



Planning Act 2008

**Guidance on pre-application consultation**



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## Introduction

1. The Planning Act 2008 ('the Planning Act' or 'the Act'), which received Royal Assent on 26 November 2008, provides for a faster and fairer development consent system for nationally significant transport, energy, water, waste-water and waste infrastructure projects.
2. The Act makes provision for the Government to produce national policy statements (NPS) which will provide clarity on the national need for infrastructure. It also makes provision for the creation of a new independent body, the Infrastructure Planning Commission (IPC), which will take over responsibility for examining applications for development consent for nationally significant infrastructure project (NSIP) applications and determining them where a relevant national policy statement is in place.
3. This guidance is part of a package of statutory instruments and guidance being prepared as part of the implementation process for the Planning Act. More information on the process for consulting on, publishing and implementing the package can be found in the Infrastructure Planning Commission Implementation Route Map, which can be accessed at:  
[www.communities.gov.uk/documents/planningandbuilding/pdf/routemap.pdf](http://www.communities.gov.uk/documents/planningandbuilding/pdf/routemap.pdf)
4. Under section 50(3) of the Act, promoters must have regard to this guidance when complying with the provisions of the Act in relation to the pre-application procedure for applications to the IPC.
5. Part 5 of the Act sets out statutory requirements for promoters to engage in pre-application consultation with local communities, local authorities, and those who would be directly affected by the proposals.
6. At present, the requirements that promoters have to meet in developing nationally significant infrastructure projects vary by sector. Consultation is not mandatory but, for most types of infrastructure projects, Government guidance recommends early consultation with the public, local authorities, and key public bodies, particularly where the proposals fall within the scope of the Environmental Impact Assessment (EIA) Directive.
7. In view of the new requirements, this document therefore aims to:
  - guide promoters of nationally significant infrastructure projects as to how the new pre-application requirements of the Act should be fulfilled
  - inform the IPC as to what is expected of promoters at this stage

- inform the various consultee groups and others about how the new system is expected to operate, and what they can expect of promoters at the pre-application stage
- help ensure that the system is transparent and accessible to all

## Principles

8. The new requirements for pre-application consultation are a vital aspect of the new regime. The early involvement of local communities, local authorities and statutory consultees at this stage can bring about significant benefits for all parties:
  - to allow members of the public to influence the way projects are developed by providing feedback on potential options, providing them with an opportunity to shape the way in which their community develops
  - to help local people understand better what a particular project means for them, so that concerns resulting from misunderstandings are resolved early
  - to obtain important information about the economic, social and environmental impacts of a scheme from consultees, thus help promoters identify project options which are unsuitable and not worth developing further
  - to enable potential mitigating measures to be considered and, in some cases, built into the project before an application is submitted
  - it may identify ways in which the project could, without significant costs to promoters, support wider strategic or local objectives
9. Overall, effective pre-application consultation will lead to applications which are better developed, and in which the important issues have been articulated and considered as far as possible in advance of submission to the IPC. This in turn will allow for shorter and more efficient examinations.
10. It will also benefit communities, enabling local people to become actively involved in shaping proposals which affect their local communities at an early stage, where their views can influence the final application.
11. However, we recognise that NSIPs and the communities and environment in which they are located will vary considerably. The Government therefore believes that a 'one-size-fits-all' approach would not be appropriate and that promoters, who are best placed to understand the detail of their specific project proposals, and the relevant local authorities, who have a unique knowledge of their local communities, should as far as possible work together to develop plans for consultation.
12. The Planning Act therefore sets out a framework within which consultation proposals in each case are developed by promoters in consultation with the relevant local authority.

13. We also recognise that, whilst consultation should be thorough and effective, there will be a variety of possible approaches to discharging the requirements, and that consultation will need to be proportionate. We understand that promoters will have their own approaches to consultation, and already have a wealth of good practice on which to draw.
14. This guidance therefore outlines what the Government's expectations are, and suggests a range of approaches as a 'toolkit' for promoters to use where relevant and helpful, but does not specify a particular approach to pre-application consultation.

### **Community involvement and public access to information**

15. The Government's strategy for sustainable development embraces the notions of transparency, information participation and access to justice. These fundamentals<sup>1</sup> are relevant to this guidance, and underpin our approach.
16. There are many ways in which communities can be effectively involved in decisions which affect them. At its most simple level, a community involvement process should ensure that people:
  - have access to information
  - can put forward their own ideas and feel confident that there is a process for considering ideas
  - have an active role in developing proposals and options to ensure local knowledge and perspectives are taken into account
  - can comment on and influence formal proposals
  - get feedback and be informed about progress and outcomes
17. To achieve this, it is essential that promoters understand the local communities who will be affected by their planned application. Promoters should therefore work closely with the relevant local authority to gain this understanding, as the local authority will have a detailed knowledge of the community, including consulting local people on planning matters<sup>2</sup>.
18. Promoters should use a range of methods and techniques to ensure that they access all sections of the community in question. Ultimately this process will benefit promoters, as without a proper understanding of the context, communities will not be able to provide the sort of informed input that is of most use to promoters when developing proposals. It is important, therefore, that an effective process is in place for information sharing, in both directions, to the benefit of both communities and promoters.

