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# Planning Act 2008 Process for Nationally Significant Infrastructure Projects

11 May 2016



# Overview

- ❑ Principles of the PA 2008
- ❑ The stages in the process
- ❑ Emerging learning
- ❑ Service improvements



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# 2008 Act is based on clear principles

- Clear and statutory timetable
- National Policy addresses need and principles
- Front loaded
- Predominantly Written Representations
- Development as applied for (Development Consent Order)



## Planning Act 2008

CHAPTER 29

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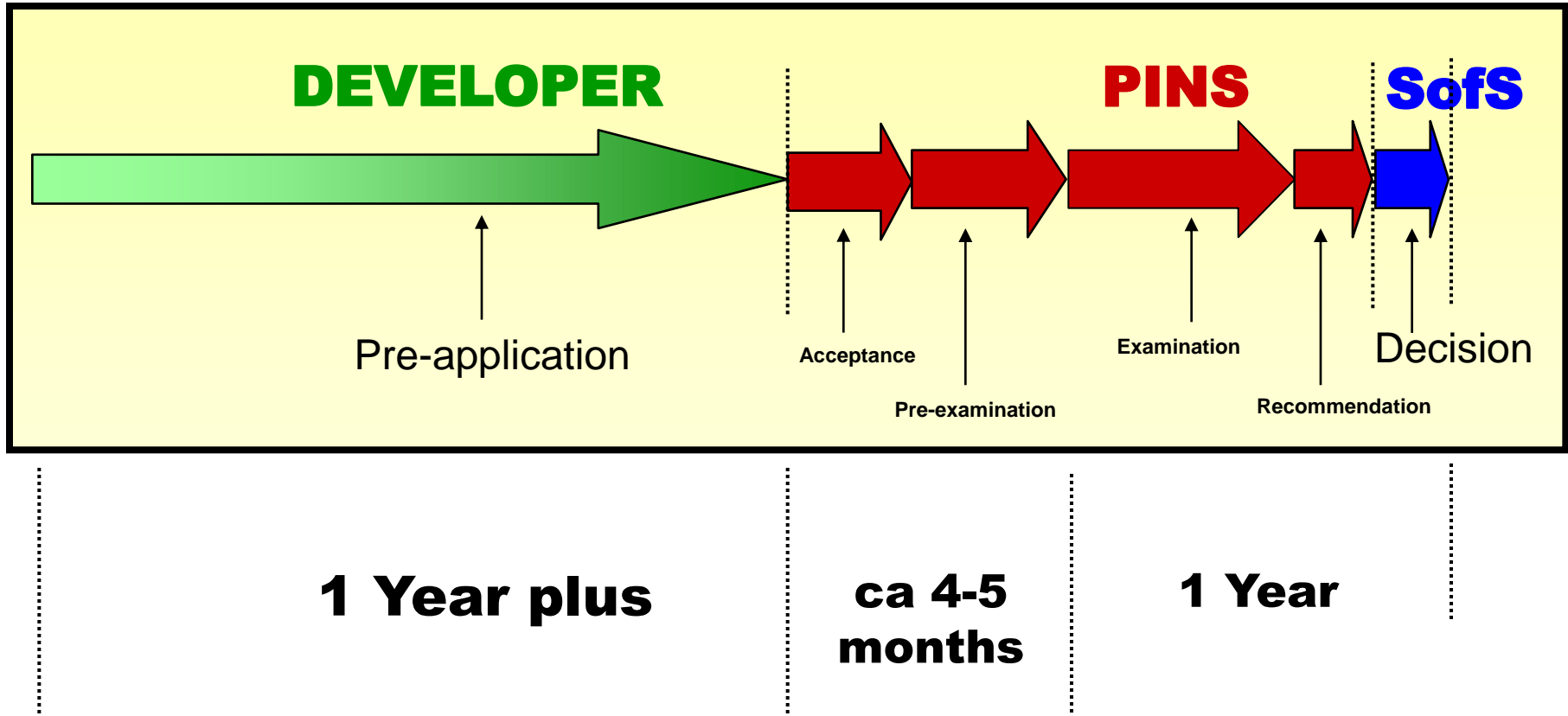
Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

