



Planning Act 2008
Guidance for local authorities



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Section 1

Purpose of this Guidance

1. This document has been developed to provide guidance to local authorities which are affected by the changes made to the planning regime for nationally significant infrastructure projects (NSIPs). Except in relation to monitoring and enforcement functions (see Annex B) a relevant local authority is:
 - an authority at both the district and county level in whose area an NSIP is proposed
 - an authority at both the district and county level which is a neighbour to a local authority where an NSIP is proposed
 - an authority at both the district and county level which is affected directly (or indirectly) by a proposed NSIP.

2. The role of local authorities in the new regime will include:
 - consulting with promoters on Statements of Community Consultation (where a proposed development will fall within the local authority area)
 - responding to the promoter's pre-application consultation
 - reporting to the Infrastructure Planning Commission (IPC) on pre-application consultation
 - preparation of agreements under section 106 of the Town and Country Planning Act 1990
 - preparation of local impact reports and making representations to the IPC on a proposed NSIP
 - approval of matters subsequent to a NSIP being granted development consent, such as detailed designs or schemes to mitigate adverse impacts¹
 - monitoring and enforcement (see Annex B).

3. A simplified process diagram is at Annex A.

¹ Similar to approvals required by a condition attached to a grant of planning permission.

Section 2

Context

4. Improving the UK's infrastructure is critical to maintaining and improving our quality of life, protecting our prosperity, and safeguarding and enhancing the environment in an increasingly competitive global economy.
5. Over the next two decades we will need to replace around a third of our electricity generating capacity. We need to ensure that investment provides security of energy supply through a diverse and reliable mix of fuels and low carbon technologies – renewables, nuclear and fossil fuel plants fitted with carbon capture and storage. These low-carbon technologies will also allow us to reduce our carbon emissions as part of our strategy to tackle climate change.
6. At the same time we need to take steps to improve our transport infrastructure – railways, ports, roads and airports – and water and waste infrastructure. People expect to be able to travel reliably and to have clean, secure and affordable supplies of water and facilities for waste management. We need to deliver this in a way which takes into account the needs of communities and the environment.
7. The old planning system for nationally significant infrastructure was simply not up to this challenge. It grew up incrementally and consisted of eight separate but overlapping regimes. It became cumbersome. Consideration of individual applications could take many months or years including lengthy debate about the national need for infrastructure. The process of reaching decisions has been too complicated. Many individuals, communities and other stakeholders found it difficult to make their voices heard under the old system.
8. This is why the Government has fundamentally reformed the development consent system for NSIPs. Following extensive consultation on the 2007 planning white paper, the Government legislated in what became the Planning Act 2008 (the Act). This provides for a more efficient, transparent and accessible planning system for NSIPs.
9. This new regime provides for:
 - the Government to produce national policy statements (NPSs) that integrate environmental, social and economic objectives and provide clarity on the need for infrastructure. These are being prepared with the objective of contributing to the achievement of sustainable development including, in particular, the desirability of mitigating and adapting to climate change

- a single consent regime – developers will generally only need to submit one application instead of the numerous related applications which often had to be made under the previous regime
 - a new duty – and greater onus – on promoters to ensure that proposals are properly prepared and consulted on before they submit an application for development consent; and
 - a new independent body, the IPC, to take over responsibility for making decisions on nationally significant infrastructure applications. Decisions will be based primarily on, and in accordance with, NPSs. The examination process will be streamlined. Questioning at hearings will be led by Commissioners rather than being adversarial in nature.
10. These reforms will establish a clear separation between policy making and decisions on individual applications. This will give promoters a clearer framework with a higher degree of predictability in which they can make investment decisions with more confidence. In most circumstances, cases will be decided within a year from application.
11. At the same time, the new regime aims to be more transparent and provide better opportunities for the public and local communities to get involved in decisions that affect them. There are three opportunities to get involved:
- in the debate about what national policy means for planning decisions
 - in the development of specific projects; and
 - the examination of applications for development consent – both by making written representations and appearing at the IPC’s hearings.
12. In summary, the new regime will enable us to take the decisions about nationally significant infrastructure in a way that is fairer and faster. This is vital to our economic, environmental and social well-being, including meeting the challenge of climate change, strengthening the voice of communities and creating the conditions for future economic success.
13. The Act provides for a more efficient, transparent and accessible planning system for nationally significant transport, energy, water, waste and waste-water infrastructure projects. In particular, it makes provision for the creation of a new independent body, the IPC, which will take over responsibility for considering and deciding on major infrastructure applications; and for the Government to produce NPSs which will provide clarity on what the national need for infrastructure is and set the policy framework for IPC decisions.

14. National Policy Statements are being produced in a rolling programme; draft NPSs covering Energy and Ports were published for consultation in November 2009. Information on the current status of NPSs can be found at www.direct.gov.uk/en/homeandcommunity/planning/theplanningsystem
15. Secondary legislation has been published that sets out the detail of how to apply for an order granting development consent for an NSIP, the procedures to be followed for examinations by the IPC of applications, the fees that will be payable to the IPC for such applications, matters relating to how the IPC decides such applications, and matters relating to development consent orders which give effect to a decision to authorise such orders. The Secretary of State has also issued guidance documents on these topics.
16. The IPC was launched on 1 October 2009. It was 'switched on' to receive applications from the energy and transport sectors on 1 March 2010. The intention is that it will be switched for the waste water and hazardous waste sectors from April 2011, and the water supply sector from April 2012.
17. If for any reason the relevant designated NPS is not available when a particular application reaches decision-making stage (likely to be early 2011 for the first IPC cases), the IPC would have to make a recommendation to the relevant Secretary of State rather than make the decision itself. The Secretary of State is under a duty to make the development consent decision within three months of the recommendation from the IPC (although the Secretary of State may extend this deadline). Where a relevant NPS has been published in draft this can still be a consideration for the IPC when making its report and recommendation to Ministers.

Section 3

Background

18. In 2006 the Government commissioned Sir Rod Eddington to investigate the relationship between transport and the economy. It also commissioned Kate Barker to undertake a review of land use planning, focusing on the link between planning and economic growth. Both of these were pursued within the context of the Government's commitment to sustainable development. The Barker Review and Eddington Study recommended a series of reforms to clarify the policy framework against which decisions on major infrastructure applications should be judged, simplify the procedures for applications, and streamline examination procedures. In particular, they recommended that an independent commission should be established to manage inquiries and determine individual applications for major schemes.
19. The Government accepted the principal conclusions of these reports and set out detailed proposals in response to their recommendations in respect of planning in the planning white paper, *Planning for a Sustainable Future*, which was published on 21 May 2007. The white paper was subject to public consultation between May and August 2007.
20. Following this consultation, the Government announced its intention to introduce a Bill to legislate to create a new system for dealing with development consent for NSIPs. The Planning Bill was introduced to Parliament on 27 November 2007, and received Royal Assent on 26 November 2008 as the Planning Act 2008. The Act has made provision for:
 - a) The Government to designate NPSs for nationally significant infrastructure. These will integrate environmental, social and economic objectives, including climate change commitments, for the delivery of sustainable development. They will set out the national need for infrastructure development and set the policy framework for IPC decisions. They will be a major step towards the overall goal of speeding up the process of delivering infrastructure.
 - b) A new duty on promoters to ensure that proposals are properly prepared and consulted on before they submit an application for an NSIP.
 - c) A new independent body, the IPC, to take over responsibility for considering and deciding such applications. Decisions will be based primarily on the National Policy Statements. The examination process will be streamlined. Questioning at hearings will be led by commissioners rather than being adversarial.