<sup>1</sup> Which reflect the UN Aarhus Convention; for more information see <http://www.unece.org/env/pp/>

<sup>2</sup> Where a proposed project lies offshore, it is suggested that promoters engage with the Marine Management Organisation when it is in place, as well as coastal local authorities closest to the proposed development, who will be able to advise as to what consultation might be appropriate.

19. It is important that, where possible, communities are able to participate early, when proposals and options are still being developed. People need to know that their participation can make a difference. This is challenging, and means that developers and consultees have to be ready to listen and adapt their own ideas.
20. Above all, it must be clear what is being consulted on. Promoters must be careful to make clear what is settled and why, and what remains to be decided, so that the expectations of consultees are properly managed.

## What is this guidance about?

21. For most types of infrastructure projects, Government guidance<sup>3</sup> recommends early consultation with the public, local authorities and key public bodies. In general, promoters do engage in consultation at this stage.
22. The new process established by the Act standardises practice across the different infrastructure types, including for pre-application consultation. The Act sets certain minimum standards, but in many cases larger, more complex applications will need to go beyond these. Many NSIPs will be complex; enough time will need to be given for consultees to get to grips with, and formulate, a response to proposals. In particular, many proposals will require detailed technical input, especially as regards impacts, so sufficient time will need to be allowed for this.
23. The Act also permits that this guidance may be supplemented by guidance from the IPC, and that the relevant local authority may make representations to the IPC about the adequacy of consultation, to which the IPC must have regard.
24. Compliance with this guidance alone will not, therefore, guarantee that the IPC will conclude that the applicant has complied with the pre-application consultation requirements introduced by the Act.
25. However, where a promoter has complied with the relevant requirements of the Act and secondary legislation, this guidance and any that the IPC may produce, and where the relevant local authority is content that consultation has been adequate, promoters can reasonably expect that an application will not be rejected on the grounds that pre-application consultation had been inadequate. Where a promoter has not been able to comply with guidance for some reason, or where the local authority is not content, promoters should be prepared to explain to the IPC why this is so, so that the IPC can make an informed decision.

<sup>3</sup> E.g: the *Code of Practice on Dissemination of Information* (DETR, 1999)



26. In brief, the Act requires promoters to:

- consult the relevant local authority on what should be in the promoter's Statement of Community Consultation (SOCC), which will describe how the promoter proposes to consult the local community about the proposals
- have regard to the local authority's response to that consultation in preparing the SOCC
- publish the statement in a locally circulating newspaper, and as required by secondary legislation, and carry out consultation in accordance with the SOCC
- consult a range of statutory consultees
- set a deadline of at least 28 days by which responses to consultation must be received
- notify the IPC of the proposed application
- publicise the proposed application in accordance with regulations in secondary legislation
- have regard to relevant responses to publicity and consultation
- prepare a consultation report and submit it to the IPC

## Who is this guidance aimed at and why?

27. This guidance is primarily aimed at promoters, to help them understand how the pre-application consultation requirements of the new regime should be implemented. It aims to set out what the Government considers to be good practice and how it should be achieved, and in particular, to give an indication as to what sort of consultation is appropriate for different kinds of projects.

28. This guidance also has several secondary aims:

- to inform local communities as to what they can expect of promoters intending to submit an application to the IPC, and as to how they can get involved in the process and have their views heard
- to guide the IPC as to what is expected of promoters at the pre-application stage, to assist it in its decision as to whether the promoter has complied with the statutory requirements in relation to pre-application consultation, and to set a context for any guidance it might issue in relation to these requirements
- to guide other stakeholders as to how and when they should expect to be engaged by promoters
- to inform local authorities in their role as consultees on what should be in a promoter's statement of community consultation

## Local communities

29. Local people have a vital role to play at the pre application stage. People should have as much influence and ownership as is realistic and possible over the decisions and forces which shape their lives and communities, and it is therefore critical that they are engaged at an early stage by promoters. Because they live and work in the affected area, local people are particularly well placed to comment on what the impact of proposals on their local community might be; what mitigating measures might be appropriate, or what other opportunities might exist for meeting the project's objectives.
30. In turn, in order for the process to be effective, local people will need to take the opportunities arising from consultation – through responding to written consultation, attending events etc – and engage with promoters. Local people will need to consider proposals carefully, identify impacts on themselves or on their communities, and then make their views and suggestions known to promoters in a timely manner.
31. To help local communities understand and engage with the planning process, Government has provided extra funding for Planning Aid, which provides a free, independent and professional planning advice and support to communities and individuals who cannot afford to pay planning consultant fees.
32. For further information visit [www.planningaid.rtpi.org.uk](http://www.planningaid.rtpi.org.uk) (where an application relates to Wales, Planning Aid Wales may be able to help: [www.planningaidwales.org.uk](http://www.planningaidwales.org.uk))

## Statutory bodies and other relevant stakeholders

33. The Act requires promoters to consult with a range of statutory consultees, who are specified either because they may be directly affected by proposals in some way, or because they have particular expertise in, or responsibility for a matter relevant to the proposal. Sections 42-44 of the Act require promoters to consult local authorities, people with an interest in the land or who may be significantly affected by proposals, and bodies prescribed in secondary legislation (statutory consultees are set out in the Infrastructure Planning (Applications: Prescribed Forms & Procedure) Regulations 2009<sup>4</sup>).
34. Promoters will, in most cases, need detailed technical input from expert bodies, to identify and comment on the social, environmental and economic impacts of proposals, and other important matters. Promoters may also need to obtain technical expert input prior to the pre-application consultation.

