

Bircham Dyson Bell

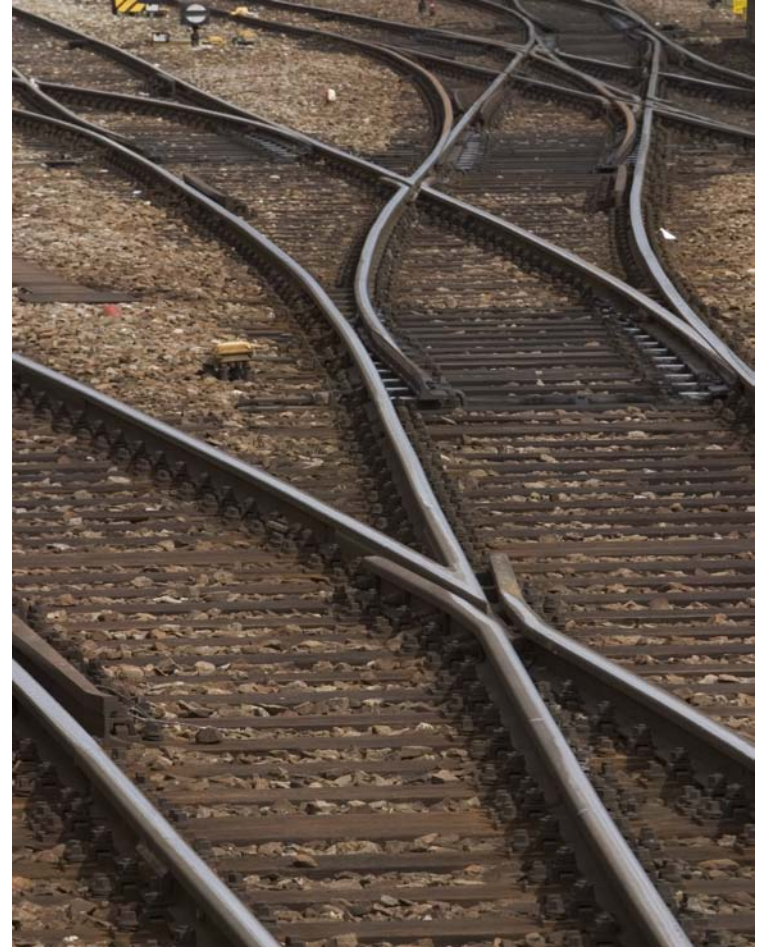
# Planning Act 2008: The New Regime for National Transport Infrastructure Projects

Presented by  
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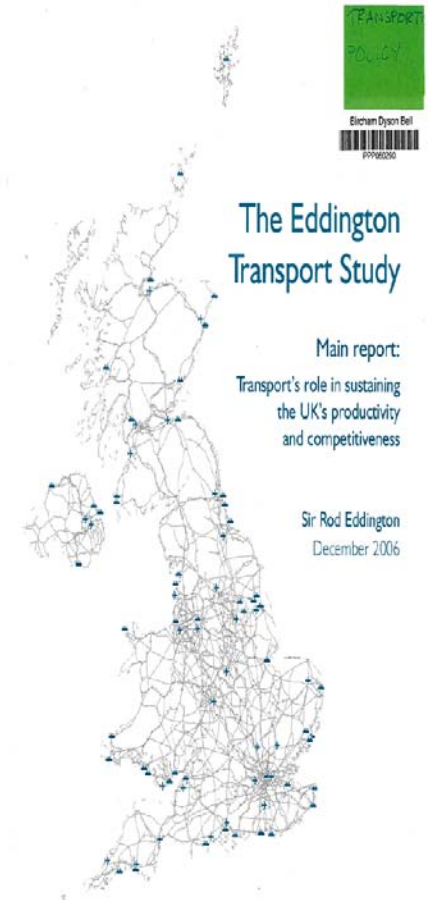
# Overview