21. Advice on local authority resources, preliminary works and the materiality of draft NPSs was provided in the letter sent to Chief Planning Officers jointly by DECC and CLG: Local Authorities' Role in New Consenting Process for Nationally Significant Infrastructure Projects² 16 July 2009. The letter to Chief Planning Officers on NPSs³ expanded on the relationship between the IPC and Town and Country Planning regimes.
22. This new regime is much more front-loaded than the old regimes, with significant consultation activity and impact assessment expected to take place early in the process. It is therefore in the local authority's interest to engage with the promoter as early as possible.
23. We have ensured that there is no new burden being placed upon local authorities as a result of this new regime. Local authorities do not generally receive fee income for the scale of project that will in future be considered by the Infrastructure Planning Commission (IPC).⁴ It remains open to local authorities – both now and under the new regime – to recover costs for any pre-application advice⁵ they provide and formalise this within a Planning Performance Agreement.
24. Local authorities currently submit representations when a proposed project is considered under the current regimes – under the Act this is unchanged except that one key aspect of that representation is defined as a 'local impact report' to which the IPC must have specific regard. Local authorities already enforce consents granted by Ministers; this will pass across to the new regime (with local authorities enforcing IPC consents).
25. Some provisions in the Act are also at the discretion of local authorities, to be used where needed. For instance:
 - relevant local authorities and the Local Government Association are routinely consulted on policy announcements that might affect them, including on energy policy – being a statutory consultee places a duty on Government to ensure all authorities are notified of NPSs (to which they can then respond as necessary)
 - whether to submit an 'adequacy of consultation representation' to the IPC. This allows a local authority to step in where it has concerns on the standard of pre-application consultation, which the IPC must have regard to⁶ when deciding whether to accept an application for consideration; and
 - whether a relevant local authority wishes to submit its representations orally or just in writing, as part of the IPC's formal examination of an application.

² www.communities.gov.uk/publications/planningandbuilding/letterroleconsenting

³ www.communities.gov.uk/publications/planningandbuilding/letternpsconsultation

⁴ Most IPC casework is transferring from consenting regimes operated by central Government, such as applications to Ministers under the Pipelines Act 1962, Harbours Act 1964, Highways Act 1980, Electricity Act 1989 and Transport and Works Act 1992.

⁵ Under section 93 of the Local Government Act 2003.

⁶ Under section 55(4)(b) of the Planning Act 2008.

Section 4

Pre-application consultation

26. The Act introduced for the first time a statutory duty that promoters of NSIPs must consult with local authorities, local communities and other key persons and bodies when working up proposals. For the purposes of consulting with local communities, promoters must prepare a Statement of Community Consultation (SOCC)⁷ after consulting with relevant local authorities about what it should contain. Previously, pre-application consultation was not required by law for any of these projects, though government guidance for most of them does recommend early consultation with the public, local authorities, and key public bodies.
27. In commenting on what should go into the SOCC, a local authority is not expected to provide a view on the project itself, only on how the promoter should go about consulting people in its area. The relevant local authority may find it helpful to make informal contact with the promoter in advance of formal consultation under section 47 of the Act (Duty to consult the local community).
28. Local authorities currently undertake this activity in an advisory capacity, and are therefore well placed to continue to engage with promoters on this issue. Those with planning responsibilities will have produced Statements of Community Involvement as part of the plan-making process. Local authorities will be able to draw on this expertise to provide advice to promoters as to the makeup of the community and how consultation should be undertaken.
29. The Government's intention in the Act was to require pre-application consultation to take place, but to leave flexibility that the forms of consultation could vary depending on local circumstances and the needs of the project itself. The Act therefore is specific in listing certain groups of people⁸ who must always be consulted, such as those statutory consultees prescribed by the Secretary of State, the relevant local authority and anyone who, in broad terms, has an interest in the land likely to be affected by the proposed application, or who may be able to claim compensation because of the effect it has on their land. However, over and above these specific consultation requirements, the Act requires promoters to carry out consultation with the local community, a term which does not lend itself to prescription.

⁷ Planning Act 2008 Guidance on pre-application consultation, published September 2009.

⁸ Secondary legislation providing details of statutory consultees:
 SI 2009 No. 1302 The Infrastructure Planning (National Policy Statement Consultation) Regulations 2009
 SI 2009 No. 2264 The Infrastructure Planning (Applications, Prescribed Forms and Procedure) Regulations 2009
 SI 2010 No. 102 The Infrastructure Planning (Interested Parties) Regulations 2010
 SI 2010 No 104 The Infrastructure Planning (Compulsory Acquisition) Regulations 2010

30. Local authorities have an important role in the pre-application process envisaged by the Act. Not only will promoters be required to talk to the local authority as a consultee in its own right (for instance to discuss mitigation measures that should be undertaken as part of the proposed NSIP), but we envisage the local authority being important in the consultation process, notably in the design and conduct of consultation exercises. However, local authorities should ensure that requests they make pertaining to the consultation process are reasonable, and must be aware that promoters are not obliged to accede to them. We intend that local authorities build on existing best practice and their longstanding relationship with local communities. This multiple role reflects their various functions, as both place-shaper for their local area, and as a representative of local people.

31. The pre-application consultation process is crucial. Without adequate informal and formal consultation at this early stage, the subsequent application may well not be accepted when it is submitted. The IPC may decide to recommend that the promoter returns to carry out more consultation activity before they will accept the application if they feel that the consultation report is inadequate. The relevant local authority is best placed to facilitate the development of high quality community engagement, and the promoter should be encouraged to liaise closely with them throughout the progress of the application.

Section 5

The design of a pre-application consultation exercise

32. The scale of most NSIPs means that they will usually take a long time to work up and design. Promoters are likely to consider a large number of variants and options for the project, in terms of scale, technologies, locations and timings.
33. The Secretary of State has issued guidance⁹ to promoters about how they should comply with the pre-application consultation duties in the Act. This guidance encourages promoters to consult at an early stage, in order to allow concerns raised to be resolved through the design process. In many cases, more detailed consultation would be appropriate once the proposals have matured and developed.
34. Consequently, we recognise that the scale, format and detail of a consultation exercise with the local community may need to be flexible, depending on what stage in the design process the project has reached.
35. At the same time, we also recognise that consultation exercises should be designed with the specific localities in mind. We recognise that local communities differ from one another, and that a prescriptive approach from central government may in fact hinder the application of best practice in community consultation.
36. As a response to both of these issues, the Act obliges promoters of NSIPs to discuss their proposed consultations with the local authority. The Government believes that these discussions are essential, in order to ensure that the pre-application consultation exercise itself is appropriate for local conditions.
37. The promoter is under a duty under section 47 of the Act to prepare a statement setting out how it intends to consult people living in the vicinity of the land (the SOCC), and then to conduct this consultation exercise in line with the proposals set out in that statement. Before doing so, the promoter will be required to consult with each local authority in whose area the proposed application site lies (as defined in section 43 – discussed below) about this SOCC. This may require consultation with a number of different local authorities, particularly for long, linear projects.

