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# The Planning Act 2008

A First RTPI Briefing

27 November 2008



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# Agenda

- Structure of the Planning Act 2008
- Major Infrastructure
- Town and Country Planning system changes



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# Structure of the Act

- Current progress on the Act (and a health warning)
- What the Act does



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# Current Progress

- The Planning Act 2008, received Royal Assent on 26 November 2008
- No approved text of the Act as yet available
- Section (former clause) numbers used in this presentation refer to the final House of Lords print and may not necessarily flow through as section numbers in the Act as assented to...



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# Current Progress

- If I need the whole story, where do I find progress on the Bill and the Act?
- <http://services.parliament.uk/Acts/2007-08/planning.html>



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Bills and Legislation - Planning Bill - Windows Internet Explorer

http://services.parliament.uk/bills/2007-08/planning.html

Google Planning Bill

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### Planning Bill 2007-08

Government Bill introduced by Hazel Blears, [Department for Communities and Local Government](#) and Baroness Andrews, [Communities and Local Government](#)

Progress of Bill including links to debates










Session	Commons					Lords					Key to abbreviations	
	1R	2R	Comm	Rep	3R	1R	2R	Comm	Rep	3R	PP	RA
2007-08	<a href="#">27.11.07</a>	<a href="#">10.12.07</a>	<a href="#">08.01.08</a> to <a href="#">05.02.08</a>	<a href="#">02.06.08</a> to <a href="#">25.06.08</a>	<a href="#">25.06.08</a>	<a href="#">26.06.08</a>	<a href="#">15.07.08</a>	<a href="#">06.10.08</a>	<a href="#">06.11.08</a>	<a href="#">18.11.08</a>	<a href="#">24.11.08</a>	<a href="#">26.11.08</a>
								<a href="#">08.10.08</a> <a href="#">14.10.08</a> <a href="#">16.10.08</a> <a href="#">20.10.08</a> <a href="#">23.10.08</a>	<a href="#">10.11.08</a> <a href="#">12.11.08</a>		<a href="#">25.11.08</a>	

Summary of the Bill

**Planning Bill**

The Bill introduces a new system for approving major infrastructure of national importance, such as harbours and waste facilities, and replaces current regimes under several pieces of legislation. The objective is to streamline these decisions and avoid long public inquiries.

Key areas

-  = Act (Royal Assent granted)
-  = Amendment Paper
-  = Bill
-  = Committee information
-  = Debate
-  = Explanatory Note
-  = Motion
-  = Proceeding
-  = Related documents

Done



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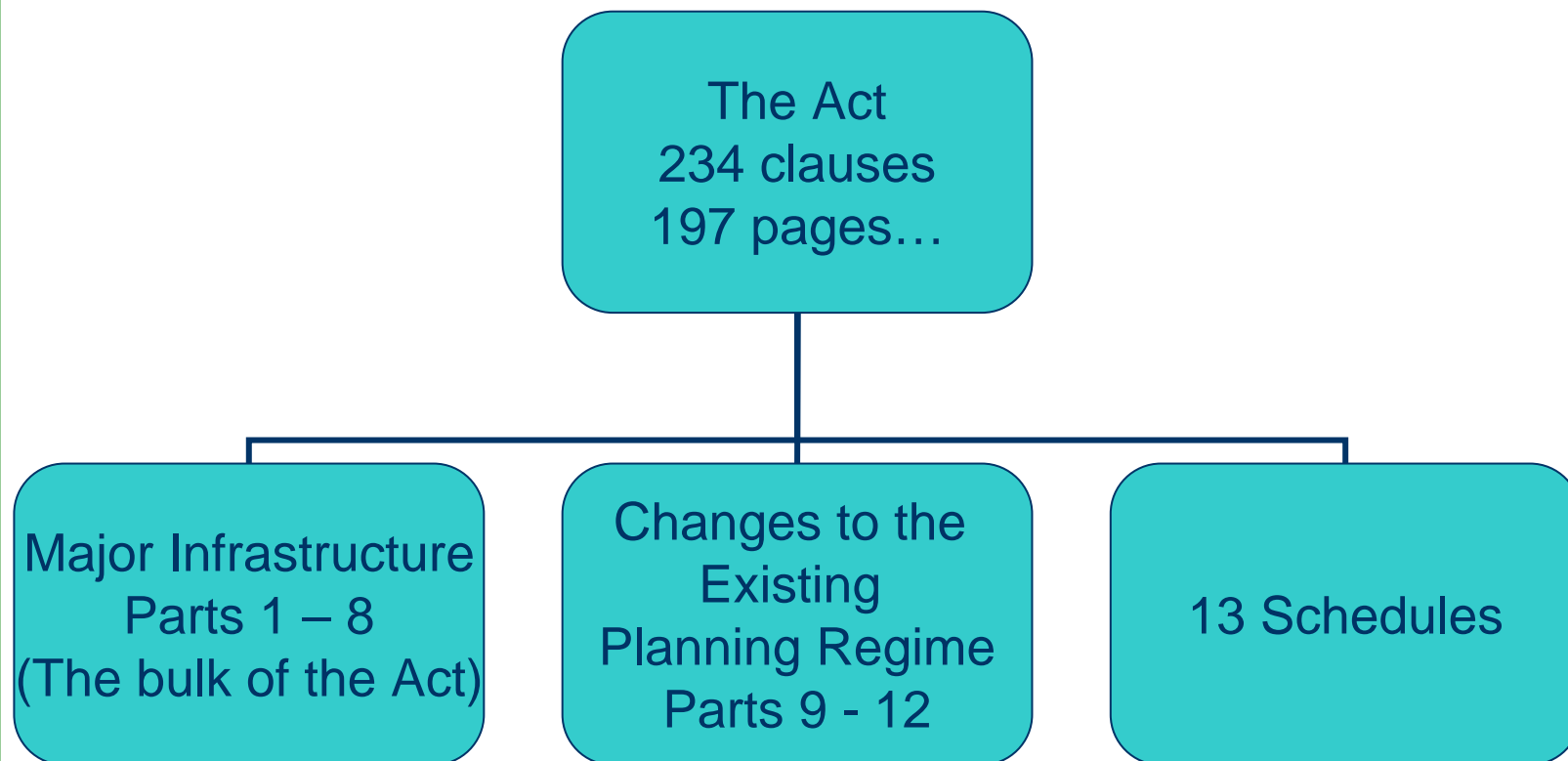
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# What is on the Parliament Website?

