

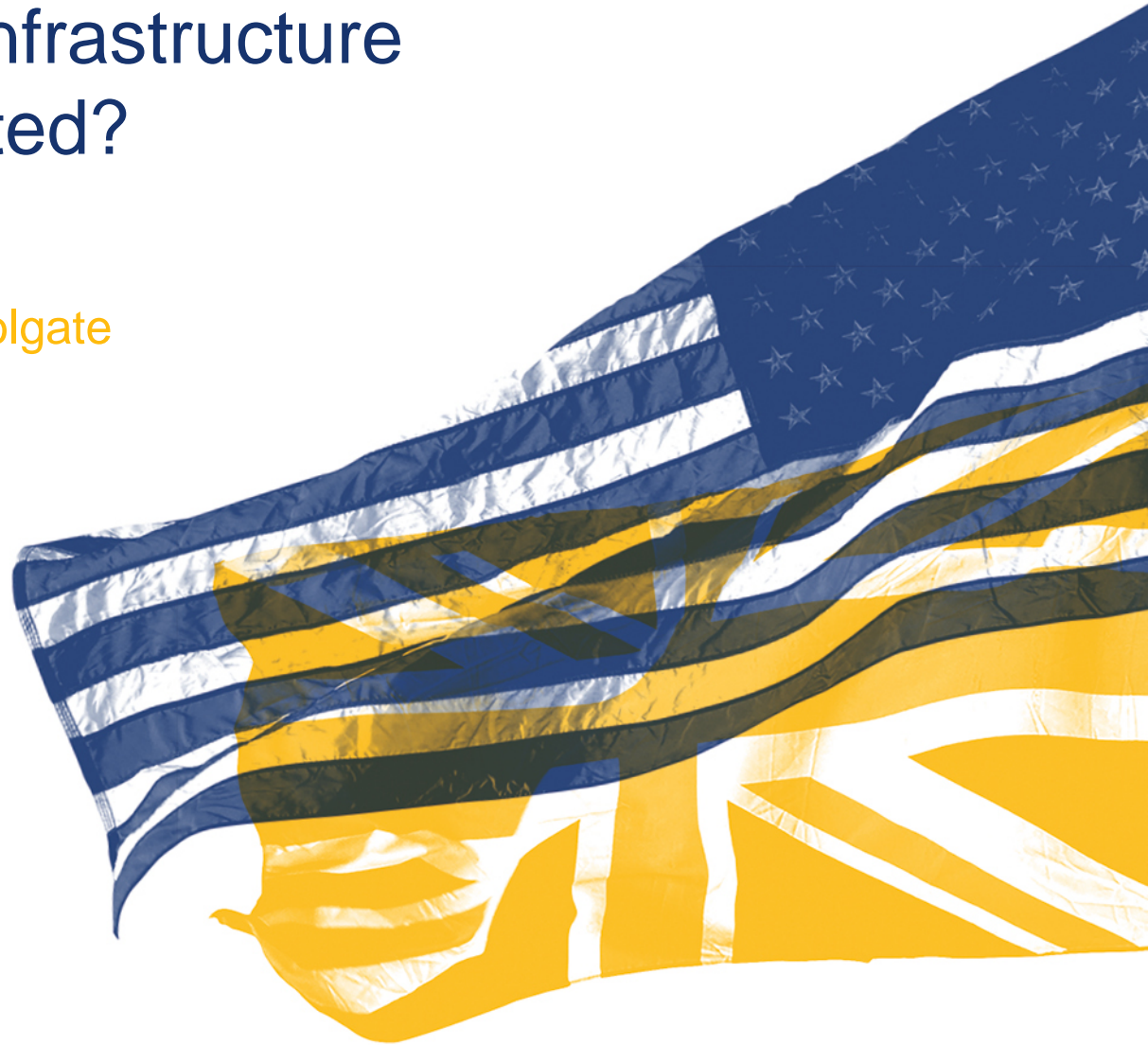
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How are Major Infrastructure Projects consented?