<sup>4</sup> These regulations are expected to come into force on 1 October 2009

35. For each sector there are a range of bodies in addition to those specified either on the face of the Act or in secondary legislation that may also be able to make an important contribution. These will include national and regional stakeholders. Promoters are therefore encouraged to consult widely on proposals.
36. Promoters will also need to identify and consult people who own, occupy or have another interest in the land in question, or who could be affected by proposals in such a way that they may be able to make a claim for compensation. This will give such parties early notice of the proposals, and an opportunity to express their views regarding them.

### **Local authorities**

37. The Planning Act recognises the key role that local authorities play as both bodies with expert knowledge of the local community and with responsibility for place shaping in the local area.
38. In the first instance, local authorities will be consulted by promoters on what should be in the promoter's statement of community consultation (see section 47(2) of the Act). This is dealt with in more detail in paragraph 41.
39. Local authorities are also themselves statutory consultees for the proposals (see sections 42 and 43 of the Act), and are likely to have views on the proposals and their impacts. Under section 55 of the Act, local authorities may make representations to the IPC concerning the adequacy of the promoter's consultation, to which the IPC must have regard when deciding whether or not to accept an application. Section 55(5) defines an adequacy of consultation representation as a representation about whether the applicant has complied with section 42, 47 and 48 of the Act. Any such representation must therefore be about how the promoter has carried out the consultation, and may not be about how the promoter has had regard to responses to consultation.

### **The IPC**

40. Under section 55(3)(e) of the Act, the IPC must conclude that the promoter has properly discharged its duties in respect of pre-application consultation before it can accept an application. This is dealt with in more detail in paragraph 86.

## Who should be consulted and how?

### **Consultation with local authorities under section 47(2)**

41. The Planning Act requires promoters to consult with local authorities before preparing their SOCC.
42. At this stage, the 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. For this reason, the Act requires local authorities to respond to the promoter's consultation within 28 days. Promoters may find it helpful to make informal contact with the relevant local authorities in advance of formal consultation under section 47.
43. Local authorities currently undertake this role in an advisory capacity, and are therefore well placed to continue to engage with promoters on this issue.
44. Local authorities have considerable expertise in consulting local people, and in particular, those with planning responsibilities will have produced a statement 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.
45. 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 the local authority's advice, promoters will need to present their reasons to the IPC, who will also have the benefit of representations from the local authority before deciding whether the consultation has been adequately carried out.
46. In some cases, especially for long linear schemes, it will be necessary for promoters to consult with multiple local authorities. Promoters are encouraged to consult informally as early as possible on their proposed approach to allow time for the resolution of differences between authorities, and secure early cross boundary agreement. Where resolution of all differences is not possible, promoters are expected to gain as broad a consensus as possible, and ensure a consistency of approach across all authorities affected by the project.

47. Where significant differences of opinion persist between the promoter and local authority (or authorities) on how the consultation should take place, the IPC may be able to offer further advice or guidance to either party. However, it will not be able to confirm whether consultation plans are acceptable until the point of application.

### **Carrying out the consultation**

48. Consultation with local communities, local authorities and statutory consultees will aim to achieve a range of different outcomes, from involving local people and gaining their views, to identifying particular social, economic and environmental impacts.

### **Local communities**

49. If it is to be seen as positive, the consultation process must be seen to be legitimate. Community involvement is a key part in achieving this.
50. Section 47 of the Act requires promoters to consult people living in ‘the vicinity of the land’. Promoters are encouraged to view this requirement from a broad perspective, and aim to capture the views of those who work in or otherwise use the area, as well as those who live there (for example consulting small businesses, leisure users, and other groups as appropriate to the area in question).
51. The first thing a promoter must do is determine the area within which it should consult.
52. The Act uses the broad term ‘vicinity’ to allow for the fact that projects will vary greatly in their size and impact on people nearby – consultation for long, linear schemes will necessarily be different from that for a new power station.
53. Promoters must therefore make a judgement as to what this means in each case, and will need to satisfy the IPC that in making this judgement they have acted reasonably. In most communities promoters will need to strike a balance between consulting those who are significantly affected by proposals (i.e. those identified in section 42 of the Act) and consulting a wider group of local people who will not be directly affected, but who will have a reasonable fear that they might be, or will have strong feelings about a project. This second category may include people who live in the proximity of the development, but not close enough to be physically affected by it, people who are likely to be affected by wider impacts of the development, or who are users of, or visitors to the area (for the avoidance of doubt it should be underlined that all of this activity is expected to take place in the local area – it is not intended to imply that promoters must consult outside the identified vicinity). The consultation plan should address the need to consult people in both of these categories, and promoters will need to give careful thought as to where the consultation boundary should be drawn in terms of the second group in particular.