⁹ Planning Act 2008: Guidance on pre-application consultation
www.communities.gov.uk/publications/planningandbuilding/guidancepreapplication

38. We believe that in most cases, promoters will need to discuss with local authorities over a longer period than the minimum requirements set out in the Act itself. While the Act requires the promoter to consult with the local authority on its SOCC (and to give the local authority 28 days to respond), we expect that in practice promoters and the local authority will discuss informally for an extended period of time, to resolve any disagreements about the design of a consultation exercise.
39. The role of the local authority in such discussions should be to impart to the promoter its expertise about the make-up of its area, and the appropriateness of suggested consultation techniques and methods. The local authority should act in such discussions to ensure that its people living in the vicinity of the land can take part in a fair, accessible and effective consultation exercise about proposals which might affect them. While the ultimate responsibility for the design and conduct of a consultation exercise clearly remains with the promoter, this role for the local authority will help to ensure that the consultation is fair and accessible for all consultees and local people.
40. Topics which could be considered at such pre-consultation discussions could include:
 - the size and coverage of a proposed consultation exercise (including, where appropriate, consultation exercises which go wider than one local authority area)
 - the appropriateness of electronic-based consultation techniques
 - design and format of consultation materials (including community languages)
 - issues which could be covered in consultation materials
 - suggestions for places/timings of public events as part of the consultation exercise (of course proportionality and context need to be considered)
 - local bodies and representative groups which should be consulted
 - timescales for consultation.
41. Even where an NSIP would take place within a single local authority area, it is entirely possible that it would have effects which go wider than just that local authority area, and hence we would expect that a promoter may need to consult people living a considerable distance away from its proposed site. The wider effects of the project could include visual impact, or noise which would be covered by the wider Environmental Impact Assessment (EIA) but local authorities may also wish to highlight them at this stage. Furthermore, a project may well be sited within more than one local authority area, particularly if it is linear in nature. A promoter may therefore need to contact several local authorities about the design of its consultation exercise. In this situation, the local authorities in question should (so far as is practicable) consider how best to co-ordinate their responses to the promoter, in order to design a consultation exercise which is coherent and effective.

42. Responsibility for the design of the consultation exercise remains with the promoter alone, and so there is no need for the promoter to seek formal approval from the local authority before it begins public consultation. The promoter is only required to have regard to any representation made by a local authority when preparing its SOCC. Therefore, while the local authority may express views on the design of a consultation exercise, it will not be in a position to hold up any consultation.
43. Instead, any residual concerns the local authority holds could be contained in any 'adequacy of consultation' representation submitted to the IPC in pursuance of section 55(4). They will take this into account when deciding whether or not an applicant has complied with the pre-application consultation requirements.

Section 6

Differences of opinion

44. Promoters are required to have regard to the local authority's response to the promoter's consultation under section 47(2) of the Act. It is expected that in most cases promoters and local authorities will be able to work closely together and agree on the local consultation process. However, in some cases it may not be possible for the promoter and the local authority to come to agreement (for example where one party believes the other to be acting unreasonably). In such cases (or where a local authority fails to respond to consultation within the 28 day period provided for in the Act) it is for the promoter to determine how to proceed. Where they have not followed a local authority's advice, promoters will in practice need to present their reasons to the IPC, who will also consider any adequacy of consultation representations from the local authority before deciding whether the consultation has been adequately carried out.
45. Where significant differences of opinion persist between the promoter and local authority (or authorities) on how the consultation should take place, the IPC may, upon request, be able to offer informal advice or guidance to either party.¹⁰ However, it will not be able to confirm whether consultation plans are acceptable until an application is made.
46. Effective involvement cannot happen without a good understanding of the make up, needs and interests of the different local groups and their capacity to engage. Local authorities are best placed to guide the promoter to achieve this. Many authorities will already have a register of local groups, and will be easily able to provide promoters with an appropriate list.
47. It is also recommended that, in particular, promoters request information from the local authority about the social and economic character of the area, including whether people in the area might have particular needs or requirements, whether the authority has identified any groups as difficult to reach, and what techniques might be appropriate to overcome barriers to communication.

¹⁰ Planning Act Section 51 gives specific details of the IPC's advice-giving role, and the safeguards around that role.

Section 7

Acceptance of an application and 'adequacy of consultation'

48. The Act specifies that the IPC must decide whether or not it will accept an application. The Act is clear that the IPC may only accept an application if it believes that specified requirements as set out in section 55(3) have been complied with. Partly, these requirements are technical in nature – such as that the application is indeed an application for development consent, and that the form and contents of the application complies with the prescribed standards. Also, the promoter will have to demonstrate how it has complied with the requirements for pre-application consultation.
49. We recognise that a promoter may have different views on the adequacy of its consultation, compared to other pre-application consultees who object to the proposed development. This is why the Act makes express provision for any representation made by a relevant local authority, which gives its view on how far the promoter complied with the requirements for pre-application consultation. The IPC must have regard to any such adequacy of consultation representation, before making a decision to accept or reject an application.
50. We envisage that local authorities would (in best practice) already have been in discussion with the promoter about how to conduct pre-application consultation. They will already have been consulted on the content of the promoter's SOCC. Therefore, we believe that an 'adequacy of consultation' representation should be linked to that document. We envisage that local authorities may wish to raise a variety of points, possibly including:
- local authority providing agreement on the content of the SOCC, the promoter then consulting in accordance with that statement; or
 - lack of local authority agreement with the content of the SOCC, the promoter then consulting in accordance with the disputed statement; or
 - local authority agreement on the content of the SOCC, but subsequently highlighting that the consultation carried out by the promoter was not in accordance with that statement; or
 - local authority raising concerns about the content of the SOCC, also highlighting that there were additional flaws in the consultation carried out by the promoter.

51. It will be for the local authority concerned to decide what it wishes to include in any 'adequacy of consultation' representations, but it is our intention that this will not be used to focus on the merits of the application itself. The purpose of 'adequacy of consultation' representations is to assist the IPC in deciding whether or not to accept an application for further examination – and it is at this later stage that issues about the merits of the application will be looked at.

Section 8

Consultation with neighbouring authorities

52. Before preparing the SOCC the promoter is required to consult not only the local authority for the area where the land the subject of a possible scheme is situated, but all other local authorities whose areas share a boundary with it. It is important that all of the potentially-affected local authorities are able to fully participate in the consultation activity throughout the pre-application and application process.
53. It is especially important that neighbouring authorities are consulted to ensure that all of the local communities which may be affected by a proposed development are able to participate in the consultation activity. It may be that more people will be affected in a neighbouring area than in the area which could host the proposed development.

Section 9

Local authorities' own views – pre-application

54. The process of designing a consultation exercise should be seen separately from the opportunities available to the local authority to express its own views on the merits of a proposed application for development consent. Local authorities and promoters need to engage as early as possible to ensure that any potential issues around the development of the proposal are understood and, where possible, managed appropriately prior to submission of the application to the IPC. Local authorities are also encouraged to engage with the IPC informally as early as possible. This will help to ensure that they are fully aware of potential application in their local authority area, and of any ongoing discussions between the IPC and promoters.
55. Local authorities will be statutory consultees in their own right for any proposed NSIPs which are proposed in their areas. Likewise, they will be statutory consultees for any proposed applications which would be situated in adjacent areas.
56. The first specific role for the local authority comes in section 42 of the Act, which provides that the applicant must consult each defined local authority about the proposed application. Section 43 specifies that the local authorities which must be consulted are each local authority in whose area the NSIP would be situated; and also any of the neighbouring local authorities. Any response which a local authority makes following a consultation under section 42 of the Act may be a representation in terms of the local authority's own vision and place-shaping.
57. Local authorities may decide to comment on the suitability of the proposed application by reference to the relevant local development framework or development plan. Alternatively, such representations may reflect other aspects of the proposed application which are of particular importance to the local authority. Under the provisions of the Act, they will therefore be given an opportunity to present their views directly to the promoter about any proposed application. The Act provides that the promoter must not set a deadline of less than 28 days for any responses. Local authorities are encouraged to take full advantage of this opportunity to present their views directly to the promoter on any aspects of the proposed application which are of importance or concern to them, such as measures to mitigate any adverse impacts, so that the promoter can consider their comments before finalising their proposals.