Kevin Gibbs & Jennifer Holgate

21 May 2019



Planning and Infrastructure Team

One of the largest P&I teams in the UK

- 5 offices
- 30 members
- Major infrastructure projects
- Renewable energy
- Development Schemes
- Residential and Housing
- Transport

Introduction

1. Overview of Planning Act 2008
2. Schemes in the South West
3. Procedure for securing consent
4. Pros and Cons
5. Compulsory Acquisition
6. Local Authority Input
7. Key Issues for Consideration
8. Research Project – Choices for Planning

Overview Planning Act 2008

- **Energy** – generating stations (50MW) and connections, gas facilities, storage, and pipelines
- **Transport** – roads, railways, harbours, airports, rail freight interchange
- **Water** – dams, reservoirs, transfer
- **Waste Water** – plants, storage, transfer.
- **Waste** – hazardous, radioactive geological storage
- **Business and Commercial** – major office, warehousing manufacturing, research and development facilities, tourism and leisure schemes
- **Retail and Housing?**

Basis of Decision Making

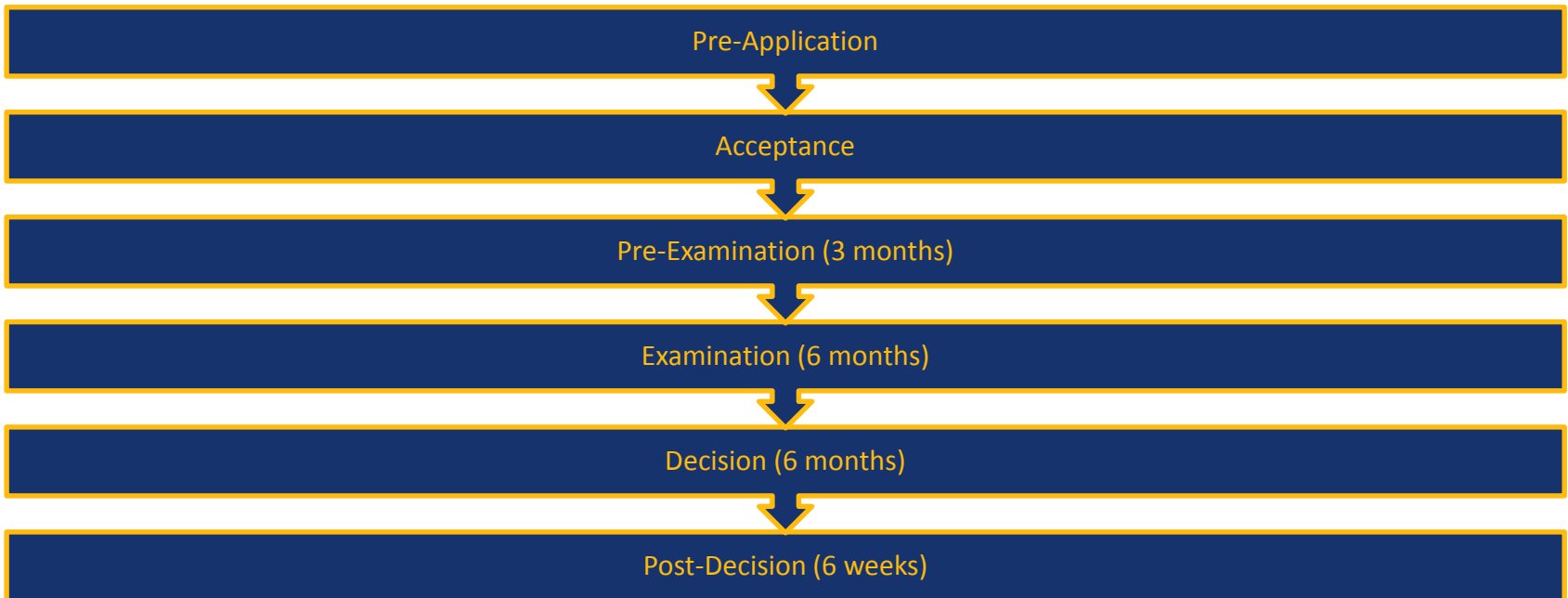
- **12 designated National Policy Statements (NPS)**
- **2 Draft NPSs**
- **NPS** – provides basis for need and criteria to determine application
- **Exception** – Business and Commercial
- **Comparison with NPPF**