54. However, consultation should also be fair and reasonable for promoters as well as communities. To ensure that consultation is fair to all parties, promoters should be able to demonstrate that the consultation plan is proportionate to the impacts of the project in the area that it affects, takes account of the anticipated level of local interest, and takes account of the views of the relevant local authority. Informal discussion with local authorities in advance of consultation under section 47 of the Act may be useful in helping promoters make this determination.
55. Having identified the geography of the local community, promoters will then need to develop an understanding of the community itself.
56. Each community is likely to be made up of many different groups, which may come together for a variety of reasons. Some community groups may focus on 'place' – the area where they live and work; others may focus on interests, principles, issues, values or religion. Any of these bodies may have an interest in the project, and many of these groups will be well established and easy for promoters to reach.
57. In other cases, interests may not be organised and it will be less easy to engage them in formal consultation. Such groups may not be homogeneous, for example people living in rural communities, the large and small businesses communities, or people who work in, visit or use an area but don't live there. There are also likely to be people who are particularly hard to reach for a particular reason, for example because of language and cultural differences, physical disability or mental health problems etc.
58. Effective involvement cannot happen without a good understanding of the make up, needs and interests those different groups and their capacity to engage. Local authorities, through the development of their statement of community involvement and other consultations, 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.
59. 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.
60. Having identified the range of people and bodies which should be consulted, promoters will need to determine how to go about the consultation itself. An inclusive approach is needed to ensure that different groups have the opportunity to participate and are not disadvantaged in the process.

61. The promoter's principal point of reference in this regard will, again, be the relevant local authority, which will best understand the local community and be experienced in carrying out consultation in the area.
62. Promoters should usually consult using a range of methods as this will be more effective at reaching communities than the use of written documents alone. For example, not everyone in every community will have the same level of literacy, and some will be better reached through a different approach. In addition to written consultation therefore, a range of other techniques should be used by promoters, as appropriate to the local community. The following are suggestions only, and are not intended to be exhaustive or compulsory:
- **local exhibitions**, possibly using models, including a means for comments and suggestions to be submitted
  - **drop in sessions** – making a representative of the promoter available to discuss the proposed development, and consider the concerns and suggestions of local people (may easily be combined with other tools)
  - **workshops** – inviting key bodies and representatives to attend a focussed session or sessions, aimed at outlining proposals and addressing particular issues. Workshops can last anything from a few hours to a few days, based on the level of engagement the promoter is seeking
  - **telephone advice line** – (either manned or with a recorded message) to inform callers of the main tenets of the proposed plan, and contact details for further information
  - **citizen panels** – group of local residents who usually provide feedback to local authorities on various matters, including planning matters
  - **Parish, Town and Community Councils and their representative bodies** – the tier of local government below district or unitary councils in England and Wales, responsible for providing a range of services
  - **internet** – use of the promoter's, local authority's and other websites to publicise applications
  - **media** – in addition to local newspapers, brochures and pamphlets, and local and specialist radio can help publicise proposals
63. Promoters will need to actively engage with community groups. There will be occasions where promoters will need to consult with people whose first language is not English, and/or do not have ready access to a computer. Promoters should, therefore, consider seeking face to face meetings with such groups, if this is possible.

64. When dealing with such groups, early engagement with community leaders is often the best way to establish the ground rules, and set in place a process for engagement which is beneficial to both parties. Local authorities will often be best placed to provide information on what the most effective approach would be.
65. Promoters are required to publicise their proposed application under section 48 of the Act. Regulation 4(2) of the Infrastructure Planning (Applications: Prescribed Forms & Procedure) Regulations 2009 sets out the detail of what this publicity must entail. This publicity is an integral part of the local community consultation process, and where possible, the first of the two required advertisements should approximately coincide with the beginning of the consultation with communities under section 47. However, the government recognises that, given the detailed information required for the publicity in secondary legislation, aligning publicity with section 47 consultation may not always be possible, especially where a multi-stage consultation is intended.

### **Statutory bodies and other (non-statutory) bodies with technical information**

66. Promoters will need to consult with a range of bodies that may possess important information about proposals that the promoter will need in order to proceed with an application. Such bodies may have information about the social, economic and environmental impacts of proposals. A list of such bodies will be designated as statutory consultees in secondary legislation which we expect to be in force on 1 October 2009. However, for each sector there are a range of bodies in addition to those specified as statutory consultees that may also possess important information, and who may therefore be able to make an important contribution. Promoters are therefore encouraged to consult widely on proposals.
67. It is an important principle of the new regime that applications should be as well prepared as possible before they are submitted, so that the examination stage is as quick and efficient as possible. Some of these bodies, such as the Environment Agency, Natural England (or where relevant the Countryside Council for Wales) and English Heritage have an important and well established role in providing technical information about impacts which the promoter will need to consider at an early stage to avoid potential delay at the examination stage. In some cases, promoters will need to obtain operational or regulatory consent from such bodies, and if aware of this should make this clear when consulting them.
68. It is recommended that promoters engage early with bodies with technical information, ideally as part of the project design development process, especially where they believe operational or other consents may be required. This will help ensure that any complex issues can be identified and addressed, and that any mitigation measures that may be required are built in to proposals at an early stage.



69. Promoters are encouraged to arrange for face to face consultation with such bodies in addition to written consultation, to ensure that the process for exchanging information on the proposals is clear and efficient.
70. As far as possible, the timescales for formal consultation on the proposed application with communities and technical consultees should be the same, to help ensure that the process is as efficient and transparent as possible, though it is understood that this may not always be the best approach.

