



E3G

BRIEFING PAPER APRIL 2016

NATIONAL INFRASTRUCTURE COMMISSION SECURING SUCCESS SERIES A GOVERNANCE MODEL FIT FOR THE FUTURE

SEPI GOLZARI-MUNRO¹

The creation of the National Infrastructure Commission presents a unique opportunity to inject long-termism, strategic direction and sustainability into the UK's infrastructure planning and investment decisions. The effective design of the Commission's governance model will determine the Commission's success in setting a credible vision for the UK's long-term infrastructure needs², and in building the public and political consensus required for its delivery. Getting it right is therefore fundamental.

The governance model will be set out in legislation soon. This will establish the Commission's scope and remit, its relationship with Parliament, Government and regulators, whether and in what way it can hold Government to account and the extent to which its long-term investment recommendations will be constrained by short term fiscal targets.

This briefing paper offers a detailed analysis of the proposed governance model in Section 1, before setting out in Section 2 a series of amendments to ensure the Commission can deliver on its mission. This is the first in a series of briefings exploring the critical factors required to ensure the success of the National Infrastructure Commission.

¹ Head of the UK Programme, E3G. Contact: sepi.golzari-munro@e3g.org; 07867 314 004

² For an exploration of the trends shaping the UK's future infrastructure needs, see: E3G, 2016, **Faster, Smarter, Safer, Cleaner: Making Britain's Infrastructure Systems Fit For The Future**

Introduction

Setting a vision for the UK's long term infrastructure needs and building the public and political consensus on the provision of that new infrastructure is a key challenge for Government³. Neither this challenge, nor its proposed solution – the creation of an independent National Infrastructure Commission (NIC) – is novel, having been the subject of various reports and recommendations from political parties⁴, think tanks⁵ and business groups⁶. It is therefore unsurprising that the Chancellor's announcement in Autumn 2015 to create a National Infrastructure Commission has been largely welcomed across the political and institutional spectrum.

Government has tasked the Commission with identifying the UK's strategic infrastructure needs over the next 10 to 30 years in order to:

- > Foster long-term and sustainable economic growth across all regions of the UK;
- > Improve the UK's international competitiveness;
- > Serve the well-being of UK citizens.⁷

NIC must build public and political consensus to meet these objectives and undertake "clear, transparent analysis of what infrastructure is needed; what the key trade-offs and dependencies are; and how these needs can best be met."⁸

Key recommendations:

- > The success of NIC 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, resulting in a loss of confidence and a missed opportunity to address the gap in long-term infrastructure planning.
- > Fundamental principles of the Commission's operating model, as set out in section 2, concerning its purpose and objectives, the setting of its remit and duties of transparency, should be enshrined in statute;
- > A parliamentary Joint Committee on Infrastructure should be established to hold the Government and the National Infrastructure Commission to account and scrutinise all aspects of related work.

³ HM Treasury & National Infrastructure Commission, 2016, **Consultation: Cm 9182**

⁴ Labour's Policy Review, 2013, **The Armit Review**

⁵ Institute for Government, 2014, **Political Economy of Infrastructure in the UK**

