposals • Revised proposals and consultation report	> 3 months
PINS accept or reject application	28 days
Pre-examination: interested parties register with PINS, decision on number of inspectors required	4 months
Examination	6 months
PINS Report to the Secretary of State	3 months
Secretary of State determination	3 months

Source: PINS Website

While this approach is likely to be beneficial for major infrastructure proposals, for smaller proposals it can be disproportionate. For comparison, the target time for decisions by local planning authorities under the Town and Country Planning Act are 8 weeks for minor planning applications and 13 weeks for major planning applications. There remains the possibility that an application could be 'called-in' by the Secretary of State if it is particularly

contentious and any application could therefore be subject to delays significantly beyond these target times. It should also be noted that in addition to a planning application, other transport consents may be required. If these consents are relatively simple and non-contentious, they can be decided within 6 - 9 months. However, if they are subject to unresolved objections, a public inquiry will be required and the process will take considerably longer.

There are also risks of refusal of permission and judicial review, both of which add uncertainty, costs and timescales to projects. That said, evidence suggests that the additional risk associated with the DCO process being placed on scheme promoters is resulting in project delays and inefficiencies in terms of the programming of infrastructure improvements.

Railway works previously authorised under the Transport and Works Act generally take 6 - 12 months for schemes with few objections (as there may need to be exchanges of written representations with outstanding objectors) and 12 - 18 months for schemes requiring public inquiries.

The fees levied under the Act are set by regulation. They have several fixed charges and a variable component according to the number of Inspectors examining an application and the time taken to determine the application. This means that the total costs for a project submitted under the Act could easily exceed £150k.

The application procedure under the Highways Act and the Transport and Works Act requires applicants to notify local authorities, inform interested parties and publish a notice of an application. The Secretary of State may direct that additional information is provided. However, although an appropriate level of consultation with those who will be affected by a project in advance is advisable and always good practice followed by many promoters, applicants are not required by law to undertake a particular form of consultation before application is made, nor to demonstrate how they have taken account of such consultation, nor to prepare a separate report on the consultation. Further, because the “additional information” is at the direction of the Secretary of State, not prescribed in primary legislation, the Secretary of State can require information that is proportionate to the application. This therefore gives flexibility for requirements to be tailored to suit the scale and impact of the scheme in question.

The main effect of this is twofold: (1) transport schemes which are of a relatively small scale are being caught by the current definition of nationally significant infrastructure and therefore subject to a disproportionate consents regime; and (2) there is uncertainty about whether certain schemes fall within the definition of nationally significant infrastructure.

Table 2: Highway and railway developments subject to DCO regime

Project	Developer
A160 Highway Improvements - Immingham	Highways Agency
A21 Kippings Cross to Lamberhurst Improvement	Highways Agency
A556 Knutsford to Bowdon Scheme	Highways Agency
Able Marine Energy Park	Able Humber Ports Ltd
Daventry International Rail Freight Terminal	Rugby Radio Station Limited Partnership
East Midlands Gateway Rail Freight Interchange	Roxhill (Kegworth) Limited and Charles Henry Curzo
Future Luton: Expansion	London Luton Airport Ltd
Heysham to M6 Link Road	Lancashire County Council

Ipswich Rail Chord	Network Rail
M1 J28-31 Managed Motorway Improvement	Highways Agency
M1 Junction 10a Grade Separation - Luton	Luton Borough Council
M20 Junction 10A Improvement	Highways Agency
Morpeth Northern Bypass	Northumberland County Council
North Doncaster Rail Chord (near Shaftholme)	Network Rail
Ordsall Chord Manchester	Network Rail Infrastructure Ltd (Network Rail)
Redditch Branch Enhancement Scheme	Network Rail
Stafford Area Improvements - Norton Bridge Railway	Network Rail
Whitwell Tunnel Rail Diversion	Lafarge Aggregates
Woodside Connection Houghton Regis Bedfordshire	Central Bedfordshire Council

Source: PINS website, 14 Nov 2012

There is evidence to suggest that the disproportionate process and costs associated with the DCO process are affecting promoters' decisions on infrastructure, particularly where schemes are relatively small scale, lower impact and non-contentious. There is also some evidence of recent highway schemes where the ambiguity around what constitutes "highway-related development" (s.14 (h) of the 2008 Act) has led to delays and associated costs.

The proposed changes would improve economic efficiency as removing the additional burden of time and cost of a DCO will allow efficiency gains to be made without additional costs being incurred elsewhere.

This is significant because new highway improvement schemes are often required to enable new housing or business development. Whilst Rail schemes promote development and growth, in both passenger and freight transport as well as benefitting the communities, areas of industry and end users those schemes serve.

It has also been widely reported that the level of consents and approvals required before development can take place can affect economic growth[4]. Removing the burdens and ambiguity in the planning process can contribute to a speedier development process, enabling wider economic benefits to be realised quicker.

[4] Killian-Pretty Review into the Planning Application Process (2008) - http://www.planningportal.gov.uk/uploads/kpr/kpr_final-report.pdf
Penfold Review into Non-planning Consents (2010) - http://www.berr.gov.uk/assets/biscore/better-regulation/docs/p/10-1027-penfold-review-final-report.pdf
Barker Review of Land Use Planning (2006) - http://webarchive.nationalarchives.gov.uk/+/http:/www.hm-treasury.gov.uk/independent_reviews/barker_review_land_use_planning/barkerreview_land_use_planning_index.cfm

Fees for DCOs are set out in the Infrastructure Planning (Fees) Regulations 2010. In summary, it comprises an application fee of £4,500, plus fees relating to the examination based on a lump sum payment (depending on the number of appointed persons) plus a daily handling fee and final payment comprising:

- £13,000 (single appointed person), £30,000 (panel of three appointed persons), £43,000 (panel of more than three appointed persons) – lump sum;
- £615 per day (single appointed person), £1,340 per day (panel of three appointed persons), £2,040 per day (panel of more than three appointed persons) – daily fee;
- £1,230 per day (single appointed person), £2,680 per day (panel of three appointed persons), £4,080 per day (panel of more than three appointed persons) – final payment minus the initial payment.