58. Where appropriate, local authorities should suggest appropriate requirements to be included in the draft Development Consent Order being developed by the promoter as part of their application. These would be similar to conditions attached to a grant of planning permission, and might include the later approval (i.e. subsequent to the granting of a Development Consent Order) by the local authority of detailed project designs or schemes to mitigate adverse impacts.
59. We expect, however, that promoters will have entered into informal dialogue with local authorities well before beginning any formal pre-application consultation to ensure that local authorities are both aware of the proposed project and can raise possible concerns early in the design process.

Section 10

Local impact reports

60. The Act is designed to set out a clear framework by which infrastructure promoters can apply for the powers and authorisations they might need, to facilitate an application which they have designed. We would expect that the pre-application consultation process should already have uncovered the most important concerns, and given space for these concerns to be allayed or mitigated, either through direct dialogue or mediation. However, we recognise that in many cases interested parties are likely to continue to carry concerns or issues into the examination process.
61. All consultees will have the opportunity to put formal representations, which outline their views, to the IPC.
62. More widely, local authorities will be invited by the IPC to submit a 'local impact report' (LIR), which sets out what the local authority believes will be the likely impacts of the proposed development on its area (or any part of its area).¹¹
63. This report may differ from other representations made by the local authority, in that LIRs are intended to allow local authorities to represent the broader views of their residents. Consequently, a local authority which has been invited to submit a LIR may decide to cover a broad range of local interests and impacts. The LIR should be used by local authorities as the means by which they submit their views to the IPC on the likely impacts of the proposed development on their area, based on their existing body of local knowledge and evidence on local issues. Hence there is no need for the local impact report to replicate the EIA. This report is distinct from any representation a local authority may choose to make in respect of the merits of an application and any subsequent approvals that should be delegated to the local authority for determination (e.g. on detailed designs).
64. The IPC have issued their own advice note on LIRs, which covers both the procedural aspects and the content.

¹¹ Planning Act Part 6 Section 60 refers.

Section 11

Fees and charging

65. Where a local authority receives a request for pre-application advice that requires substantially more resources than is normal, it is open to them to recover costs by charging a fee under section 93 of the Local Government Act 2003. Statutory guidance is available on the use of this power.¹² Such a decision would be a matter for the local authority in question, in light of discussions with the potential scheme promoter.
66. Further to this and following proposals set out in the 2007 planning white paper,¹³ the Government introduced 'Planning Performance Agreements' (PPAs) to help local authorities deal with very large and complex applications¹⁴ (or potential applications in relation to NSIPs). These are up front agreements between a developer and a local planning authority that set out all the information required and the timetable for delivering the decision or advice. As the planning white paper set out, the Government believes that where the size and importance of a proposal makes it appropriate, local authorities should seek to agree PPAs with developers.
67. NSIP buildings, but not structures, may be CIL liable. Guidance on the operation of CIL, and the accompanying scale-back of the planning obligations regime, will be shortly be available via the CIL pages of CLG's website and on the Planning Portal.
68. Although local authorities are currently unable to charge £85 for letters confirming the 'discharge of requirements' attached to a Development Consent Order, the first Orders are not expected until later this year. Government will consider this issue in the next review of planning fees.

¹² www.communities.gov.uk/publications/localgovernment/generalpower2

¹³ www.communities.gov.uk/documents/planningandbuilding/pdf/planningsustainablefuture.pdf

¹⁴ www.communities.gov.uk/publications/planningandbuilding/majorplanningapplications

Section 12

Requirements and subsequent approvals

69. Development Consent Orders (which are made by the IPC when granting development consent) will impose requirements and limitations on any development which is authorised, such as requiring the subsequent approval of detailed designs and schemes to mitigate adverse impacts or protect local amenity. Requirements and subsequent approvals correspond to conditions and reserved matters granted under the Town and Country Planning Act 1990 (TCPA).
70. As with the previous regime, local authorities should continue to recommend any requirements (both during pre-application consultation and IPC examination) that they feel are appropriate to a NSIP, including any subsequent approvals to be delegated to local authorities for decision. When doing so local authorities should continue to note Circular 11/95¹⁵ on the use of conditions under the TCPA, though it should be noted that proposals to amend this were published on 21 December 2009.¹⁶ It will be important that any concerns local authorities have on the practicality of enforcing a proposed Development Consent Order are raised at the earliest opportunity e.g. when scheme promoters consult them on a proposed application. Where scheme promoters fail to address local authority concerns then these issues should be raised with the IPC as part of its examination process.
71. As is the case under the previous regime, scheme promoters should normally be able to appeal local authority decisions on a subsequent approval – though not by appealing under the TCPA. Instead the IPC can include provision in each Development Consent Order that allows it to determine any subsequent approval in default of agreement or approval by the LPA. We will be amending the Infrastructure Planning (Model Provisions) Order 2009 to reflect this in due course.

¹⁵ www.communities.gov.uk/publications/planningandbuilding/circularuse

¹⁶ www.communities.gov.uk/documents/planningandbuilding/pdf/1419816.pdf

Section 13

Materiality of draft national policy statements

72. As outlined above, a letter¹⁷ was distributed to local authorities on 16 July 2009 setting out a number of issues relating to the role of local authorities in the new consenting process for NSIPs. The letter provides advice specific to the development consent process for new nuclear power stations, but the principles set out in the letter may usefully be applied to the process for other NSIPs.
73. Since the issuing of that letter, the Government has published a suite of draft energy NPSs (November 2009) and a draft ports NPS. These draft NPSs contain important information about the Government's policy on the need for different types of nationally significant infrastructure. Accordingly, draft NPSs may be a material consideration for local authorities – for example in their consideration of applications for preliminary works – though it will be for the local authorities themselves to determine what weight they wish to attach to them.

¹⁷ www.communities.gov.uk/publications/planningandbuilding/letterroleconsenting

Section 14

Associated development

74. Guidance on Associated Development¹⁸ has been published. Any related, but *not* associated, development will have to go through the usual planning approvals process, rather than via submission to the IPC.

¹⁸ www.communities.gov.uk/publications/planningandbuilding/guidanceassocdevelopment