⁶ CBI, 2014, Building Trust; **Making the Public Case for Infrastructure**

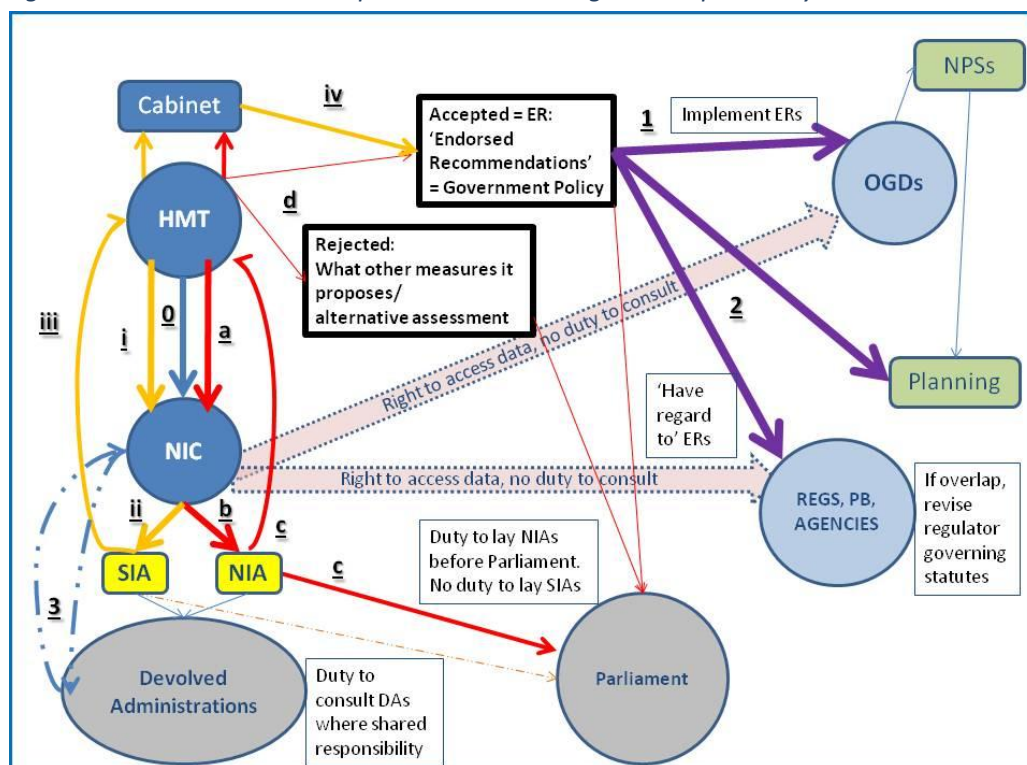
⁷ HM Treasury & National Infrastructure Commission, 2016, **Consultation: Cm 9182**

⁸ Ibid.

1. Unpacking the proposed NIC governance model

A Government consultation in January 2016 set out the Commission’s proposed governance structure. Legislation, expected in the second half of 2016, will put the Commission on a statutory footing and enshrine its governance and operating model. This section unpacks the proposal and is followed in the next section by a critique and proposed amendments.

Figure 1: NIC Governance & Operation Model Diagram - Explanatory narrative below



Source: Sepi Golzari-Munro, 2016

Governance & Legal Form (diagram reference point '0')

- > It is proposed that NIC be created through primary legislation as a Non-Departmental Public Body (NDPB) and body corporate separate from the Crown, but whose sponsor department would be Her Majesty's Treasury (HMT).
- > NIC would be accountable to HMT for its performance and allocation of funds. NIC would rely on HMT to set its operating budget; it would be allocated funds from within the HMT estimate in the form of a 'grant-in-aid'.
- > NIC's duties would be laid out in statute, however arrangements for providing more detailed guidance to NIC would be in a framework document between NIC and HMT, alongside Memorandums of Understanding (MoUs) governing the interaction with Other Government Departments (OGDs), and potential revision of Regulators' governing statutes to determine interface with Regulators (see further below).

-
- > NIC would be accountable to Parliament for (some of) its output (*see further below*). The form of this accountability is at present unclear.
 - > The Chancellor would appoint NIC Chair and Commissioners for an initial period of 5 years with the potential to appoint for one more term of up to 5 years. NIC CEO would be appointed by HMT, with approval of the Chair.

Outputs

1. National Infrastructure Assessments (NIA) (*diagram reference points 'a' to 'c'*)

- > NIC would analyse the UK's strategic infrastructure needs and priorities over a long term horizon (generally expected to be around 10 – 30 years), and articulate this in a National Infrastructure Assessment (NIA).
- > NIAs would be undertaken once per Parliament and there would be a duty for NIAs to be laid before Parliament.
- > HMT would have a duty to respond within a specific timeframe detailing how recommendations would be taken forward or, if Government disagrees with the assessment, what other measures it proposes and its alternative assessment.

