

INTERIM ADVICE NOTE 134/10

Operational Guidance for Highways Applications to the Infrastructure Planning Commission

Summary

This document provides background to the Planning Act 2008 which introduced a new development consent regime and the Infrastructure Planning Commission. It includes legal advice on which HA schemes are affected. It provides procedural guidance on making an application.

Instructions for Use

This document is supplementary guidance to existing guidance in DMRB, the Way we Work and Project Control Framework.

Table of Contents:

1	Introduction	
1.1	Purpose of this document	3
1.2	Implementation of advice	3
1.3	Content and structure	3
1.4	Links with other guidance	3
2	Planning Act 2008	
2.1	Introduction and background	4
2.2	Relevance to Highways Agency	4
2.3	Infrastructure Planning Commission	4
2.4	National Policy Statements	7
3	Nationally Significant infrastructure Projects for the Highways Agency	
3.1	Introduction	8
3.2	Highways NSIPs	8
3.3	Further advice	9
3.4	Alternative approaches	11
3.5	Third party schemes	11
4	IPC Application process for Highways NSIPs	
4.1	Introduction	12
4.2	IPC application process	13
4.3	Fees	23
5	Development Consent Order	
5.1	Introduction	25
5.2	DCO for Highways NSIPs	25
5.3	Associated Development	26
5.4	Compulsory Acquisition of Land	27
5.5	Traffic Regulation Orders and DCO	27
5.6	Highways Model Orders	27
6	Further Information	
6.1	List of acronyms and abbreviations	28
6.2	References	28
	Annexes:	
A	Legal Advice on Definition of Highways Nationally Significant Infrastructure Projects	30
B	IPC task list for HA applications to IPC	34
C	List of Statutory Consultees for NSIPs	38
D	DBFO Annex	

1 Introduction

1.1 Purpose of this document

This Interim Advice Note (IAN) provides an explanation of the background to, and process of applications to the Infrastructure Planning Commission (IPC).

This IAN is supplementary to specific processes set out in HA's Way we Work (WwW), including Major Project's Project Control Framework (PCF) which are referenced in Annex B.

Primary and secondary legislation and guidance issued by Department for Communities and Local Government (DCLG) and IPC should also be referred to (references are provided in section 6 of this document).

1.2 Implementation of advice

This advice is applicable to all highways schemes that are considered to be Nationally Significant Infrastructure Projects (see section 3).

This advice is not applicable to schemes that have draft orders, and an Environmental Statement if required, published by the 1st March 2010. However, where any such schemes change substantially after draft orders and Environmental Statements have been published, it may be that the new scheme will need to apply to IPC for a Development Consent Order. These will need to be considered on a case by case basis.

This advice has been issued in the knowledge of a Government review of planning legislation. This advice will be updated to take account of any change when new legislation is enacted.

1.3 Content and structure

Following this introduction, the document is set out as follows:

- Section 2 provides an introduction to the Planning Act 2008, including a brief background and sets out the key terms used.
- Section 3 defines Nationally Significant Infrastructure Projects for the Highways Agency.
- Section 4 details the process for the Highways Agency promoting highways Nationally Significant Infrastructure Projects.
- Section 5 explains the Development Consent Order
- Section 6 provides references and further sources of information, including a list of acronyms and abbreviations.
- Annexes provide more detailed information.

References to the Planning Act 2008 and other DCLG guidance provided in this document are shown in **bold**. Cross references to other sections of this document are underlined.

1.4 Links with other guidance

Spatial Planning Advice Note (SPAN) 01/10 'Operational Guidance for Highways Agency as Consultee to Third Party Nationally Significant Infrastructure Projects' provides overarching operational advice and guidance on the role of the Highways Agency as a consultee on nationally significant infrastructure projects (NSIPs) promoted by thirds parties. IAN 133/10 Environmental Assessment and the Planning Act 2008 provides guidance on applying DMRB Volume 11 to nationally significant infrastructure projects.

The Agency's WwW and PCF provide more detailed process.

2 Planning Act 2008

2.1 Introduction and background

The Planning Act 2008 (PA08) was enacted in November 2008 and sets the framework for a new development consent regime in England and Wales.

The development consent regime has the following core elements:

- An **Infrastructure Planning Commission (IPC)** to act as an independent decision making body ([see section 2.3](#)).
- Provision for Government to produce **National Policy Statements (NPSs)** to cover all infrastructure sectors, which will be the principal policy documents used by the IPC in decision making ([see section 2.5](#)).
- Definitions for **Nationally Significant Infrastructure Projects (NSIPs)** that will be the subject of the new consent regime ([see section 3](#)).
- **Development Consent Order (DCO)** that can be granted by the IPC as a single consent regime that will replace a range of existing permissions and orders for NSIPs ([see section 5](#)).
- Secondary Legislation in the form of Regulations published as a series of **Statutory Instruments (SI) and associated guidance** documents that set out the detailed procedures ([see section 6](#)).

2.2 Relevance to Highways Agency

The Highways Agency has two roles under the PA08, as a *promoter* of its own schemes that are considered NSIPs and as a *statutory consultee* on NSIPs promoted by third parties. This guidance is only concerned with the HA role as a promoter of schemes; SPAN 01/10 provides guidance for HA as a statutory consultee.

2.3 Infrastructure Planning Commission

The Infrastructure Planning Commission (IPC) is an independent non-departmental body to examine and decide on applications for nationally significant infrastructure project (NSIPs) within fields of energy, transport, water, waste water and waste.

2.3.1 IPC Structure

The IPC is governed by a Chair and two Deputy Chairs. A number of commissioners will examine and decide the applications. All commissioners are appointed by the Secretary of State and operate under a published Code of Conduct. The IPC will have three "Councils" in the fields of energy, transport and water & waste. Each Council will comprise the Chair, the Deputies and other commissioners making a total of at least five, but no more than nine, members. Figure 2.1 below shows the IPC outline structure. The operation of the IPC is supported by a secretariat, headed by a chief executive and divided into four arms of case management, strategy, law and resources (see figure 2.1).

2.3.2 IPC Operation

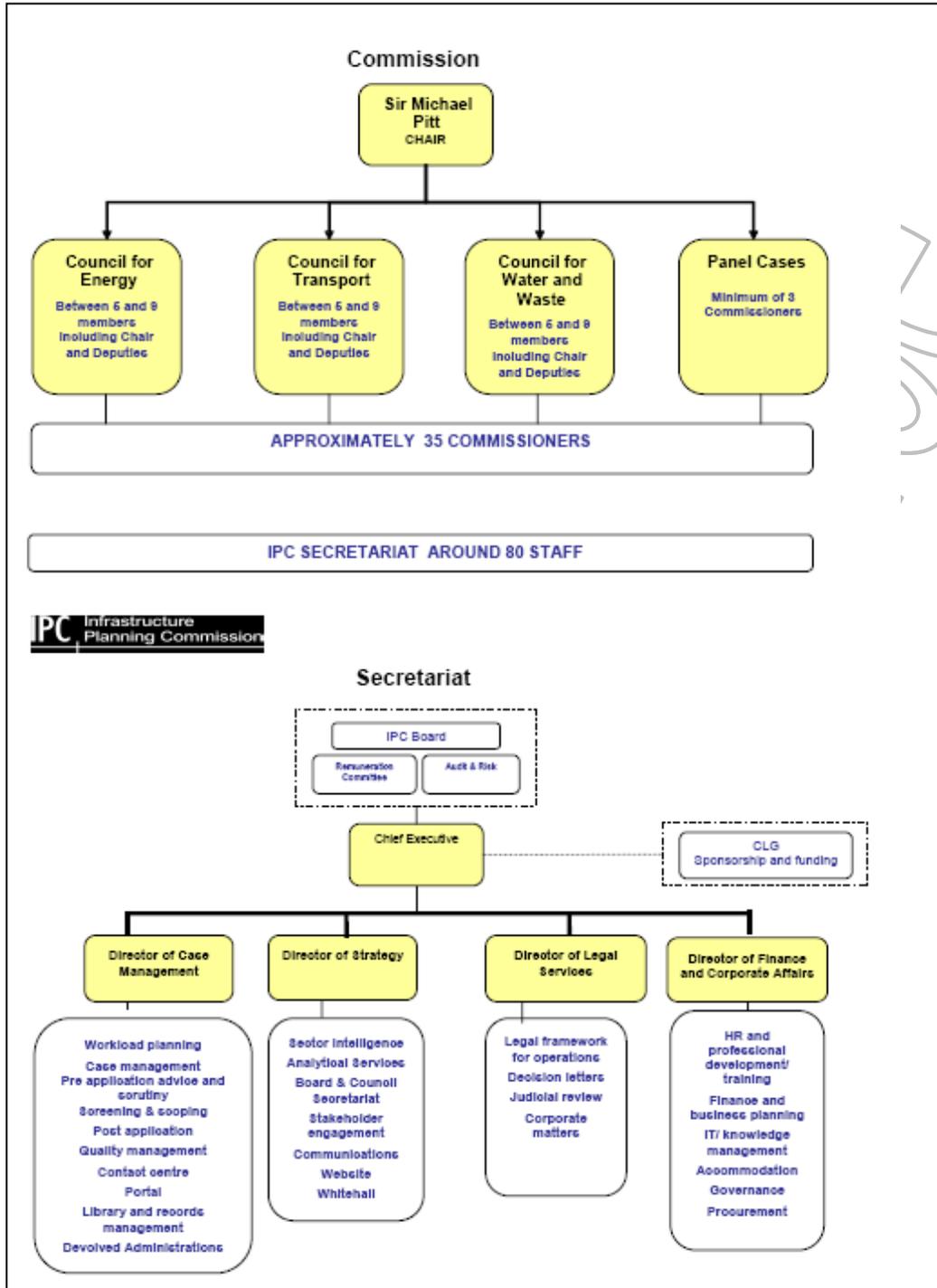
In summary, the IPC role is to validate applications for DCO, and to then facilitate examination of applications and make a decision on whether to grant DCO.

The role of the IPC also includes important statutory responsibilities at stages well before formal submission of an application. These include:

- Assisting promoters if required with obtaining land ownership information and necessary access to land
- Advising promoters on the procedures involved in applying for DCO for NSIPs
- Advising interested parties on making representations on a proposed application
- Acting as a sounding-board for ideas on interpreting and implementing procedures, for example those concerning methods of local consultation;
- Encouraging constructive dialogue between promoters, specialist bodies, local authorities and members of the local community of a proposed development location, to help ensure that all are well-informed and the proposed project itself is enhanced;
- Establishing an approachable contact point for individuals and bodies unfamiliar with infrastructure planning arrangements, to assist them in understanding the opportunities for participating in the process and the means of doing so;
- Generally promulgating with all parties the values of openness, integrity, efficiency, objectivity and accountability that underpin the role of the IPC in infrastructure planning.

The IPC must record the details of any advice given in writing and maintain a publicly accessible web-site to make such details and advice available.