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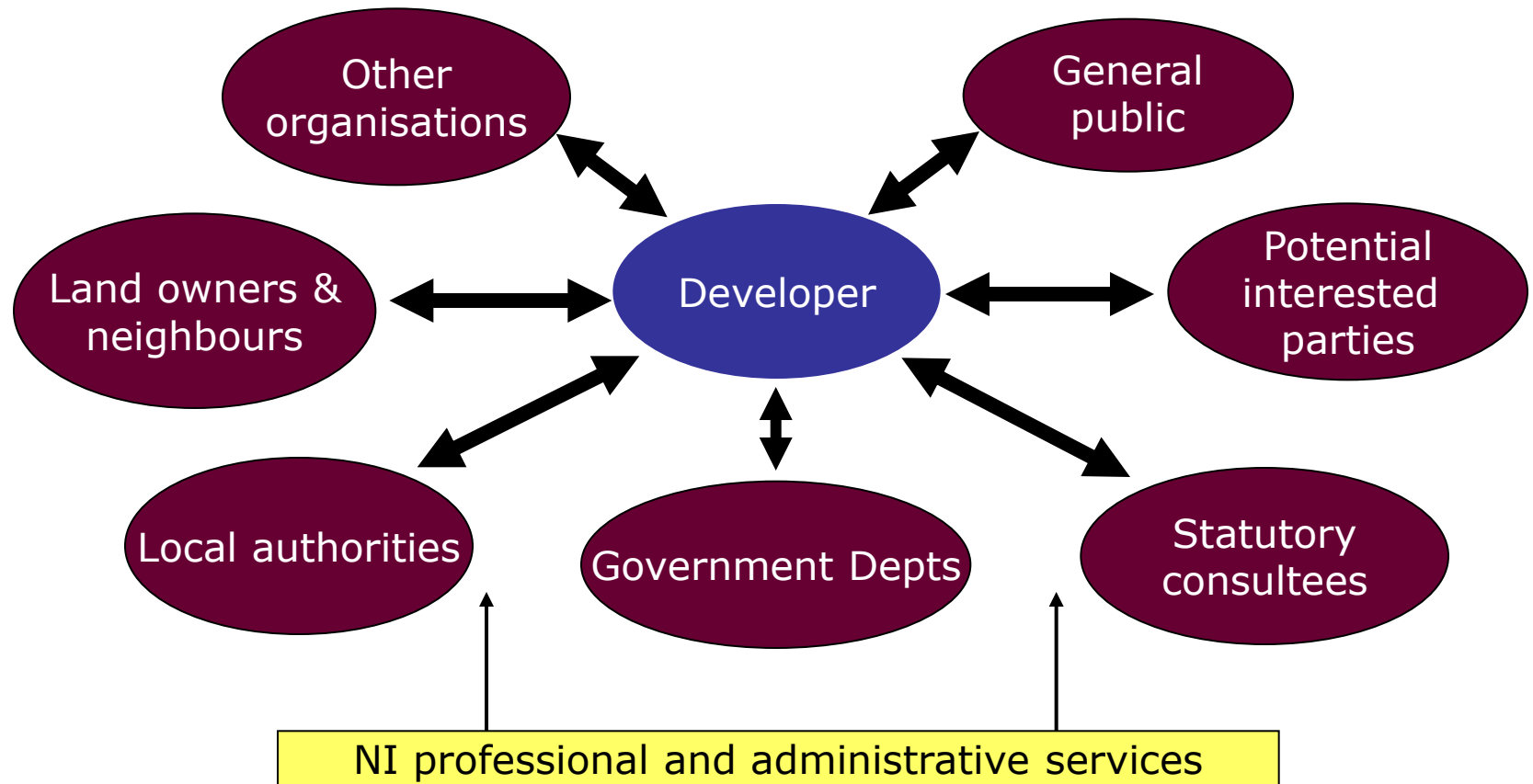


# Overview





# Pre-application: The Developer in the Lead





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## Pre-Application

1. Statutory and non-statutory consultation
2. Joint working can help manage resources
3. PINS are impartial and can advise all parties



# Relevance of Pre App to DCO

- The draft DCO is submitted as part of the application
  - Accurate description of works including associated development (plans / legal drafting / consistency with ES)
- Mitigation must be secured and set out in the DCO
  - Requirements – tie in with ES / discharge responsibility
  - Protective provisions (legally sound)
  - How do these link to any planning obligations? (part of the mitigation package)
- Compulsory Acquisition
  - Is all land / rights over land needed / included in the DCO?
  - Have the rights of affected persons been respected?



