

**PLANNING ACT 2008  
CONSULTATION ON EXAMINATION PROCEDURES FOR  
NATIONALLY SIGNIFICANT INFRASTRUCTURE  
PROJECTS**

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A response by the Royal Town Planning Institute to  
Consultation on Examination Procedures for Nationally Significant Infrastructure  
Projects  
October 2009

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**RTPI**

mediation of space · making of place

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# 1. Introduction

The Royal Town Planning Institute is the leading professional body for spatial planners in the United Kingdom. It is a charity with the purpose to advance the art and science of town planning for the benefit of the public as a whole. It has over 22,000 members who serve in government, local government and as advisors in the private sector.

The response has been formed drawing together internal consultations and the results of discussions with members.

## 2. Response in Principle

The RTPI has been positively involved in advising the government on how nationally significant infrastructure projects (NSIPs) should be progressed, both before and after submission of actual proposals. The Institute recognises that in formulating the examination procedures, DCLG has sought to make use of existing and emerging best practice from other planning and similar regimes.

A separate response to this consultation has been submitted by Planning Aid. While Planning Aid is a part of the Institute, its function and constitution as a charity providing free planning advice to individuals and communities is separate from the general function of the RTPI. Nonetheless, the Institute wholly supports Planning Aid's response and commends to DCLG the comments and suggestions made by them.

The Institute's response to earlier consultations on pre-application procedures (jointly submitted with the Institute of Environmental Management and Assessment) focused on (a) integrating NSIP application procedures fully with EIA procedures, and (b) proposing that procedures were built around an ICT-based rather than a paper-based system. We would continue to promote both of these aims in the delivery of examination procedures, and would welcome further opportunities to discuss how this might be achieved in practice.

The RTPI notes that while the NSIPs process applies to both England and Wales, the IPC does not have the power to determine matters that are devolved to the Welsh Assembly Government. As we understand it, this means that not only are certain types of infrastructure going to be subject to different consent regimes in England and Wales, but also, for example, that the IPC is not empowered to grant consents affecting listed buildings or conservation areas in Wales. Guidance will need to make the distinctions between the two jurisdictions clear, and address cross-border issues.

### **3. Section One:**

#### **Title: Response to Consultation Questions**

*CQ1: Do you agree that the draft rules provide a comprehensive set of procedures that explain how the provisions contained in the Planning Act on examinations would work in practice? If not, what additional points do you believe should be added?*

1. The Rules appear to be comprehensive, showing similarity to rules/regulations for established examination procedures in other regimes.
2. The RTPI is concerned that Rules such as 3(2) or 10(8), which allow for late representations that “may” be disregarded, could be open to misinterpretation or regarded as suspect. The guidance (see paragraph 32) does not elaborate on this. Late representations should either always be disregarded, in order to protect the interests of those who have made the effort to submit on time, or guidance should be given on when late representations may be acceptable, for example when new evidence has come to light at a later stage. Failure to provide guidance on this issue may result in accusations that some representations favouring a particular viewpoint have been accepted, whereas opposing views have not. It must always be remembered that individuals or organisations who have opinions may choose not to submit them if the deadline has already passed; such stakeholders will rightly be aggrieved if late submissions are accepted without prior indication.
3. The Rules pay a great deal of attention to circumstances under which “additional copies” of documents may be requested; the RTPI believes that consideration should be given to framing Rules and guidance on the assumption that electronic forms of communication should be the norm in the 21<sup>st</sup> century. The Rules requiring that respondents “must” submit further copies of documents on request are not specific as to the penalty for respondents not so doing – for whatever reason; the RTPI would have serious concerns if the penalty for non-submission was to be that a respondents’ evidence was disregarded.
4. The Rules should be consistent as to the use of “Commission” or “examining authority” to describe the IPC. Future-proofing would suggest that “examining authority” is the more appropriate term.

*CQ2: What assessors would be acceptable to assist the examining authority to consider the relevant issues. To what extent would independent regulators, for example, the Health and Safety Executive, be suitable?*

5. The RTPI agrees that independent regulators such as the HSE would be suitable assessors. Some issues may not be covered by a recognised independent body, however, and careful selection of expert consultancies or charitable bodies will be necessary to avoid conflicts of interest.
6. The RTPI strongly supports the explicit recognition of Planning Aid as the default body to assist the examining authority with resolving issues relating to the adequacy or robustness of community engagement procedures.

*CQ3: Are there any inconsistencies or unintended consequences in the rules as drafted?*

7. As with all complex procedures, there is the potential for the Rules to give a seemingly unfair advantage to the highly-resourced development industry. It will be essential for the examining

authority to be sensitive to the very different proficiencies of local communities and individuals, as the best Planning Inspectors often are, for example. Plain English guidance and concise, jargon-free summaries will be essential tools for examiners, as will the resources of Planning Aid.

