

National Infrastructure Commission – Consultation

Historic England Response

Historic England is the Government’s statutory adviser on all matters relating to the historic environment in England. We are a non-departmental public body established under the National Heritage Act 1983 and sponsored by the Department for Culture, Media and Sport (DCMS). We champion and protect England’s historic places, providing expert advice to local planning authorities, developers, owners and communities to help ensure our historic environment is properly understood, enjoyed and cared for.

Historic England welcomes the creation of the National Infrastructure Commission. Both our Chairman and Chief Executive have already met Lord Adonis, its Chairman, and we look forwards to working with the commission in examining the nation’s future infrastructure needs. Historic England is a statutory consultee on all nationally significant infrastructure projects and has close working relationships with High Speed 2, Network Rail, Highways England, National Grid and those involved in the potential delivery of Crossrail 2.

In responding to this consultation we have focused on those questions that fall within our remit.

Q 1. Do you agree that the National Infrastructure Commission should be established as a non-departmental public body via primary legislation?

We welcome the clarity that would arise should the National Infrastructure Commission be established as a non-departmental public body (NDPB) through primary legislation. However, we would like further clarity on the proposal in the consultation that the commission as a NDPB would be able to hold government to account and how this would operate in light of it being an unelected body. We would also welcome clarity as to how the recommendations would become government policy (paragraph 7.6 of the consultation) – see further below.

In establishing the remit of the commission we suggest this should also be placed on a statutory footing through primary legislation. Clearly, economic and fiscal considerations as part of sustainable development will be of great importance, however the same consideration should be given to the other strands of

sustainable development that include social and environmental (see further question 10 below).

Further clarity is required on how the commission will work, engage, interact and consult with other government departments, regulators, public bodies and the general public at each stage of the process as current proposals include Memorandum of Understanding (for government departments), legislation and the possible revision of statutes (for regulators and public bodies), together with the possibility of undertaking analysis for the commission.

The consultation and engagement procedures with other bodies, is at present, unclear and inconsistent especially with regard to the 'endorsed' recommendations, which could result in a revised National Policy Statement or some other policy format, and we suggest this needs to be clearly set out on a formal basis for all those involved.

Having a clear remit and provisions for engagement and consultation with other government departments, public bodies etc., established through primary legislation, will enable the commission to work closely and collaboratively with government departments, regulators, public bodies and the general public in a spirit of openness and transparency and provide its advice accordingly.

Q 2. Do you agree that the commission's National Infrastructure Assessments should be laid before Parliament and that government must respond within a specific timeframe? What would an appropriate timeframe be?

We agree that the commission's National Infrastructure Assessments should be laid before Parliament.

Q 3. Do you agree that it should not be mandatory for the government to lay the recommendations from specific studies before Parliament, but that the government should have the discretion to do so where necessary?

For the purposes of transparency and accountability where the recommendations have been 'endorsed' by government thereby becoming government policy we believe they should be laid before Parliament, but if not, discretion could be exercised.

Q 8. Do you agree that a transparency requirement should be placed on the commission with regard to its economic remit?



We suggest the transparency requirements for the commission should be the same as those for any other non-departmental public body.

Q 10. Do you agree that the remit should be set by a letter from the Chancellor, on behalf of the government?

If the commission is to be set up by primary legislation then we consider that it would be appropriate for its remit and processes to be set out in primary legislation. This would be particularly so should the commission provide recommendations which the government then look to 'endorse' and to become government policy. The legislation should also explain how the commission will work with other statutory undertakers and the general public during all stages of the process thereby providing greater transparency and accountability.

We also note the emphasis throughout this section on the economic and fiscal remit of the commission (which is covered in questions six and seven), but would also expect its work to take into consideration all three strands of sustainable development as set out in the *National Planning Policy Framework* (NPPF) including social and environmental, as well as economic (Department for Communities and Local Government, 2012). Environmental considerations are mentioned in chapter seven, but such matters would prove critical for 'endorsed' recommendations and their relationship with the *NPPF*, especially if there is a perceived conflict between the strategic and economic case that has been assessed by the commission against the *NPPF* sustainable requirements of economic, social and environmental gains. It is also not clear whether these environmental considerations are in relation to the evidence base for 'planning' matters or for all recommendations which could have implications on the planning system.