The IPC have supplemented the Regulations with Guidance Notes that indicate their expectations of promoters seeking DCO. These are referenced fully in [Section 6](#) of this document, and referred to in [Section 4](#).



source: <http://infrastructure.independent.gov.uk/wp-content/uploads/2009/10/The-IPC-A-guide-to-its-Role-and-Operations.pdf>

Figure 2.1: IPC structure

2.4 National Policy Statements

National Policy Statements (NPSs) are planning documents that provide a framework for IPC decision making by clearly setting out Government policy for specific infrastructure.

Twelve NPSs will cover the range of infrastructure sectors:

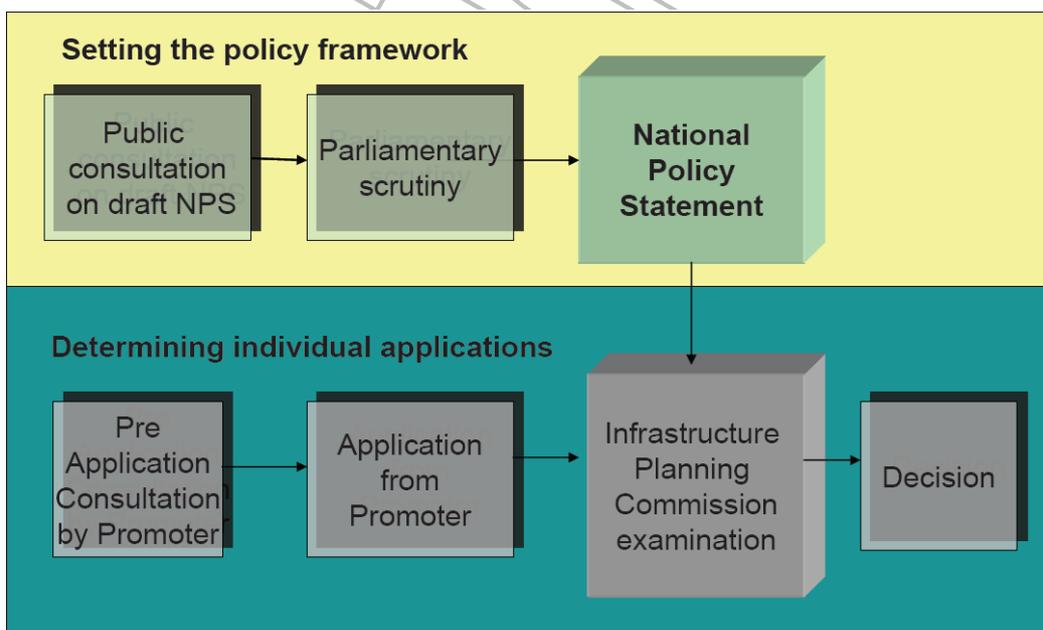
- Overarching Energy (setting the context for the other five energy NPSs)
- Renewables
- Fossil Fuel
- Electricity Networks (i.e. power lines)
- Oil and Gas Infrastructure (e.g. pipelines and storage)
- Nuclear Power
- Ports
- National Networks (strategic roads and railways, including strategic rail freight interchanges)
- Airports
- Waste Water (e.g. sewage treatment infrastructure)
- Water Supply (e.g. reservoirs)
- Hazardous Waste (e.g. high temperature incineration).

The relevant NPS to the Highways Agency is Transport Networks, covering rail and roads.

NPSs subject to Appraisal of Sustainability (AoS) and Strategic Environmental Assessment (SEA) and high level Appropriate Assessment where necessary). They undergo parliamentary scrutiny and public consultation before they are designated.

The NPS are subject to periodic review. The current status of any given NPS should be checked with the Spatial Planning Team as and when the need should arise.

Figure 2.2 below shows how the NPS will feed into the IPC's decision making on individual projects.



Source: <http://infrastructure.independent.gov.uk/wp-content/uploads/2009/09/Infrastructure-Planning-How-will-it-work-How-will-I-have-my-Say.pdf>

Figure 2.2: NPS development and relationship to IPC decision making

3 Nationally Significant Infrastructure Projects for the Highways Agency

3.1 Introduction

The Planning Act 2008 (PA08) changes the approval route for projects that are considered to be Nationally Significant Infrastructure Projects (NSIPs).

The first step for the HA as a promoter is to decide if a scheme meets the definition of a highways NSIP, that would then require an application for development consent from the IPC. Advice on the definition of Nationally Significant Infrastructure Project in the context of a highway related development has been provided by DfT legal services, and is included as Annex A.

3.2 Highways NSIPs

The definition of a Highways NSIP is set out in section 22 of PA08. In summary of this section of the PA08, a highway-related development in England is only caught by the new regime if the conditions listed below apply:

- **Construction of a highway** where the Secretary of State will be the highway authority for the highway, or the highway is to be constructed for a purpose connected with a highway for which the Secretary of State is or will be the highway authority (**section 22(2) PA08**);
- **Improvement of a highway** where the Secretary of State is the highway authority and the improvement is likely to have a significant effect on the environment (**section 22(3) PA08**); or
- **Alteration of a highway** where the alteration is to be carried out by or on behalf of the Secretary of State and the highway is to be altered for a purpose connected with a highway for which the Secretary of State is (or will be) the highway authority (**section 22(4) PA08**).

If none of the conditions above apply, a scheme is not an NSIP.

Reference should also be made to section 33(1)(4) of the PA08, which notes the sections of the Highways Act 1980 which can no longer be made for NSIPs. These are listed in table 3.1 below for reference.

There are no capacity thresholds (in terms of size or cost) associated with what makes a NSIP for highways schemes, so there is no minimum scale of highways scheme that could be considered a NSIP.

It should be noted that the SoS can direct (with stated reasoning) that a project below stated thresholds, or in combination with one or more other projects in the same field, should be considered 'nationally significant', and would therefore require consent via IPC (**PA08 s35(1) (d)**).

Table 3.1: Highways Act 1980 orders that can not be made for NSIPs

Highways Act 1980 Section	Purpose
Section 10	an order under section 10 of the Highways Act 1980 (c. 66) (general provisions as to trunk roads) directing that the highway should become a trunk road;
Section 14	an order under section 14 of that Act (supplementary orders relating to trunk roads and classified roads);
Section 16	a scheme under section 16 of that Act (schemes authorising the provision of special roads);
Section 18	an order under section 18 of that Act (supplementary orders relating to special roads);
Section 106	an order or scheme under section 106 of that Act (orders and schemes providing for construction of bridges over or tunnels under navigable waters);
Section 108 / 110	an order under section 108 or 110 of that Act (orders authorising the diversion of navigable and non-navigable watercourses);

3.3 Further advice

In addition to legal advice in [Annex A](#), the flow chart in figure 3.1 below can also be used to help decide if a scheme is a highways NSIP. Note that all three limbs (construction, improvement and alteration) should be followed to confirm if a scheme is an NSIP.

Guidance on defining highways NSIPs should also be sought on a case by case basis.

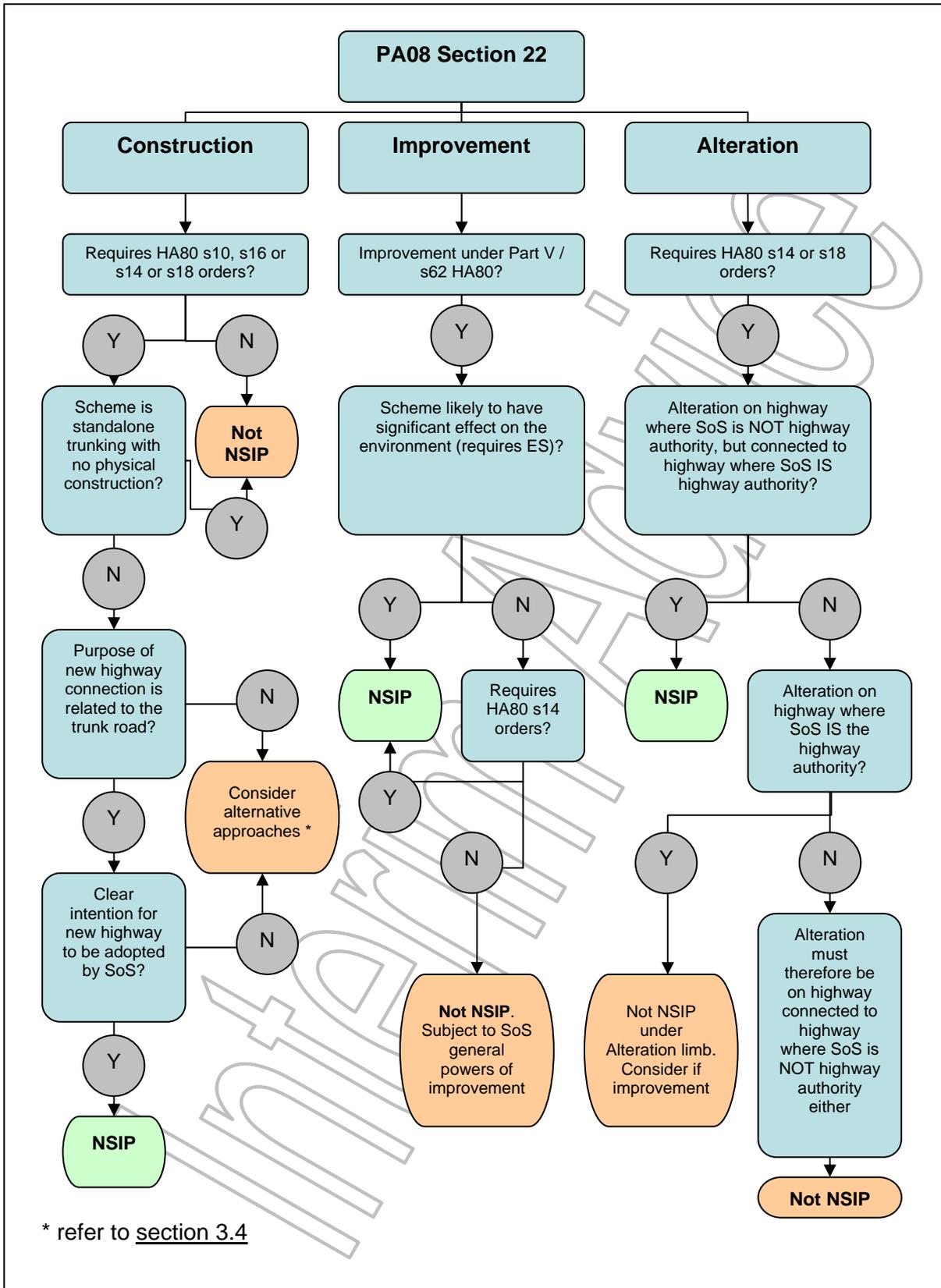


Figure 3.1: Decision flow chart for highways NSIPs.

3.4 Alternative approaches

It may be appropriate to consider alternative approaches to an application for development consent, particularly where the costs and timescales involved in an application may limit the feasibility of some schemes being delivered.

It is important that valid alternative approaches deliver the same ultimate objective as if consent was granted from IPC. For example, if there was a need to regulate traffic, it may be feasible to use traffic regulation orders (TRO) under the Traffic Regulation Act 1984, which are not associated with development consent granted by the IPC. It may also be feasible to design a scheme from the outset without the need for specified orders that would require an application to IPC.