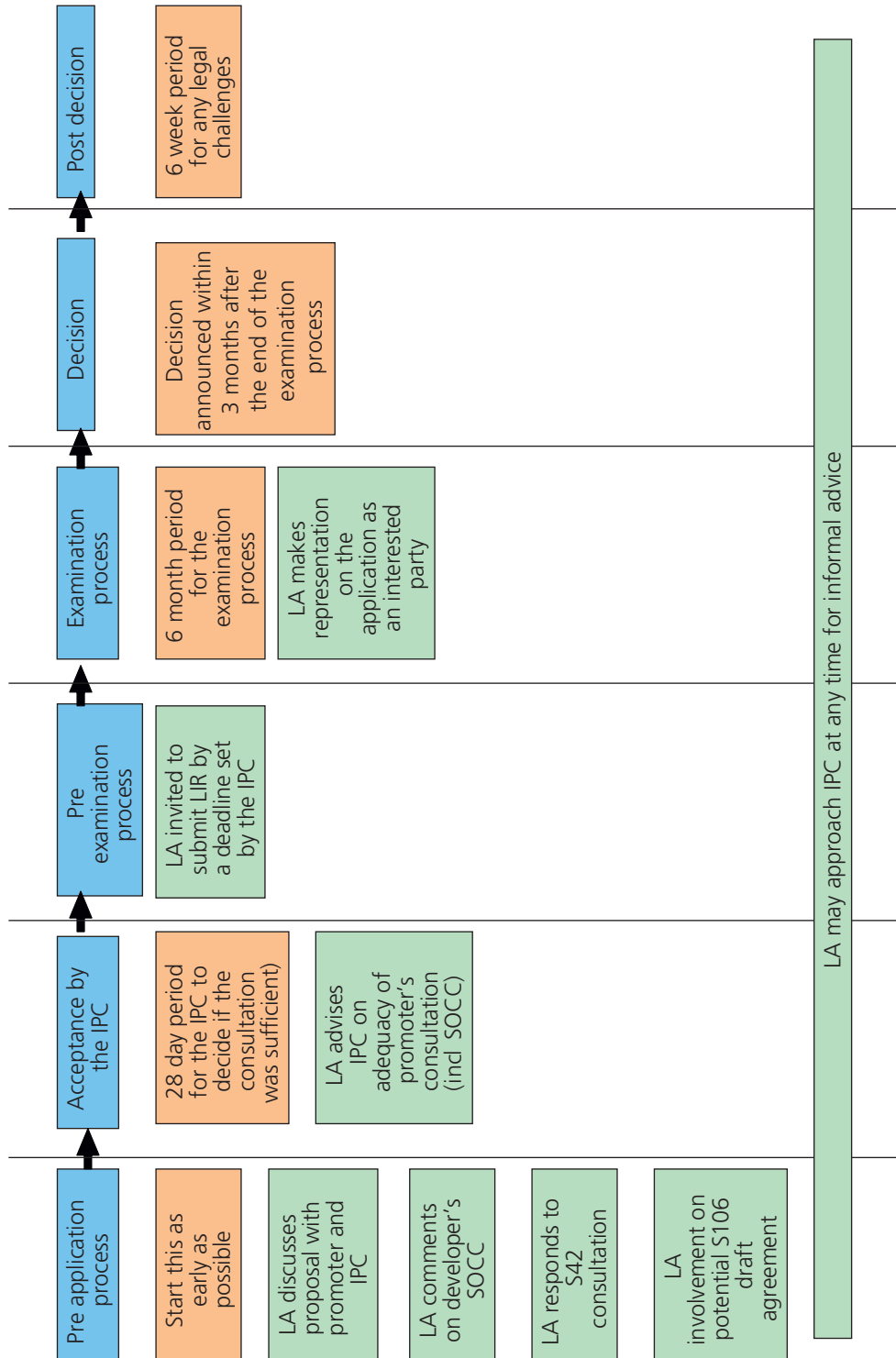
Section 15

Monitoring and enforcement

75. Further detail on this can be found at Annex B.

Annex A

NSIP Process for local authorities



Annex B

Monitoring and enforcement guidance

This annex provides an introduction to the enforcement regime under Part 8 of the Planning Act 2008, how it differs from enforcement under the Town and Country Planning Act 1990 (TCPA) and the powers of local planning authorities (LPAs) in relation to suspected offences.

Unless otherwise specified, all section references relate to sections of the Planning Act 2008.

Summary and introduction

The Planning Act 2008 provides that nationally significant infrastructure projects (NSIPs) will in future require 'development consent'¹⁹ which will be granted by the making of a Development Consent Order (DCO). Where development consent is required there is generally no need for other consents to be obtained²⁰ – such as planning permission, an Order under the Transport and Works Act 1992 or consent under the Electricity Act 1989. The main exceptions to this are devolved and certain operational consents (i.e. those not relating to the *construction* of a NSIP), which can only be disapplied by a DCO with the permission of the consent owner.²¹

Examples of the types of provisions likely to be contained in a DCO are set out in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009,²² though this will be updated in due course – for instance to clarify that LPAs will continue (as under the previous regime) to be responsible for the majority of subsequent approvals attached to a NSIP consent.

Comparison with enforcement under the Town and Country Planning Act 1990

Prior to introduction of the Planning Act 2008, NSIPs were authorised under a variety of different consenting regimes – including special regimes for authorising power stations and electricity lines, some gas supply infrastructure, pipelines, ports where the development extended beyond the shoreline, roads and railways. When giving an authorisation for an NSIP under these regimes, Ministers could deem planning permission²³ to be granted

¹⁹ See section 31.

²⁰ See sections 33, 148, 149 and Schedule 2.

²¹ See section 150 and the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 (SI 2010/105).

²² See SI 2009/2265.

²³ See section 90 of the Town and Country Planning Act 1990

including any appropriate conditions e.g. as recommended by LPAs to help mitigate adverse impacts. As a consequence LPAs were responsible for enforcing, within their areas, the terms of the deemed planning permission, in accordance with their powers under Part VII of the TCPA.

Under the TCPA it is not an offence to carry out development without planning permission. Enforcement action would, for example, take the form of an 'enforcement notice' that sets out steps that must be taken by a developer to correct the problem. An offence is only committed when the developer fails to comply with the enforcement notice. LPAs generally work with developers to rectify any breach of planning control and have a range of powers²⁴ to deal with unauthorised development. These include the power to grant planning permission for unauthorised development that has already occurred, following a retrospective application under section 73A of the TCPA.

In view of the scale and significance of NSIPs, the Planning Act 2008 follows a stricter approach as set out in some other regulatory regimes for major infrastructure, such as the Electricity Act 1989 (which makes it an offence to construct, extend or operate a generating station, without consent). This is reflected in sections 160 and 161 which:

- make it an offence to carry out development requiring development consent, where no DCO is in force; and
- make it an offence to (without reasonable excuse) carry out development in breach of the terms of a DCO, or to not comply with any other terms of a DCO e.g. requirements to carry out works only at certain times.

The first of these provisions is intended to ensure that development consent for NSIPs, in the form of DCO, is obtained before construction of the NSIP is begun. There is no provision in the Planning Act 2008 that enables development consent to be given retrospectively. Furthermore, LPAs will be able to take proceedings under section 161 without the need, for example, to first serve a 'breach of condition notice' in relation to breaches of the terms of a DCO – the onus will be on the scheme promoter to comply with its provisions or risk committing an immediate offence.

Subject to the differences outlined above, however, the enforcement principles that apply under the TCPA will continue to be relevant as many of the investigatory powers are broadly replicated in the Planning Act 2008. LPAs should therefore continue to have regard to the broad principles established under TCPA (as set out Planning Policy Guidance Note 18²⁵ and Circular 10/97²⁶) when carrying out enforcement activity in relation to NSIPs.

²⁴ For example by serving a 'planning contravention notice' under section 171C of the TCPA, by issuing an 'enforcement notice' under section 172, by serving a "stop notice" under sections 183 and 184, by serving a 'temporary stop notice' under sections 171E to 171H, by serving a 'breach of condition notice' under section 187C, or by seeking an injunction under section 187B.

²⁵ www.communities.gov.uk/publications/planningandbuilding/planningpolicyguidance18

²⁶ www.communities.gov.uk/publications/planningandbuilding/circularenforcingplanning

Summary of offences and enforcement of deemed consents

As set out earlier, there are two principal offences set out in Part 8 of the Planning Act.

(i) Development without development consent

Section 160 provides that an offence is committed if a person carries out development requiring development consent at a time when no DCO is in force. A person found guilty of this offence is liable to an unlimited fine if convicted by a Crown Court, or a maximum of £50,000 if convicted by a Magistrates' Court.