C) Policy objective

The policy objective is to ensure that the definition of a nationally significant highway and railway related development is clearly set out in the Planning Act 2008. The intended effect is to ensure that highway and rail infrastructure proposals are subject to a consents regime that is proportionate to the scale and scope of each infrastructure project.

Proportionality

One of the main drivers behind the proposed regulatory change is that of proportionality. The intention of the Planning Act was to provide a streamlined consents regime for NSIPs. A consequence of the ambiguity and scope of the current definitions of highways and railways related development has meant that infrastructure proposals that are arguably not nationally significant fall within its scope. They are therefore subject to a consents procedure that is both disproportionately time consuming and costly compared to the scale and impact of the scheme.

Another difficulty in the current wording is that developer funded highway mitigation schemes affecting the Strategic Road Network also fall within the scope of the NSIP definition, even though they would have been subject to an earlier planning approval – some schemes may therefore be subject to both the Town and Country Planning Act 1990 consents regime and the DCO process.

By removing some forms of highway and railway-related infrastructure schemes from the scope of the Act, and introducing thresholds to others, the intention is that there will be a more proportionate consents procedure, i.e. the Town and Country Planning Act 1990, Highways Act 1980 or Transport and Works Act 1992 (for rail schemes only).

Reducing ambiguity

Despite guidance being produced on the interpretation of highways-related development, ambiguity remains and this is affecting decisions for infrastructure promoters. There are examples of promoters pursuing the DCO route to avoid the risk of legal challenge at a later date, even though it may not be necessary. This has resulted in unnecessary resource costs and project delays.

A reduction in ambiguity is also likely to increase confidence in the planning process and has the potential to increase the propensity to make an application. There are potential benefits associated with the reduced level of risk on scheme promoters when planning new infrastructure.

Greater flexibility

There is also the issue of lack of flexibility within the Planning Act DCO process. In discussions with the Planning Inspectorate, it has been highlighted that applications can take

longer to be submitted, and if a change to schemes is required mid-way through the DCO process, this can result in significant delays.

Under the local planning permission or local plan making process changes can be made during the process without starting again. This is a saving to developers in both time and resources. Inspectors at Highways Act Inquiries also have scope to vary the Orders submitted when making their recommendations to the Secretary of State with similar benefits to highway authorities and, indirectly, developers (as they may fund the work).

D) Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

The Impact Assessment is at consultation stage. Part of the consultation is to seek any further evidence, particularly relating to the financial implications of the current consents regime. The questions being asked are as follows:

- Do you consider that there are reasonable grounds for introducing thresholds for small highway and railway schemes into the Planning Act?

- Do you consider that there are reasonable grounds to remove local major schemes and mitigation works within an existing planning permission from the Planning Act?

- Do you agree with the way in which we propose to change the thresholds? Do you consider that the specified criteria for thresholds are reasonable? If not, what other criteria do you suggest and why?

- Do you agree that the area thresholds are the right size? Should the limit include land required for the purpose of construction?

- Do you agree that the threshold should be based on length of track? Do you agree that the limit should be set at 2km of continuous track, and include both single and multi-track schemes?

- Do you have any other suggestions for setting reasonable thresholds for these types of scheme? Please support your suggestions with appropriate evidence.

- Do you agree with the decision to remove the purposive requirement for the construction or alteration of a highway (i.e. that the highway must be built “for a purpose connected with a highway for which the Secretary of State is the highway authority”) Do you consider this wording is still required?

- Do you have any other suggestions or opinions on this proposal? Please support your suggestions with any relevant evidence.

- Do you have any views on this proposal? Are there any other suggestions you might wish to make to help resolve the issue?

- Do you agree with the Government’s assessment that the proposals meet the stated policy aims? If not, please explain how you consider other proposals would better meet those aims.

- Do you have any views about when any changes to the Planning Act should come into force?

- Do you think projects which have started out under the Act but not been the subject of an application for development consent under the Act should be allowed to remain governed by it after the changes have taken effect, and, if so, on what basis?

We have obtained some data from the Highways Agency and Network Rail, but there has been some difficulty in quantifying potential savings not least because each scheme is unique and will be subject to varying levels of contention. There is a further difficulty in monetising impacts because the system has been operational since only March 2010, and therefore there is only limited data. However, we have provided examples of how the status quo has affected the decisions of infrastructure promoters in terms of cost and time.

However, following the consultation period we hope that scheme promoters (including developers) will be able to provide monetised examples of the impact of the system on their proposal, compared with the Town and Country Planning Act / Highways Act, or Transport and Works Act processes. Any additional monetised analysis emerging from the consultation will be presented in the final proposal stage.

E) Risks and assumptions

As the Planning Act 2008 has only been in force since 1 March 2010, it is difficult to quantify the likely impact fully. It is also difficult to fully predict the number of schemes that will come forward in future years. Our evidence is therefore based on the experience to date of Network Rail, the Highways Agency and local authorities delivering major transport schemes.

There may be other evidence available, namely from private sector promoters. Part of the consultation exercise is to request further evidence.

F) Direct costs and benefits to business calculations (following OIOO methodology);

The policies in this document are within the scope of One In One Out. We believe that the three policy proposals, which form the 'preferred option' count as OUTS for business - the proposals will reduce the costs associated with ambiguity and regulatory burden for infrastructure projects that are not, in practice, nationally significant.