### **Local authorities**

71. Consultation with affected local authorities and their neighbours (see section 42 of the Act) is also a key element of the pre-application process. Local authorities will be able to provide an informed opinion on a wide number of matters, including how the proposals relate to local and regional development plans, what requirements should be included in the draft consent order, and the scope of the environmental impact assessment.
72. Section 60 of the Act also provides that relevant local authorities will be invited by the IPC to prepare a local impact report, giving details of the likely impact of the proposals on the local authority's area. Given this, promoters are encouraged to make early informal contact with the relevant authorities, and continue to liaise closely with them through the consultation process and beyond.

## When should consultation take place, and what should it consist of?

### **When should consultation take place?**

73. To enable the benefits of early consultation (as set out in the 'principles' section of the introduction) to come about, consultation must happen at a sufficiently early stage to allow consultees a real opportunity to influence the proposals. In particular promoters will often require detailed technical advice from consultees where their input will be of the greatest value if they are consulted when proposals are fluid, followed up by confirmation of the approach as proposals become firmer. In principle, therefore, promoters should consult initially as soon as it is possible to provide sufficient detail to allow consultees to understand the nature of the proposal properly.
74. To manage this tension between consulting early, but nonetheless where proposals are firm enough to enable consultees to comment promoters are encouraged to consider an iterative, phased consultation consisting of two (or more) stages, especially for large projects with long development periods. For example, promoters might wish to consider undertaking an early consultation at a stage where options are still being considered, followed by a further, possibly shorter consultation on a

preferred option to inform the public of its choice and gather their views on that option.

75. However a promoter chooses to arrange the consultation process, it will be necessary to ensure that all the consultation requirements in Chapter 2 of Part 5 of the Act and in the Infrastructure Planning (Applications: Prescribed Forms & Procedure) Regulations 2009 are complied with in the course of that process. Promoters will have to demonstrate compliance with those statutory requirements in their consultation report (see paragraph 94). Where an iterative consultation is intended therefore (bearing in mind the requirement under section 44 of the Act to consult those who would be directly affected by proposals), it may be advisable for promoters to carry out the final stage of consultation only once they have worked up their preferred option in sufficient detail to identify such affected land interests.
76. The timing and duration of consultation will be likely to vary from project to project, depending on its size and complexity, and the range and scale of its impacts. The Planning Act provides for a minimum 28 day period for consultation, though it is expected that, while this may be sufficient for projects which are straightforward and uncontroversial in nature, many projects – particularly larger or more controversial projects – may require considerably longer periods than this.
77. Ultimately, the IPC must be satisfied that the promoter has properly complied with the pre-application requirements of the Planning Act before it can accept the application, and promoters must be prepared to justify how they have fulfilled them.
78. It may be necessary from time to time for a promoter to proceed with project options significantly different from those consulted on (for example because new information arises which renders all previous options unworkable or invalid for some reason). Where a proposed application changes to such a degree that the legitimacy of the consultation may be in question, promoters should consult the community again on the new options. In such circumstances promoters should supply consultees with sufficient information to enable them to fully understand the nature of the change (but not necessarily the full suite of consultation documents), and allow at least 28 days for consultees to respond. If an application changes significantly after it is been submitted to the IPC, promoters should seek the advice of the IPC as to whether further consultation is necessary.
79. It is important that consultees respond in good time to promoters, as they may possess information without which the promoter will not be able to proceed. Where responses are not received by the deadline set by the promoter, the promoter is not obliged to take those responses into account.

## What should consultation consist of?

80. As indicated earlier, local communities and technical consultees are likely to need different information from promoters.
81. Technical consultees will require a clear set of written documents, outlining proposals in sufficient detail for consultees to provide their assessment of the likely impacts. The information should include, but need not be limited to:
- a map of sufficient size and scale to clearly identify the proposed location(s) for development
  - a high level description of the type and size of the development
  - an outline of the project options, including any alternatives to those options already considered
  - information sufficient for the relevant consultee to assess the impacts of the proposals on their area of interest<sup>5</sup>
  - detail of any hazardous materials needed during the construction or operation of the development
  - information regarding any compulsory purchase of land that may be needed, and where relevant, any land to be given in exchange
  - information on whether or not an environmental impact assessment (EIA) is being, or will be carried out
  - the deadline by which responses must be received
  - information on when an application is intended to be submitted to the IPC
82. The detail needed by technical consultees would not be appropriate as a principal means of engaging communities, though this information should be made available in the local area throughout the consultation should anyone wish to examine it. Instead, a short document should be prepared by promoters specifically for local communities, summarising the proposals, outlining the matters on which the view of the local community is sought. It should also, as far as possible, describe the key aims and objectives of the proposal, and explain what the potential impacts of the proposals might be.
83. The document should be written in clear, accessible, and non-technical language. In some areas, documents may need to be made available in other languages, including in Welsh for applications relating to Wales, and promoters should also be ready to make it available in formats appropriate to the needs of people with disabilities if requested.

<sup>5</sup> Note in particular that any proposal that impacts on the strategic road network should include information about any highways and/or accesses to be provided, altered or stepped up, and any drainage proposals including effects on flood plains.

84. The document should act as a framework for the community consultation generally, stating where and when events will be taking place. It must state where a full set of the consultation documents may be examined locally, and must state the date by which responses to the consultation must be received. It should be made available online, at any workshops or other events held by the promoters, and should also be placed at appropriate local deposit points (e.g. libraries, council offices etc.), and sent to local community groups as appropriate.