- PDF and word versions of the Act
- The Bill in its various iterations
- Lists of amendments
- Dates of debates
- Hansard (the definitive record) of debates



# Structure of the Act





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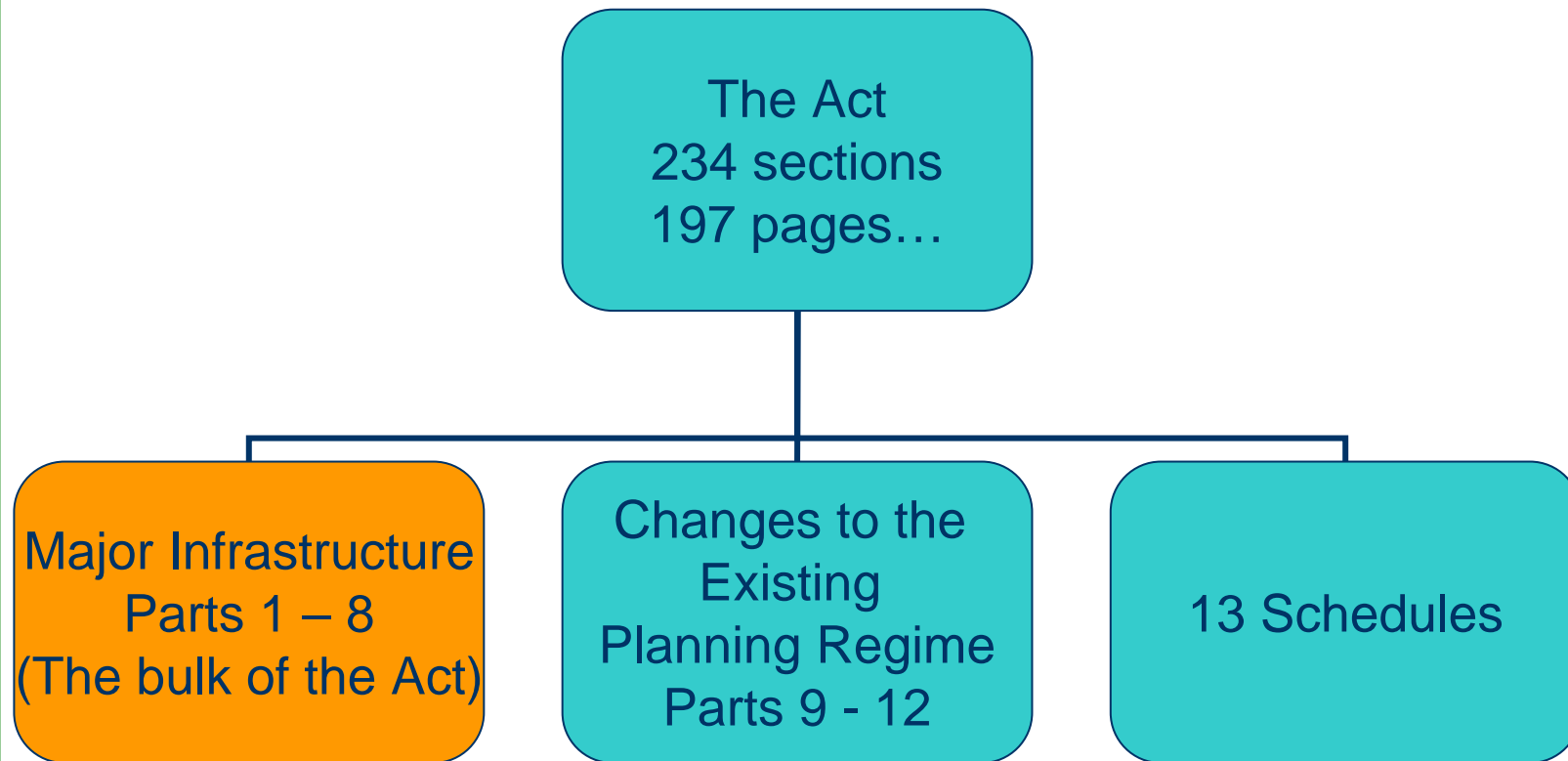
# Major Infrastructure

- Objectives of major infrastructure (NSIPs) planning reform
- The mechanics of the new system
  - National policy statements
  - The Infrastructure Planning Commission



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# NSIPs Issues

- Foundations of RTPI policy
- What we asked of government
- The Act –  
Does the proposed system measure up?
- Contrary views –  
Sound legislation or consultation disaster?



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# Foundations of RTPI policy

- The UK Spatial Planning Framework
- Fighting the ‘sustainable infrastructure deficit’
- Responding to climate change



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# UK SPF



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**ROYAL TOWN PLANNING INSTITUTE**

## **UNITING BRITAIN**

**THE EVIDENCE BASE – SPATIAL STRUCTURE AND KEY DRIVERS**





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Figure 1.9

**UK Airport Connections 2004**

**Passenger Numbers**

1,044 - 247,828

247,828 - 770,055

770,056 - 1,698,200

**International Airports 2004**

**% of All Passengers**

0% - 0.9%

1% - 2.3%

2.4% - 4.4%

4.5% - 10.4%

10.5% - 36%





Figure 1.27

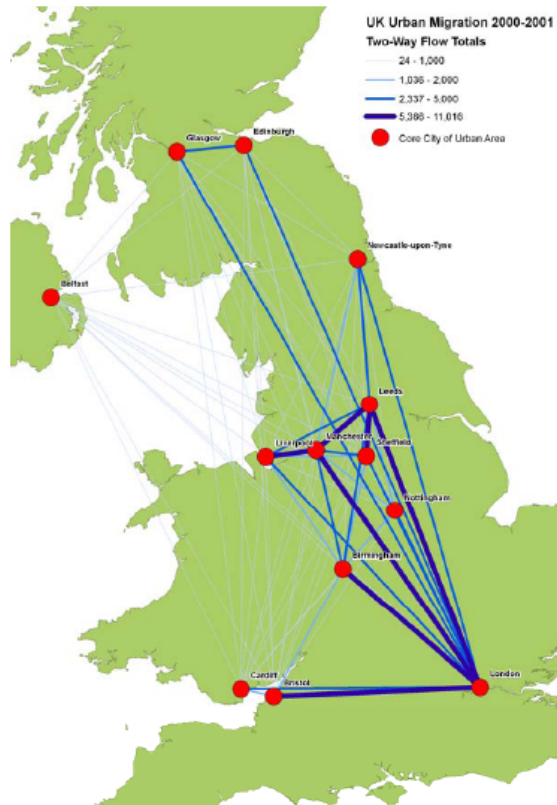


Figure 1.28

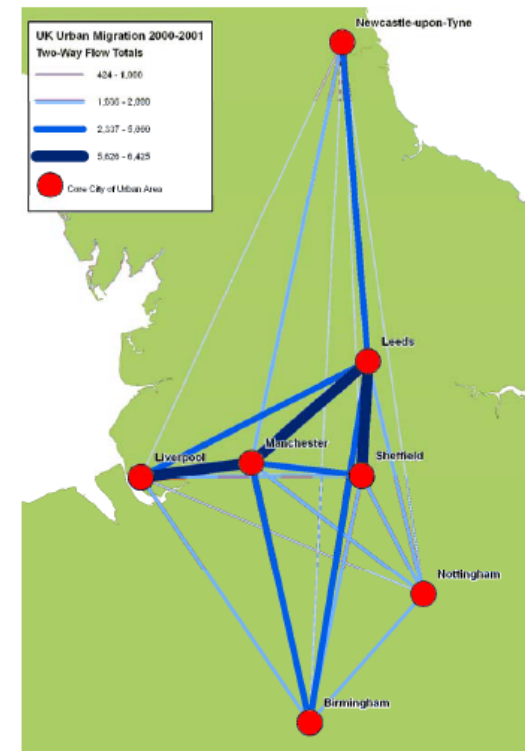
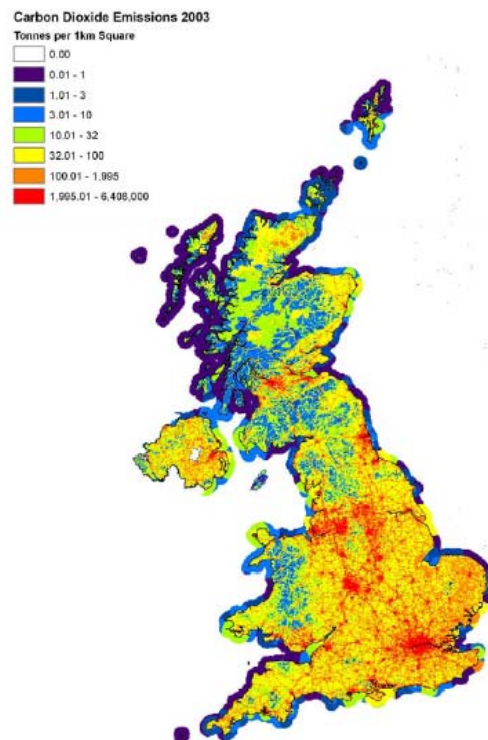


