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**CONSULTATION RESPONSE** MARCH 2016

## NATIONAL INFRASTRUCTURE COMMISSION CONSULTATION RESPONSE

### Summary

The National Infrastructure Commission is being created with the stated aims of:

- > fostering long-term and sustainable economic growth across all regions of the UK;
- > improving the UK's international competitiveness;
- > serving the well-being of UK citizens.<sup>1</sup>

To succeed in setting long-term, strategic and sustainable direction for the UK's infrastructure, it is vital that a series of fundamental principles are hard-wired into the design of the Commission's governance and operating model.

### Independence in substance as well as form

The success of the National Infrastructure Commission will depend on its ability to be, and to be seen to be, independent of the political arm of Government and operating in the long-term public interest as distinct from the Government or party political interests. This principle must form the foundation of the Commission's governance and operating model and inform each element of its design. Any indication that the Commission's independence is, or is capable of being, compromised would irretrievably undermine its credibility and therefore its ability to succeed.

While the current proposals provide a good degree of formal independence through the proposed establishment of the Commission in statute as a non-departmental public body (NDPB), the Commission's substantive independence is called into question by the following design points.

#### Setting the Remit and Terms of Reference

Under the current proposals, the Commission will work within a remit set by the Chancellor. Its remit would be established through a formal letter from the Chancellor on behalf of the Government at the beginning of every Parliament. The letter would:

- > Provide the broad framework within which the Commission would operate;

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<sup>1</sup> National Infrastructure Commission: consultation, Cm 9182, January 2016, p5



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- > Highlight pressing objectives;
  - > Set the context for the National Infrastructure Assessment (NIA); and
  - > Detail the nature of the economic and fiscal remit.

In addition, it is proposed that the terms of reference for specific infrastructure studies (SISs) will be set by Government, which will define the issue to be addressed and provide the economic and fiscal guidance within which recommendations can be made. There are three problems with this approach:

1. The Commission's remit and terms of reference provide a means by which infrastructure options can be pre-emptively foreclosed or mandated. If the ability to set these is restricted to the Chancellor, on behalf of the Government, this leaves the Commission highly vulnerable to short-term political pressure, which risks calling into question its substantive independence and thereby undermining its ability to attract and sustain national and political consensus.
2. A related problem is that this model risks restricting the Commission's scope for making evidence-based, objective judgments about what aspect(s) of UK infrastructure it should focus on. Without this ability the Commission would be providing little more than expensive consultancy services to the Government. It would not have substantive independence, and this would undermine the Commission's credibility and call into question the evidence base used to arrive at its conclusions.
3. It is unclear how the fiscal and economic remit of the Commission can be set in a way that does not confine it to prioritising the reduction of short-term costs over the delivery of long-term value or of undercutting the role of independent economic regulators. However, more information will be required about this before we will be able to provide a considered response.

#### **Recommendation: Enshrine Principles in Statute**

To avoid the first two problems highlighted above and to ensure that the Commission enjoys substantive as well as formal independence, we propose that significant fundamental principles of the Commission's remit and duties – including extensive duties of transparency – should be enshrined in statute. This should be alongside a requirement that any subsequent terms of reference or guidelines issued to the Commission be in line with, and unable to derogate from, these fundamental principles.

#### **We would propose that the following principles be included and enshrined in statute:**

*The remit of the National Infrastructure Commission will be to identify the UK's infrastructure needs over the next 10-30 years:*

#### ***In the context of:***

- > *the UK's national laws and obligations, including those contained in the UK's Climate Change Act 2008, the Warm Homes and Energy Conservation Act 2000 and devolution to cities and regions;*



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- > *the UK's international commitments and obligations, including those contained in the Sustainable Development Goals, the COP21 Climate Change Agreement and the Aarhus Convention;*
  - > *European Union laws and obligations, including those contained in the EU Habitats Directive.*

***In order to:***

- > *provide best long-term environmental, social and economic value to UK citizens;*
- > *serve the best long-term public interest and well-being of UK citizens;*
- > *provide a deliberative forum where politicians, experts, interest groups and representatives of local communities may engage in structured, informed discussions about policy options for infrastructure investment;*
- > *go beyond project-by-project analysis of specific infrastructure investment proposals and provide a strategic systems-wide approach to building sustainable, resilient and best-value infrastructure;*
- > *ensure all UK infrastructure is resilient to climate change impacts and growing global resource constraints.*