Any alternative approaches would need to be considered on a case by case basis.

3.5 Third party schemes

The same conditions set out in [section 3.2](#) may apply to schemes promoted as part of third-party developments, such that a third party scheme may be considered to be a highways NSIP.

- If a third party scheme is already an NSIP for another infrastructure sector, then the Agency becomes a statutory consultee for that project. SPAN 01/10 provides operational guidance for the Agency as a consultee on third party NSIPs.
- If a third party scheme would not only be an NSIP because of highway orders, the Agency would promote the scheme to the IPC on behalf of the third party, following the process set out in [section 4](#) of this guidance. The associated fees would be payable by the developer.

Where the Agency should need to acquire wider control for maintenance and/or operational purposes, this can be achieved by a post-opening Trunking Order (HA80 s16), which does not require reference to the IPC.

It may be appropriate to consider some alternative approaches (as referred to in [section 3.4](#)) to an application to IPC to facilitate third party schemes. Any alternative approaches would need to be considered on a case by case basis.

4 IPC Application Process for Highways NSIPs

4.1 Introduction

If a scheme is identified as being a nationally significant infrastructure project (NSIP), an application will be required to the IPC, to obtain Development Consent Order (DCO). The IPC application process has six stages, as shown in Figure 4.1. DCO is explained further in [section 5](#).

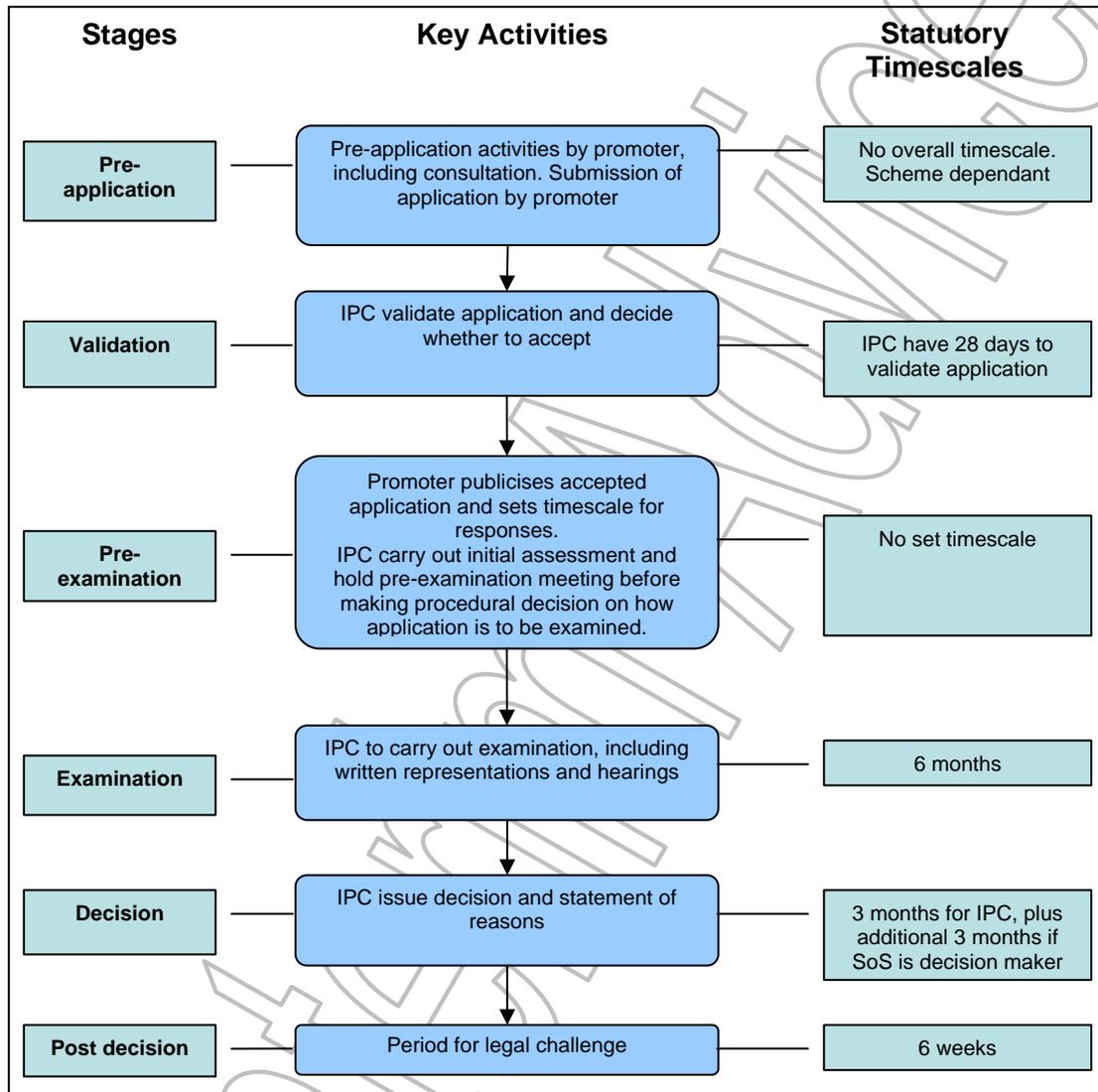


Figure 4.1: Overview of IPC application process and timescales

4.1.1 Timescales of IPC process

The IPC application stages are sequential, and each must be completed for the next to commence. However, preparation for future stages could be carried out in advance.

The Planning Act 2008 sets statutory timescales for some activities and stages of the application process, indicated in figure 4.1. The statutory timescales for examination and decision stages can be extended by IPC, but reasons for doing so must be explained to the relevant SoS.

Timescales indicated in figure 4.1 are simply based on statutory maximum timescales, where set by the Planning Act 2008. The timescales are therefore not representative of an actual programme for a scheme applying for development consent from IPC. In practice, large or complex schemes may take many months to complete the pre-application stage, and the full examination and decision timescales may also be required. Smaller schemes may need comparatively little time for pre-application activities, and examination and decision stages could be reduced in duration from statutory maximum.

4.2 IPC application process

This section describes each of the six stages of the IPC application process from the perspective of the Agency as a promoter of a NSIP. Activities and deliverables are described in general terms, based on best current understanding and therefore subject to change based on monitoring and review of actual applications. Reference should be made to the Agency's WwW (including Project Control Framework) that details more specific process requirements, as referenced in the task list at Annex B.

Where a number of smaller and related NSIPs are proposed, it may be feasible to combine these into a single application to IPC, and so make savings on resources, time and costs associated with an application. Project teams considering this approach would need to consider the practicalities of carrying out consultation to meet IPC requirements for more than one scheme, particularly where this may involve a number of local authorities and communities that may be geographically dispersed.

4.2.1 Pre-application Stage

The pre-application stage is when the promoter prepares their application and supporting information, in advance of submitting the application itself. IPC envisage the full consent process to be 'front loaded' at the pre-application stage, with the aim to resolve as many issues as possible prior to an actual application being made, and its subsequent examination.

IPC guidance note 1 on pre-application stages stipulates:

- The provision of sufficient information on the project and its impact to encourage constructive participation, which means the community must know exactly what will be done.

DCLG guidance on pre-application consultation promotes:

- Early consultation with bodies with technical information
- Consultation periods of at least 28 days.

IPC guidance note 2 on preparation of application documents further stipulates that:

- Promoters need to encourage and listen to a large number of people and organisations when developing their proposals and then produce applications of the highest standard to allow the IPC to carry out robust and efficient examinations of applications.
- IPC will not accept applications where documents have been prepared with insufficient rigour. Even if the application is accepted, the examination period could be extended – at greater cost.

The IPC are clear that the proposal being consulted on and put to them should be as detailed as possible, not an outline. Only 'minor modifications' will be acceptable once the DCO is granted.

Promoter activities

It is important to note that this stage is led by the promoter, with the IPC in an advising and facilitating role. It is therefore a very important stage in the process.

Figure 4.2 is a flow chart of the pre-application stage tasks. It should be noted that the order of some activities can vary. The flow chart sets out a likely scenario, assuming that a preferred option has been identified. As each project will vary, it is not possible to set out an exact programme of activities at the pre-application stage. Table 4.1 lists some of the interdependencies between pre-application stage activities, that will help inform where the order is restricted or how the order of activities could be varied.