## After the consultation period

### Ongoing engagement

85. Formal pre-application consultation is unlikely to be either the beginning or the end of the process of engaging consultees. Promoters are encouraged to engage iteratively with communities, local authorities and technical consultees before they undertake formal consultation, and continue to consult with them bilaterally throughout the application and examination processes and beyond.

### IPC acceptance of applications

86. Before it can accept an application, section 55 of the Act requires that the IPC must be satisfied that the promoter's pre-application consultation has complied with Chapter 2 of Part 5 of the Planning Act. The IPC's judgement in this regard will be based on:
- whether the procedure set out in the Act has been complied with
  - the extent to which the applicant has had regard to this guidance
  - any guidance the IPC might publish
  - the promoter's consultation report
  - any representation from the relevant local authority as to whether the promoter has complied with sections 42, 47 and 48 of the Act
87. There is a clear expectation that the views and impacts identified through the consultation can and should influence the final application. By addressing impediments and impacts before an application is submitted to the IPC, the examination process will be as fast and straightforward as possible.
88. Promoters should therefore be able to demonstrate that they have acted reasonably in fulfilling the requirements of section 49 of the Act, to take account of responses to consultation and publicity.
89. The Government understands that promoters and consultees will not always agree about whether or how particular impacts should be mitigated. Therefore, providing the IPC is able to conclude that the promoter has acted reasonably, the IPC it is not expected to decide that pre-application consultation was inadequate on the basis

that particular impacts had not been mitigated to a particular extent. Ultimately it is in the promoter's interest to ensure that the application is as well prepared as possible in advance of submission to the IPC, to ensure that examination of the application is straightforward. Under-prepared applications are likely to lead to longer and more complex examinations; and therefore higher costs for promoters.

### **Adequacy of consultation representations**

90. It is important to stress that pre-application consultation is a statutory duty for promoters, and it should, as this guidance makes clear, be carried out to a certain standard. Where someone feels that consultation was inadequately carried out, they approach the promoter in the first instance to ascertain their view of the matter. If they remain unsatisfied, they should make a complaint to the relevant local authority (who may make representation to the IPC on the adequacy of consultation), the IPC, or both. Any complaint should be made promptly following the close of consultation, to ensure that it is received not later than the point at which an application is made to the IPC. In all cases, the final decision as to whether pre-application consultation was adequately carried out rests with the IPC.
91. Where someone believes they have identified an issue which has not been adequately addressed by the promoter following consultation, they may wish to make a written representation about the matter to the IPC to ensure that the issue continues to be considered.

### **Environmental impact assessment**

92. Most proposals will fall within the scope of the EIA Directive, and will require an Environmental Statement (ES) to be prepared. Under the Planning Act, this process is governed by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. These regulations are designed to ensure that the pre-application publicity and consultation requirements of the EIA process are consistent with those of the Planning Act:
- regulation 9 requires that the promoter's SOCC must state whether the proposals fall within the scope of the Directive, and if they do, how the applicant intends to publicise and consult on the preliminary environmental information
  - regulation 10 requires that publicity of proposals under section 48 of the Planning Act must also encompass the requirements of the EIA process
  - regulation 11 requires that pre-application consultation under section 42 of the Planning Act must also include consultation with the relevant consultation bodies on the preliminary environmental information
93. The process charts at annex B suggest how these processes could be aligned.

## Feedback to consultees and the consultation report

94. Promoters are required under section 37 of the Act to produce a consultation report, detailing how they have complied with the consultation requirements of sections 42, 47 and 48 of the Act.
95. This report will be one of the factors taken into account by the IPC when it is deciding whether or not the promoter has complied with the pre-application consultation requirements, and ultimately, whether or not an application can be accepted.
96. The consultation report should, therefore:
  - provide a general description of the consultation process
  - set out specifically what the promoter has done in compliance with the requirements of the Act, this guidance, and any relevant guidance published by the IPC
  - set out how the promoter has taken account of any response to consultation with local authorities on what should be in the promoter's statement of community consultation (section 47(2))
  - set out a summary of relevant responses to consultation (but not a complete list of responses)
  - provide a description of how the application was influenced by those responses, outlining any changes made as a result and showing how significant relevant responses will be addressed
  - provide an explanation as to why any significant relevant responses were not followed, including advice on impacts from a statutory consultee
  - where the promoter has not followed the advice of the local authority, not complied with this guidance or any relevant guidance published by the IPC, provide an explanation for the action taken
97. The consultation report should be expressed in terms sufficient to enable the IPC to fully understand how the consultation process has been undertaken, and significant effects addressed, but need not include full technical explanations of these matters.
98. It is important that those who have contributed to the consultation are given feedback, to inform them of the results of the consultation exercise and to inform them how the information received by promoters has been used to shape and influence the proposals, and how any outstanding issues will be addressed.

99. As with the consultation itself, it is likely that different audiences will require different levels of information. The local community may be particularly interested in what the collective view of the community is and how that has been taken into account, whilst consultees with technical information will require more detailed information on what impacts and risks have been identified, and how they are to be managed.
100. This information will be contained in the consultation report, and it is recommended that promoters make this document available to consultees, to ensure that the entire process is open and transparent. However, this may not be the most appropriate format in which to provide feedback to the various consultee groups and bodies.
101. Promoters should therefore consider producing a summary report aimed at the local community setting out headline findings and how they have been addressed, together with a link to the full consultation report for those interested. This could, if helpful, be supplemented by workshops, seminars or other events in the local area.
102. Feedback to consultees with technical information will likely need to focus on the specific impacts for which the body has expertise. The promoter should make a judgement as to whether the consultation report provides sufficient detail on the relevant impacts, or whether targeted feedback would be more appropriate. The promoter is also likely to have identified a number of key bodies with information which is particularly important and relevant to the proposals, and should therefore be prepared to continue to engage with such bodies on an individual basis.