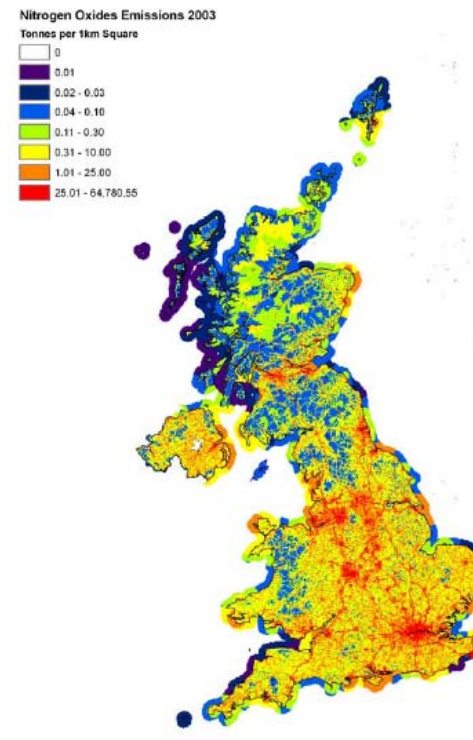


Figure 2.19



Source: National Atmospheric Emissions Inventory, 2006

Figure 2.20



Source: National Atmospheric Emissions Inventory, 2006



Figure 3.1 Transport Infrastructure and Functional Spatial Clusters





# The sustainable infrastructure deficit

- A lack of capacity to deliver in scale:
  - we simply do not have the institutional and investment capabilities and culture to deliver very large scale new infrastructure projects
- A lack of capacity to deliver in space:
  - we are not clear where the new infrastructure demand largely generated by housing can be met, having regard to resource availabilities and constraints and hence lack the certainty to prompt either infrastructure or housing investment at the speed that we desire



- ageing infrastructure:
  - where the average age of the infrastructure stock continues to rise and where key infrastructures such as power stations approach their design life without programmed replacement
- depreciated infrastructure:
  - whereby returns from capital invested in new infrastructure have to compete against returns from substantially discounted and depreciated capital assets and whereby service/supply costs from new infrastructure are unduly high in comparison with service/supply costs from discounted infrastructure
- inefficient infrastructure:
  - where opportunities to deliver considerable sustainability and cost improvements in energy and water supply and public transport are not invested in, or where investment is limited, due to a conflation of issues around investment scale, the lack of certainty around the location of demand and undue competition from discounted infrastructures



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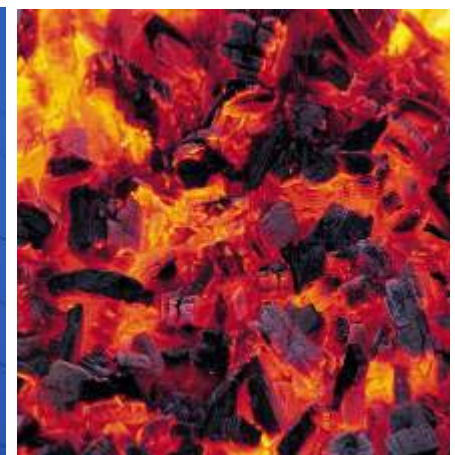
# Climate change and power case study

- Anthropogenic global warming





- Reconfiguring the generation mix





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- Retiring old nuclear
- Retiring old coal
- Grid vs distributed/embedded energy
- Our decisions about new infrastructure
- Carbon implications
  
- The need for bridging technologies
- The need for swift action



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- Principles:
- Avoid structural commitments to new high carbon generation
- Take carbon seriously: capture opportunities to reduce emissions
- Send signals to the provider market to support this policy direction
- Do it in time – Stern suggests 5-7 years
- Ensure capacity for real community engagement



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## What the RTPI asked for - MIPs

- A national infrastructure investment plan
- Regional and local infrastructure plans and programmes
- Using economic and geographic data
- Closer partnerships: linking users and needs to providers
- An expert, expeditious and engaged decision making process



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# Does the proposed system measure up?

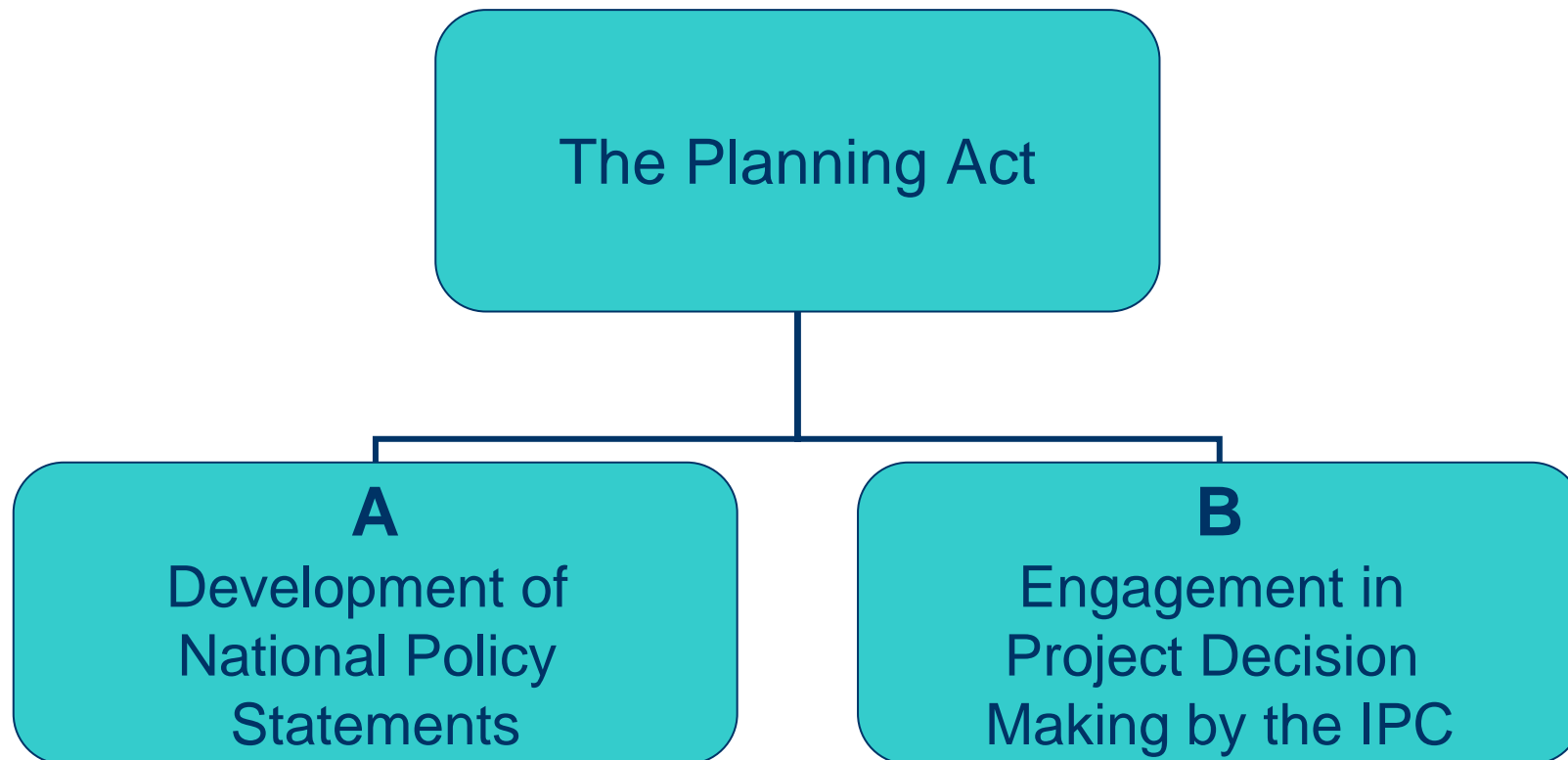
- Largely yes
- But...
- The devil is in the detail
- Procedures are not yet settled
- RTPI and members will need to engage in the settlement of secondary legislation (regulations) and guidance and matters such as draft National Policy Statements