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Planning Commission  
(IPC)
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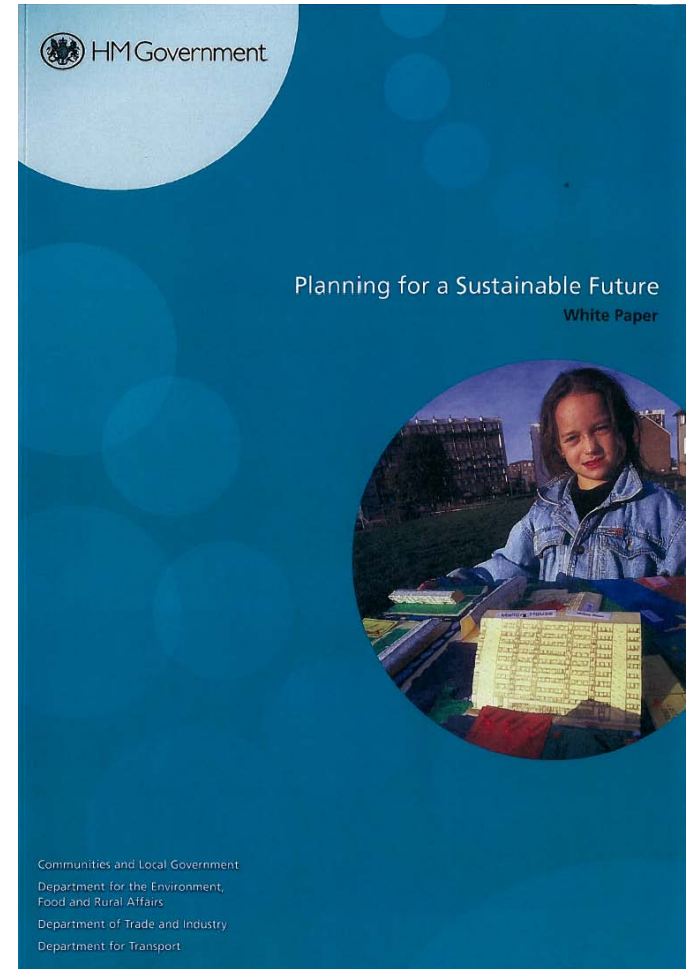
# 1. Background – Barker and Eddington

- Barker Review of Land Use Planning and the Eddington Transport study – December 2006:
- reduce the complexity and uncertainty of the planning system
- proposed unified consents regime for national projects
- self-contained and up to date process
- separate national policy and decision-making on individual projects



# 1. Background - Legislation

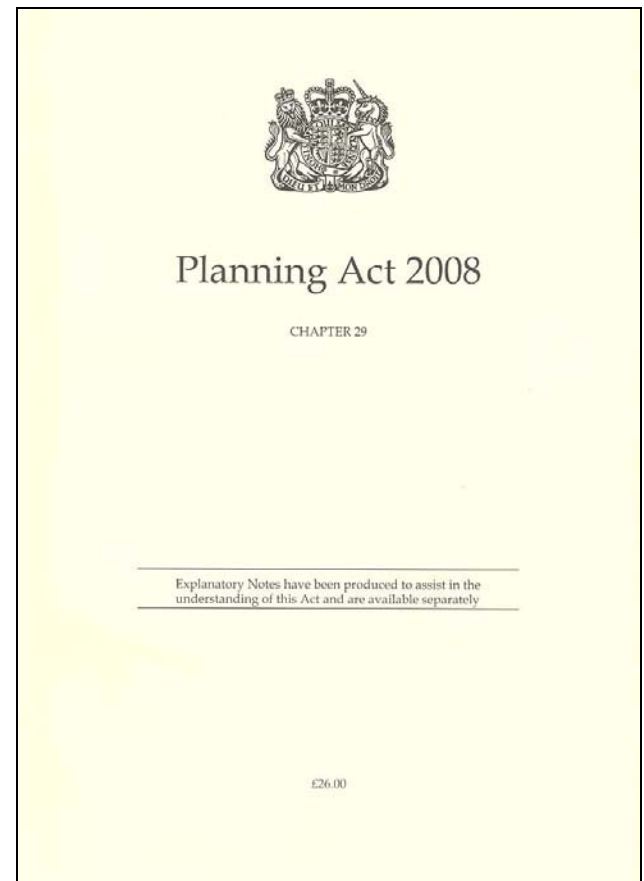
- Planning White Paper, May 2007
- Planning Bill, November 2007
- Planning Act, November 2008
- The solution: NPSs and an IPC
- Closely modelled on existing order-making procedures (e.g. TWA and Harbours Act)