G) Potential groups affected

The groups that would be affected by these proposals are:

- Local authorities: the default position for all local authority highway schemes would be the Town and Country Planning Act and Highways Act Orders. This will remove the ambiguity that exists as a result of the DCO process and give local authorities greater certainty in which to plan and manage infrastructure improvements.
- Highways Agency: The introduction of thresholds and exclusion of mitigation works (which will have already been through the planning approval process) will provide greater certainty in the planning process, which will bring with it greater flexibility to the programming and costing of smaller highway schemes.
- Network Rail: The introduction of thresholds will ensure fewer small scale rail improvement projects are subject to the regime. A more proportionate and flexible consent requirements for schemes that are not NSIPs would increase certainty, reduce the time for seeking consent and therefore reduce cost and facilitate the efficient delivery of rail schemes to deliver benefit expediently.
- Department for Transport (TWA Orders Team): May be affected by increased workload and resource requirement for processing additional TWA Order applications; depending

on the timing of applications and the nature of the schemes the impact may not be substantial, and would be offset to some extent by increased application fee income.

- Planning Inspectorate: Likely to receive a reduction in the number of DCOs received for highway and railway related schemes. This will affect their fee income but is unlikely to have a significant impact on their ability to operate effectively.
- Affected landowners: The rights of owners of land affected by proposals will be safeguarded by the consultation and examinations processes that are applicable to the alternative Highways Act regime.
- The public (other than affected landowners): The public likely to be affected by these proposals would be those who have an interest in a particular part of the highway or railway that is affected by a proposal. However, in all consents regimes there are statutory consultation requirements to enable the public to have their say. In addition, regardless of the regime, environmental safeguards remain. They may also benefit from transport improvements being delivered more quickly.
- Developers: Likely to benefit from a speedier consents process and reduction fees. This will reduce costs for developers and improve efficiency. The faster consents are approved, the faster development can take place on the ground and deliver economic benefits. For rail this could include franchised train operators who may be asked to deliver schemes (such as station improvements) as part of their franchise commitments.
- Environmental groups: The rights of such groups will be safeguarded by the consultation and examinations processes that applicable to the alternative Highways Act regime.

Equalities impact

I confirm that this proposal has been screened for its likely impact (positive or adverse) on the equality groups. It is not considered that these proposals will have any impact on these groups.

Carbon impact

We do not believe the proposal will result in an increase in greenhouse gas emissions. The objective of the policy is that infrastructure projects that would otherwise take place would continue to do so, only quicker.

H) Description of options considered (including do nothing)

DO NOTHING - Do not amend the Act, leaving small highways and railway schemes within the NSIP regime.

This is the baseline option, which entails retaining the current process.

Sections B and C of this Assessment provides explanation of how the baseline would not achieve the policy objectives.

NON-REGULATORY INTERVENTION – Provide guidance on interpretation of the Act for Highways and Rail Projects

The Department for Transport, Department for Communities & Local Government (DCLG) and PINS have issued guidance on how to interpret the Act in relation to “highways-related” development. While this has provided some clarification, significant ambiguity remains and small highway schemes continue to be subject to the Planning Act. One example of this ambiguity is described in ‘Local Authority Case Study 1’. There is no such guidance for rail schemes.

However, non-regulatory measures can only provide advice on the interpretation of the definition as set out in statute. To exclude small scale infrastructure proposals, local authority projects and developer mitigation works requires an amendment to the definitions. Because the definition of highways and railways as NSIPs is set out in Section 14 of the Planning Act, any change to the definition can only be made by changes to the Act, either through primary or secondary legislation under Section 14(3) (b) of the Act. Without Government intervention, some small scale transport projects will continue to be subject to the requirements of the Planning Act 2008 and this ambiguity will remain.

PREFERRED OPTION – Amend the Planning Act 2008 through legislation

POLICY PROPOSAL 1: Introduce a threshold for highway and railway schemes.

This would allow small schemes which would not be nationally significant themselves to be authorised using the most appropriate planning process. This would subject these schemes to the Highways Act 1980 and Transport and Works Act 1992 or Town and Country Planning Act 1990 processes, allowing for speedier delivery of these small schemes.

The consultation proposes to introduce thresholds into the Planning Act at s22 and s25 respectively:

- The thresholds for **highway schemes** would be for small schemes
    - on motorways to be 15.0 hectares in area;
    - for an all-purpose trunk road with a speed limit of 50mph or greater, 12.5 hectares in area; and
    - for an all-purpose trunk road with a speed limit of less than 50mph, 10.0 hectares in area.
- The threshold for **railway schemes** will be set so that the construction or alteration of the railway will only require authorisation under the Act where it consists of or includes the construction or alteration of more than 2 continuous route kilometres of railway track (whether this consists of a single or multiple pathways) outside existing operational land.

  This would mean that development not including railway track (such as station platforms, bridges etc) or being or including less than 2 continuous route kilometres of track would not require authorisation by a Development Consent Order. Development under permitted development rights will continue to be outside the Planning Act regime.

Highway schemes

Section 14(1) (h) of the Act defines "highway related development" and "the construction or alteration of a railway" as an NSIP. However, for highways Section 22 restricts further the definition of highway related development as constituting a NSIP. That section states, *inter alia*, that:

> *"highway related development is within s.14 where construction or alteration of a highway is wholly within England and that the Secretary of State will be the Highway Authority or the highway is to be constructed or altered for a purpose connected with the highway for which the Secretary of State is or will be the highway authority".*

The proposal amends only development which relates to the construction or alteration of a highway. The requirement for the improvement of a highway remains unchanged.

The construction of a highway is a NSIP if:

- the Secretary of State will be the highway authority for the highway; or
- the highway is to be constructed for a purpose connected with a highway for which the SoS is the highway authority.

The alteration of a highway is a NSIP if:

- the alteration is to be carried out by or on behalf of the Secretary of State; and

- the highway is to be altered for a purpose connected with a highway for which the Secretary of State is (or will be) the Secretary of State.

The implication is that all new highway schemes and alterations to the highway, where the Secretary of State is highway authority – i.e. motorways and trunk roads in England – are subject to the DCO process. This is regardless of the size, scale and scope of the scheme. As mentioned above, the effect is that many small projects are subject to a consents regime which the Highways Agency believes, in practice, is disproportionate.