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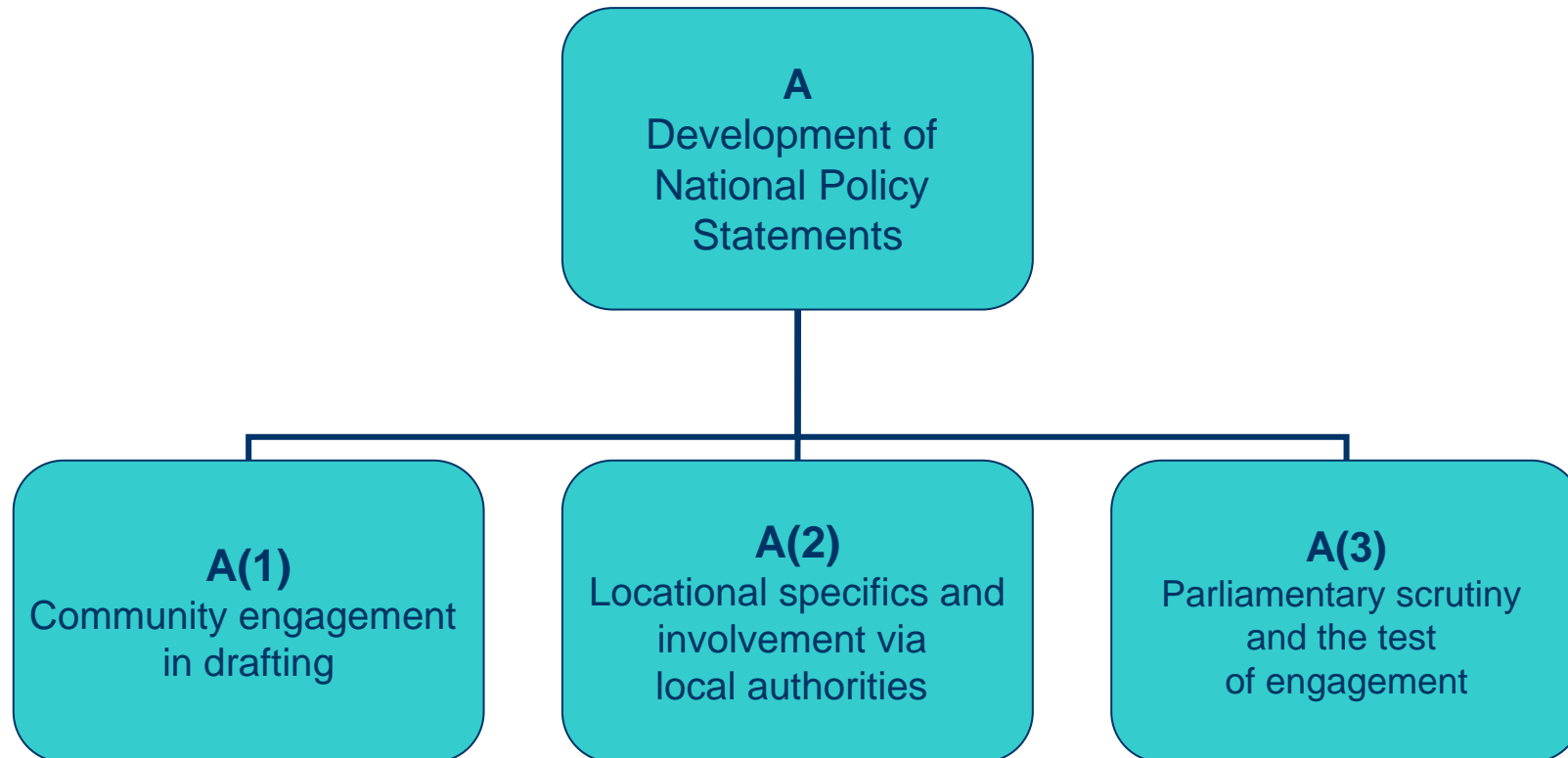
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# What emerged?





# Stream A: Developing National Policy Statements





# NPS subject matters and IPC jurisdiction

## *Energy*

- 15 Generating stations
- 16 Electric lines
- 17 Underground gas storage facilities
- 18 LNG facilities
- 19 Gas reception facilities
- 20 Gas transporter pipe-lines
- 21 Other pipe-lines

## *Transport*

- 22 Highways
- 23 Airports
- 24 Harbour facilities
- 25 Railways
- 26 Rail freight interchanges

## *Water*

- 27 Dams and reservoirs
- 28 Transfer of water resources

## *Waste water*

- 29 Waste water treatment plants

## *Waste*

- 30 Hazardous waste facilities

Plus other subjects,  
subject to review. The SoS  
can add additional subject  
matters by order under S14



# Consultation and Publicity

## 7 Consultation and publicity

- (1) This section sets out the consultation and publicity requirements referred to in sections 5(4) and 6(4).
- (2) The Secretary of State must carry out such consultation, and arrange for such publicity, as the Secretary of State thinks appropriate in relation to the proposal.  
This is subject to subsections (4) and (5).
- (3) In this section “the proposal” means –
  - (a) the statement that the Secretary of State proposes to designate as a national policy statement for the purposes of this Act, or
  - (b) (as the case may be) the proposed amendment.
- (4) The Secretary of State must consult such persons, and such descriptions of persons, as may be prescribed.
- (5) If the policy set out in the proposal identifies one or more locations as suitable (or potentially suitable) for a specified description of development, the Secretary of State must ensure that appropriate steps are taken to publicise the proposal.
- (6) The Secretary of State must have regard to the responses to the consultation and publicity in deciding whether to proceed with the proposal.



## **8 Consultation on publicity requirements**

- (1) In deciding what steps are appropriate for the purposes of section 7(5), the Secretary of State must consult –
  - (a) each local authority that is within subsection (2) or (3), and
  - (b) the Greater London Authority, if any of the locations concerned is in Greater London.
- (2) A local authority is within this subsection if any of the locations concerned is in the authority's area.
- (3) A local authority ("A") is within this subsection if –
  - (a) any of the locations concerned is in the area of another local authority ("B"), and
  - (b) any part of the boundary of A's area is also a part of the boundary of B's area.



