# Major Infrastructure Projects - can government grease the wheels?

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Reforms to the nationally significant infrastructure project (NSIP) regime have been on the cards for some time.

In its 2020 National Infrastructure Strategy the previous government announced its ambition to cut consenting timescales for some NSIPs by up to 50% from 2023.

The National Infrastructure Planning Reform Programme was established in 2021 to undertake "an end-to-end review of the NSIP process and all its interactions". That review culminated at the end of August 2022, when a policy paper emerged from the dying embers of the Johnson administration which promised to amend the Levelling Up and Regeneration Bill. The policy paper aimed to reduce examination timescales for certain applications for development consent orders (DCOs), enable faster post-consent changes to be made to DCOs, and resolve capacity issues across government agencies providing technical advice on DCO applications.

Late September's now infamous "mini" budget was accompanied by the Treasury's Growth Plan which bemoaned the "slow" and "fragmented" planning system and the "deterioration" of the NSIP system over recent years. The Department for Business, Energy & Industrial Strategy's analysis found that the timescales for the grant of DCOs increased by a whopping 65% between 2012 and 2021.

The Growth Plan concludes that the source of these delays is, in part, the "complex patchwork of environmental and regulatory rules", including retained EU law. This patchwork is to be reformed and streamlined whilst "ensuring environmental outcomes are protected". Once freed from the shackles of complex legislation, the government sees the accelerated delivery of NSIPs as a means of driving the UK's economic growth and – albeit a little too late for the coming winter – increasing the robustness of the country's energy security.

How will this legislative tangle be unpicked? With yet more new law, of course. The Growth Plan promises that a new Planning and Infrastructure Bill will be brought forward in the coming months to minimise the "burden" of environmental impact assessment and the "bureaucracy" of consultation, reform habitats and species regulations, and increase the flexibility to make changes to a DCO once it has been submitted.

Scant detail has been provided on the proposed scope and extent of the contents of the new Planning and Infrastructure Bill – and nor do we know what the implications of that Bill are for the Levelling Up Bill. The planning and development industry has been awash with speculation that the Levelling Up Bill is not long for this world, although the Conservative Party Conference was told that there was life in the old Bill yet. The Growth Plan notes that the latest targeted proposals build on the changes which are already underway – but it remains to be seen whether the Planning and Infrastructure Bill is intended to dovetail with the Levelling Up Bill or replace it wholesale.

In addition to legislative reform, the Growth Plan announces a variety of other changes to accelerate infrastructure delivery, including a cross-government action plan to reform the NSIP system, prioritising the delivery of National Policy Statements for energy, water resources and national networks, and reforming onshore wind planning policy and reforms to the delivery of roads.

Together with these overarching reforms, the Growth Plan itemises 138 infrastructure projects across transport, energy and digital infrastructure that the government will prioritise for acceleration, "aiming to get the vast majority starting construction by the end of 2023". The schemes, which have a heavy transport bias (including, in a nod to "levelling up", the Northern Powerhouse Rail project), are earmarked to benefit from acceleration through "planning reform, regulatory reform, improved processes or other options to speed up their development and construction". Practitioners – especially those representing interested third parties and objectors – will have a keen eye on how the government's input on acceleration manifests itself in practice.

There is, without question, a pressing need to speed up the delivery of major infrastructure and to reduce the burdens involved in making changes to consents already in the bank. Promoters, investors and practitioners have been advocating for the wheels of major infrastructure consenting to be greased for some time.

On the face of it, therefore, the government's latest suite of reforms (taken together with the changes promised in the August 2022 Policy Paper) have real potential to expedite decisions on DCO applications and allow flexibility in the consents granted to ensure speedy delivery of projects. The direction of travel will offer some welcome reassurance to promoters of and investors in NSIPs, particularly at a time of such political and economic volatility.

However, the devil will be in the detail. Neither the August 2022 Policy Paper nor the Growth Plan provides more than a bird's eye overview of the government's intentions. The substantive details of the criteria or thresholds to determine which DCO applications will qualify for an abridged examination process, for example, are left to legislative drafting.

The detail will be vital to assess the potential effectiveness of the proposed measures and their palatability to those involved in the NSIP development process. Any hint of the government reneging on its "non-regression" commitment in the Levelling Up Bill not to dilute environmental protections, for example, is likely to garner a similar response to the proposed removal of the 45p tax rate. Likewise, the scope of the government's proposed intervention to accelerate the 138 priority infrastructure schemes will need to be carefully and sensitively handled.

For all the talk of reducing the legislative barriers to speedy consenting, it is notable that decisions on a number of recent NSIP applications have been delayed by the relevant Secretary of State at the decision-making stage, extending the decision-making period well beyond the allotted three months. To reduce delays and ensure certainty in the NSIP regime it is important that, as well as increasing the efficiency of the consenting framework, government directs its attention closer to home.

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