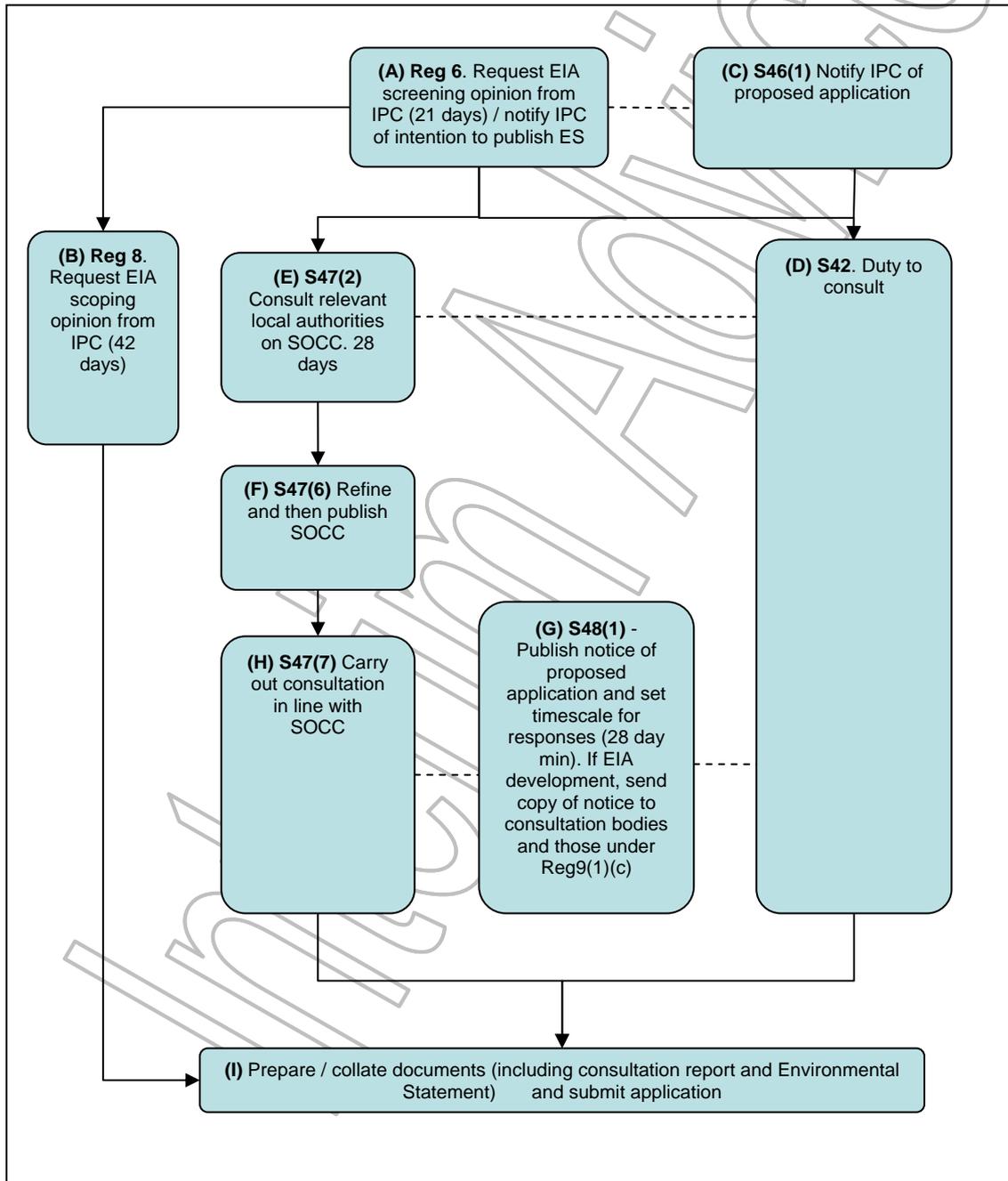


Figure 4.2: Flow chart of pre-application stage tasks

Table 4.1: Interdependencies between pre-application stage tasks

Pre application activity		Links with other activities
A	Request EIA screening opinion from IPC (or notify IPC of intention to publish ES)	Must be undertaken before consultation under S42, S47 and notification of a proposed development under S48
B	Request EIA scoping opinion from IPC this is not mandatory, but strongly recommended	This task can take place as soon as practicable. It may be undertaken before or after S46 notification. screening opinion feeds into scoping opinion.
C	Notify IPC of proposed application – S46(1)	This must be carried out on, or before the start of consultation under S42. This notice to IPC must be accompanied by copies of documents to be used for S42 consultation.
D	Duty to consult under S42 Formal consultation with local authorities, statutory consultees and affected land owners.	Cannot take place before S46 notification or before a screening opinion is received
E	Statement of Community Consultation (SOCC) – S47(2) SOCC is a document to set out promoter's proposed approach for consultation, particularly how to engage with local community. S47 (2) - Promoter must consult relevant local authorities on the SOCC, and then have regard to LA comments, or explain why approach is different.	SOCC needs to state if project is EIA development , i.e. the outcome of IPC screening opinion will be needed before this step can take place. Consultation under S42 (for local authorities) and S47(2) can occur in parallel.
F	Statement of Community Consultation (SOCC) – S47(6) - SOCC must be published.	After SOCC consultation in
G	Publish notice of proposed application – S48(1) Published notice to inform public and stakeholders of intention to submit an application. Marks the start of community consultation.	To be published after SOCC published. Helpful if response deadlines for consultation under S42 and S47(7) are as close as possible. Cannot take place before S46 notification or before a screening opinion is received (or IPC notified of the intention to publish an ES).
H	Consultation under S47(7) Carrying out community consultation in line with SOCC.	Likely that this will commence after S42 consultation, so that early outcomes of S42 consultation can inform community consultation under S47(7).
I	Prepare application form and required documents , including consultation report, ES, book of references etc.	Cannot be complete until consultation tasks carried out, so there is opportunity for consultation to influence proposals, and all required documents can be provided alongside application form.

Consultation

A key element of pre-application is therefore consultation (a list of statutory consultees for NSIPs is provided in [Annex C](#)). Key consultation activities are as follows.

Consultation under S42 – Consultation under section 42 is a formal stage of consultation with statutory consultees, local authorities and affected persons. It is separate to the wider community consultation which relates to the SOCC and section 47.

Statement of Community Consultation (SOCC) - SOCC is a document to set out the promoter's proposed approach for consultation, particularly how to engage with the local community. It must be agreed with the local authority. There is no IPC template on the SOCC.

Consultation on Environmental Statement - When an application for DCO is accepted by the IPC (and includes an ES), the applicant must send the following to 'consultation bodies': a copy of the accepted application, a map showing where the NSIP is to be sited, and a copy of the ES, in line with regulation **13 of the PA08 EIA Regulations**. The applicant must send

a certificate of compliance with this regulation to the IPC using the form set out in certificate 1 in **Schedule 5 of the PA08 EIA Regulations**. If an application includes an ES, the applicant must ensure that a reasonable number of copies of the ES are available at the address set out in the notice of an accepted application in accordance with regulation 20 of the PA08 Regulations. Refer to IAN 133/10 Environmental Assessment and the Planning Act 2008 for further information.

Consultation Report - Report to set out how consultation responses have influenced the scheme. The standard of the consultation report will be one of the considerations for IPC in deciding whether to accept an application. The consultation report should include:

- 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
- 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

Transitional Consultation - For schemes that will be required to follow the IPC application process, but where consultation has already been carried out in advance of publication of consultation guidance, it may be that transitional arrangements regarding pre-application consultation could apply. For this to be the case, the factors listed below need to apply:

- Application made before 1 October 2011;
- The IPC must be satisfied that between 1 October 2007 and 1 October 2009, consultation began with the statutory bodies set out schedule 1 to the applications regulations;
- Community consultation had begun in that period, with the local authority having first been consulted on how this was to be undertaken;
- The proposed application has been publicised in a manner that would have substantially fulfilled the requirements of application regulation 4 had it been in force.

If these factors apply, the applicant must submit a report with the application setting out how the community consultation was carried out and the account taken of responses in finalising the application. If these considerations are thought to apply, the applicant should consult the IPC before any application is submitted to discuss and verify the position.

Role of IPC at pre-application stage

If required, and for a fee, IPC can assist in identifying landowners for land affected by a proposal. The IPC can also grant authorisation to enter land for the purposes of surveying or taking levels. However, this is unlikely to be required as surveys can still be undertaken from public places, through direct negotiation with the landowner/occupier and under existing powers under the Highways Act 1980.

IPC will be available to provide advice on applications at any time (but not on the *merits* of an application). Advice may be sought well in advance of an application being submitted. However, any contact from the Agency to the promoter should follow appropriate channels of communication.

Application form

The pre-application stage is complete when the application form and accompanying documents have been submitted to the IPC.

A list of application form requirements is provided in Table 4.2 below. This refers to the relevant box numbers on the prescribed application form itself. Separate guidance from DCLG is available on completing the application form (see [section 6.2](#)), and further detail on requirements is provided in the application task list at [Annex B](#).

Where appropriate, some requirements of the application form can be provided as separate documents, and referenced accordingly on the application form.

DCLG Application form guidance calls for the:

- Submission by the applicant of an application which specifies the development to which it relates, be made in the prescribed form, be accompanied by the consultation report and documents and information of a prescribe description
- Submission of two specific plans, a land plan and a works plan

DCLG guidance is clear that the application information must be provided to a sufficient degree of detail that will enable the IPC and all other interested parties to appropriately consider the proposal.

Table 4.2: Application form content

Application form box reference	Content	Purpose
1	Details of applicant	To provide contact information
2	Details of agent (if applicable)	
3	Details of fee	To pay for application to be validated
4	Brief statement why the application falls within the remit of the IPC	To confirm why IPC are appropriate consenting body
5	Brief non-technical description of the development proposal	To give basic overview, including interested parties
6	Description of the route of development including reference to appropriate plans	To clearly identify location of site / route
7	Details of any associated development	To provide information on associated development.
8a	Consultation Report	To report on consultation undertaken
8b	Copies of newspaper notices	To provide complete information for application
9	Draft development consent order (DCO)	As basis for later decision making
10	Explanatory memorandum for draft DCO	To explain purpose and effect of provisions in draft order
11	Land Plan	To identify land that is required to be used by development, and land that would be affected by it.
12	Works Plan	

Application form box reference	Content	Purpose
13	Details of compulsory acquisition of land, interests or right over land, including: a statement of Reasons why compulsory acquisition is necessary; a statement to explain how compulsory purchase will be funded; Book of Reference (land and rights) with names, addresses and details of relevant persons; and relevant plans.	To set out proposed positioning of development and works.
14a	Environmental Statement (ES), or environmental assessment report, including responses to the ES	To aid IPC in notifying persons affected
14b	Copies of screening and scoping opinions	To identify significant environmental effects
14c	Notices published or posted on site	To provide complete information for application
15	Information on Appropriate Assessment	To provide complete information for application
16	Plans and information on nature conservation features	To identify any affected sites and allow IPC to make appropriate assessment on any implications
17	Plans and information on historic environment	To identify how features could be affected by proposal
18	Flood risk assessment	To identify how features could be affected by proposal
19	Matters set out in section 79(1) (statutory nuisances etc) of the Environmental Protection Act 1990	To provide details of any flood risk associated with development
20	A plan and accompanying information identifying any Crown Land	To identify if nuisance is caused by the proposal
21	Plans showing new and altered access, stopping up, diversions, extinguishment or creation of rights of way or rights of navigation	To identify affected land
22	Additional information for specific types of infrastructure	To identify new or altered access
23	Any other plans, drawings, sections necessary to describe the proposals, structures, drainage, surface water management and means of landscaping etc.	To aid understanding of application
24	Other consents or licences required under other legislation e.g. affecting trees, listed buildings and conservation areas etc.	To identify other consents / licenses required, and application status of these.
25	Declaration	To confirm that information is provided to best of applicant's knowledge

4.2.2 Validation Stage

On receiving an application, IPC must be satisfied that pre application requirements have been carried out. To validate an application, IPC will look for evidence that:

- There has been a thorough discussion and exchange of information with the local community and technical bodies (as evidenced in consultation report)
- The proposal is as refined as it can be
- As many issues of format and procedure as possible are resolved
- Application itself is complete.

IPC will notify relevant local authorities that their views on pre-application consultation are needed and indicate a timescale for responding.

IPC will notify the applicant of an accepted application within 28 days.

IPC will notify the applicant of a rejected application, along with its reasons. If rejected, the application can be revised and resubmitted.

4.2.3 Pre-examination Stage

This stage is for the IPC to review the accepted application in more detail. A flow chart of tasks is shown in figure 4.3 below.

The applicant must publicise and notify prescribed persons of an accepted application (a **notice of accepted application**) and certify to the IPC that this has been carried out. The notice should be published in the press, journals and also displayed on site. The notice should state how application information be inspected, with a deadline (minimum 28 days) for representations to be submitted. A formal certificate should be submitted to IPC to confirm that the notification has been carried out. Within 10 days after the deadline for representations to be made in response to the notice of accepted application, the promoter must provide the IPC with a list of affected landowners. Once the application has been submitted and accepted and the necessary notification and publicity of this undertaken by the applicant, the IPC takes over from the applicant at the heart of the process.

IPC chair will appoint the examining authority, which is to decide if examination will be via a panel of three or more commissioners or a single commissioner.

Any persons who make representations within the set period (minimum of 28 days) set out in the published notice of an accepted application are then considered as interested parties, along with the applicant, the local authorities and the statutory parties.

Following the period for representations to be made, the examining authority (referred to as IPC from now onwards) will then undertake an initial assessment of the scheme, based on the application and any representations received, to consider how to examine the application.