Examples of current DCO Projects in the South West

- A30 Chiverton to Carland Cross Scheme – Highways England, Mid Examination
- A30 Temple to Higher Carblake Improvement – Cornwall Council, consent granted Feb 2015
- Bere Alston to Tavistock Railway Reinstatement and Associated Trails – Devon County Council, no timetable
- West Somerset Tidal Lagoon, no timetable
- Hinkley Point C, its Connection (2016, NGET) and material change application
- Portishead Branch Line Metrowest Phase 1

Summary of Procedure

- Front loaded, pre-application
- Fixed time periods for final 3 stages

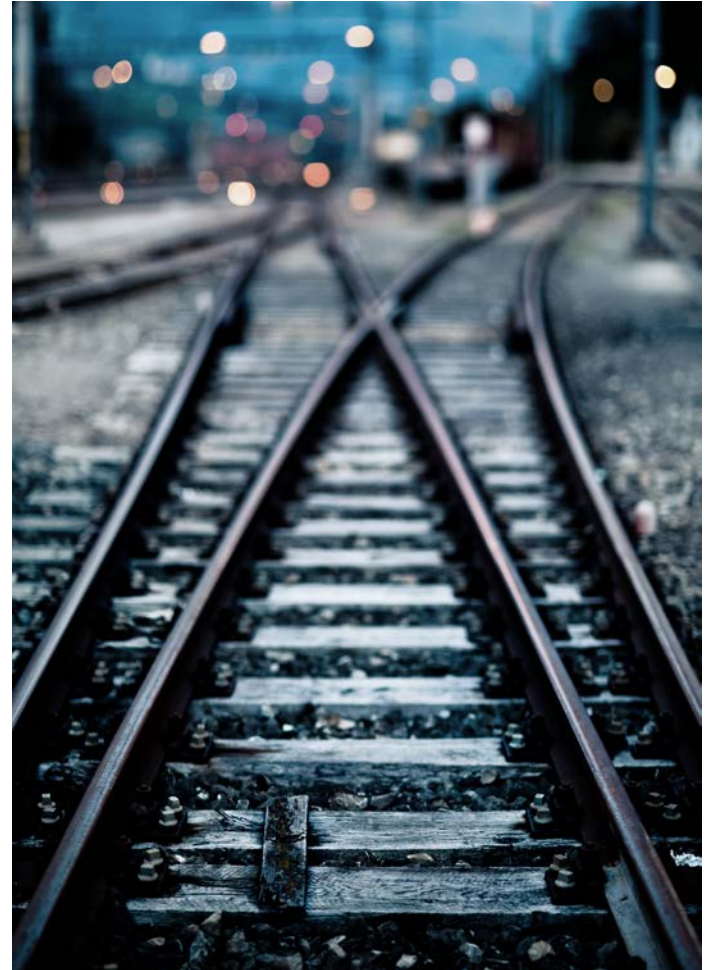


Consenting Regimes

- Important to note a number of differences between England, Wales and Scotland
- No DCO regime in Scotland, more limited regime in Wales. Developers used to one part of Island may not understand practices elsewhere
- Internationally entirely different consenting regimes – particularly difficult in getting investors "on board" with bankability vs cost and consenting main barrier to market entry

The Development Consent Order Process: Legislative and Policy Framework

- Planning Act 2008
- Statutory Instrument
- Regulations
- 8 DCLG Guidance Notes
- 17 PINS Advice Notes
- National Policy Statements
- Nationally Significant Infrastructure Projects
- Front loaded consultation
- Open, structured, decision making process