# Government Commitments

- 7(4) –  
What persons will be ‘prescribed’ and hence must be consulted?
- When must they be consulted?  
(Front end loading)  
The Nuclear NPS example
- 7(5) and 8 –  
Commitment to engage in respect of locational specifics and to do so having sought views of local government
- Additional work required to ‘keep the implementation honest’



# Parliamentary Scrutiny

## **9 Parliamentary requirements**

- (1) This section sets out the parliamentary requirements referred to in sections 5(4) and 6(4).
- (2) The Secretary of State must lay the proposal before Parliament.
- (3) In this section “the proposal” means –
  - (a) the statement that the Secretary of State proposes to designate as a national policy statement for the purposes of this Act, or
  - (b) (as the case may be) the proposed amendment.
- (4) Subsection (5) applies if, during the relevant period –
  - (a) either House of Parliament makes a resolution with regard to the proposal, or
  - (b) a committee of the House of Commons makes recommendations with regard to the proposal.
- (5) The Secretary of State must lay before Parliament a statement setting out the Secretary of State’s response to the resolution or recommendations.
- (6) The relevant period is the period specified by the Secretary of State in relation to the proposal.
- (7) The Secretary of State must specify the relevant period in relation to the proposal on or before the day on which the proposal is laid before Parliament under subsection (2).



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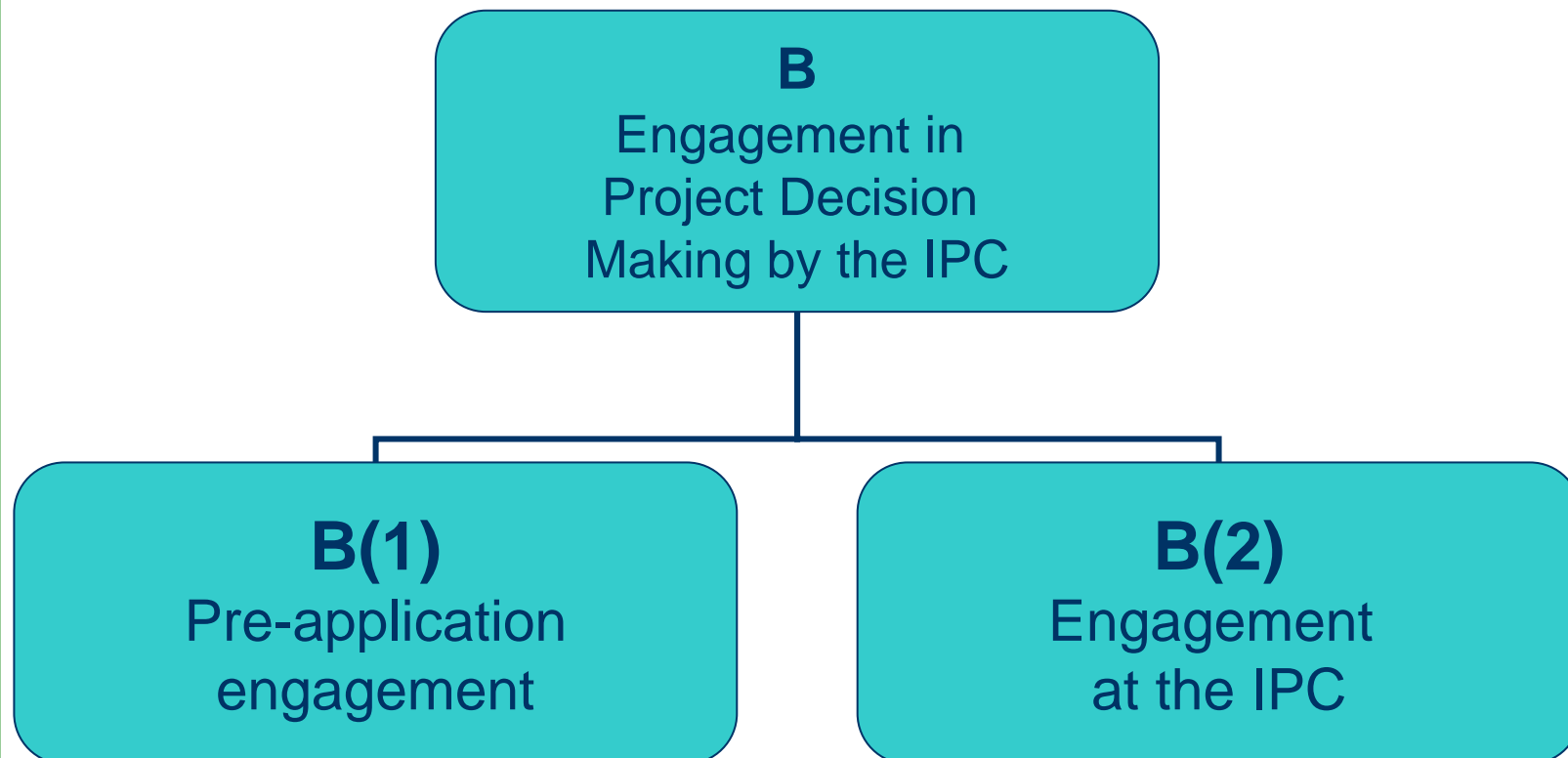
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# Government Commitments

- Capacity for parliamentary resolution or committee examination of draft NPS
- Prospect of calls for evidence
- Clearly committees will not hear all comers
- Again, devil lies in detail of committee procedure



# Stream B: Project Decision Making





# Duty to ‘front end load’ consultation

## **41 Duty to consult**

- (1) The applicant must consult the following about the proposed application –
  - (a) such persons as may be prescribed,
  - (b) each local authority that is within section 42,
  - (c) the Greater London Authority if the land is in Greater London, and
  - (d) each person who is within one or more of the categories set out in section 43.
- (2) The Commission may issue guidance about how to comply with the duty under subsection (1).
- (3) The applicant must, in discharging that duty, have regard to any guidance under subsection (2).



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- CI 41, 42 and 43–  
Applicant must pre-consult with
  - Prescribed persons
  - Affected local authorities
- The timetable is very short (28 days)



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- CI 88 –  
Examination is primarily a written process  
But...
- CI 89 –  
Examining authority may conduct hearings and invite parties



# Rights before the Commission

- CI 54 –  
Prescribed persons notified of accepted applications
- Representations to be made in 28 days
- CI 58 –  
Commission may seek local impact reports from local authorities



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# Some good, but clarity needed...

- RTPI strongly welcomes the commitment to front end loaded engagement
- But – the devil is in the detail
- Many ‘how’ questions will determine whether the proposed engagement routes are substantial
- Again, we need to engage in secondary legislation and guidance preparation