This will be followed by a **preliminary meeting**. IPC will invite all interested parties to this meeting, giving at least 21 days notice. The meeting should be held within 6 weeks of the deadline for representations to be received set out in the published notice of an accepted application. Procedural decisions on how the application is to be examined will be made at or immediately after this meeting, which will typically include:

- details of the examination timetable,
- the requirement for any hearings on specific issues,
- confirming any open floor hearing and the arrangements for these
- Whether and on what basis any legal assistance, or assessors, are to be appointed on behalf of IPC (for example if specialist knowledge is required on a certain aspect).
- Deadlines for a range of processes, including:
 - the receipt of written representations from interested parties,
 - the deadline for submission of the full local impact report by a relevant local authority,
 - dates by which parties may comment on written representations and,
 - deadline for statements of common ground to be agreed (if not already agreed at the pre-application stage between the applicant and relevant parties, as is encouraged).

It is a statutory requirement for IPC to invite Local Authorities to submit a local impact report (LIR) within 6 weeks of preliminary meeting, but it is not statutory for the local authority to

provide one. The LIR is a report in writing by the local authority on the likely effects of the proposed development on their area.

Statement of Common Ground may be required – which is a written statement prepared jointly by applicant and main interested bodies, setting out agreed factual information.

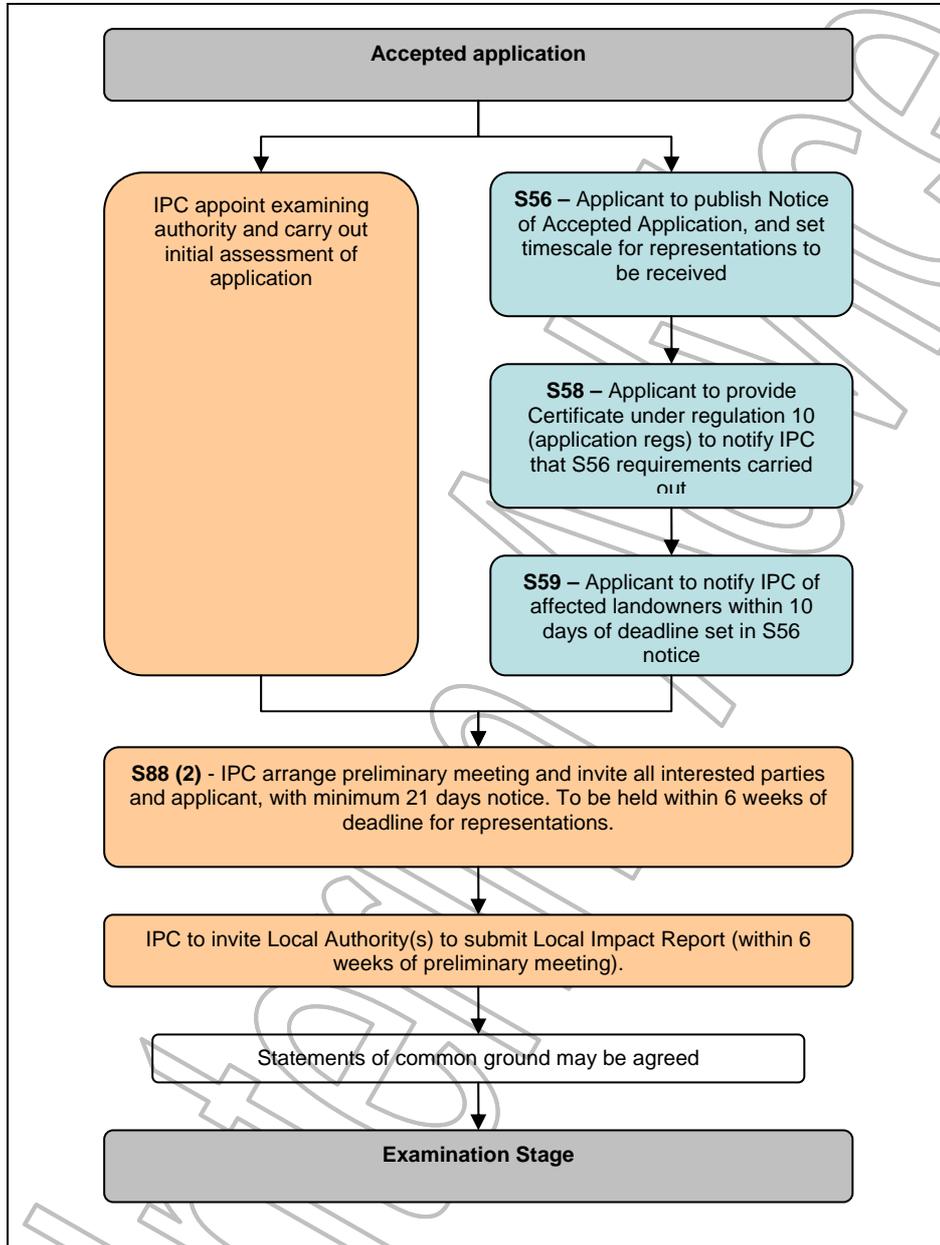


Figure 4.3: Flow chart of pre-examination stage tasks

4.2.4 Examination Stage

The IPC examining authority (panel or single commissioner) will decide how to examine an application.

(a) Written representations

The baseline approach for examination is the consideration of written representations. These must be received within the deadlines set by the IPC. The IPC can request further information or clarification on written representations within a specified period. There will be

an opportunity for all interested parties to comment on any other representations relevant to the examination. The IPC must make all written representations and responses to written questions available to all (for inspection and for copies to be taken) as soon as practicable.

The decision-maker can disregard representations if they relate to the merits of policy set out in a NPS, concern compulsory acquisition compensation, or are considered to be 'vexatious or frivolous' (**PA08 s106**).

(b) Hearings

The IPC may also hold hearings if the appropriate circumstances apply (**PA08 s91(1-2)**).

There are three types of hearing:

- Specific issues - if the examining authority considers a hearing of this kind would assist the examination process. More than one may potentially be held at the same time where appropriate, when the examination authority is a panel;
- Compulsory acquisition - if a party whose land interests are affected requests one, in response to the notification from the applicant about the accepted application, and this is confirmed through the procedural meeting; or
- 'Open-floor' format - Interested parties have a right to be heard at an 'open-floor' hearing if they request one in response to the applicant's notice of acceptance of the application and this is confirmed through the procedural meeting. This gives people the opportunity to explain their views to the examining authority in person, for example to emphasise or develop points made in writing.

The IPC will decide how a hearing is to be conducted, which parties it wishes to question, topics of questions and duration of questioning. Generally hearings will be inquisitorial with questioning led by the examining authority (rather than adversarial with cross-examination of witnesses). However, the examining authority can allow a person making oral representations at a hearing to be questioned by another person, if this is necessary to ensure adequate testing of evidence (**PA08 s94(3),(7); examination rule 14**). Oral representations must not repeat other representations, or relate to the merits of policy already set out in a NPS. For compulsory acquisition hearings, oral representations should be restricted to the principle of the acquisition of land, and not compensation. They will also not be allowed if they are 'irrelevant, vexatious or frivolous' (**PA08 s94(8)**).

If a legal adviser to IPC has been appointed, the person may assist if necessary in the questioning of those making oral representations at a hearing.

(c) Site inspections

The IPC may make unaccompanied site visits before or during its examination of the application without notifying other parties. IPC may also make site visits at any time before the end of the examination accompanied by an interested party, although when doing so all interested parties must be notified of the arrangements (**examination rule 16**).

4.2.5 Decision Stage

There are different scenarios for decision making, as follows:

1. Where a designated NPS is in place, the IPC is the decision maker on applications.
 - If the examining authority is a panel, the decision is based on panel majority vote.
 - For a single commissioner case, the commissioner makes a recommendation to the relevant IPC Council who will issue the decision.
2. The Secretary of State (SoS) may intervene and take over from the IPC as decision-maker if there are changes in circumstances with the relevant NPS, or if important defence and national security considerations arise.

3. Where no designated NPS is in place, the IPC makes a recommendation (as a report) to the SoS, who is the decision maker.

When the IPC is the decision maker, the panel or IPC Council must consider:

- The relevant NPS;
- Any local impact report from a local authority;
- Any relevant matters contained in regulations, for example the desirability of preserving a listed building or its setting if an application affects a listed building (**decisions regs, e.g. 3**);
- Any other matters thought by the decision-maker to be both important and relevant to its decision (**PA08 s104(2)**). These may include other national, regional and local policy documents such as Planning Policy Statements, Regional Strategies and Local Development Documents.

As a general principle, the panel or IPC Council is required to decide an application in accordance with the relevant NPS except in certain circumstances (**PA08 s104(3-7)**), namely:

- Breach of international obligations;
- Breach of any duty imposed on the IPC by any law;
- Contravention of a law; and
- The decision-maker being satisfied that the adverse affects of the proposal would outweigh its benefits.

The SoS will have regard to the same decision-making factors as the IPC, except that there will not be a relevant NPS to take into account, (unless SoS is intervening and taking over an IPC decision). However, an NPS that has been published in draft will be a material consideration.

Reasons for the decision, either to approve or refuse, must be put into a statement by the decision maker, to be publicised and provided to the interested parties (**PA08 s116**).

Where a decision on an application by the IPC Council or SoS departs from the recommendation of the report by the examining authority (single commissioner or panel) because the decision-maker differs on a matter of fact or takes into consideration new evidence or a new matter of fact, then before it is issued the decision-maker must notify interested parties and explain the circumstances, with the opportunity given for further written representations (**examination rule 19**).

4.2.6 Post Decision Stage

A six week period for legal challenge commences when the IPC decision has been made. If the challenge is successful and the decision is quashed, the IPC Chair or Secretary of State will send a statement of the matters for additional representations to all parties, to enable the further consideration of the application (**PA08 s118; examination rule 20**).

A slip rule error exists where IPC have power to make minor amendments to DCO using a correction notice.

The promoter will need to apply to **discharge any conditions** imposed as part of DCO granted. Approval of details specified by requirements attached to an order, for example,

layout, external appearance and landscaping, is by means of subsequent submissions to the IPC (e.g. **model provisions, sched 4, 4-38**).

Enforcement of development consent related offences is the responsibility of the relevant planning authority (i.e. district authority, National Park Authority, borough, unitary or county council for the area, or any other relevant body, for example the appropriate marine organisation or the Environment Agency (**PA08 s160-170**)).

Change to or revocation of an order granting development consent are dealt with in **Schedule 6 to the PA08**. The power under paragraph 3(1) enables the appropriate authority (the IPC or SoS depending on the circumstances) to change or revoke an order on application by the original applicant or successor in title, or a person with an interest in the land, or any other person for whom the order has effect. A local authority within which the site lies may also apply, if the development has begun but has been abandoned and the amenity of other land is suffering as a result (para. 3(5)). In addition, the SoS may also apply to vary or revoke an order if the IPC is the appropriate authority and the development would result in a contravention of Community law or Community rights (relating to human rights), or if other exceptional circumstances justify use of the power. Where the Secretary of State is the appropriate authority and the above considerations apply, then the power to vary or revoke may be exercised without an application.