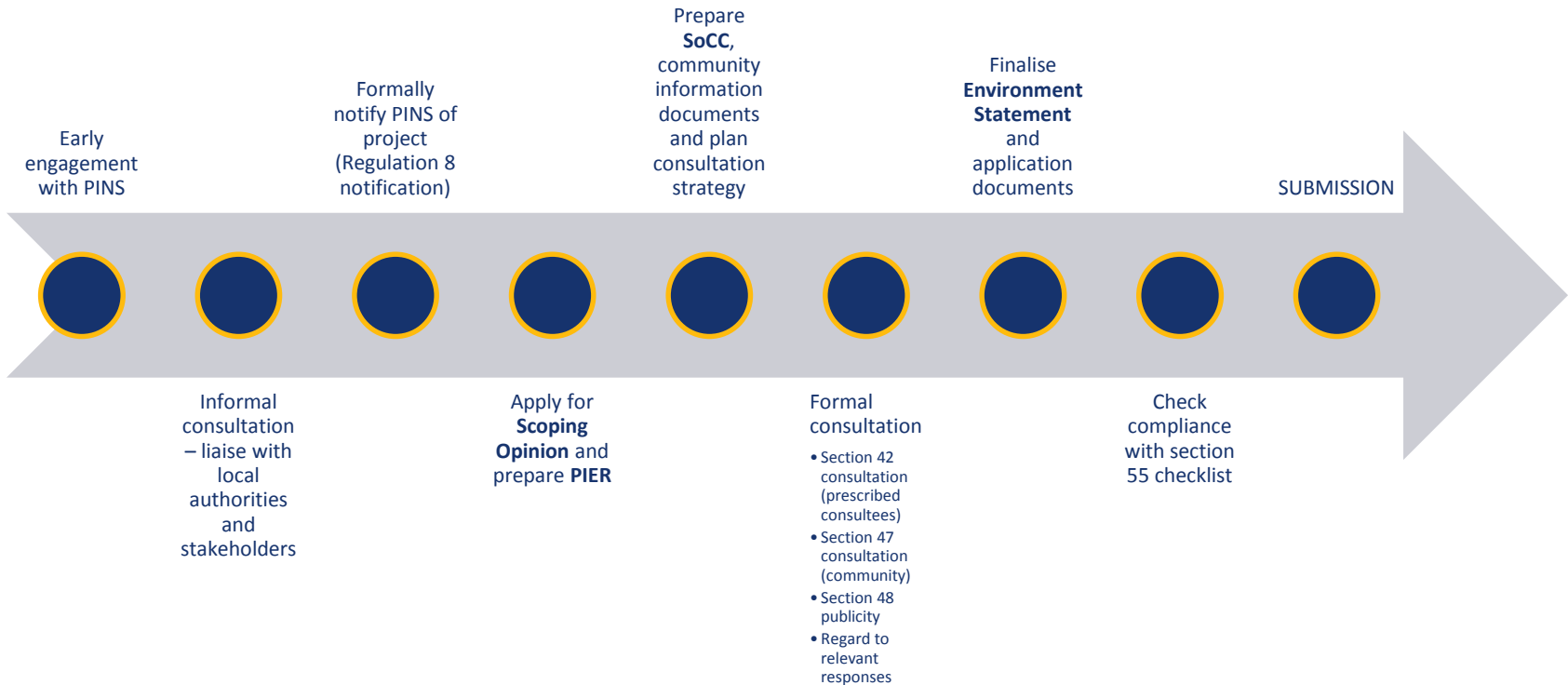


Key documents

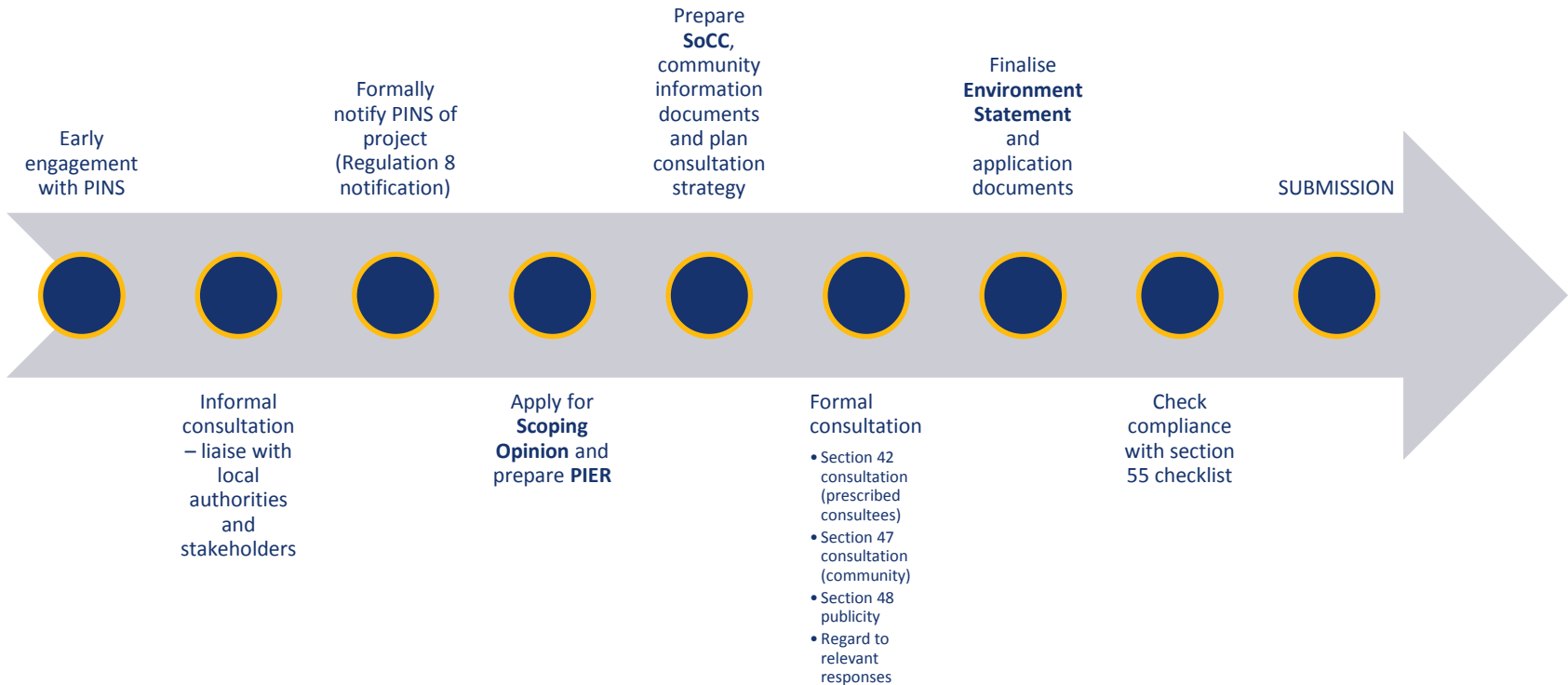
- Scoping Opinion
- Preliminary Environmental Information Report (PEIR)
- Statement of Community Consultation (SoCC)
- Environmental Statement (ES)
- Statement of Common Ground (SoCG)
- Local Impact Report (LIR)
- Section 106 agreement