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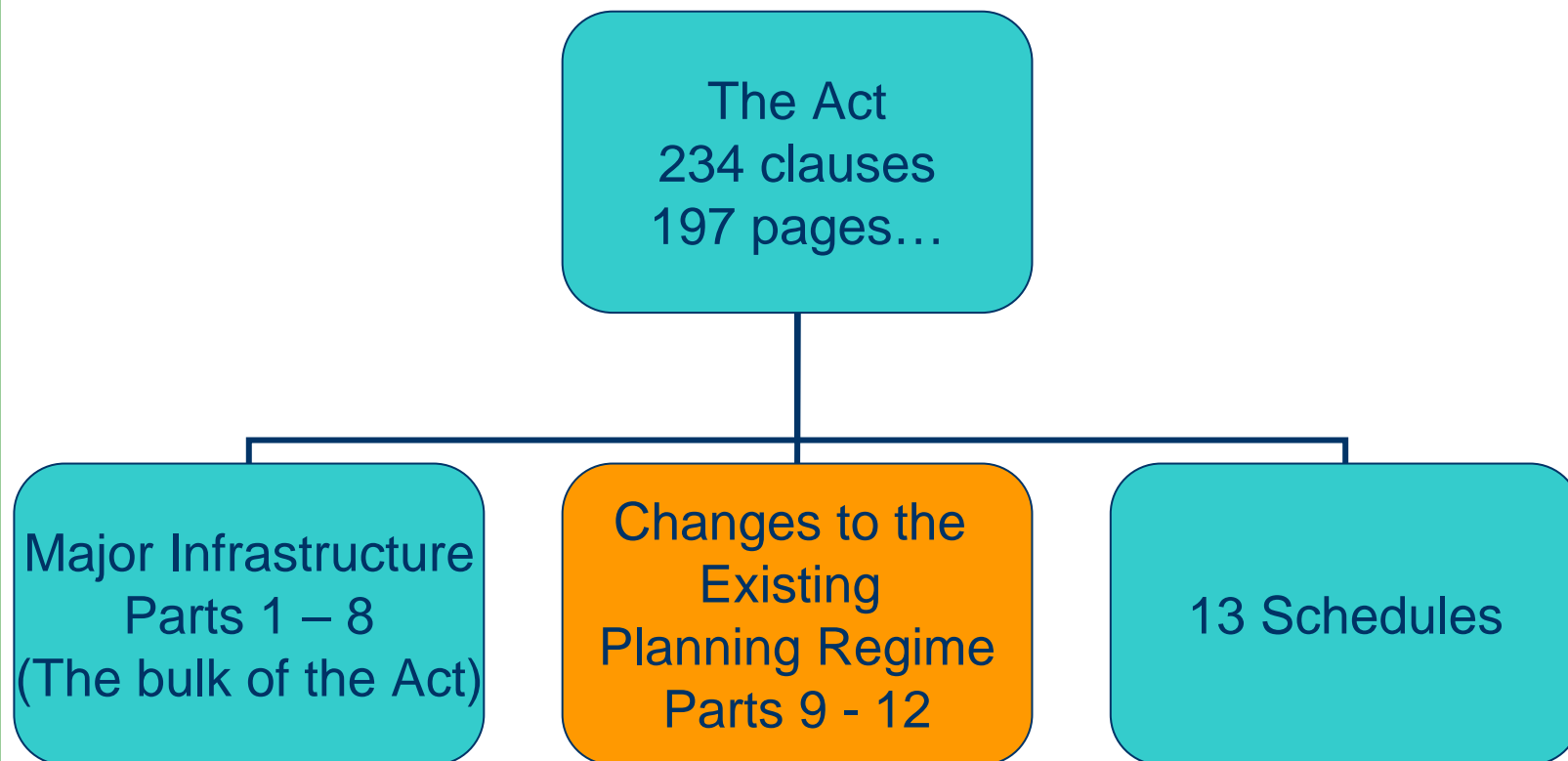
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# Town and Country Planning

- Minor changes
- Community Infrastructure Levy
- Removal of Local Member Review Bodies



# TCP Changes





# Minor Changes

## *Regional functions*

176 Delegation of functions of regional planning bodies

## *Local development*

177 Local development documents

## *Climate change*

178 Development plan documents: climate change policies

## *Correction of errors*

179 Correction of errors in decisions

## *Validity of strategies, plans and documents*

180 Power of High Court to remit strategies, plans and documents

181 Power of High Court to remit unitary development plans in Wales

## *Determination of applications*

182 Power to decline to determine applications: amendments

## *Planning permission*

183 Local development orders: removal of requirement to implement policies

184 Compensation where development order or local development order withdrawn

185 Power to make non-material changes to planning permission

## *Validity of planning decisions*

186 Validity of orders, decisions and directions

## *Trees*

187 Tree preservation orders

188 Existing tree preservation orders: transitional provision



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# Community Infrastructure Levy

- From Planning Gain to Infrastructure Funding
- Some history
- The foundations of the RTPI position
- Why a levy and not a tax?
- Current thoughts on CIL implementation



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# The 1427 Legislation

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## The 1427 Legislation

- ‘there is no novelty in proposals to secure for the community at least a share in the values it has itself created. An Act of 1427 sought to recover increases in the value of property attributable to public expenditure on works for sea defence ....’
- White Paper on ‘The Land Commission’ [Cmnd. 2771, Sept. 1965]



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# Delivering the Thames Embankment for London





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# Delivering the Thames Embankment for London

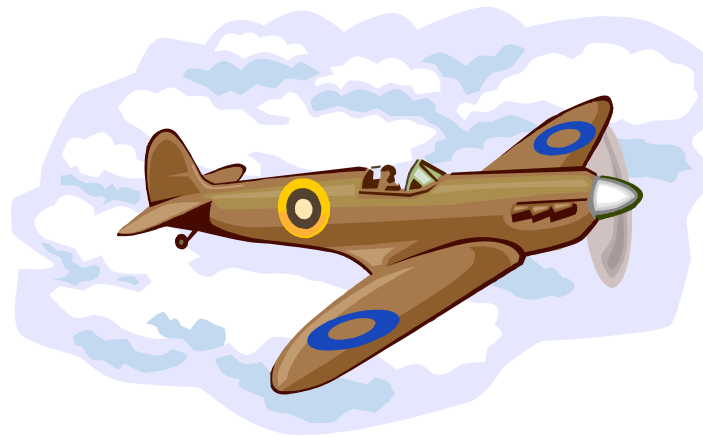
- Palmerston, Bazalgette and the Metropolitan Board of Works, 1864 to 1870
- 12 acres of new land
- Flood defences, drainage and rail transport for London
- Who benefits
- Who pays



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# Our New Planning System: Nationalising Land Value

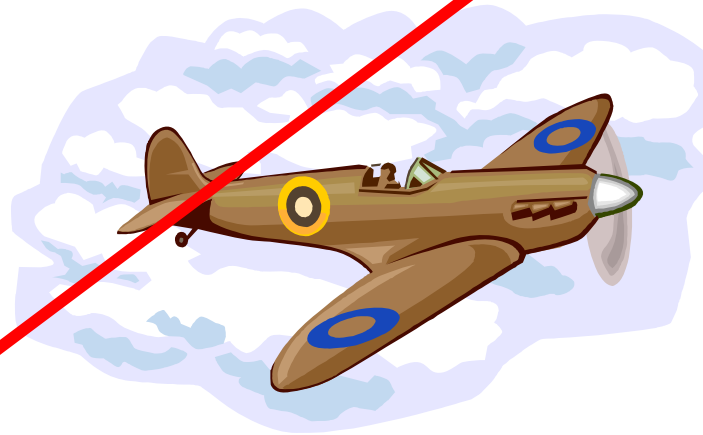




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# Our New Planning System: Nationalising Land Value





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# The Community Land Act: Taxing Planning Gain



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# The Community Land Act: Taxing Planning Gain

- Implementing the 1975 Act



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# Making Section 52 Work for You





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## Making Section 52 Work for You

- Planning Agreements under the TCPA 1971



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# Planning Obligations Section 106



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# Planning Obligations Section 106

- The purposes of agreements under the TCPA 1990



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# The Planning Gain Supplement



# The Planning Gain Supplement

- Providing greater certainty around planning obligations
- Taxing the uplift in land value due to the grant of planning permission
- Providing the infrastructure for sustainable communities



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# RTPI Policy Foundations





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**THE ROYAL TOWN PLANNING INSTITUTE**

**Planning-Gain Supplement: a consultation**

A response to HM Treasury, HM Revenue and Customs and the Office of the Deputy Prime Minister