Q 11. Do you agree that the commission's working assumption should be to only review those areas of infrastructure that are the responsibility of the UK government?

Whilst recognising the devolved powers on some infrastructure matters within the UK there will need to be a degree of close and collaborative working with the devolved administrations if the commission is to operate effectively and efficiently. An overview of all the information within the defined territory (both public and private) would also help to ensure greater co-ordination and efficiency in infrastructure planning and delivery.

Q 13. Should departments be obliged to accede to the Commission's requests for analysis?



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The intention to legislate to provide the commission with the right to ask department's for both data and analysis seems unnecessary when this could perhaps be better secured through the proposed Memorandum of Understanding described in paragraph 6.7 of the consultation.

Q 14. Do you agree that the legislation used to create the commission should place obligations on the relevant regulators and public bodies to share information with the commission?

It would clearly be beneficial for relevant regulators and public bodies to share information with the commission (subject to confidentiality and freedom of information requirements), but we note that for government departments such working arrangements are to be set out in individual Memoranda of Understanding (MoU). We suggest similar arrangements should be put in place for relevant regulators and public bodies where the MoU would 'include, among other things, a common understanding of what responsible and proportionate requests for data and analysis should entail, how (these bodies) are expected to meet such requests, and how the commission will use the information provided by (these bodies)' – paragraph 6.7 of the consultation.

Q 15. Should legislation also place obligations on the relevant regulators and public bodies to provide analysis for the commission?

The consultation is not clear whether this question relates to analysis already undertaken by such bodies and regulators or whether the commission can request these organisations to undertake new work on its behalf. We would have concerns if this related to the latter given its potential impact on the existing statutory duties, priorities and commitments for these bodies and question the need in paragraph 6.13 that 'it may be necessary to revise the statutes governing how the relevant regulators and public bodies function, and how information is managed' when perhaps an MoU would be a better arrangement (see question 14 above). If the intention is for regulators and public bodies to provide analysis on behalf of the commission further clarification is needed on how this would relate to any charging regime they may have in place – Treasury guidance is that other public agencies should not be exempt so that the real cost of projects is reflected properly.

Q 16. Do you agree that government should specify a timetable to review or replace a National Policy Statement when endorsing recommendations?

If the 'endorsed' recommendations are to become government policy that could be transposed into or reflected in National Policy Statements then a timetable for the



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relevant departments to implement this would appear necessary. It would be helpful to have clarity as to what is meant by the statement in paragraph 7.13 which refers to amending the current procedures for the review of National Policy Statements as set out in the Planning Act 2008 (together with appropriate consultation of any proposed changes). The intended government 'guidance that will provide information to policy and decision makers about how to use the commission's output' will also be welcome (paragraph 7.11).

Q 17. Do you agree that, while additional consultation may be necessary, consultation undertaken by the commission should not be repeated by the Secretary of State when preparing a National Policy Statement?

It would not seem prudent to repeat a consultation exercise. However sufficient safeguards need to be put in place if this recommendation is to be taken forward. Although paragraph 7.16 suggests the commission could adopt the same approach that is carried out by the Secretary of State as set out in the Planning Act 2008 together with the submission of a 'Consultation Statement' (paragraph 7.17), methods of consultation and the wider engagement with relevant regulators, statutory consultees, other bodies and the general public are unclear. Similarly, we do not fully understand what the commission would be consulting on as the 'endorsed' recommendations could result in a revised National Policy Statement or 'another policy format' (paragraph 7.15) prepared by the relevant department - no further explanation is given on what that alternative policy format might be. It is also not clear if there will be any consultation from the commission or government during or once the recommendations have been prepared or whether they should be taken forward by government. We suggest proportionate publicity and consultation may be needed at each of stage of the process which should then be put on the same formal basis as the procedures currently set out in statute.

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