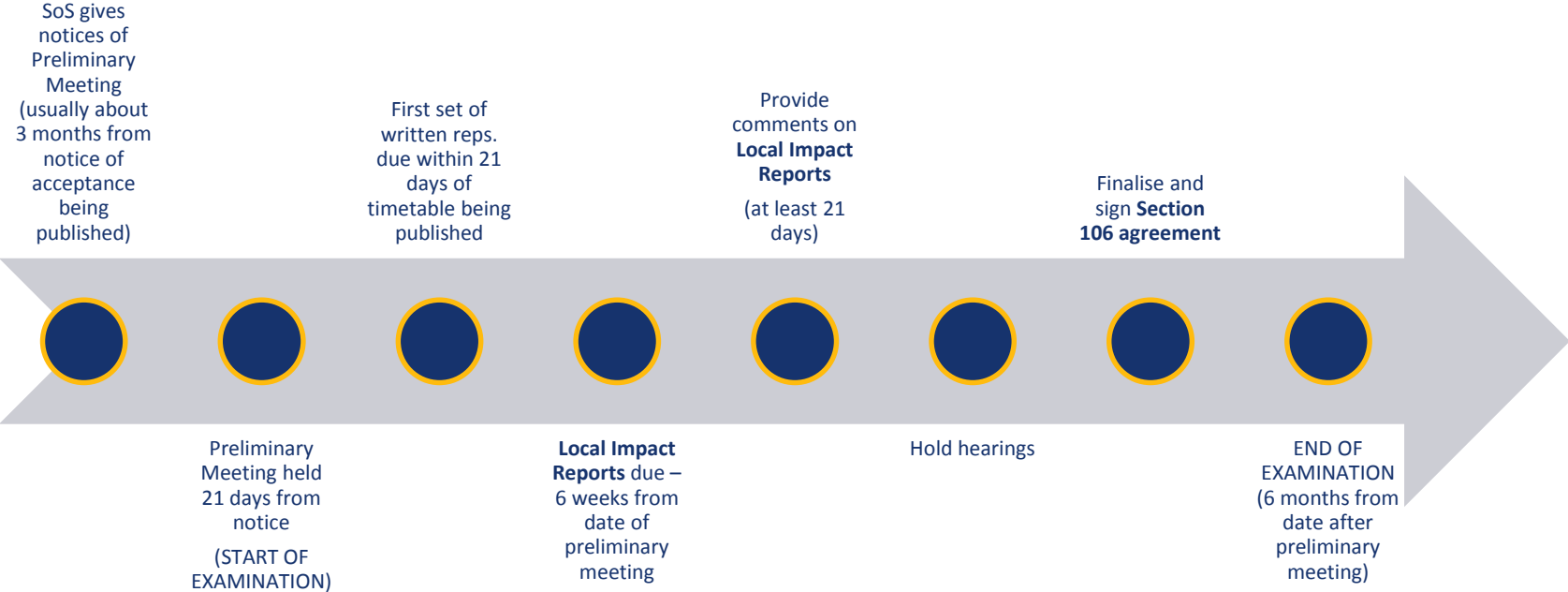
Pre-Application (No time limit, usually 12 – 24 months)



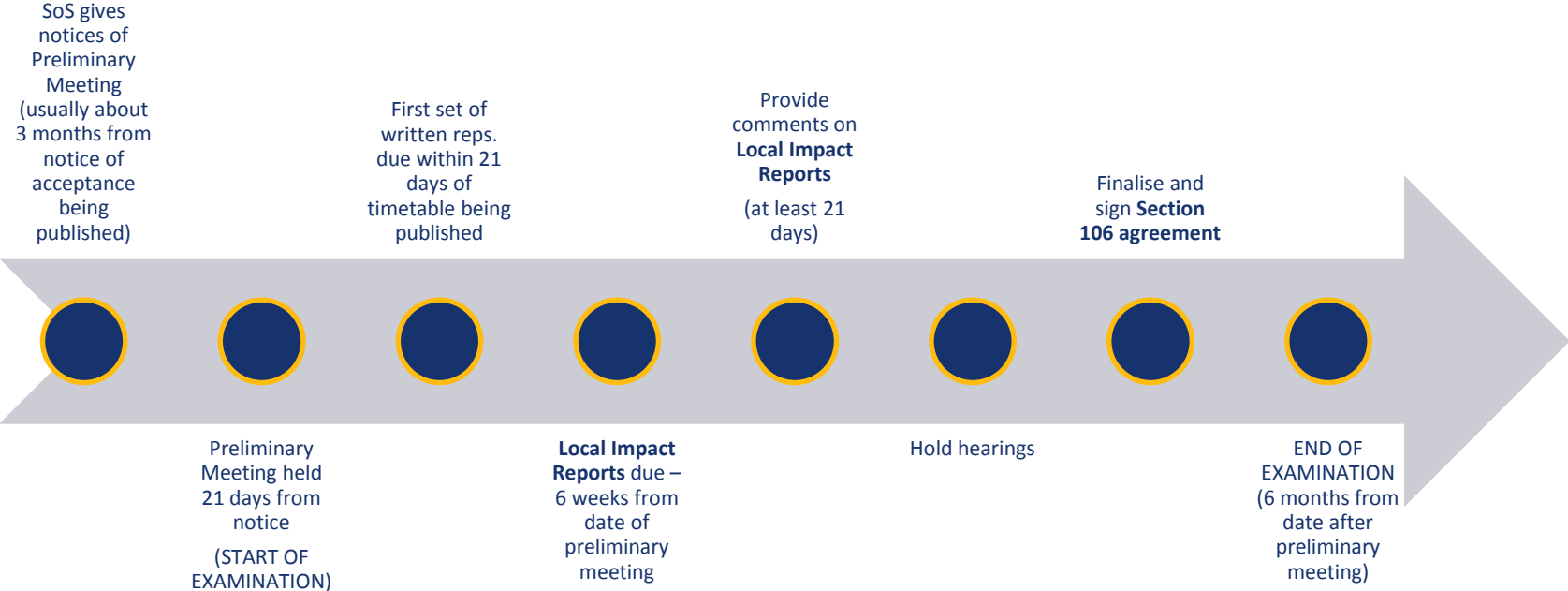
Pre-Application (No time limit, usually 12 – 24 months)