# Annex A

## Commentary on the relevant provisions of the Act

**Section 41** – defines some of the terms used in the chapter.

**Section 42** – places a duty on the promoter to consult about a proposed application:

- parties specified in secondary legislation (as set out in the Infrastructure Planning (Applications: Prescribed Forms & Procedure) Regulations 2009)
- relevant local authorities (defined in section 43)
- the Greater London Authority if the land is in Greater London
- people within the categories set out in section 44

This list does not mean that other parties should not be consulted; it merely identifies certain parties that a promoter is legally obliged to consult before they submit an application.

**Section 43** – defines what a local authority is for the purposes of section 42 i.e. any local authority in whose area proposed development would be sited and neighbouring authorities sharing a boundary. The definition includes National Park authorities and the Broads Authority.

**Section 44** – provides a list of categories of people who should be consulted under s.42(d), including owners, tenants, lessees or occupiers of the land, people with an interest in the land or with the power to sell, convey or release the land, or people who could have a claim for compensation as a result of the development going ahead.

**Section 45** – sets out a timetable for consultation under section 42, consisting of a 28 day **minimum** period within which responses to the consultation must be received.

**Section 46** – requires the promoter to send to the IPC the same information the promoter would need to send to consultees under section 42, before section 42 consultation begins.



**Section 47** – requires the promoter to consult the local community. The promoter must draw up a statement explaining how it intends to carry out consultation with the people who live in the vicinity of the land it wants to develop. Before drawing up the statement, the promoter must consult the relevant local authority (or authorities if the land needed for the project crosses local authority boundaries) about what the statement should say. The local authority then has 28 days to reply to the promoter.

The promoter must:

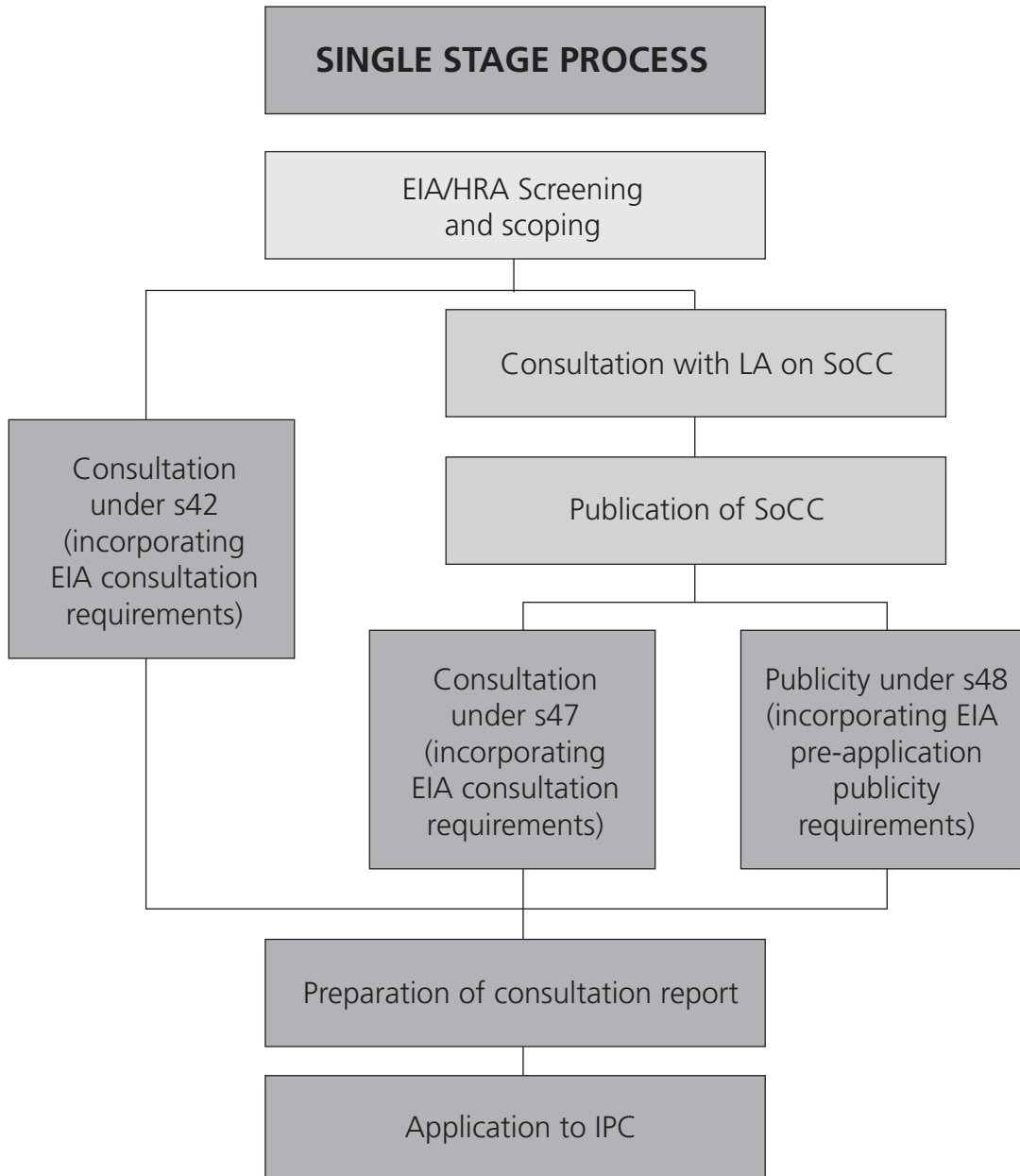
- have regard to any responses from the local authorities about the statement when preparing it
- having prepared the statement, then publish the statement in a newspaper circulating within the area of the land he wants to develop, and in such other manner as may be prescribed
- carry out the consultation as laid out in its statement