2. Specific Infrastructure Assessments (SIA) (*diagram reference points 'i' – 'iii'*)

- > These may be sector specific or technology based and cross-sectoral.
- > Terms of Reference (ToRs) for these studies would be set by Government and would define the issue to be addressed and provide fiscal and economic guidance within which NIC must make its recommendations.
- > The Government may ask NIC to complete its work in such a way that its recommendations feed into national policy for the land-use planning system, including appropriate consultation and environmental assessment.
- > There would be no duty to lay SIAs before Parliament (though Government may choose to) and no duty for the Government to respond to SIAs. SIAs would be published.

Chancellor would set NIC's remit

- > Because it is said to be “vital that the commission recommends infrastructure that is sustainable and affordable, and delivers real economic benefits,” NIC will work within a remit set by the Chancellor.
- > NIC's remit would be set through a formal letter from the Chancellor at the beginning of every Parliament which sets the context for the NIA and commissions individual studies.
- > The letter would be published and detail the nature of the economic and fiscal remit. It would also provide a broad framework within which the commission would operate, and highlight pressing objectives such as supporting regional economic growth or delivering sustainable infrastructure.



E3G

Fiscal constraints on NIC's remit

- > NIC would be given an indicative financial envelope in which to make recommendations.
- > Because the financial envelope extends over long time periods, NIC would assume total infrastructure spending as a specified percentage of GDP, and would be expected to use OBRs central long-term GDP projections.
- > Government expects that the forthcoming NIA would work strictly within the fiscal remit for the coming 5-10 years where it is recommending specific projects and programmes.
- > NIC would take account of long term funding guidance provided by departments; the fiscal remit would provide guidance on infrastructure spending which is part of a Government programme (e.g. Transport/flood defence).

Economic Considerations and Impacts on Consumer Bills

- > NIC would be expected to explicitly highlight the potential impact – positive or negative – of proposed infrastructure recommendations on consumer bills.
- > The economic remit is said to be intended to ensure that NIC works with economic regulators in other sectors such as water and energy, to protect consumer bills from unaffordable increase.

Taking Outputs forward (diagram reference points d, iv – 2)

- > NIC recommendations accepted by Government would become 'Endorsed Recommendations' and would thereby become Government Policy.
- > NIC would not be responsible for delivering the infrastructure it recommends. The Government would continue to decide and approve what should be built.
- > NIC would hold Government to account for delivery of 'Endorsed Recommendations' and the progress of individual projects and would publish a regular assessment of the Government's infrastructure programme.
- > The Infrastructure and Projects Authority (IPA) – a new joint Cabinet Office and HMT unit – would support a pipeline of projects and give progress updates, which NIC would have access to and be able to comment on.

Other Government Departments (OGDs)

- > NIC would have sole responsibility for its recommendations and would not be required to consult on them with government departments or other bodies though it could choose to do so.
- > NIC would have the right to ask departments for data and analysis.
- > Specific working arrangements would be set out in separate MoUs between NIC and OGDs.



E3G

-
- > Reports, assessments and publications would be published under NIC's sole responsibility and would not require clearance from OGDs or Cabinet Committee.
 - > Government would be responsible for sequencing work between endorsed recommendations and existing investment strategies/processes.