Examination (6 months)



Examination (6 months)



Timescales

- Pre-application – EIA, land acquisition and statutory undertakers, statutory consultees and community consultation
- Acceptance – formal acceptance process, publicity and certification, preliminary meeting
- Examination stage – ExA's recommendation
- Decision stage – ExA's recommendation and SoS decision
- Judicial Review



Example of timetable in practice

A303		2018												2019												2020											
		J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
Option and Lease negotiations		[Blue bar: Jan to Feb 2018]																																			
DCO Stages	Pre-application	[Yellow bar: Mar to Dec 2018]												[Yellow bar: Jan 2019]																							
	Submission													[Green bar: Jan 2019]																							
	Acceptance													[Red bar: Feb 2019]																							
	Pre-examination													[Red bar: Mar to Apr 2019]																							
	Examination													[Red bar: May to Sep 2019]																							
	PINS recommendation													[Red bar: Oct 2019]												[Red bar: Jan 2020]											
	SoS Decision																									[Red bar: Feb to Mar 2020]											
	Legal Challenge																									[Red bar: Apr 2020]											

DCO Process – Broad Pros and Cons

- Extensive formal consultation – key consenting risk is usually **consultation based**
- Omnibus DCO (the one stop shop)
- Volume of Documentation
- Cost
- Certainty but **consenting delay risk has increased**
- No public inquiry but there are hearings (inquisitorial)
- Compulsory acquisition powers available
- Associated development optional
- Flexibility vs Detail in statutory drafting and project design



What is in the consent? What does it look like?

- Articles
- Schedule One – Description of Development
- Schedule Two
- CA Powers
- Streets and Highways
- Protective Provisions
- Approvals
- Key provisions of note



CA: Key principles

- Project may use, or acquire, land (including rights in land) compulsorily
- To back up negotiated property agreements
- Apply for powers over all land required, even if deals are in place
- Compensation
- Section 135 Consent



The Role of the Local Authority

- The Relevant Planning Authority
- Key statutory consultee
- Advice Note Two: Role of Local Authorities in the DCO process
- More than one "RPA" due to consultation requirements – host and neighbouring authorities
- Statement of Community Consultation and logistics/remit
- Local Impact Report
- Statement of Common Ground
- Planning Obligation
- Discharge of Requirements, Monitoring and Enforcement



Key Issues for Consideration: the DCO Regime (1)

- Consultation risk
- Redline boundary – what is the project
- Material and Non-Material Changes/Making Changes
- What is "necessary" for development – benefits vs mitigation
- Cumulative Assessment Risk
- Assessment vs Delivery vs Mitigation – future proofing projects (i.e. mitigation now may be workable but what about in the future when you implement)
- Habitats Regulation Assessment



Key Issues for Consideration: the DCO Regime (2)

- Grid connections
- If in Wales, changing the entire consenting regime (again)
- Replace and maintain infrastructure within boundaries of the consent (flexibility)
- Project cost
- Change in technologies