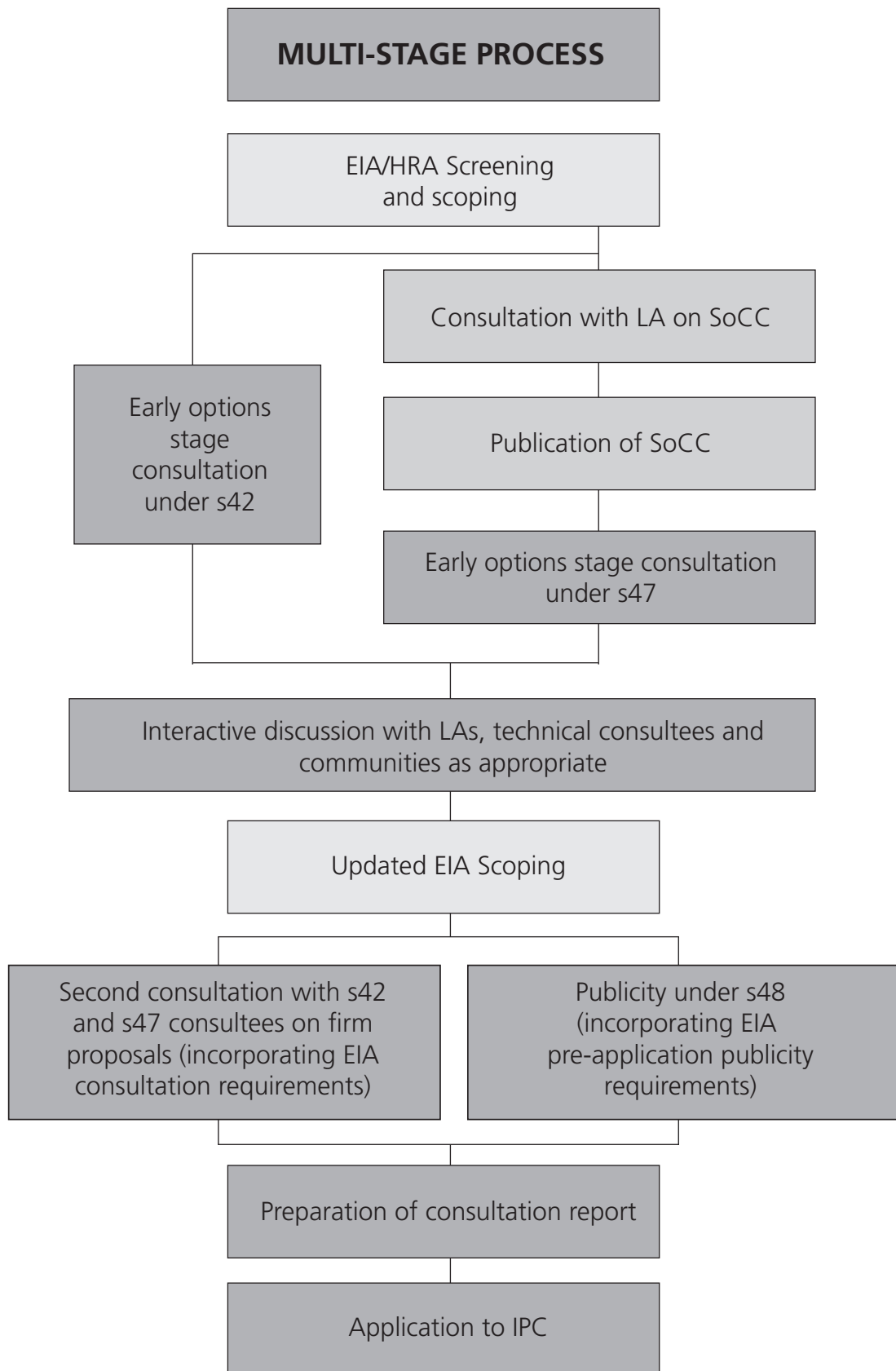
**Section 48** – requires the promoter to publicise the proposed application in accordance with secondary legislation (see the relevant provisions of the Infrastructure Planning (Applications: Prescribed Forms & Procedure) Regulations 2009), and include a deadline for receipt of responses to publicity.

**Section 49** – requires the promoter to have regard to relevant responses to all consultation and publicity undertaken under sections 42, 47 and 48.

# Annex B

## Pre-application process illustrative flow charts





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