Impact of the current system

While the current DCO process is an effective and proportionate consents process for large, nationally significant infrastructure projects, the requirements it places on smaller projects are disproportional. The Highways Agency has identified that costs of the current system are not simply related to DCO application fees. There is also the cost of producing and presenting evidence to the examination that must take place even in the case of an uncontested order.

Under the Highways Act provisions, the Secretary of State for Transport can approve scheme orders without the need for an inquiry in cases where there are no unresolved objections.

Some of the greatest costs are those relating to the lost opportunities to deliver improvements because of the timescales associated with the DCO process. The reasons they are not being pursued are the impact of the additional costs of a DCO on the value management process and the resource/time penalty of promoting such orders in the context of an annual programme. This has been a significant factor in the make up of the Pinch Point Programme[5]. The need for a DCO has been a specific reason why certain otherwise good schemes were not put forward. This will have direct negative economic impacts on the developers, and also second round impacts relating to the indirect economic growth which the project may have stimulated.

Case study – Intermediate Junction, M49

The M49 intermediate junction is a priority scheme for the West of England authorities and the Local Enterprise Partnership. It is pivotal to unlocking the Avonmouth/ Severnside Enterprise Area which has the potential to deliver over 10,000 additional jobs by 2030 and more beyond. A new junction would open up 400 hectares of development land. Most of the land has extant planning consent, but there are no requirements to provide off-site infrastructure (such as motorway access).

The West of England Local Enterprise Partnership (LEP) and Highways Agency have identified a project which utilises an existing over bridge to which can be connected 4 slip roads via two 'dumb-bell' junctions. The broad project cost was estimated at about £20million.

[5] Announced on 8 October 2012 – Press Release: http://www.dft.gov.uk/news/press-releases/press-dft-20121008a/

Land in two separate private ownerships is required to deliver the scheme. Both land owners have indicated their willingness to provide the land at no cost towards the delivery of the scheme. The new junction would give direct access to both landowners.

The scheme was considered for inclusion in the Government's Pinch Point Programme, but was rejected. A significant factor was that the scheme was determined to be an NSIP and the 18 month Development Consent Process pushed the profile and amount of scheme funding too far beyond March 2015 period (the timetable set for the delivery of projects within the Programme).

Based on the PINS published advice it was concluded that a DCO process would take 18 months.

Before it was known that a DCO was required the engineering consultant was of the view that the planning, design and build of a new junction could have been substantially complete by March 2015. Although it is likely that there would have been some over run past March 2015, it would have been significantly less money and less time than with a DCO.

The anticipated 18 month DCO process took delivery well beyond the March 2015 delivery window for the fund and this was a substantive reason for failure of the bid for an otherwise good project.

The HA considers that this scheme is not 'Nationally Significant' in the context of the intention of the NSIP concept. However, a new junction would make a very significant contribution towards conditions for growth in the greater Bristol/Avonmouth area by opening up employment sites to development.

Rationale for proposed change

The rationale behind the proposed change is not so much any difference in administration or inquiry/examination costs, but is the potential to avoid an inquiry/examination process altogether, coupled with potential to save time and avoid the application fee.

Justification for choice of threshold

The suggested thresholds have been set in hectares to accommodate the various types of highway which make up the Strategic Road Network. This is to recognise that motorways and other trunk roads are different in their size and impact.

We have also considered the impact of works on neighbours/local interests rather than the impact of the finished road since the former is likely to be far more significant. The rationale behind the <50 mph category is that the lower speed trunk road tend to be in built up areas where the impact of the trunk roads and works carried out are likely to have much greater impact on neighbours than is the case with roads in rural areas to which higher speed limits will apply.

When considering other types of threshold, such as financial or road length, there were too many variables which would introduce uncertainty into the criteria. For a financial threshold, other factors other than the cost of the scheme were raised such as implications for VAT, increased costs during the preparation of the schemes, changes to costs estimates following consultation. It was suggested that these issues leave too much doubt to make a considered

timely decision on which regime should be used. This could result in needing to change the process should the financial criteria be triggered.

Length of highways scheme was also considered but this did not take into account schemes which were under the length criteria but which were of national significance such as large junctions on motorways.

Impact of proposed change

For highway schemes where the Secretary of State is the highway authority, the Highways Agency do not need to obtain planning permission, as they have permitted development rights, but do need to obtain Highways Act orders. This would have a number of benefits.

There is a benefit associated with using conventional consents processes, although it is difficult to make direct comparisons because each scheme is different and therefore consents requirements are unique. There is no application fee associated with the publication of Highways Act orders, though there will be other costs associated with preparing documentation and, if necessary, partaking in a public inquiry if the case contentious.

However, if there are no unresolved objections of substance, Orders can proceed without the need for a Public Inquiry. This is often the case with small schemes which have only local impacts and benefits. This brings not only cost savings but time savings, which might be 6 - 12 months or more. This is of particular significance to developers who, having secured their planning permission, cannot realise their development until the associated highway mitigation works have been authorised and delivered.

The pre-application requirements for a DCO application are also far more onerous than for the publication of draft Orders. For the DCO a scheme must be developed almost to its final detailed design whereas the Orders process only requires outline proposals, allowing greater flexibility and more scope to respond to changing requirements quickly and efficiently. If any changes of substance are necessary in order to render the proposals acceptable, a revised application must be submitted to PINS with a new fee and a second examination. By contrast, Inspectors have considerable scope to vary Highways Act 1980 Orders in the light of findings during their public inquiries thus allowing the scheme to proceed without further cost and delay.

Table 3 lists highway schemes being developed by the Highways Agency. All of the schemes would benefit from the introduction of the legislative changes being proposed. Schemes 4, 5, 9, 10 &17 would be covered by the exemption of development mitigation works (policy proposal 3); schemes 6, 11 & 18 would be covered by the exemption of local highway authority schemes (policy proposal 2) whilst the remainder could be delivered within the limits of the new thresholds (policy proposal 1).