***With the requirement of:***

- > *best-in-class standards of transparency;*
- > *an undertaking that all methods and assumptions underpinning technical analysis, and the entirety of the evidence base used by the Commission, are made public and extensively discussed with relevant interested parties as part of a deliberative process to ensure that any conflicting views about data, methods, system boundaries and optimisations are resolved and do not undermine the quality of the debate or sustained consensus;*
- > *exposing the Commission's analysis and conclusions to public scrutiny before the advice to Government is finalised;*
- > *ensuring adequate opportunity for public participation and allowing that feedback to be incorporated in findings must be central to the Commission's processes. It must be active in finding those potentially interested in the Inquiry and all individuals and organisations who want to and can participate;*
- > *the Commission having the power to undertake research on its own initiative to promote public understanding of the trade-offs involved in different policy approaches;*
- > *all submissions and views expressed to the Commission being made public as soon as possible.*

*Any more detailed terms of reference may be set by the Government or by a new Parliamentary Joint Committee on Infrastructure, however these terms of reference cannot override or circumvent the remit of the National Infrastructure Commission, set in statute.*



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## Accountability/Scrutiny

It is unclear from the current proposals:

- > How the National Infrastructure Commission will be held to account in a way that enhances and does not diminish its substantive independence;
- > How the Government will be effectively held to account for its interactions with and response to the recommendations of the Commission.

Under the current proposals, the National Infrastructure Commission, as a non-departmental body of Her Majesty's Treasury (HMT) would be accountable to Government through HMT for its performance while at the same time being responsible for holding the Government to account. This arrangement on its own appears tautological and could significantly negate the quality of accountability and scrutiny that the new model would achieve.

Furthermore, the current proposals envisage a rather weak role for Parliament. The Commission will be accountable to Parliament for any of its outputs but it is unclear what form this accountability will take and to what extent it will be effective.

### Recommendations:

- > Establish a parliamentary Joint Committee on Infrastructure (JCI) – analogous to the Joint Committee on the National Security Strategy – with a dedicated chair and members made up of the chairs of the relevant departmental select committees. The JCI would have the role of holding the Government and the National Infrastructure Commission to account and scrutinising all aspects of related work. The JCI would have the power to call the Prime Minister, Chancellor of the Exchequer, Secretaries of State as well as the Commissioners of the National Infrastructure Commission to give evidence on the delivery, value and impact of UK infrastructure and UK infrastructure spend.
- > Requirement for the National Infrastructure Assessment and the Specific Infrastructure Studies to be laid before Parliament and scrutinised by the parliamentary Joint Committee on Infrastructure.
- > Requirement for the National Infrastructure Commission to update/review the analysis and recommendations made in the National Infrastructure Assessment within 3 years of it having been finalised.
- > A clear role for the National Infrastructure Commission to hold the Government to account on the delivery, value and impact of UK infrastructure.



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## Consultation Questions

### **1. Do you agree that the National Infrastructure Commission should be established as a non-departmental public body via primary legislation?**

While we agree that the National Infrastructure Commission should be established as a non-departmental public body via primary legislation, for the reasons set out above and again below, we do not believe that this is enough to secure substantive as well as formal independence. Please refer to Summary section above which includes our concerns and proposals for addressing them.

### **2. Do you agree that the Commission's National Infrastructure Assessment should be laid before Parliament and that the Government must respond within a specific timeframe? What would be an appropriate Timeframe?**

While we would agree that the Commission's National Infrastructure Assessment should be laid before Parliament, we do not believe that this proposal goes far enough to ensure there is sufficient accountability and scrutiny over the National Infrastructure Commission and the Government's response to the National Infrastructure Commission.

To address these concerns we propose the following:

- > Establish a parliamentary Joint Committee on Infrastructure (JCI) – analogous to the Joint Committee on the National Security Strategy – with a dedicated chair and members made up of the chairs of the relevant departmental select committees. The JCI would have the role of holding the Government and the National Infrastructure Commission to account and scrutinising all aspects of related work. The JCI would have the power to call the Prime Minister, Chancellor of the Exchequer, Secretaries of State as well as the Commissioners of the National Infrastructure Commission to give evidence on the delivery, value and impact of UK infrastructure and UK infrastructure spend.
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**3. Do you agree that it should not be mandatory for the Government to lay the recommendations from specific studies before Parliament, but that the Government should have discretion to do so where necessary?**

The proposal that it should not be mandatory for recommendations of specific studies to be laid before Parliament appears incoherent with the aims and objectives of the National Infrastructure Commission. We therefore do not agree with this proposal.