Compensation may be payable to a person with an interest in the land if, as a result of a decision to change or revoke an order, they have incurred abortive expenditure, or sustained other loss or damage.

4.3 Fees

Fees are payable to the IPC to cover the cost of validating an application, and carrying out an examination. Fees are staged throughout the process and reflect the scale and complexity of a scheme, and therefore the actual time taken by the IPC dealing with the application. A summary of fee levels is shown in table 4.2.

At the pre-application stage, a fee is payable to the IPC if an authorisation is requested either for obtaining information on land ownership, or for gaining access to land for surveying purposes. It is unlikely that the HA would need to pay this fee, as access to land can be arranged by agreement, or under S289 of the Highways Act 1980 (power of entry).

An application fee of £4,500 is payable at the time the application is made.

When an application is accepted, an initial fee on this decision is payable at the pre-examination stage. This fee varies depending on the IPC's choice of examining authority (see table 4.3).

The fee for handling the application is split into the initial fee and the final fee. The initial fee is made up of a cost per estimated day of the examination. The day rate is progressively higher depending on whether the examining authority is a single commissioner, a three, or a four commissioner panel (see table 4.3). The final payment is calculated on the same basis of cost per estimated day, but at higher daily rates. The final application handling fee payable is the amount calculated per day, less the initial application handling fee.

If the relevant fee is not paid at the required stage, the IPC need not consider the application any further.

Table 4.3: Summary of fee levels

Stage	Fee
Authorisations under PA08 sections 52 and 53 (land interests information and access for surveying)	£1000
Application fee • IPC decision on whether to accept an application as valid	£4,500
Pre Examination fee • Single commissioner • Panel of 3 commissioners • Panel of more than 3 commissioners	£13,000 £30,000 £43,000
Initial Payment for handling an application • Single commissioner (per estimated day) • Panel of 3 commissioners (per estimated day) • Panel of more than 3 commissioners (per estimated day)	£615 £1,340 £2,040
Final Payment for handling an application (minus Initial Payment) • Single commissioner (per actual day) • Panel of 3 commissioners (per actual day) • Panel of more than 3 commissioners (per actual day)	£1,230 £2,680 £4,080

Source: The Infrastructure Planning (Fees) Regulations 2010

5 Development Consent Order

5.1 Introduction

Development Consent Order (DCO) is the 'approval' introduced by the PA08. It unifies a range of separate consents that would have been needed under separate strands of legislation and from different authorities, including for example, planning permission, compulsory acquisition and approvals under various parts of the Pipelines, Gas, Energy and listed buildings acts (PA08 s33). This unification is intended to simplify and speed-up the process of bringing forward infrastructure projects.

5.2 DCO for Highways NSIPs

The grant of a DCO would give the HA all the authority it needs to implement a scheme. This would include:

- the compulsory acquisition of any land required;
- powers to stop up, divert or otherwise alter side roads, footpaths, bridleways, private means of access, etc
- powers to impose tolls;
- the trunking or de-trunking sections of highway;
- the alteration or diversion of statutory undertaker equipment;
- the construction of off-site landscaping or drainage works; and
- the discharge of water.

In making an application, the promoter is required to submit a draft DCO, to include:

- A full description of the development for which development consent is required, including any necessary associated development, for example connections from a generating station to electricity networks (**PA08 s115(1)-(2)**);
- Provisions giving the developer authority to take actions which are necessary for the project to be implemented satisfactorily. These might include, for example, authority to compulsorily acquire land, or to stop-up streets or extinguish private rights of way, or to carry out protective works to buildings (**PA08 s120(3-4); sched 5**);
- Other provisions which are necessary for the purposes of the project, or for matters ancillary to it, for example, applying or amending existing legislation, or modifying agreements, or which protect the interests of persons potentially affected by compulsory land acquisition (**PA08 s120 (3-5); sched 5**);
- The requirements to be attached (**PA08 s120(1-2)**). Requirements are similar to conditions under existing consent regimes, for example specifying the duration of the order, or the matters for which detailed approval needs to be obtained before the development can be lawfully begun.

The normal duration of an order will be 5 years, unless a different period is specified (PA08 s154; miscellaneous prescribed provisions reg 4).

It should be noted that if the order entails the compulsory acquisition of 'special category land', such as local authority, statutory undertaker, National Trust or common land, then it will not take effect until either the appropriate certificate of authorisation is issued by the Secretary of State, or, if necessary, the special parliamentary procedure has been undertaken (PA08 s127-132). Promoters are encouraged to seek to secure any necessary certificate before they submit an application.

5.3 Associated Development

The principle of associated development under the Planning Act 2008 is to facilitate a single consent regime by allowing promoters to apply for certain development as part of the main application. Associated development should be necessary for the (main) development and to allow effective operation to its design capacity. Associated development should not however be integral to the main development (in which case it should form part of the main application for DCO). The IPC will decide whether associated development should be treated as such.

DCLG Guidance on associated development indicates that:

- Associated developments should not be an aim in itself but should be subordinate to and necessary for the development
- Developments should not be treated as associated development if it is actually an integral part of the NSIP.

DCLG have published specific guidance on associated development (see [section 6.2](#)), which includes typical examples of associated development. Those most relevant to the Highways Agency are listed below.

General access arrangements (for any NSIPs):

- Formation of new or improved vehicular or pedestrian access (to stations, work sites etc.), whether temporary or permanent
- stopping up, diversion or alteration of roads and footpaths, and bridleways and construction of new or altered roads and footpaths (potentially including diversion of coastal paths)
- construction of new rail, road or foot bridges, viaducts or tunnels, and works to reconstruct, alter or replace existing ones
- highway and rail route/junction improvements (which may provide some benefit to third-party network users as well as users of the NSIP)
- other highway-related works, e.g. to facilitate demand management measures or to provide lorry parking or service facilities

Specific to Highways NSIPs:

- roadside facilities where this becomes necessary due to the elimination of an existing facility by highway improvement
- infrastructure associated with cycle/pedestrian access
- off-site landscaping, habitat creation and other environmental works
- off-site drainage works
- alteration/diversion/stopping up of local roads, accesses and other rights of way
- alterations to canals, railways and watercourses and
- off-site diversion of statutory undertakers equipment

One specific item of Associated Development is the potential for the DCO to grant authority to construct roadside facilities such as Motorway Service Areas, Rest Areas or Truckstops as part of a highway NSIP. This will facilitate the development of new sites to fill gaps that exist in the network of roadside facilities or to meet specific need as well as the replacement of any existing facility that may become non-viable as the result of an Agency project.

5.4 Compulsory Acquisition of Land

Under PA08, CPO is referred to as compulsory acquisition of land and is granted as part of the DCO.

If a highways scheme is a NSIP (see [section 3.2](#)), compulsory acquisition of land can be applied for as part of the DCO, and a separate compulsory purchase order (CPO) would not be required.

Where compulsory acquisition of land is required, the promoter is required to notify affected landowners accordingly (see task list at [Annex B](#)). IPC is able to assist with identifying parties with interest in land (see [section 4.2.1](#), and task list at [Annex B](#)).

The pre-application consultation stage will effectively replace the previous draft CPO stage for NSIPs. Early negotiation and agreement of compensation may be appropriate at this stage to demonstrate to IPC that effort has been made to resolve issues with affected parties. The use of Alternative Dispute Resolution is also recommended but this can be expensive and time consuming without a guaranteed outcome between parties. Exchange land certificates or other special land procedures will have to be considered and settled in advance of an application to IPC for DCO.

Where an application includes compulsory acquisition, it must be accompanied by set information (see task list at **Annex B**). These requirements suggests that much more thought will have to go into the detail of compulsory land acquisition at an early stage, including earlier involvement with land owners, and it is recommended that careful records are kept of costs, consultation responses and any negotiation that has taken place.

Any party whose land interests are affected can request a compulsory acquisition hearing to be held as part of the IPC examination stage. Assuming the request relates to the need for the land, and not compensation, this request would be confirmed through the preliminary meeting.

Once IPC has granted DCO, the Notice to Treat and Enter, procedures and the negotiation of compensation will be much the same as at present. HA will have up to five years (instead of three at present) to serve Notice to Treat.

5.5 Traffic Regulation Orders and DCO

Any necessary Traffic Regulation Orders (TROs) are not associated with DCO and would have to be promoted separately. Given the ability of the IPC to modify proposals when issuing a DCO, it may not be possible to complete the preparation of the draft TROs until after the IPC decision has been announced.

5.6 Highways Model Orders

Model provisions for certain specific types of infrastructure are set out in the 2009 model provisions order (see [section 6.2](#)). It is intended that there will be a separate highways schedule to the model provisions, which will contain all the relevant clauses that will be necessary for highway schemes. In essence, these will be a simplified version of the existing highway orders.

6 Further information

6.1 List of acronyms and abbreviations

CPO	Compulsory Purchase Order
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
EIA	Environmental Impact Assessment
ES	Environmental Statement
HA80	Highways Act 1980
IPC	Infrastructure Planning Commission
LA	Local Authority
LIR	Local Impact Report
NN	National Networks
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
PA08	Planning Act 2008
RoD / NoD	Record / Notice of Determination
SEB	Statutory Environmental Bodies
SOCC	Statement of Community Consultation
SoS	Secretary of State
SRN	Strategic Road Network
TRO	Traffic Regulation Order

6.2 References

Internal References

- Highways Agency Major Projects Project Control Framework (PCF)
<http://www.highways.gov.uk/roads/19638.aspx>
- Highways Agency (2010). IAN 133/10. Environmental Assessment and the Planning Act 2008.
- Highways Agency (2010). Spatial Planning Advice Note (SPAN) 01/10 'Operational Guidance for Highways Agency as Consultee to Third Party Nationally Significant Infrastructure Projects'

External References

- IPC website
<http://infrastructure.independent.gov.uk/>

6.2.1 *List of Legislation and Guidance*

- Planning Act 2008
- Statutory Instrument 2009 No 1302. The Infrastructure Planning (National Policy Statement Consultation) Regulations 2009.
- Statutory Instrument 2009 No 2263. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009
- Statutory Instrument 2009 No 2264. The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009
- Statutory Instrument 2009 No 2265. The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009
- Statutory Instrument 2009 No 2438. The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009
- Statutory Instrument 2009 No 490. The Conservation of Habitats and Species Regulations 2010
- Statutory Instrument 2009 No 101 (C.11). The Planning Act 2008 (Commencement No.4 and Saving) Order 2010
- Statutory Instrument 2009 No 102. The Infrastructure Planning (Interested Parties) Regulations 2010
- Statutory Instrument 2009 No 103. The Infrastructure Planning (Examination Procedure) Rules 2010
- Statutory Instrument 2009 No 104. The Infrastructure Planning (Compulsory Acquisition) Regulations 2010
- Statutory Instrument 2009 No 105. The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010
- Statutory Instrument 2009 No 106. The Infrastructure Planning (Fees) Regulations 2010
- Statutory Instrument 2009 No 305. The Infrastructure Planning (Decisions) Regulations 2010
- Department for Communities and Local Government (2009). Planning Act: Guidance on pre-application consultation.
- Department for Communities and Local Government (2009). Planning Act 2008: Nationally significant infrastructure projects – Application form guidance
- Department for Communities and Local Government (2009). Guidance on associated development: Applications to the Infrastructure Planning Commission
- Department for Communities and Local Government (2010). Planning Act 2008: guidance for the examination of applications for development consent for nationally significant infrastructure projects
- Department for Communities and Local Government (2010). Planning Act 2008: Guidance related to procedures for compulsory acquisition
- Department for Communities and Local Government (2010). Planning Act 2008: The Infrastructure Planning (Fees) Regulations 2010 – Guidance

Annex A – Legal Advice on definition of Highways Nationally Significant Infrastructure Projects

Construction of a highway

(a) Construction of a highway for which the Secretary of State will be the highway authority

PA08 is concerned with the construction of new highways which would constitute trunk roads. It applies to those projects that would currently require an order under section 10 of the Highways Act 1980 (HA80) to construct and trunk a highway, or under section 16 in respect of special roads (which are roads reserved for a particular class of traffic).