Table 3: Schemes on the Strategic Road Network that may require a DCO

	Scheme	**DCO required after change?**
1	M5 Piffs Elm overbridge replacement	No
2	M5 Painswick Bridge, Gloucester	No
3	A303/A350 Furze Hedge Chicklade	No

4	A303 Longbarrow Roundabout Improvement	No
5	Port Salford/Western Gateway Infrastructure Scheme	No
6	M6 to Heysham Link	No
7	A1 Wittering Grade Separated Junction	No
8	A1/B6387 Twyford Bridge Junction Improvement	No
9	A1 Spitalgate New Grade Separated Junction	No
10	A14 Kettering East SU	No
11	A2 Dover Harbour Terminal 2	No
12	A2070 Orbital Park (Cheesemans Green)	No
13	A11 Brigham Heath Pedlars Way Crossing	No
14	M5 between junctions 4A and 5	No
15	M40 between junction 15 and 16	No
16	M42 Junction 10 Phase 2	No
17	M49 New intermediate junction	No
18	M32 Bus Only Junction	No

Source: Highways Agency/ DfT

Railway schemes

For rail, an NSIP has a wide and potentially far-reaching definition, being a project for the "construction or alteration of a railway" (s.14 (1) (k)), but not where the alteration of the railway is by using Permitted Development Rights (s.25 (2) (c)). A DCO is therefore required for any scheme falling within the definition. This means that all projects not covered by Permitted Development Rights are subject to the DCO regime – in practice this means that relatively minor rail improvements are subject to a consents regime that is intended for nationally significant infrastructure.

Permitted Development Rights are set in the Town and Country Planning (General Permitted Development) Order 1995, and allow certain projects to take place without the need for planning consent.

<u>Impact of the current system</u>

While the current DCO process is an effective and proportionate consents process for large, nationally significant infrastructure projects, the requirements it places on smaller rail projects are disproportional.

First, there is a lack of clarity around the extent and inclusion of works caught by the NSIP definition, particularly around the interpretation of "railway" and "construction" and "alteration" and the only fail safe way to proceed is to apply for a DCO where there is any doubt. Relying on interpretation of the Act and proceeding without a DCO would be at the risk of the developer of the rail scheme and may mean that the authorisation is challenged at a later date, which would have time and cost implications.

The imposition of a threshold for rail schemes means that this lack of clarity can be removed, making it clear how schemes and works must be authorised below the threshold.

The wide definition of an NSIP and a requirement that a project must be authorised by DCO where it falls in the definition has removed some of the previous flexibility in considering how to authorise projects; flexibility that was very useful for smaller schemes (or parts of larger schemes authorised in a different way, such as under Permitted Development Rights) with smaller budgets and time constraints for delivery and that would not in the usual course be considered nationally significant.

Before the introduction of the Act, Network Rail had flexibility in seeking authorisation for projects. Where works were outside Permitted Development Rights, Network Rail could take the decision to apply for planning permission and other necessary consents independently of each other – useful for smaller projects and works where any additional land could be acquired by agreement – or seek a TWA order as a way of obtaining all necessary consents in one application, the route often used for the bigger and more complex projects and those requiring new land.

Evidence from Network Rail indicates that where schemes and works cannot be delivered under Permitted Development Rights and require a DCO, to save time and cost, schemes may be re-designed to fall within existing authorisations and avoid the need for a DCO.

By altering schemes in this way, some functionality may be lost and schemes may be less than optimal so they can be delivered to time and budget and without need for DCO.

Network rail also suggest that schemes that can be delivered in part under Permitted Development Rights are being split into phases to de-couple works from those requiring DCO authorisation. Effectively this has the potential to cause confusion in separating the works, prolonging the construction phase and importing inefficiencies in the delivery of the overall scheme. Public consultation on such hybrid schemes has the potential to cause confusion too in terms of which aspects of the overarching scheme are being consulted on for the purposes of the DCO and which parts are deemed to be Permitted Development.

Case study - Redditch branch enhancement scheme

This is a small rail enhancement scheme to create capacity along the single track to Redditch by the construction of a new section (“loop”) of track, consisting of approximately 3km of double track and 2 connections to the original track, allowing trains to pass one another.

The new track will run alongside the existing branch line and that line will be realigned to accommodate it on operational land where possible to do so. There will also be the creation of a new station platform and a new footbridge to link the existing and new platforms. A footpath will be diverted to run over the new bridge and there will be a relocation of equipment buildings and a new permanent right of access to the southern part of the scheme.

A DCO is necessary because although most of the works are on operational land and can be carried out under Permitted Development Rights, a small extension beyond existing boundaries mean a DCO is required for those elements of the scheme.

It has taken approximately 16 months to get the scheme to application stage and comply with the pre-application consultation and other requirements. The application was made in August 2012 and it is likely to take a further 16 months until an Order is made.

Comparing this to seeking planning permission, even a major application should be dealt with in around 13 weeks. Other consents that may be required, such as diversions of Public Rights of Way for Redditch, can take in the region of 6 months to secure. Different applications can usually be made at the same time and it is sometimes possible for works to commence in parallel.

The scheme promoters recognise that design and development work will be needed for any scheme, but it is the processes over and above this which add to the time commitment for a DCO, processes that for smaller schemes and minor works are disproportionate to the scale and impact of the project.

The application fee for this scheme was £4,500. There will also be pre-examination, examination and other fees, but it is not yet clear how much these will be. On another similar DCO scheme, application, pre-examination and other fees were in the region of £150,000, but as Redditch is a smaller scheme, it is likely to be lower.

If the scheme were authorised under a planning application made to the local authority, the fee would have been £7,705 based on an approximate area of permanent land-take of 5.626 acres. A separate fee of approximately £1,500 - £3,000 would be payable to the local authority for an Order to divert the Public Right of Way.

To application, in addition to the application fees, Network Rail estimates costs in excess of £200,000. This would include legal fees for the preparation of the order, consultation costs and advertisements, but not the costs of design and other consultants. TWA applications would incur some of these costs, but they are more likely to be proportionate to the scale and impact of the scheme.