Regulators, Public Bodies, Agencies

- > NIC would 'be expected to' maintain close working relationships with relevant regulators, public bodies and agencies, and to keep them up to date on its work programme.
- > There would be an obligation on regulators to 'have regard' to Endorsed Recommendations. However, this would be an overriding duty and would have to be balanced against regulators' other duties and interests. It is unclear how this would be done in practice.
- > Where there is an overlapping statutory remit, 'it is expected' that NIC would examine closely the conclusions of these bodies but would remain independent in its own recommendations.
- > NIC would have the right to access data and analysis from regulators and public bodies and similarly it would report on the amount of work it has commissioned.
- > To facilitate this, it may be necessary to revise statutes governing how the relevant regulators and public bodies function, and how information is managed.
- > NIC would engage with private sector infrastructure owners and operators (including regulated companies) in each of the sectors that it examines, as well as with other relevant stakeholders, such as environmental and community groups.
- > The Commission may request information from regulated companies and other industry bodies.
- > Given NIC should aim to promote cross-party consensus with its recommendations, it will therefore need the freedom to engage, where appropriate, across the political spectrum and with relevant Parliamentary, devolved and local committees and institutions.

Impact on planning system

- > Government wishes to ensure that the planning system – both for Nationally Significant Infrastructure Projects (NSIPs) and other infrastructure projects – is able to absorb the work of the Commission and move projects forward.
- > Endorsed Recommendations would therefore be deemed to be 'material considerations' in both the NSIP planning process and locally led planning regime. This would significantly enhance the status of Endorsed Recommendations.
- > Government Departments would be under an obligation to review National Policy Statements (NPSs) in light of Endorsed Recommendations (there are currently 12 different NPSs held as follows: DECC: 6; DfT 3; DEFRA: 3).

2. Amendments to ensure the Commission's success

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 NIC 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 following design points could serve to compromise the Commission's position.

Setting the remit and the terms of reference

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

- > Provide the broad framework within which the Commission would operate;
- > 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 assessments (SIAs) would be set by the Chancellor which would define the issue to be addressed, and provide the economic and fiscal guidance within which recommendations could be made.

There are three potential problems with this approach.

1. **The Commission's remit and terms of reference provide a means by which infrastructure options could be pre-emptively foreclosed or mandated.** If the ability to set these is restricted to the Chancellor, on behalf of the Government, this would leave the Commission highly vulnerable to short-term political pressure which would risk its substantive independence, undermine and therefore compromise its ability to form and sustain a national and political consensus.
2. A related problem of such a remit setting process is that it risks **restricting the Commission's scope for taking into account all relevant evidence when making**

judgments about which aspect(s) of UK infrastructure it should focus its attention on. Without this ability, the Commission would not in fact be able to fulfil the function of providing objective, evidence-based advice, but would rather be providing consultancy services to Government. It would not have substantive independence, which 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 could be set without confining it to the prioritisation of short-term cost reduction over the delivery of long-term value.** This is particularly so, given the Chancellor’s new fiscal mandate which requires Government to achieve a budget surplus (in each year) by 2019-2020, and to maintain a surplus thereafter so long as economic growth does not fall below 1%. By committing to this, the government has effectively ruled out borrowing to fund public infrastructure or, at best, restricted itself to expensive off-balance sheet models of finance. This approach has been criticised by the OECD⁹, the IFS¹⁰ and IMF researchers¹¹.

Transparency to facilitate consensus

Responding to future uncertainties – or “known unknowns” – and thereby making informed decisions about infrastructure investment is difficult. It requires robust analysis of the long-term effects of alternative infrastructure systems across a wide range of uncertain future scenarios. Unsurprisingly, the assumptions and methodologies that influence these decisions can be highly contestable and contested¹².

The proposals do not currently include a transparency requirement for the full evidence-base – including methodologies and assumptions – used by the Commission in reaching its conclusions. To facilitate a constructive public and political debate and bolster the perception of the Commission’s independence, absolute transparency on the evidence-base, methods and assumptions used to underpin the Commission’s analysis is crucial.

Recommendation

To address the problems highlighted above and to ensure that the Commission enjoys substantive as well as formal independence, significant fundamental principles of the Commission’s remit and duties – including extensive duties of transparency – should be enshrined in statute. These 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.