It does not apply to an existing highway which is to be trunked/de-trunked where there is no construction. Therefore, standalone trunking orders will not be caught.

(b) Construction of a highway where the highway is to be constructed for a purpose connected with a highway for which the Secretary of State is or will be the highway authority

This is intended to cover the situation where a new highway is constructed to provide a link to the trunk road, such as where the Highways Agency (HA) constructs slip roads to or from a motorway or where a new side road is built to facilitate access to the trunk road. It covers orders which are currently made under section 14(1)(a)(ii) and 18(1)(c)(ii) of the HA80 i.e. where a new road is constructed which joins the trunk road.

The purpose of the connection must be related to the trunk road. Connection does not necessarily have to be a physical connection. So bridges and flyovers could be caught even if there is no physical connection as such with the trunk road.

Construction of a highway does not cover construction of a highway where the purpose of the connection does not relate to the trunk road. In these cases, the promoter will have to consider whether the new highway is part of a larger scheme which is a NSIP, in which case the new highway will also be a NSIP. This is because section 31 of the PA08 states that consent is required for a development to the extent that it is or forms part of a NSIP.

If at the time of construction, it is clear that there is no intention that the new highway will be adopted by the Secretary of State and that the highway is not to be constructed for a purpose connected with a trunk road, then subject to the road not being part of a larger scheme (see (iii) above) the highway will not be a NSIP.

Improvement of a highway

(a) General

Improvement is defined in **section 235 of the PA08** as having the same meaning as set out in the HA80. The HA80 definition states that improvement means the doing of any act under the powers conferred by Part V of HA80. The definition of improvement is therefore concerned with any improvement to a trunk road made using the general power of improvement in section 62 of the HA80 or any improvements made under Part V of the HA80.

The powers of improvement of highways in Part V are wide-ranging and can encompass, inter alia, dualling and putting in roundabouts (section 64 HA80), construction of footbridges (section 70 HA80), levelling and alteration of levels (sections 76 to 77 HA80), cutting off corners (section 78 HA80), reconstruction and improvement of bridges (sections 92 to 93 HA80).

There will be cases where it may be considered that having reference to what is commonly understood as meaning “improvement” and “alteration” in the context of HA80 that highway works could potentially fall within the improvement limb or alteration limb of a highway related NSIP.

However, in the context of the HA80 any alterations/improvements to a trunk road will be regarded as an improvement to a highway for the purposes of PA08 and will fall within the improvement limb.

The reason for this is because the definition of “alteration” in PA08 makes it clear that for the purposes of a NSIP, the alteration must be to a highway other than a trunk road (see **section 22(4)(c) of the PA08**). Therefore, any alterations to the trunk road must be regarded as improvements to the highway for the purposes of PA08. For alterations to roads other than trunk roads, see 3.2.3 below.

(b) Improvements that have a significant effect on the environment

Improvements will only be caught if the improvement is likely to have a significant effect on the environment.

The use of the words “significant effect on the environment” mirror the wording used in the Environmental Impact Assessment (EIA) regime and the test should be regarded as being the same as the test for whether an EIA should be undertaken for a project.

The HA will undertake the screening process for the project to determine whether it is likely to have any significant effects on the environment at an early stage (i.e. before it consults under **section 42 of the PA08**). The process will be the same as the HA are doing now under Part VA of the Highways Act 1980. The HA will consider (i) whether the project falls within Annex I or II of the EIA Directive (ii) whether an Annex II project is a “relevant project” (iii) make the determination i.e. consider whether the project is likely to have a significant environmental effect and (iv) report the determination.

If the HA decide that the improvement is likely to have significant effects on the environment then it will be necessary to provide an Environmental Statement (ES). The HA will notify the Infrastructure Planning Commission (PC) that it intends to provide an ES, or ask the IPC to adopt a screening opinion (in accordance with regulation 6 of the 2009 regulations). Also see Annex D.

(c) Improvements that do not have a significant effect on the environment

If the HA decides that the preparation of an ES is not necessary, then so long as highway orders are not required (see under (e) below) the improvement will not be caught by the new regime. The HA will publish its decision.

(d) Borderline cases

(i) It is a matter for the HA to take an initial view as to whether a project will have a significant environmental effect. In borderline cases, the HA may approach the IPC for advice on whether the IPC considers that a scheme will have a significant effect on the environment. The IPC has discretion to give advice on this issue.

On receipt of an application, the IPC must decide whether to accept the application (see **section 55(2)** and may only do so if it is satisfied that the project is a NSIP (**section 55(3)(c)**).

(e) Improvement schemes that require highway orders

If the improvement needs a side roads order under section 14 HA80 as part of the improvements, then the improvement will be caught by the new regime. For example, if an

existing access or part of a highway needs to be stopped up, and it would be necessary to obtain a side roads order, the scheme will need to obtain a development consent order from the IPC.

However, if land simply needs to be acquired for the improvement, then so long as the scheme will not have a significant effect on the environment, the HA may be able to acquire the land without recourse to the IPC. This is by virtue of its wide compulsory purchase powers for improvements set out in Part XII of the HA80. In particular, the HA may acquire land under section 239(3) of the HA80 for improvement of a highway. This is subject to the distance limits set out in section 249 and Schedule 18 of the HA80 (i.e. the acquisition must be within 220 yards from the centre of the highway).

Alteration of a highway

(a) General

In the PA08, alteration in relation to a highway is specifically defined as including “stopping up the highway, or diverting, improving, raising or lowering it”. This definition is based on the power in section 14(1)(a)(i) (and 18(1)(c)(i) for special roads) of the Highways Act 1980.

The alteration must be carried out by or on behalf of the Secretary of State and the highway must be altered for a purpose connected with a highway for which the Secretary of State is the highway authority (i.e. a trunk road). Alteration of a highway therefore covers those projects which currently require an order under section 14(a)(i) of the HA80, i.e. those projects which currently require a side roads order.

(b) Alteration for a purpose connected with a highway for which the Secretary of State is the highway authority

The alteration must be for a purpose connected with the trunk road. Because of use of the words “for a purpose connected with a highway for which the Secretary of State is the highway authority”, it is considered that alterations must be on a highway for which the Secretary of State is not the highway authority.

For alterations to trunk road, see under 3.2.2 above.

New means of access

(i) If the new means of access are to be constructed within the highway boundary, then they can be done using the Secretary of State’s general powers of improvement and should not generally be regarded as a NSIP as they will not have a significant effect on the environment. This is the preferred approach to the delivery of development-related connections to the SRN, with the developer and/or LPA taking responsibility for the works outside of the trunk road boundary.

(ii) If the new means of access also requires a side roads order, then they will be regarded as being a NSIP.

Compulsory Purchase orders

The requirement to compulsory purchase land, in its own right, does not mean that a scheme is an NSIP. Existing arrangements for compulsory purchase of land remain under the Highways Act 1980 (sections 239 to 248) for schemes that are not NSIPs.

Compulsory purchase orders (CPOs) pursuant to section 239(3) Highways Act 1980 required for the improvement of a highway authorised under the HA80 could also be retained (subject to the limits set out in section 249 and Schedule 18 - i.e. within the specified distances from the centre line), assuming the improvement scheme is not an NSIP by needing specified orders or ES.

Similarly land required for the provision of buildings or facilities to be used in connection with the construction or maintenance of a trunk road could be acquired under the current powers, assuming the scheme is not an NSIP by needing specified orders or ES.

However, should any of the above elements be required for a highway scheme that is a highways NSIP, these elements can be included in the application for development consent (DCO) from IPC, possibly as associated development.

Interim Advice

Annex B – IPC Task List for HA applications to IPC

Notes

- This task list sets out the activities and deliverables required as part of making an application to IPC.
- HA promoters would still need to have regard to application form and associated DCLG guidance
- List assumes design, environmental assessment etc is complete, but in reality, some of these activities may be carried out in parallel with tasks listed

Key

Bold – mandatory deliverables / activities
<i>Italic – optional deliverables /activities (scheme dependant)</i>
Plain – preparation activities

Deliverable / Task	IPC / DCLG refs in guidance / legislation	Related HA guidance
PRE APPLICATION STAGE		
<i>Request advice from IPC</i>	<i>PA08 s51 Applications Regs 11</i>	
<i>Seek assistance from IPC to verify owners of land / enter land for surveys</i>	<i>PA08 s51-53</i>	<i>s52 and s53 PCF Product</i>
EIA screening opinion	EIA Regs 4, 6	Bridging IAN on EIA and Planning Act 2008 Environmental Impact Assessment screening and scoping PCF product WwW
<i>EIA scoping opinion</i>		<i>Bridging IAN on EIA and Planning Act 2008</i> <i>Environmental Impact Assessment screening and scoping PCF product</i> WwW
Notify IPC of proposed application	PA08 s46	
Duty to consult	PA08 s42-45, application reg 3	Pre-Application Consultation PCF Product WwW
Statement of Community Consultation (SOCC)	PA08 s47, 49 EIA regs 6,10, 11	Statement of Community Consultation PCF product WwW
Notice of proposed application	PA08 s48, application regulation 4, EIA regulation 11, 9(1)(c)	WwW
<i>Draft Statement of common ground</i>		