These costs would be substantially lower for planning and other consents. They would include some consultation on a smaller scale, and consultant's costs and legal fees for negotiating land purchase and temporary access.

The design costs for the scheme would be broadly similar whichever process were followed.

Rationale for proposed change

The requirement to consent small schemes and minor works by DCO where it is not proportionate to do so imposes additional costs into those schemes.

Limited experience from Network Rail DCO schemes so far shows that it usually takes around 32 months to complete development of a scheme, deal with the pre-application processes and seek and receive a DCO, with bigger and more complex schemes (particularly those with multiple options) taking (and expected to take) longer than the smaller ones.

In larger schemes with long lead times, it is likely to be easier to absorb and deal with the timing implications required in seeking a DCO than with smaller schemes and minor works, where development and delivery times are generally shorter and that timescale and process is not proportionate to the size and impact of the scheme. There is also a level of uncertainty around when a decision will be received, meaning arrangements with contractors to start work cannot be finalised until late in the process.

Delay in delivery of a scheme or works means that the benefit to be obtained by the end user will take longer to be realised. This may have an impact on the viability or business

case for a scheme proceeding, particularly with small schemes and minor works. Where minor works requiring a DCO form part of a larger scheme, the delay may also impact on the delivery of the whole scheme.

Longer timescales are problematic not only for the developers of rail schemes, but also for government and funders. Delay means that public commitments might prove challenging to fulfil in practice because of long lead times for those schemes and that may have an impact on the availability of funding for or commitment to deliver a scheme.

Justification for choice of threshold

In developing a threshold it was considered that length of track was most appropriate. This is also the approach adopted in the Act for linear gas transporter lines. Bearing in mind the scale and likely impacts of the various schemes, the suggested 2km threshold would mean that appropriate schemes are included for authorisation by DCO, with the smaller schemes and minor works being outside. Alternatives were also considered, including a size (area) threshold and a 4km of track length threshold. However, when considered against how this would affect typical rail proposals (Table 4) it was felt that 2km provides the right balance in differentiating those projects which are nationally significant from those which are not.

Impact of proposed change

The consequence is that Network Rail will have the flexibility to seek necessary consents via a planning application or Transport and Works Act Order. If the planning application was minor, the decision period would be 8 weeks whilst a major application is 13 weeks. These timescales will often extend to include pre-application advice, EIA screening and public consultation, together with a period post decision to discharge conditions before works can commence. Other consents that may be required such as diversions of Public Right Of Way can take in the region of 6 months, but works can sometimes commence in parallel with this process. Fees are set out in the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2008.

There is also the option to obtain the necessary consents via the Transport and Works Act. TWA fees are set out in the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. The application fee depends on the area of the proposed works, starting at £6,600 for a scheme up to 1 hectare which involves the compulsory acquisition of land. Applicants also have to pay the cost of any inquiry Inspector appointed (daily rate £1,000 for each day working on the case).

The TWA process typically takes 6 to 12 months for schemes with few objections (as there may need to be exchanges of written representations with outstanding objectors) and 12 to 18 months for schemes requiring public inquiries.

13 out of the 15 examples of current and future Network Rail schemes where there is a high likelihood of needed to be approved via a DCO, should the proposed amendment take they place would no longer have to do so. This is shown in table 4 below.

Table 4: Impact of proposed threshold on current and future Network Rail schemes

Scheme	**Without threshold**	**With threshold**
1. 1.4km of double-track railway.	DCO compulsory.	DCO not compulsory.
2. 3.2km of new double-track railway.	DCO compulsory.	DCO compulsory.
3. 5km of new railway.	DCO compulsory.	DCO compulsory.

4. 3.2km doubling of existing track, mostly within existing operational land. Embankment works fall outside operational land.	DCO compulsory (due to small extension beyond boundary of operational land).	DCO not compulsory. Can be authorised using local consents.
5. Extension of sidings by 800m outside operational land.	DCO compulsory as outside operational land so PDRs not available.	DCO not compulsory. Can be authorised using local consents.
6. Construction of passing loop less than 3km, of which all but 300m x 2m is on operational land.	DCO compulsory for section outside operational land so PDRs not available.	DCO not compulsory. Can authorise section outside operational land using local consents.
7. 2 x 775m passing loops. (Note: scheme revised to keep within operational land and avoid need for DCO application).	DCO compulsory for section outside operational land so PDRs not available.	DCO not compulsory. Can authorise section outside operational land using local consents.
8. Minor works forming part of electrification schemes – bulk of scheme authorised by PDRs, but certain minor works may require separate authorisation because they fall outside operational land.	Potentially DCO required to authorise minor works where not authorised by PDRs if fall within the NSIP definition.	DCO not compulsory. Minor works needing authorisation (if any) can be authorised by local consents where appropriate.
9. Works at stations, such as platforms or car parks or works to bridges etc	Potentially DCO required to authorise works where not authorised by PDRs if fall within NSIP definition.	DCO not compulsory. Works requiring authorisation (if any) can be authorised by local consents where appropriate.
10. Reconstruction of rail connection including laying of track.	DCO likely depending on scope.	DCO likely depending on scope and distance of new track.
11. Installation of railway chord (track and associated works)	DCO compulsory.	DCO not compulsory.
12. Platform works.	DCO likely depending on extent.	DCO not compulsory.
13. New Platform	DCO likely depending on extent.	DCO not compulsory.
14. Area remodelling (track and associated works)	DCO likely depending on extent.	DCO not compulsory depending on final track length.
15. Freight Sidings	DCO likely depending on extent.	DCO not compulsory depending on final track length.

Source: Network Rail

Wider impacts

PINS may be adversely affected by changes to the Act, through a reduction in fees. However, PINS operates as a not-for-profit body and its primary funding is a grant from the Department for Communities and Local Government. Fees payable for examination of applications are prescribed in the Infrastructure Planning (Fees) Regulations 2010. As PINS' grant funding is predicated on an estimate of a number of major projects being

received each year, rather those actually submitted annually, the proposal is unlikely to have any significant effect on resourcing.