⁹ Organisation for Economic Development and Cooperation, 2015, [Global Economic Outlook and interim Economic Outlook](#)

¹⁰ Institute Fiscal Studies, 2016, [The IFS Green Budget](#)

¹¹ International Monetary Fund, 2015, [When Should Public Debt Be Reduced?](#)

¹² For an excellent exposition of this issue, see Institute for Government, 2014, [Political Economy of Infrastructure in the UK](#)



E3G

The following principles should 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.

The Commission will do this 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;
- > 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.

The Commission will do this in order to:

- > serve the best long-term public interest and well-being of UK citizens;
- > provide best long-term environmental, social and economic value to UK citizens;
- > provide a deliberative forum where politicians, experts, interest groups and representatives of local communities may engage in structured, informed discussions about 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.

This must be done 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 advice to Government is finalised;



E3G

-
- > 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 that 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 by any party being made public as soon as possible.

Further Terms of Reference

Further detailed ToRs, may be set by Government or by a new Parliamentary Joint Committee on Infrastructure, while remaining consistent with this statute.

Embedding accountability and a consistent basis for scrutiny

Changes to the machinery of Government also require changes to the scrutiny of new governance arrangements. It is currently unclear from existing proposals:

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

There are two potential problems with this.

1. 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.
2. Furthermore, current proposals envisage a weak role for Parliament, stating NIC would be accountable to Parliament for its outputs but without being clear about what form accountability would take.



E3G

Recommendations

Creation of a parliamentary Joint Committee on Infrastructure

Addressing concerns over accountability and scrutiny requires the establishment of a parliamentary Joint Committee on Infrastructure (JCI). This would be analogous to the Joint Committee on the National Security Strategy and would have a dedicated chair and members made up of the chairs of the relevant departmental select committees.

The Parliamentary Committee 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.

Additional scrutiny

- > Requirement for the National Infrastructure Assessment and the Specific Infrastructure Studies to be laid before Parliament and scrutinised by the parliamentary JCI.
- > Requirement for the National Infrastructure Commission to update/review the analysis and recommendations made in the National Infrastructure Assessment within 3 years of finalisation.
- > A clear role for the National Infrastructure Commission to hold the Government to account on the delivery, value and impact of UK infrastructure.

The Power of ‘Endorsed Recommendations’ and Interface with Other Bodies

If accepted by Government, recommendations made through NIAs and SIAs would be ‘Endorsed Recommendations’ and automatically be deemed official Government Policy, though there would be no duty for NIC to consult OGDs, Regulators or others in reaching its recommendations. NIC would also have the right to access data and analysis and report on any work it has commissioned. This could have far reaching consequences for OGDs, Regulators and the Planning System and the impact must be explored in more depth.

- > Regulators must ‘have regard to’ Endorsed Recommendations. While this would not be an overriding duty, the proposal that Regulators governing statutes could be amended where there is an overlapping remit could have the same impact as imposing Endorsed Recommendations on Regulators.



E3G

-
- > Current proposals inadequately explore the impact of NIC on the independence of economic regulators and their ability to fulfil their statutory duties of protecting the consumer. Whether intentionally or not, there is a risk of NIC activity, in particular engagement with regulated companies, to undermine activities of the relevant economic regulator.
 - > OGDs would have a duty to implement Endorsed Recommendations.
 - > While the duties concerning OGDs appear weightier than those imposed on Regulators, there could be consequences for key environment areas if there are significant Machinery of Government changes – i.e. if the Environment Agency is taken in-house to DEFRA – therefore treated as OGD with weightier obligations with respect to Endorsed Recommendations.
 - > Endorsed Recommendations would become ‘material considerations’ in both National and local planning systems. There would be a duty to revise National Policy Statements in light of Endorsed Recommendations.
 - > There are proposals for the duty of OGD or regulator to consult to be removed if the NIC has already consulted on the issue.

Conclusion

NIC’s governance model cuts to the heart of whether NIC will succeed in setting a credible vision for the UK’s long term infrastructure needs, and building the public and political consensus on the provision of that new infrastructure. Getting it right is therefore fundamental.