## 2. The Planning Act - An overview

### **New Unified Consents Regime for National Infrastructure Projects in England**

- National Policy Statements (NPSs)
- Nationally Significant Infrastructure Projects (NSIPs)
- The Infrastructure Planning Commission (IPC)
- Development Consent Orders (DCOs)



## 2. The Planning Act - An overview c/td

### Transport NSIPs:

#### AIRPORTS



Construction, alteration or increase in the permitted use of an airport in England where the capacity of the airport, or the increase in capacity is expected to be at least 10million passengers or 10,000 air cargo movements per year

#### HARBOURS



Construction or alteration of a harbour in England or Wales (at least 500,000 TEU for container ships, 250,000 units for ro-ro ships, or 5m tonnes for other cargo ships (all per year) or a proportionate combination of these)

## 2. The Planning Act - An overview c/td

### Transport NSIPs:

#### HIGHWAYS



Construction or alteration of a highway in England which forms part of the Strategic Road Network (SRN) or construction of a highway for a purpose connected with a SRN highway or improvement of a SRN highway where likely to have a significant environmental effect

#### RAILWAYS



Construction or alteration of a railway but only if in England, part of an approved operator's network and not covered by permitted development rights

Also Strategic Rail Freight Interchanges (SRFIs)

## 3. 12 National Policy Statements



Overall Energy Policy

Renewables

Fossil

Electricity Networks

Oil and gas

Nuclear



Ports

Transport networks

Airports



Water supply

Waste water

Hazardous waste

### 3. National Policy Statements c/td

- Vital importance of contributing to their formulation, whether or not locationally-specific
- NPSs may be designated “for the purposes of” the Act, if issued by the SofS and if they set out national policy in relation to one or more specified descriptions of development
- 12 NPSs will cover –
  - need for infrastructure
  - location: criteria or specific places
  - identification of impacts
  - relative weight to be given to impacts
  - action to mitigate impacts



# 3. National Policy Statements c/td

## NATIONAL NETWORKS NPS

- Covering strategic road and rail network and rail freight interchanges, but concentrating on highways
- drawing on core elements of existing rail policy e.g. Rail White Paper, Route Utilisation Strategies and *Towards a Sustainable Transport System*



## PORTS NPS

- A re-badged Ports Policy Review final report?

## AVIATION NPS

- 2003 Air Transport White Paper, together with a progress report ( due 2009 – 2011) may be designated