DCO Research Project – Choices for Planning

RESEARCH PROGRAMME

Literature review

Survey

Specialist interviews

Roundtables

Report

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DCO Successes

Taking stock: DCO successes

- Cross – party consensus / endurance
- Speed
- Transparency
- Certainty
- CPO / multiple consents
- Early engagement – early focus on scheme mitigation
- Shared objectives and visions for schemes across players
- National Policy Statements

"You know when you are going to get your powers"

"As a process it's excellent...For promoters it works well. Certainty of timetable is best. You have a pretty good idea of when you are going to get powers"

"A DCO allows you to hit the ground running on delivery"

"Telling is that the regime has survived multiple governments of different persuasions when lots of other bits of the planning system have gone"

"National Policy Statements need to be timely and well done"

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DCO Challenges

Taking stock: DCO challenges

Viewed as:

- Highly legalistic
- Expensive
- Inflexible / changes difficult
- Impenetrable (information volume)
- Lack of 'spatial reach'
- Focused on consent not delivery and project life cycle
- Disconnected from the 'main' planning system – National Policy Statements in silos

And:

- More evaluation still needed on impact

"It's more legalistic than ordinary planning permission. This is unsurprising given that the core product is a statutory instrument ... It's not normal planning. Again it's a trade-off – because it comes with some sweeping powers. To counterbalance that power you have to ensure it's fairly done"

"An awful lot of things get examined in exacting detail. There is a feeling at examination that we've got to tie everything right down. It was never really the intention of the system"

"We need more of a joined-up approach – we don't make best opportunity of the housing potential and things like that. Still as an industry we are working in our own little silos. Would be better if we could help LAs around their housing agenda – but that's not our bit"



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New Settlements

New settlements - barriers and choices

"A mood change is what's needed - a general 'can do' attitude to housing to enable the right decisions to be taken without huge amounts of opposition"

Barriers:

- Lack of strategic planning / cross-boundary thinking
- Politics around plan making and housing
- Lack of connectivity with infrastructure delivery
- Challenge of multiple consents
- Land assembly
- Long term investment finance

A - Continue with the current approach(es) to new settlements - for *policy, consent and delivery* - accepting deficiencies

B - Assess the potential of other options to address / ameliorate the effect of deficiencies

Could a DCO approach help address some of the challenges being identified, and if so, in its current or in an evolved format?



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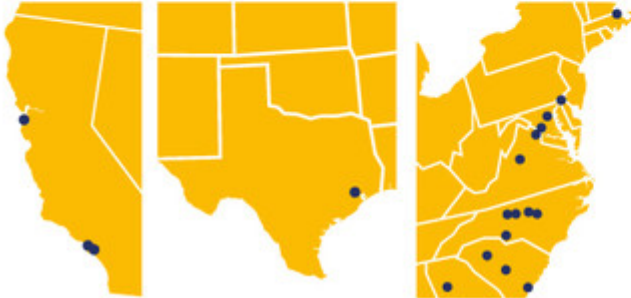
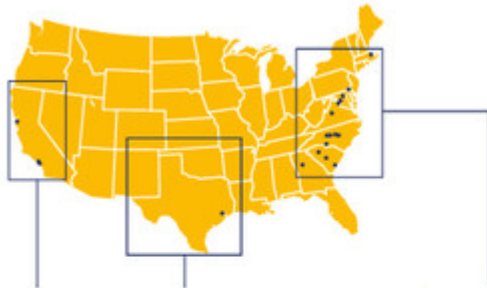
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Questions and Discussion

- Can a convincing case be made for a DCO option to new settlements in its current format?
- In what circumstances might a DCO be appropriate?
- Could changes in the relationship between NPSs, the NPPF and Local Plans help make the case?
- Could a NPS for new settlements work? Would this be a good choice?



Thank You



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- Atlanta
- Baltimore
- Boston
- Charleston
- Charlotte
- Charlottesville
- Columbia
- Greensboro
- Greenville
- Houston
- Los Angeles
- Orange County
- Raleigh
- Research Triangle Park
- Silicon Valley
- Tysons
- Washington, D.C.
- Wilmington
- Winston-Salem

UK

- Aberdeen
- Bristol
- Edinburgh
- Leeds
- London
- Newcastle
- Plymouth
- Southampton