There would be some increase in workload and resource requirements for the TWA Unit in the Department for Transport. But how significant that would be depends a lot on when the cases come forward, how complex they are, and what the remainder of the TWA caseload is like at the time. In terms of the cost of processing TWA Order applications, these are intended to be covered by the fee paid by applicants (which are based on a scale, rather than recovery of actual costs). However, as the TWA Unit already deal with DCO decisions for transport projects, the impact is unlikely to be significant.

The public and business are likely to benefit from development opportunities being realised quicker. This provides knock-on benefits for local economic growth although these cannot be monetised as every scheme is unique and so the impact will vary.

Safeguards

Section 35 of the Act (as amended by section 132 of the Localism Act 2011) allows the Secretary of State to direct that development is treated as development where a DCO is required where that development would otherwise be outside the DCO process. This gives an ability to authorise a project by DCO should the Secretary of State decide it is necessary to do so, but this only applies where a potential applicant has made a qualifying request.

Embedded within the planning system is that the requirement local authorities, in making any determination under the planning Acts, must make that determination "in accordance with the [development] plan unless material considerations indicate otherwise" (section 36 Planning and Compulsory Purchase Act 2004). All local authorities produce local plans, which are subject to external scrutiny, including a public examination, and a Strategic Environmental Assessment (SEA) to assess effect plans on the environment.

Both the Highways Act 1980 and Transport and Works Act 1992 have established consultation procedures, including the provision to hold Public Inquiries into schemes where there are a high number of, or unresolved, objections.

In addition, further environmental protection obligations are maintained by the duty on promoters of major projects to undertake an Environmental Impact Assessment (EIA) to assess the likely effects of a proposal on the environment. The types of projects that fall within its scope are defined in legislation and would not be affected by these proposals.

POLICY PROPOSAL 2: Amend the Planning Act so that local authority highway schemes are removed from the Planning Act regime.

The policy proposal is to amend the Planning Act so that all local authority highway schemes are excluded from the definition of a NSIP. This will mean that local authority projects will be subject to the conventional planning / highways orders regime.

Impact of the current system

The Planning Act contains a definition that any highway scheme with a purpose which connects to the highway where the Secretary of State is or would be the highway authority must use the DCO regime. This mandatory definition has led to confusion for developers due to the vagueness of the meaning of 'for a purpose connected to' as it goes further than just a physical connection. Whilst interpretation guidance has been agreed between the Planning Inspectorate, DfT and DCLG, there is still not sufficient clarity to remove all doubt of when a local major road scheme must use the Act.

Several schemes have been seriously delayed due to this confusion and in some cases it has led to increased costs and delays where, to avoid any doubt, the developer has started the planning process again. While there have been discussions to try to redraft an interpretation, there is still room for doubt as the Inspectorate are unable to advise developers when presented with conflicting but equally valid legal advice from developers and the other consultees or objectors.

Local highway authorities whose road construction/improvement schemes interact with the Strategic Road Network must undertake two authorisation processes promoting Highways Act Orders for their own road and a DCO for the connection to the Strategic Road Network. Each is precluded from using the alternative. This represents a significant increase in resource demand and costs, stifling the development process whilst also delaying and reducing efficacy of the wider economic benefits.

Case study – Local authority major scheme 1

An alliance of local authorities secured government funding for package of transport improvements. A key element of this package is the provision of new bus-only junction to enable rapid movement of public transport vehicles. The scheme comprises two south facing slips and an over-bridge. The scheme has the potential to be extended to include two north facing slips to accommodate a potential park and ride site in the future subject to funding.

In order to avoid risk of challenge the Local Highways Authorities have taken the view the junction constituted an NSIP and requires a DCO.

The Local Highway Authorities anticipate an additional cost of £250 – £500k as a result of having to run a separate DCO process to the planning applications for the remainder of the scheme. They also anticipate a delay of at least 6 months over the traditional planning application route for the junction element and the lost opportunity to accelerate another part of the scheme to off set delays elsewhere due to statutory processes.

Case study – Local authority major scheme 2

There is an example of a local authority highway scheme where the current definition has caused some delay. A change in the design of a scheme that had gone some way through the conventional planning process had to restart the planning process because the change in scheme design was deemed to fall within the definition of nationally significant infrastructure. This created delays of 6 months, plus associated costs.

Rationale for proposed change

The rationale for removing local authority highway projects from the definition of NSIPs is that the current definition is ambiguous and there is evidence that this is causing delays in delivering new infrastructure.

Removing local authority projects from the definition – requiring all of them to be subject to conventional planning and highways orders procedures – will remove this ambiguity.

Impact of proposed change

It has been widely reported that the level of consents and approvals required before development can go ahead can effect economic growth (see footnote 2). Therefore, removing the burdens and ambiguity in the planning process can contribute to a speedier development process, enabling the economic benefits to be realised quicker. An example of such benefits include reducing congestion, allowing journey times to fall, or improving accessibility to certain regions, allowing local businesses more potential to expand.

Greater certainty is also likely to increase confidence in the planning process and has the potential to increase the propensity to make an application. There are potential benefits associated with the reduced level of risk on scheme promoters when planning new infrastructure.

Speeding up the planning process and removing the associated costs will increase the number of viable, cost effective projects, leading to better developed transport infrastructure and the knock-on benefits this achieves in other sectors of the economy.

As with allowing small highway schemes to be excluded from the regime, there would be savings in costs to developers through time savings made possible by the certainty of the planning timetable. This means that when the scheme is ready to proceed, the Highways Act regime is quicker as the merits of the scheme have already been decided through due process and the planning permission granted in a much quicker time span, usually three months. Any outstanding issues relating to the scheme which would require a Public Inquiry, Side Road Orders and Compulsory Purchase Orders would also be on the details of those orders and not on the scheme itself. Again this could lead to a much shorter time scales than the Planning Act.