**Introduction**

- 1 The Royal Town Planning Institute (RTPI) is the professional body for planners. It has over 19,000 members working in every aspect and sector of planning. The RTPI's members are at the forefront of securing agreements under section 106 and of striving for the achievement of sustainable development. The RTPI is a learned and a learning body and, as seen below, has had a long involvement in the whole question of betterment. More recently, it has put forward suggestions in 2000 for a tariff-based approach to address some of the problems of the current system.
- 2 The RTPI fully supports the concept of, and need for, using the changes in the value of land in order to provide the infrastructure to support the creation of mixed and sustainable communities and to achieve sustainable development. Over sixty five years ago, a Town Planning Institute Committee on Compensation and Betterment concludes that 'we are satisfied that essential planning and, particularly, re-planning cannot be carried out effectively under the existing legislation regarding compensation and betterment.' As the White Paper on 'The Land Commission' [Cmnd. 2771, Sept. 1965] pointed out, 'there is no novelty in proposals to secure for the community at least a share in the value of property attributable to public expenditure on works for sea defence ....'.
- 3 It is one of the key shortcomings of the current planning system that, despite a number of attempts, no satisfactory system of capturing value has been implemented. The RTPI, therefore, very much welcomes the fact the current Government is keen to devise an acceptable, workable and effective system to achieve this. All the comments we make below should be read within the context of a clear acceptance of the principle of using land or development value to support sustainable development.
- 4 Additionally, these comments should not be taken as indicating a belief that the current system of Sec. 106 agreements is fully effective either in raising the necessary funding in all cases or in delivering effective and transparent decision making and certainty. However, there is evidence that this system is starting to work more effectively at a time when the Government intends to scale back its operation.

February 2006



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The RTPI fully supports the concept of, and need for, using the changes in the value of land in order to provide the infrastructure to support the creation of mixed and sustainable communities and to achieve sustainable development. Over sixty five years ago, a Town Planning Institute Committee on Compensation and Betterment concludes that ‘we are satisfied that essential planning and, particularly, re-planning cannot be carried out effectively under the existing legislation regarding compensation and betterment.’ As the White Paper on ‘The Land Commission’ [Cmnd. 2771, Sept. 1965] pointed out, ‘there is no novelty in proposals to secure for the community at least a share in the values it has itself created. An Act of 1427 sought to recover increases in the value of property attributable to public expenditure on works for sea defence ....’.

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# PGS February 2006

- Will significant additional revenue accrue?
- Breaking the link between the infrastructure needs of a community that are generated by a new development and the provision of that infrastructure before the development commences
- Concerns about revenue distribution in practice – not least in relation to devolved administrations
- PGS was perceived as a green field tool when eg most housing is built on brown field sites
- Previous attempts at capturing and returning the uplift in value failed not only because of political differences between administrations but because of their complexity and difficulty in delivering the objectives of those schemes
- +
- Very widespread professional scepticism



## PGS: February 2006

- A policy dilemma
- In principle support from many members for some measure to capture the uplift in value due to the grant of planning permission
- Concerns about the effectiveness and consistency of application of s 106 obligations appeared valid
- Agreement that significant housing and other growth requires co-ordinated infrastructure investment... but
- The proposed method will not work



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**PLANNING GAIN SUPPLEMENT  
RESPONSE IN PRINCIPLE &  
POSSIBLE OPTIONS FOR CHANGE**

Changes to Planning Obligations: a Planning Gain Supplement Consultation, DCLG 2006  
Paying PGS: a Planning Gain Supplement Technical Consultation Paper, HMRC 2006  
Valuing Planning Gain: a Planning Gain Supplement Consultation Paper, HMRC 2006



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# PGS Submission: February 2007

- Major concerns about potential unlooked for effects of taxation proposals
  - Delay
  - Investment disincentives
  - One size fits all
  - Infrastructure funding gaps
- Made partnership with Halliwells – Taxation Legal Advisors

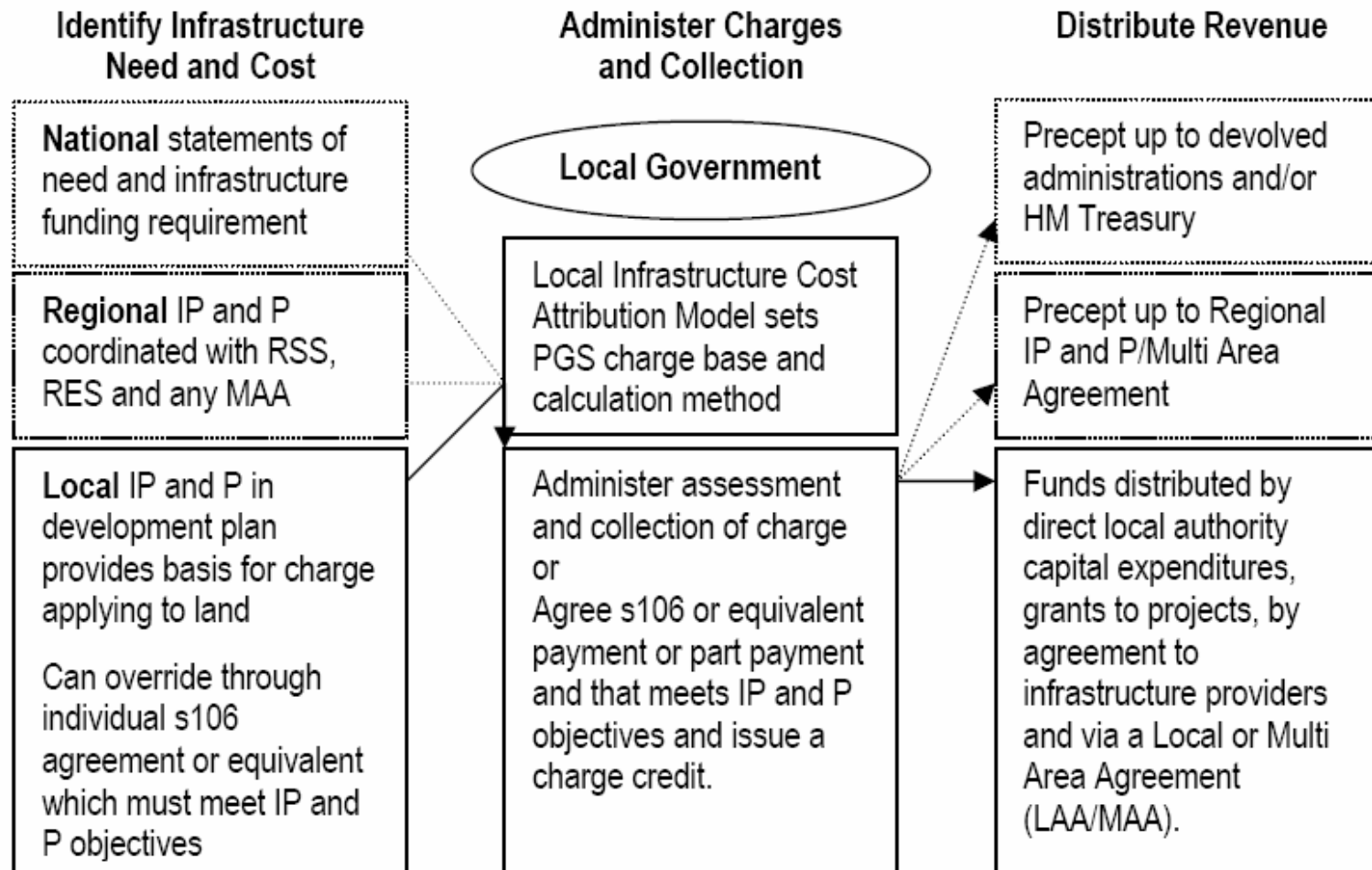


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# From PGS to Tariff: February 2007

- If RTPI supports infrastructure delivery through planning gain
- But does not support PGS
- What next
  
- Tariffs???
  