Legal proceedings must be brought within four years from the date on which development was substantially completed, though this is extended where the relevant LPA has served an 'information notice' or applied for an injunction²⁷.

(ii) Breach of terms of order granting development consent

Section 161 provides that an offence is committed if a person, without reasonable excuse, carries out development in breach of the terms of a DCO, or otherwise does not comply with the terms of a DCO. There are two exceptions to this whereby an offence is not committed if:

- the breach or failure occurred because of an error or omission in the DCO (which was subsequently corrected through Schedule 4 to the Act); or
- a person fails to comply with the terms of the following consents deemed as part of a DCO:
 - consents under section 34 of the Coast Protection Act 1949, or
 - licences under Part 2 of the Food and Environmental Protection Act 1985.

A person found guilty of an offence under section 161 is liable to an unlimited fine if convicted by a Crown Court, or a maximum of £50,000 if convicted by a Magistrates' Court.

Legal proceedings must be brought within four years from the date on which development was substantially completed or the breach or failure to comply occurred, though this is extended where the relevant LPA has served an 'information notice' or applied for an injunction.

²⁷ See section 162.

Deemed consents

Where development consent is required under the Act, this replaces the need to obtain the separate consents listed in section 33. All provisions authorising NSIP construction will generally be contained in a DCO. There are, however, a small number of consents which are not disapplied by section 33 but which can be deemed to be granted by provisions in the DCO. These are:

- consents under section 34 of the Coast Protection Act 1949 (“CPA consents”);²⁸ and
- licences under Part 2 of the Food and Environment Protection Act 1985 (“FEPA licenses”).²⁹

In addition, when a DCO is made, a direction can be given deeming the grant of hazardous substances consent³⁰ (if required). This would be separate from the DCO itself.

These consents are not disapplied like other consents (such as planning permission) because Ministers wanted certain existing and specialist enforcement regimes to remain in force. For instance, CPA and FEPA consents relate to offshore marine enforcement where specialist enforcement powers are needed e.g. power to intervene where there is a danger to navigation.

The Marine and Fisheries Agency (and in due course the Marine Management Organisation³¹) will therefore continue to enforce marine aspects of development and the relevant Hazardous Substances Authority (often the relevant LPA³²) will be responsible for securing compliance with any hazardous substances consent, guidance on which is available in Circular 04/00.³³

Section 161 does not apply in relation to breaches of the terms of a CPA or FEPA consent. Offences will instead be prosecuted under the Coast Protection Act 1949 or Food and Environment Protection Act 1985. Similarly, any contravention of hazardous substances control would be enforced under the Planning (Hazardous Substances) Act 1990.

²⁸ See section 148.

²⁹ See section 149.

³⁰ See Schedule 2.

³¹ Established under the Marine and Coastal Access Act 2009, which will also introduce a new streamlined system of ‘Marine Licences’ to replace CPA and FEPA consents; power is provided for DCOs to deem marine licenses under paragraph 4 of Schedule 8 to that Act.

³² See section 1 of the Planning (Hazardous Substances) Act 1990.

³³ www.communities.gov.uk/publications/planningandbuilding/circularplanningcontrols

Enforcement: power to bring legal proceedings and investigate suspected offences

There are two aspects to enforcement activity in relation to NSIPs. First, the Planning Act 2008 enables legal proceedings to be brought against a person who commits an offence under sections 160 or 161. There is no restriction on who can bring forward legal proceedings, but it is generally intended that only 'relevant LPAs' will do so.³⁴ Second, relevant LPAs are provided with powers to investigate any suspected offences to enable them to carry out their enforcement role effectively. These are summarised below and are largely based on existing powers in TCPA (explained in *italics* at the end of each section).

Section 163: Right to enter without warrant

The relevant LPA has power to authorise a person (such as an enforcement officer) to enter land, if it has reasonable grounds to suspect an offence is being (or has been) committed under sections 160 or 161 on the land. An authorised person may be accompanied by other persons as necessary. Where a property is to be entered that is used as a dwelling-house, 24 hours notice of entry must be given to the occupier.

The authorisation to enter land is subject to the following:

- the person entering land must produce evidence, if requested, of the authority and state the purpose for entry before entering the land
- if the land owner or occupier is not present when the authorised person leaves the land, the authorised person must take steps to ensure the land is left as effectively secured against trespassers as it was found; and
- where damage is caused to land or chattels in the exercise of a relevant right of entry, compensation may be recovered from the LPA that authorised the entry (with any disputes about compensation determined by the Lands Chamber of the Upper Tribunal).

It is an offence if someone wilfully obstructs a person authorised to enter land and a person found guilty of this offence is liable to a fine of up to £1,000. The power to enter land does not apply to:

- Crown land; or
- land on which the relevant LPA does not have reasonable grounds for suspecting an offence under section 160 or 161 is being, or has been, committed.

This provision is similar to existing powers provided at section 196A of TCPA and, in exercising the power to authorise entry to land, relevant LPAs may find it helpful to have regard to Annex 6 to Circular 10/97.

³⁴ 'Relevant local planning authority' is defined in section 173.

Section 164: Right to enter under warrant

A justice of the peace may issue a warrant authorising a person (such as an enforcement officer), who has been authorised by the relevant LPA, to enter land. The conditions of exercising this power are:

- there are reasonable grounds for suspecting that an offence is being, or has been, committed under section 160 or 161 on the land; and
- either entry has been,³⁵ or is likely to be, refused or this is an urgent case.

The warrant will authorise entry on one occasion only and that entry must take place within one month of the date of issue of the warrant. Entry should only be made at a reasonable hour, though an exception may be made in urgent cases. An authorised person may be accompanied by other persons as necessary.

The authorisation to enter land is subject to the same restrictions and offences as set out under section 163 above.

This provision is similar to existing powers provided at section 196B of TCPA and, in exercising the power to authorise entry to land, relevant LPAs may find it helpful to have regard to Annex 6 to Circular 10/97.

Section 167: Power to require information

The relevant LPA has power to require information from the owner or occupier of land, or anyone carrying out work on land or using it for any purpose. The power may be used where the relevant LPA suspects an offence under section 160 or 161 has been committed in respect of the land, and is exercised by serving an 'information notice' on the relevant person. This is similar to a 'planning contravention notice' served under the TCPA.

The information notice may require the recipient to provide information about:

- operations being carried out in, on, over or under the land
- any use of the land and any other activities being carried out in, on, over or under the land; and
- particular provisions of any DCO that is in force in respect of the land.

The notice must set out the likely consequences of failing to respond and the recipient must send the information required in writing to the relevant LPA.

There are two offences in relation to information notices. It is an offence if, without reasonable excuse, a person fails to comply with the terms of an information notice within 21 days. A person found guilty of this offence is liable to a fine of up to £1,000.

³⁵ Admission to land is also regarded as having been refused if no reply is received (within a reasonable period) to a request for admission – see section 164(4).

It is also an offence if a person makes a statement in response to an information notice that he or she knows to be false or misleading in a material respect, or is reckless as to whether it is true or false. A person found guilty of this offence is liable to a fine of up to £5,000.

A model information notice is provided at **Appendix A**.

This is similar to existing powers provided at section 171C of TCPA and, in exercising the power to require information, relevant LPAs may find it helpful to have regard to Annex 1 to Circular 10/97.

Section 169: Notice of unauthorised development

Where a person has been found guilty of an offence under *section 160*, the relevant LPA has power to require that person to remove any unauthorised development and return the land to its previous condition. Where a person has been found guilty of an offence under *section 161*, the relevant LPA has power to require that person to remedy the breach in the terms of a DCO or failure to comply with the terms of a DCO.