Removing local authority schemes from the DCO regime will avoid duplication of work in preparing the scheme leading to further efficiency savings. Usually local authority schemes are included in the Local Transport Plan and, if in place, the Local Plan; both of which will have gone through a full consultation process and most through a Strategic Environmental Assessment. Any objections and environmental issues would be heard during the Examination in Public and developers would be aware of the work required to resolve any outstanding issues. The DCO definition means that these schemes will be subject to consents processes under the Town and Country Planning and Highways Acts respectively.

A comparison of the time and costs associated with the DCO regime compared with the conventional consents processes are provided in pages 4-6.

If the effect of this policy proposal were to be considered against those projects which are currently subject to the DCO process, the following projects would not require a DCO:

- M1 Junction 10a Grade Separation - Luton
- Woodside Connection Houghton Regis Bedfordshire
- Morpeth Northern Bypass
- Heysham to M6 Link Road

As with the policy proposal 1, the benefit is not only in terms of cost savings relating to fees or process, but in terms of the reduction in ambiguity.

Wider impacts

As Policy Proposal 1.

Safeguards

As Policy Proposal 1.

POLICY PROPOSAL 3 - Amend the Planning Act to remove those schemes which are highway schemes where the Secretary of State is the highway authority but which are mitigation works for developments with planning permission

This proposal is intended to address those schemes affecting the Strategic Road Network which are development mitigation measures, by removing the need for them to be subject to the DCO process.

Impact of current system

This aims to address the situation where development proposals which already have planning approval can be subject to the DCO process if Highways Act orders are required. This can occur where a proposal has been granted planning permission for a development, yet the highway mitigation works (under Section 278 of the Town and Country Planning Act 1990) are required to the Strategic Road Network before it can take place. As all alterations to the Strategic Road Network are currently defined as a NSIP, the proposal would be subject to a DCO process before development could commence, despite having already been through the town and country planning consents process.

Where this is the case, proposals would be subject to an additional consents process, which can take 16 months or more. If a scheme is contentious, this delay is likely to be even longer, as despite having already been approved by the local planning authority and subject to the necessary consultation and other planning procedures, the proposals may once again be challenged through the DCO process on grounds that are not directly related to the merits of the highway design (on the basis that the highway impacts are not justified by the development benefits). Under the former Highways Act process only the merits of the highway works *per se* would come under scrutiny.

The potential consequence of this is not only the direct costs (fees of c.£20k - £150k+) to the developers and scheme promoters, but to the wider economy. For example, in the short term, the construction sector will be affected in terms of the additional time that is required to undertake a DCO. Post-construction there is likely to be a loss of potential benefits associated with new economic development, such as job creation.

Rationale of policy proposal

The rationale for this proposal is that there is evidence that highway mitigation works affecting the Strategic Road Network can be subject to the DCO process and this can cause unnecessary delays to development. By removing such mitigation works from the scope of the Planning Act it is intended to reduce delays, costs and uncertainty for new development.

Impact of proposed change

This proposal will not remove the situation where double jeopardy occurs – this can only be done through an amendment to the Town and Country Planning Act bringing approval of highway mitigation work on the SRN within the scope of the overall planning consent. What it is intended to achieve is the time taken to achieve the highways consent. The DCO process is lengthy and proposals that have prior planning approval can be challenged on the grounds that are not directly related to the merits of the highway design. In contrast, Highways Act Orders only assess the merits of the highway works, not the principle of proposal as a whole (as this will have been considered previously).

This is likely to bring cost savings in terms of fees (which are documented in policy proposal 1) and the work associated with preparing a DCO (compared to a Highways Order). However, the real benefit is in the certainty it gives developers that the development

proposal will not be open to a further round of detailed scrutiny after approval has been granted by the local planning authority.

The consents route for mitigation works will therefore be via a Highways Act Order. This is likely to be quicker because within the process there will be no scope to reconsider the development proposal as a whole, only the highways element. If non-contentious, such orders could be agreed in around 6 months. If there are unresolved objections, there would be a need for a Public Inquiry, but this would also be on the details of those Orders and not on the scheme itself.

Pages 4-6 provide an assessment of the relative costs and timescales of the DCO route compared with the Town and Country Planning Act / Highways Act consents route. These demonstrate that such a change is likely to beneficial for scheme promoters.

Table 3 identifies five current projects on that would benefit if the proposal were already in place.

Wider impacts

As Policy Proposal 1.

Safeguards

As Policy Proposal 1.

APPENDIX 1 – IMPACT OF PROPOSALS BY SCHEME TYPE

Scheme type	**Current consent requirements**	**Consent requirements after proposed changes**
Local highway authority schemes (including those promoted by a local highway authority on a developers behalf) which are constructed for a purpose connected with a highway for which the SoS is the highway authority	Planning Act 2008 – DCO process	Town and Country Planning Act 1990 (plus any necessary Highways Orders)
Highways schemes: • on motorways <15.0 hectares in area; • on all-purpose trunk roads with speed limits of 50mph or greater <12.5 hectares in area; and • on all-purpose trunk roads with a speed limit of less than 50mph <10.0 hectares in area.	Planning Act 2008 – DCO process	Highways Act 1980
Highway schemes where the Secretary of State is the highway authority but which are mitigation works for developments with planning permission	Planning Act 2008 – DCO process	Town and Country Planning Act 1990 (plus any necessary Highways Orders)
Any railway scheme consisting of or including the construction or alteration of more than 2 continuous route kilometres of railway track (whether this consists of a single or multiple pathways) outside existing operational land.	Planning Act 2008 – DCO process None (if within 'permitted development rights')	Town and Country Planning Act 1990 (plus Orders) Transport and Works Act 1992 Order None (if within 'permitted development rights')

Source: DfT

Annex B Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available on the Better Regulation Executive website at https://update.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/14 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk

Consultation principles

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- the consultation period has been set as it aimed at Local Highway and Planning Authorities and Developers. Interested parties will have sufficient technical knowledge to respond within this time;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be ‘digital by default’, but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.