- Be productive: suggest a working alternative





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## But why tariffs...?

- Milton Keynes
- Ashford
- EPISP
- +
- Overseas practice (but I'm going to look at this first)...



# How might this work?

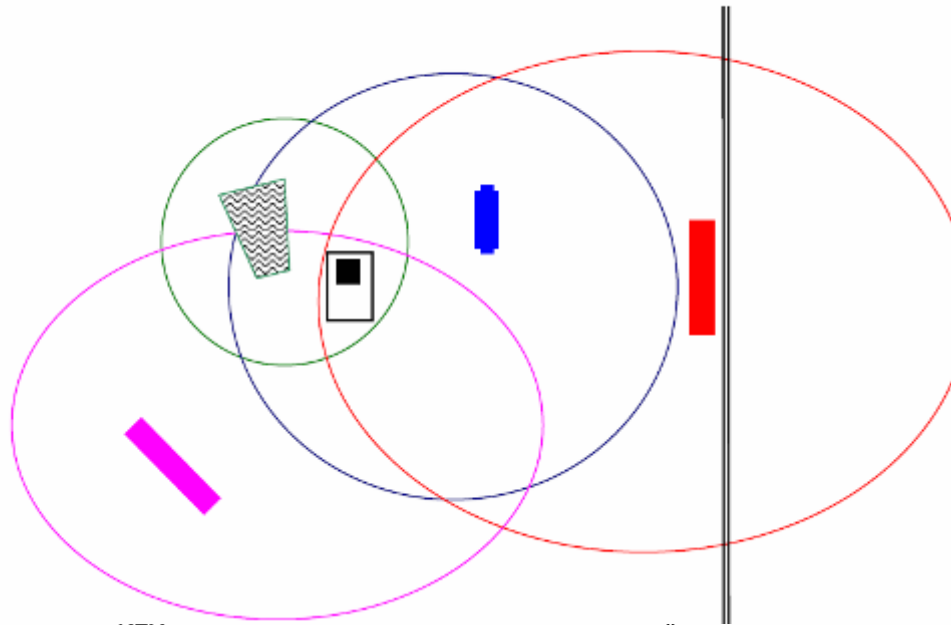
- Theoretical and modelling underpinning for District-wide Infrastructure Charging Plans (ICP)
- Local infrastructure plan and programme
- Attribution model (ICAMs)
- Micropayments from small developments far below the threshold for s106, now contributing to incremental increases in infrastructure demand

## How Does an ICAM Work?



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**KEY**

All indicated infrastructures and catchment areas are notional.



The 'development site' subject to PGS charge, notionally for residential use.



A school site, benefiting from PGS drawdown to provide extra accommodation, and the 'catchment area' within which residential development is charged for a proportion of this.



A local park, benefiting from PGS drawdown to improve recreational facilities, and the 'catchment area' within which residential development is charged for a proportion of this.



A community hall to be constructed using PGS drawdown, and the 'catchment area' within which residential development is charged for a proportion of this.



A station to which access improvements are to be provided from PGS drawdown, and the 'catchment area' within which residential development is charged for a proportion of this.

Infrastructure type	Cost	Location/polygon	Charge basis
High school	\$4m	Xxx xxx	\$X/sqm in polygon +decline curve
Detention basin			
Aged care facility			



# The Planning Act: Part 11

- Cls 199 to 217

## PART 11

### COMMUNITY INFRASTRUCTURE LEVY

199	The levy
200	The charge
201	Joint committees
202	Liability
203	Amount
204	Charging schedule: examination
205	Charging schedule: approval
206	Charging schedule: effect
207	Appeals
208	Application
209	Collection
210	Enforcement
211	Compensation
212	Community Infrastructure Levy: procedure
213	Secretary of State
214	CIL regulations: general
215	Relationship with other powers
216	Community Infrastructure Levy: amendments
217	Community Infrastructure Levy: repeals



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## The Community Infrastructure Levy



[www.communities.gov.uk](http://www.communities.gov.uk)  
community, opportunity, prosperity



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# Key Benefits

- Building on the strengths of tariff experience (Milton Keynes, Horley [Reigate & Banstead], City of London, Warrington...)
- Supporting the implementation of Infrastructure Planning and new PPS 12
- Enabling delivery of regional and sub-regional infrastructure through RSS-SRS, sub-regional partnerships, MAAs etc...
- Equity: capturing value for infrastructure contributions from schemes that fall below the scale necessary to warrant individually negotiated s 106 agreements



# Key Questions

- Payment falling due?  
on 'commencement' – but note clause enables regs to support instalment payments
- The amount?  
criteria including infrastructure need/cost and increase in land value due to grant of planning permission: **dynamic**
- The viability threshold?  
where does this sit in the post credit-crunch land-market
- Viability effects?  
eg How do we manage affordable housing contributions in the post CIL world? - Clause enables regs to include these but current government policy is not to use this power



# Key Questions

- Delivery
  - How much security of delivery should a CIL charging authority provide and a CIL payee receive?
  - At what point (if any) should a CIL payee be able to obtain cessation of payment or indeed any refund for non-delivery of infrastructure?
- The concept of the CIL Plan as ‘objective based’?



# RTPI Position

- Support for the underlying principles of CIL
- A sense of still needing the detail...
  - Plan led: how?
  - CIL and regions/subregions/RSS-SRS/MAAs
  - CIL and local infrastructure/SCS/LAA/LDF
  - Mandatory or not?
  - Preparation, soundness and review: how?
- The **Regulations**
- Critically important that this reform is implemented soundly



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# Local Member Review Bodies

- A successful RTPI Campaign
- They have been removed from the Act



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YOUR LOCAL PAPER 2009

## HOMEOWNER OUTRAGE AT PLANNING APPEALS PROCESS



"I applied to my local council for planning permission to extend my house. I had a bit of a row with the conservation officer. Slightly really – we didn't see eye to eye on the design. Later my husband rang the council's planning office and they said the application had been refused. It was quite a shock. We were certain we'd met all the relevant criteria. He asked whether we could appeal. The person on the phone said yes, but the appeal would be heard by the council... How can we possibly expect a fair and impartial hearing from them when they rejected the proposal in the first place?"

Outraged local resident

**Don't let this story appear  
in your local constituency paper.**

### ACT NOW TO AMEND THE PLANNING BILL

Unsuccessful applicants for planning permission will lose the right to appeal against planning refusal to an impartial body if clauses 155 to 159 of the Planning Bill pass unamended into law. You can stop this from happening.

Currently appeals against council planning decisions are handled by the Planning Inspectorate and considered by an independent, impartial and expert inspector whose decision is guided by the council's planning policy. This system works well.

The Planning Bill proposes to replace this with 'Local Member Review Bodies', which would be presided over by local councillors. That means appeals would be heard by the same organisation which rejected the original application.

The Royal Town Planning Institute and Royal Institute of British Architects think that's wrong.

It will undermine the independence and impartiality of the appeals process and destroy the confidence applicants have in the fairness of the system.

Please ensure this proposal does not pass into law.

To discuss this issue further and explore possible alternatives please contact Rymd Smith, Director of Policy and Communications at the RTPI on 020 7929 9474 or at [policy@rtpi.org.uk](mailto:policy@rtpi.org.uk)



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# Conclusions

- The Planning Act 2008 is legislation that achieves necessary objectives in principle
- The implementation stage – regulations and guidance – are still utterly critical to the success or failure of the legislative project
- RTPI will remain vigilant and active to influence these processes