8. See also response to CQ1 above.

***CQ4: What further action, if any, should Government take to facilitate the effective running of the examination?***

9. The RTPI reiterates its suggestion made in the initial response to the consultation on pre-application procedures that the examining authority sets up a comprehensive web-based portal to manage information relating to the proposal and the examination in an accessible manner.
10. We also support Planning Aid's request that communities are fully apprised of how they can contribute to the examination early on in the process; this could include targeted training. Experience of pre-examination meetings for Regional Spatial Strategy examinations, for example, indicates a tension between seasoned professionals, who require minimal information focusing on the examination in hand, and less experienced individuals and amenity groups, for example, who need more coaching in order to optimise their contributions and reduce disenchantment with the process.

***CQ5: Do you think transcribers, or other less costly methods of documenting evidence (e.g. audio/video recording) should be used during IPC examinations?***

11. The RTPI considers that cost should be a secondary consideration to accuracy of documentation and accessibility of the document. Audio visual solutions can only ever be part of the package as transcripts, or at least summaries, of these will be preferred by most users.

***CQ6: Do you agree with the list of statutory parties? Are there any others which you feel should be included?***

12. Apart from noting that the regulations/rules relating to "statutory parties" and "interested parties" are impenetrable almost to the point of absurdity (which makes paragraphs 27-28 of the Guidance indispensable), the RTPI has little to add, other than to recommend that the list of "statutory parties" should be compared with the list of "statutory consultees" for pre-application procedures, and any inconsistencies carefully justified.

***CQ7: Is the information required to be stated in the registration form appropriate? If not, what omissions or additions would you make?***

13. The RTPI considers that the information required by Registration 4 is relevant and consistent with other similar regimes.
14. However, the success of the process by which representations are received and processed must not be compromised by an unnecessarily rigorous adherence to bureaucratic rules. Many individuals are suspicious of "prescribed forms" and of requests for personal information. While it would of course be inappropriate to have a free-for-all with anonymous or spuriously attributed representations, procedures should take people's willingness to engage with bureaucracy into account.
15. The prescribed form (or accompanying notes) must explain why the information is required (i.e. what the actual consequences of not supplying the information would be) and what measures are in place to protect individuals' identities.

16. There should be a prescribed mechanism by which representations received by the deadline, but not accompanied by a fully completed Registration Form (or any form at all), can be provisionally accepted, and the respondent requested to provide the information. Consideration should be given both to (a) assisting individuals with completing a form based on information they may supply in other formats, and/or (b) accepting representations providing all of the required information even if not given on the prescribed form.

***CQ10: Do you agree that the draft guidance, when combined with the Act and draft rules, would provide a firm principles-based framework for how the IPC should conduct and manage examinations into applications for NSIPs? If not, what changes should be made?***

17. The RTPI considers that the apparent purpose of the guidance – to provide a framework for how the IPC should operate – is too narrow, and the fact that it needs to be read “alongside” quite a significant raft of legislation makes it of limited value to other users of the NSIPs process.
18. Very little attention has been paid by DCLG to producing accurate, definitive, general purpose guidance on any of the “new” planning regimes since the 2004 Act. While it is understood that this has often been delegated to other bodies, such as PAS, experience has shown that production of such guidance often lags behind necessity, meaning that independent bodies – including planning consultancies – provide their own guidance, and differences of emphasis and misunderstandings emerge between what was originally intended by DCLG, and what finally appears in the public guidance, if, indeed, any public guidance ever appears at all.

***CQ11: Are there any ‘have regard to’ requirements on decision makers that have been missed from the list in this statutory instrument?***

19. The RTPI considers that it is essential that a specific requirement is made to have regard to the development plan for the area affected by the proposal. It may, of course, be the case that the principle of a particular proposal is not recognised by the local development plan, but there is precedent in planning legislation (section 38(6)) for development plan policy to be set aside for certain matters. However, it is absolutely critical that decision makers (a) have regard to the policy before choosing to set it aside, and justifying their reasons for setting it aside, and (b) have regard to development plan policies on matters other than the principle of development, including patterns of proposed development in the area, and details such as design, noise mitigation, etc.
20. Any aspect of the NSIP that may be ancillary or otherwise subservient to the main project, such as access roads, supporting services, etc., should very much be guided by the development plan, even if the main project itself is not.
21. With regard to regulation 3, the RTPI finds the expression “have regard to the desirability of...” somewhat dissatisfactory, although recognising the use of this expression elsewhere in legislation and guidance. It is always desirable to protect/preserve/enhance a listed building, conservation area or scheduled ancient monument, otherwise they would not be so designated. In determining an application affecting such heritage assets, the decision-maker should have regard to the impact of the proposal on the significance of the asset (in line with updated thinking – see draft PPS15). Guidance should be issued on how the decision-maker should assess this, and this should include the presumption that where there are options, proposals should be favoured that have no harmful impact on such assets. Only where options are limited should “desirability” come into play, and in such circumstances, the decision-maker should balance the desirability of protecting the heritage asset with the desirability of providing the infrastructure in this location.

22. See also the note regarding different regimes in England and Wales set out in section 2.