Department for  
Transport

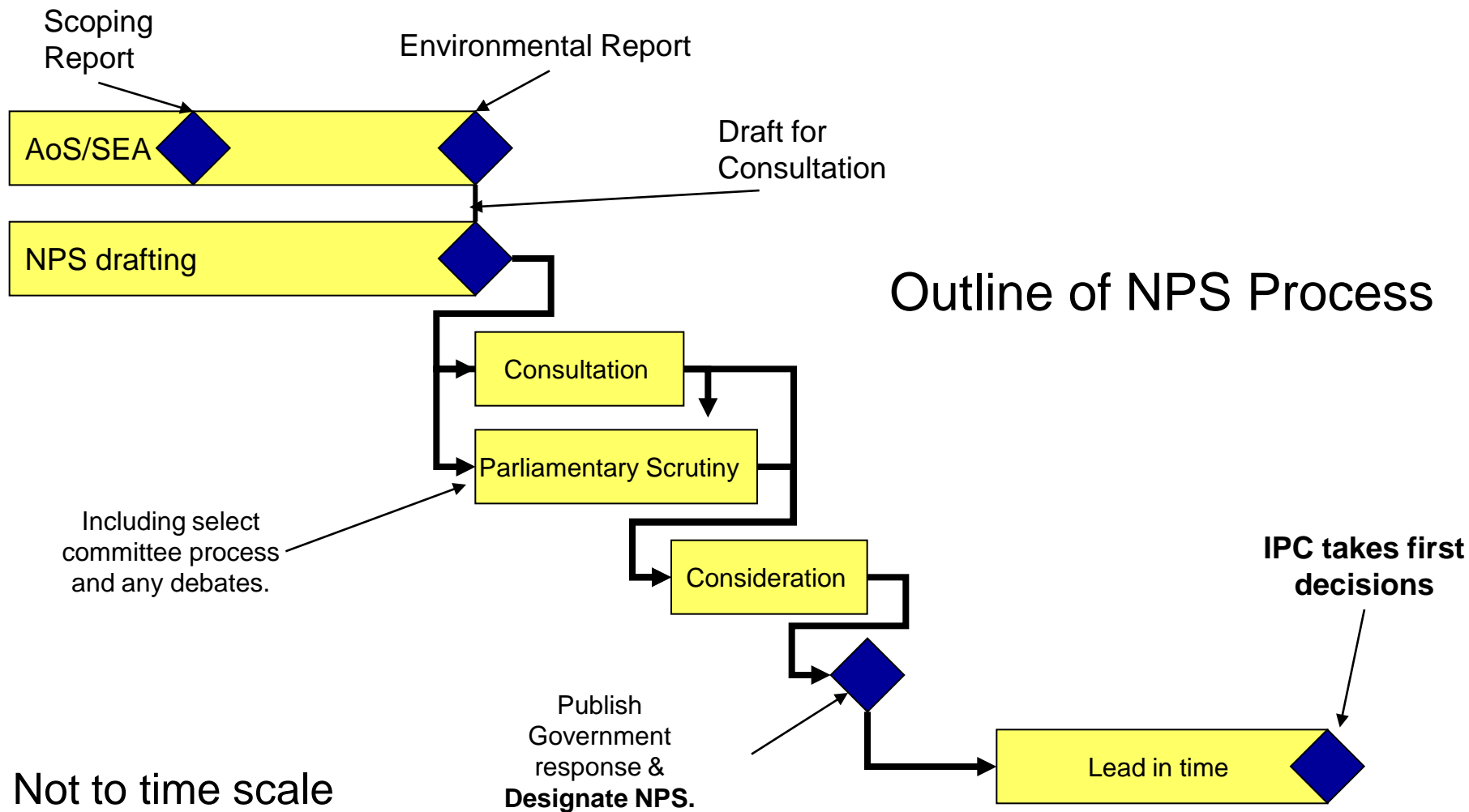
Delivering a  
Sustainable Railway

Summary



July 2007

# 3. National Policy Statements c/td





# 3. National Policy Statements c/td

NPS	Original issue date in draft	New issue date in draft	IPC 'switch on' date
<b>Energy</b>			
Overarching Energy	Summer 2009	Autumn 2009	1 March 2010
Renewables	Summer 2009	Autumn 2009	
Fossil Fuel	Summer 2009	Autumn 2009	
Electricity Networks	Summer 2009	Autumn 2009	
Oil and Gas Infrastructure	Summer 2009	Autumn 2009	
Airports	2011	2011	
<b>Transport</b>			
Ports	Summer 2009	Autumn 2009	
Nuclear Power	Autumn 2009	Autumn 2009	
National Networks (i.e. road, rail and freight interchanges)	Autumn 2009	Autumn 2009	
<b>Water/Waste</b>			
Waste Water	Late 2009	Spring 2010	April 2011
Hazardous Waste	Spring 2010	Summer 2010	
Water Supply	Late 2010	Late 2010	April 2012



## 4. The IPC

- An independent body comprised of experts of “considerable standing and experience”
- The IPC will decide applications in accordance with the relevant NPS (exceptions includes adverse impact outweighing benefits)
- Local authorities well knitted into the process in terms of NPSs publicity, consultation and local impact reports
- The IPC’s inquiry will focus on site-specific matters rather than need but complications (e.g. EIA and alternatives, new evidence/changes in circumstances)
- Promoter must undertake pre-application consultation



## 4. The IPC (cont'd)

- IPC decides whether to accept application for examination and decision
- IPC will make a “*Development consent order*”
- Development consent orders may include, e.g., powers re:
  - Compulsory acquisition of land
  - Stopping up or diversion of highways
  - Amendments/repeals or revocations of local Acts
- So largely a “unified consents regime” for the first time

## 5. IPC Process overview

Pre application advice

28 days to validate application and decide whether to accept

Promoter publicises accepted application

IPC appoints Panel or single commissioner to carry out initial assessment and pre-examination before making procedural decisions on how application is to be examined

6 months to carry out examination, including written representations and hearings

Promoter and other parties engaged in examination process

IPC has 3 months to issue decision and statement of reasons

6 week window for legal challenge



## 5. IPC Process – Projects in the Pipeline

- Hinkley Point Nuclear Power Station;
- 7 non-nuclear power stations;
- 8 wind farm projects;
- 18 national grid upgrades;
- 1 major rail depot; and
- 13 improvements to motorways and trunk roads.