The above powers are exercised by serving a 'notice of unauthorised development' on the person found guilty of the offence, which must specify the period within which any steps must be taken. The notice should include a plan setting out the boundaries to which it relates (preferably on an Ordnance Survey base with a scale of not less than 1/2500), on which the exact boundary of the land is clearly indicated by a suitably coloured outline. If this is insufficient to identify the boundary exactly, the plan should be supplemented by a brief written description, or an accurately surveyed drawing to a larger scale.

LPAs should not seek to impose over-detailed requirements or require subsequent submission and approval of a restoration scheme, but instead, wherever possible, set out specific steps which they require to be taken. If this is impractical, an alternative is simply to require restoration of the land to its condition before the breach took place, leaving it to the developer to comply in accordance with his or her knowledge of that condition.

Model notices of unauthorised development are provided at:

- **Appendix B** in relation to offences under section 160 (development without development consent); and
- **Appendix C** in relation to offences under section 161 (development in breach of the terms of a DCO).

This notice has some similarities to an 'enforcement notice' served under section 172 of TCPA. However given that a notice of unauthorised development is served after a person has been found guilty of an offence under section 160 or 161, Circular 10/97 is unlikely to have much relevance when exercising this power.

Section 170: Execution of works required by notice of unauthorised development

Where a notice of unauthorised development has been served but not complied with within the specified period, the relevant LPA has power to enter the relevant land and carry out any works required in the notice. The LPA has power to recover any expenses reasonably incurred in doing so from the owner of the land (who can in turn recover costs from the person found guilty of the offence under section 160 or 161).

In exercising its powers under section 170, a relevant LPA also has power³⁶ to sell materials removed from the site when executing works set out in the notice of unauthorised development.

It is an offence if someone wilfully obstructs a person acting under these powers and a person found guilty of this offence is liable to a fine of up to £1,000.

This is similar to existing powers provided at section 178 of TCPA and, in exercising the power execute works and reclaim from the owner of land, relevant LPAs may find it helpful to have regard to Annex 2 to Circular 10/97 (paragraphs 2.84 to 2.88).

Section 171: Injunctions

The relevant LPA has power to apply to the County Court or the High Court for an injunction, when it considers it necessary or expedient to prevent an actual or anticipated offence under section 160 or 161.

This is similar to existing powers provided at section 187B of TCPA and, in applying for an injunction, relevant LPAs may find it helpful to have regard to Annex 5 to Circular 10/97.

Immunity from enforcement – time limits

In general, legal proceedings must be brought for an alleged offence within four years of the following date:

- in the case of an alleged offence under section 160 (development without a DCO in force), the date on which the development was substantially completed;³⁷ or
- in the case of an alleged offence under section 161 (development in breach of the terms of a DCO), the later of:
 - the date on which the development was substantially completed
 - the date on which the breach or failure to comply occurred.

³⁶ See Regulations 5 and 6 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 (SI 2010/105).

³⁷ Information on the definition of 'substantially completed' can be found in paragraph 2.80 of Annex 2 of Circular 10/97.

Once these periods have passed a person cannot be charged with an offence, except as set out below.

Extending the period in which an offence can be prosecuted

Where a LPA identifies an offence (or potential offence) towards the end of the initial four year period, they may not have collected sufficient evidence at that point on which to make a decision on whether to bring legal proceedings. Without the ability to extend the period in which a prosecution could be brought, LPAs would have to either bring legal proceedings (which would be potentially expensive) or lose the ability to do so altogether. Such a cut-off point would remove any chance of discussions between the LPA and scheme promoter – and would make recourse to the Courts an option of first, rather than last, resort.

Where a relevant LPA therefore becomes aware of a possible offence under sections 160 or 161, towards the end of the initial four year period, if it still needs to obtain further information the LPA can serve an information notice in accordance with section 167. The effect of this will be to extend the period in which legal proceedings can be brought by a further four years. An application for an injunction under section 171 will have the same effect. As a consequence, the LPA will have sufficient time to collect further evidence and discuss any suspected offence with the scheme promoter.

Questions and answers

Q. How does the Government envisage this enforcement regime working in practice?

As with enforcement under the TCPA, it is a matter for the discretion of the relevant LPA how it carries out its enforcement activity under the Planning Act 2008. The broad principles set out in Planning Policy Guidance Note 18 and Circular 10/97 are relevant when investigating suspected offences in relation to NSIPs. For instance – proactively engaging with the scheme promoter where there are concerns over potential offences under sections 160 or 161, and making use of the power to require information or enter land as appropriate.

Where a scheme promoter fails to take action to the relevant LPA's satisfaction, or where serious issues arise (such as where the LPA believes an offence is being committed and this is having a significant adverse effect on the local area), the LPA has discretion to bring legal proceedings for an injunction under section 171 or offence under sections 160/161 without first, for example, serving an information notice. Given the scale of fine that a court can impose, there is a strong incentive on scheme promoters to address any issues brought to their attention by the LPA.

Q. Who is the ‘relevant local planning authority’?

Section 173 sets out which LPAs can use the powers in Part 8 to investigate potential offences in relation to NSIPs. In most cases this is the local planning authority for the area where the development has taken place without consent or in breach of a DCO. In areas where there are both district and county planning authorities, the relevant local planning authority is the district planning authority except where any of the relevant development relates to a hazardous waste facility – in which case it is the county planning authority.

Q. Is it an offence for development not to be built in *precise* accordance with a DCO?

This is a matter of proportionality, the discretion of the relevant LPA and where the public interest lies. We would ordinarily expect minor or accidental breaches to be rectified by the scheme promoter once it is aware of them, but it is open to LPAs to bring formal legal proceedings (for an offence under section 160 or 161) if they have sufficient evidence that an offence has been committed.³⁸

The prosecuting authority will though need to be mindful that the offence under section 161 is not one of strict liability, as a person only commits an offence where they have failed to comply with a DCO without ‘reasonable excuse’.

Q. Can breaches be remedied by modifying the terms of the DCO?

In some circumstances it may be that it is appropriate for scheme promoters to apply to modify the terms of a DCO as a way of dealing with breaches. This would be done by applying to the IPC under the process set out in Schedule 6 to the Planning Act 2008. If such an application was successful, the development that had been unauthorised would, in the future, be authorised. However, it would not affect what has happened in the past. A person, who had undertaken unauthorised development or development in breach of the terms of a DCO, would, therefore, still have contravened sections 160/161 and, therefore, potentially be liable to prosecution. It is not a defence to proceedings under sections 160/161 to argue that development consent ought to be granted.

Under the Planning Act 2008, the relevant LPA is responsible for enforcement under sections 160 and 161 whereas an application to modify the terms of a DCO is made to the IPC. It would, therefore, be important for the scheme promoter to liaise with the LPA and ensure that it was content with this way of dealing with breaches.

This contrasts with the position under the TCPA where one of the grounds on which a person can appeal against an enforcement notice is that planning permission ought to be granted in respect of the breach of planning control and an appellant is deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice. On appeal the Secretary of State has the power to grant planning permission.

³⁸ Paragraph 5 of Planning Policy Guidance Note 18 is relevant here.

Government will be publishing draft regulations on the procedure for applying to modify a DCO and for the examination of such applications later in 2010.

Q. What if a development is only half built and/or a DCO is revoked?

NSIPs are major undertakings that require considerable planning and funding, and we expect the IPC will need to satisfy itself that a scheme will be completed before deciding whether to grant development consent. It is, therefore, unlikely that a NSIP granted development consent will be abandoned half-way through construction.