Deliverable / Task	IPC / DCLG refs in guidance / legislation	Related HA guidance
Application form and accompanying documents	PA08 s37 Application regs 5-7 Application Form Guidance	Application and draft Development Consent Order PCF Product WwW
Details of applicant (Box 1)		
<i>Details of Agent (Box 2)</i>		
Fee (Box 3)	Fee regulations	IPC Fees product PCF product
Confirmation of relevance to IPC (Box 4)		
Non-technical description of proposal (Box 5)		
Description of location / route of proposal (Box 6)		
<i>Information on associated development (Box 7)</i>	PA08 s115(2) Guidance on associated development	
Consultation report (Box 8a)	PA08 s37(7) Pre-application consultation guidance	Pre-Application Consultation Report PCF product WwW
Newspaper notices (Box 8b)		
Draft DCO (Box 9)	The Infrastructure Planning (Model Provisions) Order 2009. Highways Model order (tbc)	Application and draft Development Consent Order PCF Product
Draft order – explanatory memorandum (Box 10)		Application and draft Development Consent Order PCF Product
Plans (general)		
Land Plan (Box 11)	Application Regs 5(2)(i)	Follow existing practice
Works plan (Box 12)	Application Regs 5(2)(j)	Follow existing practice
<i>Statement of reasons for compulsory acquisition, book of reference and funding statement (Box 13)</i>	<i>Application regs 7</i>	<i>part of DCO template / guidance (also similar to existing practice)</i>
<i>Environmental Statement (Box 14a)</i>	<i>Infrastructure Planning (environmental impact assessment) Regulations 2009</i>	<i>DMRB vol 11</i>
Screening and Scoping Opinions (Box 14b)		
<i>Notices under reg 11 of EIA regs (Box 14c)</i>	<i>EIA regs regulation 9</i>	
<i>Information on European sites (Habitats regulations) (Box 15)</i>	<i>regulation 48 of the Conservation (Natural Habitats & c.) Regulations 1994</i>	
Plan and accompanying information on features of nature conservation interest (Box 16)	Application reg 5(2)(l)	

Deliverable / Task	IPC / DCLG refs in guidance / legislation	Related HA guidance
Plan and accompanying information on features of the historic environment (Box 17)	Application reg 5(2)(m)	
<i>Flood risk assessment (Box 18)</i>	<i>None</i>	<i>DMRB vol 11</i>
Matters set out in section 79(1) (statutory nuisances etc) of the Environmental Protection Act 1990 (Box 19)		
<i>A plan and accompanying information identifying any Crown land (Box 20)</i>		
<i>A plan identifying new or altered access (Box 21)</i>	<i>Applications Regulation 5(2)(k)</i>	
Additional information on specific infrastructure (Box 22)	Application Regulation 6	
<i>Other plans, documents, drawings (Box 23)</i>	<i>Application Regulation 5(2)</i>	
<i>Details of Other consents licenses required (Box 24)</i>		
Declaration (Box 25)		

Deliverable / Activity	IPC / DCLG refs in guidance / legislation	Related HA guidance
VALIDATION STAGE		
No specific actions on promoter		

Deliverable / Activity	IPC / DCLG refs in guidance / legislation	Related HA guidance
PRE EXAMINATION STAGE		
Notice of accepted application	PA08 s56, applications reg 8, 9	
Certificate under regulation 10 (application regs)	PA08 s58, applications reg 10, form in schedule 3	
Notice of affected landowners	PA08 s59, applications reg 10, form in schedule 4	
Attend Preliminary meeting	PA08 s88 (2), examination rule 7	IPC Preliminary Meetings and Hearings PCF product
Act on any outcomes of IPC procedural decisions on how to conduct examination	None	
<i>Comment on LIR</i>	<i>None</i>	
<i>Statement of common ground</i>	<i>Examination regulations rule 8</i>	

Deliverable / Activity	IPC / DCLG refs in guidance / legislation	Related HA guidance
EXAMINATION STAGE		
Written evidence for examination		
Comment on / respond to others' written representations		
Preparation for hearing(s)		

Deliverable / Activity	IPC / DCLG refs in guidance / legislation	Related HA guidance
DECISION STAGE		
No specific actions on promoter		

Deliverable / Activity	IPC / DCLG refs in guidance / legislation	Related HA guidance
POST DECISION STAGE		
Evidence of having met conditions	None	

Annex C – List of Statutory Consultees

(Taken from The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 SCHEDULE 1 Regulations 3 and 8(1))

Consultee	<i>Circumstances when that person must be consulted about a proposed application.</i>	<i>Circumstances when that person must be notified about an application.</i>
The Welsh Ministers	All proposed applications likely to affect land in Wales	All applications likely to affect land in Wales
The Scottish Executive	All proposed applications likely to affect land in Scotland	All applications likely to affect land in Scotland
The relevant Northern Ireland Department	All proposed applications likely to affect land in Northern Ireland	All applications likely to affect land in Northern Ireland
The relevant Regional Planning Body	All proposed applications likely to affect land in England and Wales	All applications likely to affect land in England and Wales
The Health and Safety Executive	All cases	All cases
The relevant Strategic Health Authority	All proposed applications likely to affect land in England and Wales	All applications likely to affect land in England
The relevant Health Board(1)	All proposed applications likely to affect land in Scotland	All applications likely to affect land in Scotland
Natural England(2)	All proposed applications likely to affect land in England	All applications likely to affect land in England
The Historic Buildings and Monuments Commission for England	All proposed applications likely to affect land in England	All applications likely to affect land in England
The relevant fire and rescue authority	All cases	All cases
The relevant police authority	All cases	All cases
The relevant parish council, or, where the application relates to land Wales or Scotland the relevant community council	All cases	All cases
The Environment Agency	All proposed applications likely to affect land in England and/or Wales	All applications likely to affect land in England and/or Wales
The Scottish Environment Protection Agency	All proposal applications likely to affect land in Scotland	All applications likely to affect land in Scotland
The Commission for Architecture and the Built Environment	All proposed applications likely to affect land in England	All applications likely to affect land in England
The relevant Regional Development Agency	All cases	All cases
The Equality and Human Rights Commission	All proposed applications likely to affect land in England and Wales	All applications likely to affect land in England and Wales

Consultee	Circumstances when that person must be consulted about a proposed application.	Circumstances when that person must be notified about an application.
The Scottish Human Rights Commission	All proposed applications likely to affect land in Scotland	All applications likely to affect land in Scotland
The Commission for Sustainable Development	All cases	All cases
AONB Conservation Boards	All proposed applications likely to affect an AONB that is managed by a Conservation Board	All applications likely to affect an AONB that is managed by a Conservation Board.
Royal Commission on Ancient and Historical Monuments of Wales	All proposed applications likely to affect the historic environment in Wales	All proposed applications likely to affect the historic environment in Wales
The Countryside Council for Wales	All proposed applications likely to affect land in Wales	All applications likely to affect land in Wales
The Homes and Communities Agency(3)	All proposed applications likely to have an effect on its areas of responsibility	All applications likely to have an effect on its areas of responsibility
The Joint Nature Conservation Committee	All proposed applications likely to affect the marine environment	All applications likely to affect the marine environment.
The Commission for Rural Communities	All proposed applications likely to affect rural communities in England	All applications likely to affect rural communities in England
Scottish Natural Heritage	All proposed applications likely to affect land in Scotland	All applications likely to affect land in Scotland
The Maritime and Coastguard Agency	All proposed applications likely to affect the maritime or coastal environment, or the shipping industry	All applications likely to affect the maritime or coastal environment, or the shipping industry.
The Marine and Fisheries Agency	All proposed applications likely to affect the marine area in England and Wales	Where the proposal would involve carrying on any activity in the marine area in England and Wales
The Scottish Fisheries Protection Agency	All proposed applications likely to affect the fisheries industry in Scotland	All applications likely to affect the fisheries industry of Scotland
The Civil Aviation Authority	All proposed applications relating to airports or which are likely to affect an airport or its current or future operation	All applications relating to airports or which are likely to affect an airport or its current or future operation
The Highways Agency	All proposed applications likely to affect road or transport operation and/or planning on roads for which the Secretary of State for Transport is the highway authority.	All applications likely to affect road or transport operation and/or planning on roads for which the Secretary of State for Transport is the highway authority.
Integrated Transport Authorities (ITAs) and Passenger Transport Executives (PTEs)	All proposed applications likely to affect transport within, to or from the relevant integrated transport area of the ITA or PTE	All applications likely to affect transport within, to or from the relevant integrated transport area of the ITA or PTE
The relevant Highways Authority	All proposed applications likely to have an impact on the road network or the volume of traffic in the vicinity of the proposal	All applications likely to have an impact on the road network or the volume of traffic in the vicinity of the proposal

Consultee	Circumstances when that person must be consulted about a proposed application.	Circumstances when that person must be notified about an application.
Transport for London	All proposed applications likely to affect transport within, to or from Greater London	All applications likely to affect transport within, to or from Greater London
The Rail Passengers Council	All proposed applications likely to affect rail passenger transport	All applications likely to affect rail passenger transport
The Disabled Persons Transport Advisory Committee	All proposed applications likely to affect access to transport for disabled people	All applications likely to affect access to transport for disabled people
The Coal Authority	All proposed applications that lie within areas of past, present or future coal mining.	All applications that lie within areas of past, present or future coal mining.
The Office of Rail Regulation and approved operators(4)	All proposed applications likely to affect the rail transport industry	All applications likely to affect the rail transport industry
The Gas and Electricity Markets Authority	All proposed applications likely to affect gas and electricity markets	All applications likely to affect gas and electricity markets
The Water Services Regulation Authority	All proposed applications likely to affect the water industry in England and Wales	All applications likely to affect the water industry in England and Wales
The Water Industry Commission of Scotland	All proposed applications likely to affect the water industry in Scotland	All proposed applications likely to affect the water industry in Scotland
The relevant waste regulation authority	All proposed applications likely to affect waste infrastructure	All applications likely to affect waste infrastructure
The relevant internal drainage board	All proposed applications likely to increase the risk of flooding in that area or where the proposals relate to an area known to be an area of flood risk	All applications likely to increase the risk of flooding in that area or where the proposals relate to an area known to be an area of flood risk
The British Waterways Board	All proposed applications likely to have an impact on inland waterways or land adjacent to inland waterways	All applications likely to have an impact on inland waterways or land adjacent to inland waterways
Trinity House(5)	All proposed applications likely to affect navigation in tidal waters	All applications likely to affect navigation in tidal waters
The Health Protection Agency	All proposed applications likely to involve chemicals, poisons or radiation which could potentially cause harm to people	All applications likely to involve chemicals, poisons or radiation which could potentially cause harm to people
The relevant local resilience forum	All cases	All cases
Relevant statutory undertakers	All proposed applications likely to affect their functions as statutory undertakers	All applications likely to affect their functions as statutory undertakers
The Crown Estate Commissioners	All proposed applications likely to impact on the Crown Estate	All applications likely to impact on the Crown Estate
The Forestry Commission	All proposed applications likely to affect the protection or expansion of forests and woodlands	All applications likely to affect the protection or expansion of forests and woodlands

- (1) See section 2 of the National Health Service (Scotland) Act 1978 (c.29)
- (2) See section 1 of the Natural Environment and Rural Communities Act 2006 (c.16).
- (3) See section 2 of the Housing and Regeneration Act 2008 (c.17)
- (4) For the definition of “approved operators” see section 25 of the Planning Act 2008.
- (5) The Corporation of Trinity House of Deptford Strond.

Note to Table - “relevant”, in relation to a body, shall mean the body which has responsibility for the location where the proposals may or will be sited or has responsibility for an area which neighbours that location.

Interim Advice

**Annex D - IAN 134/10 Operational Guidance for Highways Applications to the
Infrastructure Planning Commission**

Nil

Interim Advice