**4. Do you agree that economic regulators should ‘have regard’ to Endorsed Recommendations?**

The current proposals do not fully explore the impact that the National Infrastructure Commission could have on the independence of economic regulators and on their ability to fulfil their statutory duties of protecting the consumer. There is a real risk that the National Infrastructure Commission could be used by regulated companies to undermine the approach being taken by the relevant economic regulator. We would like to see further details about this impact in order to provide a considered response.

**5. Do you agree that Government should legislate to oblige the Commission to produce National Infrastructure Assessments once in every parliament?**

Yes, we agree, though we believe the proposals should go further and require the National Infrastructure Commission to undertake a review of the National Infrastructure Assessments within 3 years and present this to Parliament.

**6. Do you agree that the precise timing of reports and interim publications should be a matter for the Commission in consultation with relevant departments?**

This should be done in consultation with the new parliamentary Joint Committee on Infrastructure.

**7. Do you agree that a GDP envelope would provide the most effective fiscal remit for the Commission?**

The primary consideration in setting any fiscal remit must be to enhance and not undermine the ability of the Commission to take a long-term strategic view on the infrastructure needs of the country. A fiscal remit which pulls the National Infrastructure Commission into prioritising short-term costs over long-term value will result in failure. The costs and the benefits of options need to be weighed in order to ensure strategic decisions for the long term are made and the social, environmental and economic costs and benefits are all taken into account.

**8. Do you agree that a transparency requirement should be placed on the Commission with regard to its economic remit?**

We agree that there ought to be a transparency requirement but would highlight that as with the fiscal remit, the primary consideration in setting any economic remit must be to enhance



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and not undermine the ability of the Commission to take a long-term strategic view on the infrastructure needs of the country. It must also not undermine the statutory duties of the relevant economic regulators. More information is required on this impact before we can provide a considered response.

**9. Do you think that any additional constraints are necessary to deliver the Commission’s anticipated benefits to consumers?**

More information is required about the interplay between the National Infrastructure Commission and economic regulators which have a statutory duty to protect the consumer.

**10. Do you agree that the remit should be set by a letter from the Chancellor, on behalf of the Government?**

As described above, the success of the National Infrastructure Commission will depend on its ability to be, and to be seen to be, independent of the political arm of Government and operating in the long-term public interest as distinct from the Government or party political interests. This principle must form the foundation of the Commission’s governance and operating model and inform each element of its design. Any indication that the Commission’s independence is, or is capable of being, compromised would irretrievably undermine its credibility and therefore its ability to succeed.

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substantive independence and thereby undermining its ability to attract and sustain national and political consensus.

5. A related problem is that this model risks restricting the Commission's scope for making evidence-based, objective judgments about what aspect(s) of UK infrastructure it should focus on. Without this ability the Commission would be providing little more than expensive consultancy services to the Government. It would not have substantive independence, and this would undermine the Commission's credibility and call into question the evidence base used to arrive at its conclusions.
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**11. Do you agree that the Commission's working assumptions should be to only review those areas of infrastructure that are the responsibility of the UK Government?**

It will be very difficult for the Commission to take a systems-wide, integrated approach to UK infrastructure without examining infrastructure under devolved competence. More information is required about the proposals in order to provide a more considered response.

**12. Do you agree that the decision of whether to accept or reject the Commission's recommendations should rest with the responsible government?**

Yes, though any decision on whether to accept or reject must be subject to scrutiny by a new parliamentary Joint Committee on Infrastructure.



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### **13. Should Departments be required to accede to the Commission's request for analysis?**

This issue requires further examination and detail, particularly surrounding the question of who will pay for any additional resources required to undertake new analysis and the transparency around methods and assumptions underpinning any of this analysis.

### **15. Should legislation also place obligations on the relevant regulators and public bodies to provide analysis for the Commission?**

This issue requires further examination and detail, particularly surrounding the question of who will pay for any additional resources required to undertake new analysis, the transparency around methods and assumptions underpinning any of this analysis, and the relative weight to be given to this analysis as against other relevant considerations.

#### **Contact**

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#### **About E3G**

E3G is an independent, non-profit European organisation operating in the public interest to accelerate the global transition to sustainable development. E3G builds cross-sectoral coalitions to achieve carefully defined outcomes, chosen for their capacity to leverage change. E3G works closely with like-minded partners in government, politics, business, civil society, science, the media, public interest foundations and elsewhere.

More information is available at [www.e3g.org](http://www.e3g.org)