Legislation introduced in the second half of 2016 must include better safeguards to secure NIC’s independence, its scope to make evidence-based decisions and the means by which scrutiny and accountability functions can be secured, including a stronger role for Parliament. This briefing has set out a series of recommendations to help achieve these, without which there is a risk that the NIC would be incapable of addressing the challenges faced by the UK, now and in the future.

ANNEX A

The 'Shadow' Commission

The Commission has been operating in shadow form since the announcement of its creation on 5 October 2015 and will continue to do so until legislation is passed in the second half of 2016 to establish it on a statutory footing.

Chair and Commissioners

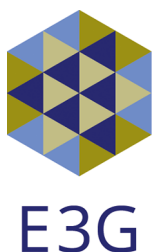
Lord Adonis was appointed the 'Interim Chair'. The Commissioners include:

- > **Lord Heseltine** – the former deputy prime minister who has long championed the regeneration of Britain's inner cities through infrastructure investment;
- > **Sir John Armitt** – the former chair of the Olympic Delivery Authority and the President of the Institute of Civil Engineers for 2015/16;
- > **Professor Tim Besley** – a former member of the Bank of England's Monetary Policy Committee and LSE's Growth Commission, which recommended an independent infrastructure body;
- > **Demis Hassabis** – artificial intelligence researcher, neuroscientist and head of DeepMind Technologies;
- > **Sadie Morgan** – a founding director of dRMM Architects and Design Panel Chair of HS2;
- > **Bridget Rosewell** – a senior adviser at Volterra and former Chief Economist and Chief Economic Adviser to the Greater London Authority;
- > **Sir Paul Ruddock** – chairman of the Victoria & Albert Museum and the University of Oxford Endowment.

The CEO, appointed by the Chancellor, is **Phil Graham**. He joined from the Department for Transport, where he led the development of the Government's high speed rail strategy, as well as leading the team supporting Sir Howard Davies' Airports Commission and working on the London Olympics.

Institutional History

- > In January 2016, Infrastructure-UK (I-UK; based inside HMT) and the Major Projects Authority (MPA; based inside Cabinet Office) were merged to form the Infrastructure and Projects Authority (IPA; HMT + CO) and the National Infrastructure Commission (NIC; proposed NDPB).
- > Infrastructure-UK was established in the 2010 emergency budget to 'provide stronger focus on the UK's long term infrastructure priorities and meet the challenge of facilitating significant private sector investment over the long-term'. It was set up within HMT's Enterprise and Growth Directorate (EGD), and led by its CEO. Instruments such as the UK Guarantee Scheme and Platforms such as the



Pensions Infrastructure Platform were operated from I-UK. Its predecessor, Partnerships UK (P-UK) represented an alternative approach to infrastructure provision utilising PFI and later PPP approaches. Arguably, I-UK was P-UK brought inside Treasury.

- > The Major Projects Authority was responsible for the Government's Major Projects Portfolio, which covered around 200 projects with a whole life cost of £500bn. It had far reaching powers across departments and could intervene directly in major projects.
- > The Infrastructure and Projects Authority reports both to Cabinet Office Ministers and the Chancellor. It has brought together the functions of MPA and I-UK (apart from the latter's strategy functions, which passed to NIC). This merger has raised concern in the House of Commons Committee of Public Accounts that the IPA may become too much of a champion for government projects, at the expense of its vital role in challenging government performance.¹³

About E3G

E3G is an independent, non-profit global think tank, operating in the public interest to accelerate the transition to a low-carbon economy. 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.

In 2016 E3G was ranked the number one environmental think tank in the UK by the Go To Think Tank Index, second in Europe and sixth in the world.

More information is available at www.e3g.org

Copyright

This work is licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 2.0 License.

© E3G 2016

¹³ House of Commons Committee of Public Accounts, 31st report of session 2015-16 HC710, **Delivering Major Projects in Government**