In the event that a scheme promoter cannot complete a project, however, we would expect a remedial plan to be discussed with the relevant LPA. For example, to only complete a part of the project in a way that would still deliver worthwhile benefits. There might need to be a parallel application to the IPC to modify the original DCO, or possibly a separate planning permission from the relevant LPA if the revised project would fall below the threshold for a NSIP.

Where no agreement is reached with the relevant LPA, that LPA could make an application to the IPC to revoke the DCO entirely.³⁹ In such cases the IPC also has the power to require the removal of works.

³⁹ See Schedule 6.

Appendix A

Model Information Notice

Important – This Communication Affects Your Property

Planning Act 2008

Information Notice

Served by: [name of Council]

To: [Name[s] of those thought to be owner[s] or occupier[s] of land or person[s] having any other interest in it]
[Name[s] of person[s] thought to be responsible for a possible offence]

1. This Notice is served by the Council because it appears to them that there may be reason to believe an offence has been committed under section 160 or 161 of the above Act, at the land described below. It is served on you as a person who appears to be the owner or occupier of the land or has another interest in it, or who is carrying out operations in, on, over or under the land or is using it for any purpose. The Council requires you, in exercise of their powers under section 167, so far as you are able, to provide certain information about interest in, and activities on, the land.

2. The Land to Which the Notice Relates

Land at [address or description of land], shown edged red on the attached plan.

3. The Matters Which May Constitute an Offence

[Specify the development which might meet the criteria in Part 3 of the Planning Act (definition of Nationally Significant Infrastructure Project) and for which no DCO is in force]

[Specify the failure to comply with a requirement or limitation set out in a DCO]

4. What You Are Required to Do

You must provide in writing the following information:

(1) [Specify the information required, having regard to the terms of section 167(4) and (5)]

(2)

(3)

Time within which the information must be provided: *within twenty-one days*, beginning with the day on which this notice is served on you:

5. Opportunity to Make Representations in Response to Notice

If you wish to make an offer to refrain from carrying out any operations or activities, or to undertake remedial works; or to make any representations about this notice, the Council, or representatives of the Council, will consider them on [date and time] at [address where the person served with the notice may be heard] where you will be able to make any such offer or representations in person.

6. Warning

It is an offence to fail, without reasonable excuse, to comply with any requirements of this notice within twenty-one days beginning with the day on which it was served on you. The maximum penalty on conviction of this offence is a fine of £1,000. It is also an offence knowingly or recklessly to give information, in response to this notice, which is false or misleading in a material particular. The maximum penalty on conviction of this offence is a fine of £5,000.

7. Additional Information

If you fail to respond to this notice, the Council may take further enforcement action in relation to the suspected offence. In particular they may enter land, seek an injunction or – where they have sufficient evidence – bring legal proceedings for an offence under section [160 / 161] of the above Act. The penalties if you are found guilty under that section can be severe – for instance there is no limit on the scale of fine that can be imposed if convicted by a Crown Court.

Signed: [Council’s authorised officer]

Dated: [date of notice]

On behalf of: [Council’s name and address]

Appendix B

Model Notice of Unauthorised Development for Offences under Section 160 of the Planning Act 2008

Important – This Communication Affects Your Property

Planning Act 2008

Notice of Unauthorised Development

Served By: [name of Council]

To: [name[s] of person[s] found guilty of the offence under section 160]

1. This Notice is issued by the Council because you have been found guilty of an offence under section 160 of the above Act, in relation to the land described below. Under powers provided at section 169 of that Act, this notice requires you to take steps to remove certain unauthorised development [and / or cease an unauthorised use of land]. The Annex at the end of the notice contains important additional information.

2. The Land to Which the Notice Relates

Land at [address of land], shown edged red on the attached plan.

3. The Matters Which Constitute an Offence

At the land specified in paragraph 2, the following developments [and use of land] for which development consent is required and is not in force:

- [describe any unauthorised buildings, referring to specific crosses / markings made on the land plan specified as appropriate]
- [describe any other construction activities or uses of land e.g. construction of a highway between [X] and [Y]; the use of underground gas storage facilities etc.]

4. Details of Court Judgement

[details of court judgement finding the person guilty of an offence under section 160]

5. What You Are Required To Do

At the land specified in paragraph 2:

[(i)] Cease any (civil engineering) works.]

[(ii)] Discontinue the (use of the underground gas storage facilities / discharge of water into underground strata / operation of the generating station etc.).]

[(iii)] Remove the (building / warehouse / electricity substation / wind turbine / overhead line etc.).]

[(iv)] Remove from the land all building materials and rubble arising from compliance with requirement (iii) above, and restore the land to its condition before the breach took place (by levelling the ground and re-seeding it with grass).]

6. Time For Compliance

[(i)] [Immediately] after this notice takes effect.]

[(ii)] [4] weeks after this notice takes effect.]

[(iii)] [12] weeks after this notice takes effect.]

[(iv)] [24] weeks after this notice takes effect.]

7. When This Notice Takes Effect

This notice takes effect on [*specify date*].

Signed: [Council's authorised officer]

Dated: [date of issue]

On behalf of: [Council's name and address]

Annex

Warning

Failure to take action may result in the works being carried out by the Council, the cost of which (and any incidental expenses) will be recovered from you under powers provided in section 170 of the Planning Act 2008.

Appendix C

Model Notice of Unauthorised Development for Offences under Section 161 of the Planning Act 2008

Important – This Communication Affects Your Development

Planning Act 2008

Notice of Unauthorised Development
(Breach of Terms of Order Granting Development Consent)

Served By: [name of Council]

To: [name[s] of person[s] found guilty of the offence under section 161]

1. This Notice is issued by the Council because you have been found guilty of an offence under section 161 of the above Act, in relation to the land described below. Under powers provided at section 169 of that Act, this notice requires you to [comply] [secure compliance] with the requirement[s] specified in this notice. The Annex at the end of this notice contains important additional information.

2. The Land to Which the Notice Relates

Land at [address of land], shown edged red on the attached plan.

3. The Relevant Development Consent Order

The relevant Development Consent Order to which this notice relates is the Order granted by the [Infrastructure Planning Commission] [Secretary of State] on [date of issue of Order] for [description of development] Ref [reference number].

4. Details of Court Judgement

[details of court judgement finding the person guilty of an offence under section 161]

5. The Breach of Terms

The following terms[s] [has][have] not been complied with:

(i) [State each term which has not been complied with]

(ii)

(iii)

6. What You Are Required To Do

As the person found guilty of the offence as specified in paragraph 4 of this notice, you are required to [comply][secure compliance] with the stated terms[s] by taking the following steps:

(i) [State clearly the steps to be taken in order to secure compliance with the terms[s] in paragraph 5 above.]

(ii)

(iii)

[and] [ceasing the following activities:-]

(iv) [State clearly the activities which must cease in order to secure compliance with the terms[s] in paragraph 5 above.]

(v)

(vi)

Period for compliance: **[30] days** beginning with the day on which this notice takes effect. [Different periods may be specified for each term as appropriate].

7. When This Notice Takes Effect

This notice takes effect on [*specify date*].

Signed: [Council's authorised officer]

Dated: [Date of notice]

On behalf of: [Council's name and address]

Annex

Warning

Failure to take action may result in the works being carried out by the Council, the cost of which (and any incidental expenses) will be recovered from you under powers provided in section 170 of the Planning Act 2008.

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