# Preparation of Statements of Common Ground

- What is agreed, and what is not agreed
- Simple and Soon – don't overcomplicate, and don't delay
- Just because an issue is agreed, doesn't mean it won't be examined. You may want to include reasoning within the SoCG





# Acceptance stage

- 28 calendar days to decide
- Full application
- Main tests:
  - Consultation Report – has the Applicant fulfilled their duties?
  - Adequacy of Consultation - PINS request opinion from Local Authorities – 14 days to respond
  - Full suite of documents
  - Ensure all Plans are correct





# Pre-Examination stage

- Begins once the application has been accepted
- **Relevant Representations (28 days):**
  - Summary of key points about application
- Examining Authority appointed
- Initial Assessment
- Preliminary Meeting





# Examination stage

- 6 months – **tight timescales**
  - Quick turnaround of documents
  - Prepare draft documents now/Pre-Exam stage
  - Resource appropriately
- Primarily **written process** (supplemented by hearings)
- Responding to written questions and requests for information from the ExA
- Requests for Statements of Common Ground
- PINS **project website**
- **Types of questions** that may arise (see other NSIPs)



# Recommendation

- The ExA will make a recommendation to relevant SoS
- Recommendation drafted by ExA will take account of:
  - (National Policy Statements)
  - Local Impact Reports
  - Important and relevant matters
  - International obligations
- Do the adverse impacts outweigh benefits?
- Recommendation to approve would include finalised DCO and requirements
- Recommendation must be made within 3 months of the end of Examination



# Decision - SoS

- Has to make his decision within 3 months of receiving recommendation (s107)
- Decision needs to take into account:
  - (National Policy Statements)
  - Local Impact Reports
  - Important and relevant matters
  - International obligations
- Challengeable through application for Judicial Review – 6 week window under s118 of the Act



# Emerging Learning

- Discuss draft DCO requirements early
- Start preparing Statements of Common Ground as early as possible
- Agree key points in writing to minimise 'change in positions' from misunderstanding





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# Service improvements

- Pre-application discussion and prospectus
- Good example documents
- Drafting DCO Advice Note
- Website improvements
- Post decision case review meetings – learn lessons
- Improved Examination practice
- Revised acceptance checklist

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Advice note fifteen: Drafting Development Consent Orders

The Planning Act 2008<sup>1</sup> (the PA 2008), and related secondary legislation sets out the regime in relation to applications and proposed application orders granting development consent for Nationally Significant Infrastructure Projects (NSIPs).

The Planning Inspectorate carries out certain functions related to national infrastructure planning on behalf of the Secretary of State.

Experience to date has shown that applicants and others welcome detailed advice on a number of aspects of the PA 2008 regime. This advice note forms part of such advice provided by the Planning Inspectorate. It has no statutory status.

A Development Consent Order (DCO) is a statutory instrument and should follow statutory drafting conventions. The DCO must be drafted in full by the applicant and submitted, together with other prescribed documents, with its application<sup>2</sup>. It will not be drafted by the relevant Government Department these reasons, DCOs differ substantially from planning permissions under the Country Planning Act 1990 which are granted by local planning authorities.

This advice note sets out advice from the Planning Inspectorate on the preparation of the draft DCO. It also reflects the views, on DCO drafting matters, of the Government Departments that are most involved in the PA 2008 regime.

It is not intended to be a comprehensive advice note on all aspects of the drafting of such DCOs, but rather it focuses on a number of key issues which are considered that advice could most usefully be given.

Whilst this advice note is aimed primarily at applicants, it should also be helpful to other persons involved in the PA 2008 regime.

This advice note is intended to be a "living document" so it will be kept under review and updated when necessary.

Further advice is set out in Planning Inspectorate Advice Note 13: Preparation of a draft order granting development consent and explanatory memorandum which largely deals with non-drafting aspects of DCOs and the explanatory memorandum, including procedural matters.

1. All references to the Planning Act and any other legislation in this advice note are taken to mean "as amended".  
2. See section 37(2)(g) of the Planning Act 2008 and regulation 62(6) of the Infrastructure Planning Regulations: Prescribed Forms and Procedural Regulations 2008.

Drafting Development Consent Orders  
October 2014

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## Pre-application service for Nationally Significant Infrastructure Projects



Prospectus for Applicants



# Make use of our website

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### Legislation and advice

Find out more about the relevant legislation and advice.

#### [Legislation](#)

Here you can view the legislation which govern the application process, including:

- **Primary legislation** – The Planning Act 2008
- **Secondary legislation** including rules, regulations and commencement orders
- **European Legislation** – TEN-E: Regulation (EU) No 347/2013

#### [Guidance](#)

Provides guidance on a range of matters relating to the application process.

#### [Advice notes](#)

The Planning Inspectorate has published its own series of advice notes about a range of process matters.

#### [National Policy Statements](#)

Find out what National Policy Statements (NPSs) are, what they include and how they fit into the decision making process.

#### [Consents Service Unit](#)

Provides information on the Consents Service Unit within the Planning Inspectorate that became operational in April 2013.

#### [Register of advice](#)

View the advice the Planning Inspectorate has provided that is not specific to a project.

### In this section:

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