## 5. IPC process - Role of local authorities

- Pre-application consultation & publicity
- Representations on adequacy of consultation
- May submit Local Impact Reports to IPC
- Involvement with agreeing planning obligations, discharging DCO 'requirements' and enforcement
- Coordination
- Resources





## 5. IPC - Examination of applications

- Panel of 3-5 Commissioners or single Commissioner and Council
- Presumption of written representations
- Presumption against oral evidence and cross-examination: inquisitorial rather than adversarial process
- Focus is on site-specific matters rather than 'need'
- Hearings: only re specific issues (for proper examination and/or fairness), compulsory acquisition and 'open floor'
- Examination generally to be completed within 6 months of preliminary meeting and decision within a further 3 months

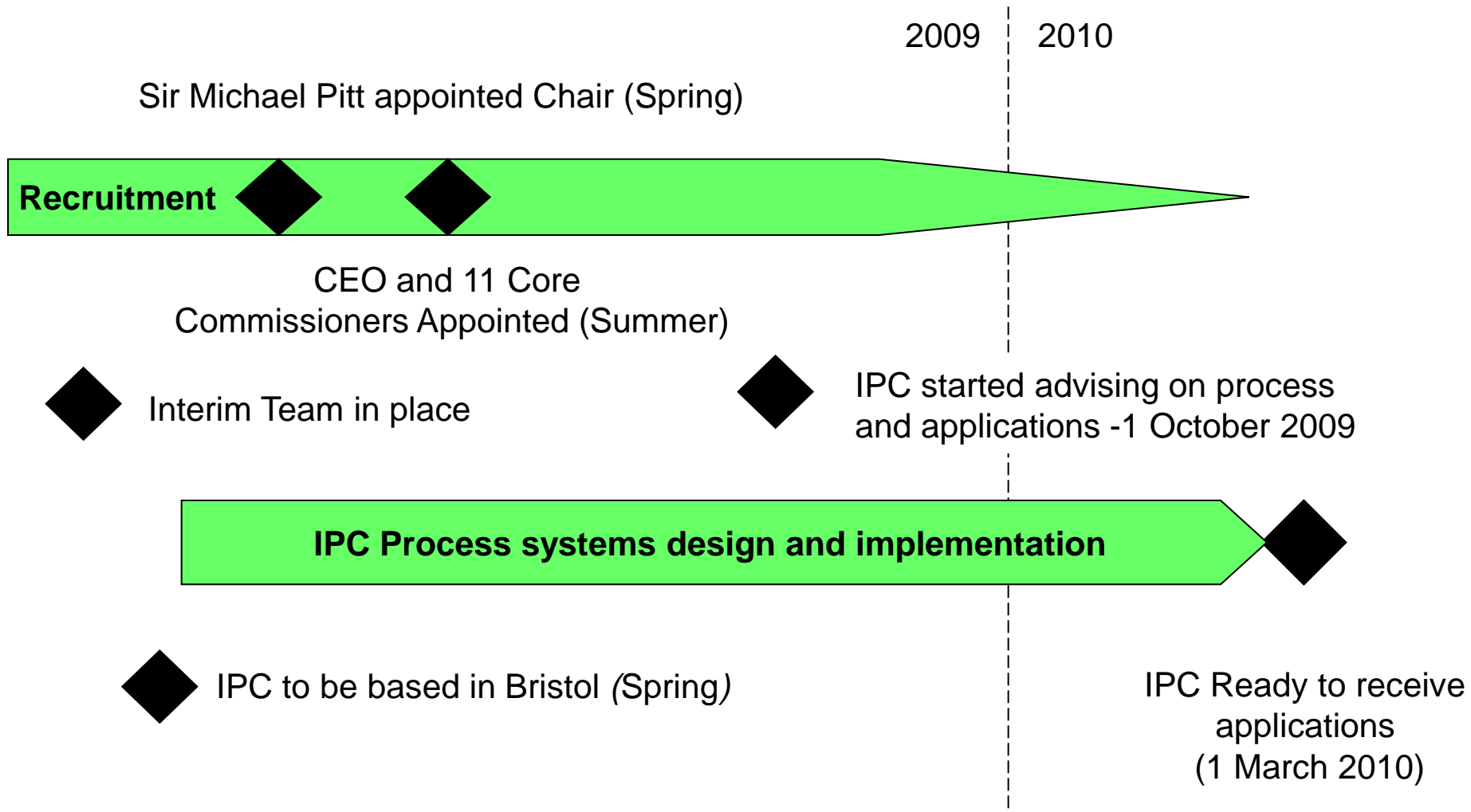
## 5. IPC - Examination of applications c/td

- Adequacy of 6 months for preparation of written evidence; rebuttals/responses and clarifications; parallel negotiations of objections; and all hearings?
- Timing of determining need for “specific issues hearings”?
- Impact on preparing applications: no ‘muddling through’





# 6. Progress - the IPC





## 6. Progress - Regulations

- 1. The Infrastructure Planning (National Policy Statement Consultation) Regulations 2009 – in force 22 June 2009
- 2. The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009 - in force 1 October 2009
- 3. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 - in force 1 October 2009
- 4. The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 - in force 1 October 2009
- 5. The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 - in force 1 October 2009

# 6. Progress - Guidance

GUIDANCE- 8 September 2009

1. Nationally significant infrastructure projects Application Form guidance
2. Guidance on pre-application consultation
3. Guidance on associated development and applications to the Infrastructure Planning Commission

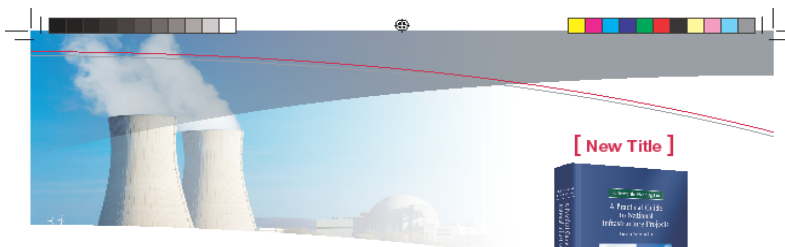




## 6. Progress – Further Regs & Guidance

- 7 more SIs to be made in late 2009/early 2010 on:
  - IPC examination procedures
  - Compulsory purchase procedures
  - Fees for applications
  - IPC decisions
- 2 more sets of Guidance to be issued in late 2009/early 2010 on examination procedures and compulsory purchase

# For Further Information:



[ New Title ]



## Butterworths Planning Law: A Practical Guide to National Infrastructure Projects

The Planning Act 2008 introduces a radical new process outside the normal planning regime for obtaining consent for nationally significant infrastructure projects (NSIPs). **Butterworths Planning Law: A Practical Guide to National Infrastructure Projects** is an expert guide to the new system, containing commentary, guidance, practical tips and checklists on each stage of the process – from national policy statements and pre-application preparations through to application, decision, implementation and beyond.

£130.00

Product Code: PLNIR  
ISBN: 9781405747226  
Publication Date: July 2009

The expert author team at Bircham Dyson Bell gives detailed guidance on the issues which crop up in the development of major projects, such as environmental impact assessment, consultation and the management of objections.

Ensure that you have the best information on this new regime whatever your involvement with national infrastructure projects.

### This user-friendly guide provides:

- ✓ The background to the Act
- ✓ A clear step by step explanation of the new system
- ✓ Explanatory notes and accessible commentary on the effects of the new legislation
- ✓ Guidance on the position of projects outside the new regime
- ✓ The Planning Act 2008 in full

### About the Authors

Bircham Dyson Bell LLP have renowned and longstanding experience of the current planning regimes for infrastructure across many sectors, e.g. aviation, energy generation and transmission, ports, rail, roads, urban transit and water, advising both promoters and objectors. They consistently have one of the largest planning law teams in the UK and are supported by an in-house public affairs and communications consultancy.

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# New Association

- For all those with an interest in the planning and promotion of national infrastructure projects under the Planning Act 2008.
- In particular, to provide:
  - a forum for developing and sharing best practice with respect to the process for preparing applications to the IPC and their examination by the IPC;
  - opportunities for networking among those who are involved in the planning of national infrastructure in the UK; and
  - a platform for general debate and discussion.

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