

# NATIONAL PRIORITY INFRASTRUCTURE BILL

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Make provision for the development of infrastructure which is a national priority; and for connected purposes.

**BE IT ENACTED** by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows—

**PART 1**

PRELIMINARY

**1. Citation and commencement**

This Act may be cited as the National Priority Infrastructure Act 202[ ] and shall come into force [●] from the date on which it is passed.

**2. Interpretation**

In this Act—

“the 1990 Act” means the Town and Country Planning Act 1990;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the 2023 Act” means the Levelling Up and Regeneration Act 2023;

“appropriate licensing authority” has the meaning given by section 113 of the 2009 Act”;

“data centre” means any physical room, building, group of buildings or facility that holds IT infrastructure related to the storage, processing or distribution of data;

“developer” means a person who proposes to carry out development which is, or forms part, of national priority infrastructure;

“development” includes—

- (a) development within the meaning of section 55 of the 1990 Act which is carried out in, on, over or under land (as defined in this Act, and for the purposes of this Act development under the 1990 Act is to be construed accordingly);
- (b) the carrying out of any licensable marine activities within the meaning of section 66 of the 2009 Act as may be amended from time to time by an order made by the appropriate licensing authority for any area under subsection (3) of that Act; or
- (c) the carrying out or construction of any other work or engineering operation which relates to land, or territorial sea.

“excluded land” has the meaning given in section 5 of this Act;

“illness” includes any disorder or disability of the mind and any injury or disability requiring medical or dental treatment or nursing;

“IT infrastructure” includes any computer or other technology by means of which information or other matter may be recorded or communicated without being reduced to documentary form;

“land” includes land covered by water including territorial sea;

“national priority infrastructure” has the meaning given in section 3(1) of this Act;

“nuclear power station” means station or plant where power is generated by the conversion of nuclear energy;

“overhead lines” means any electric line which is placed above ground and in the open air;

“planning Acts” has the meaning given by section 117(4) of the Planning and Compulsory Purchase Act 2004 and also includes the Planning Act 2008;

“priority consent” has the meaning given in section 6(1) of this Act;

“representation period” has the meaning given in section 7(4) of this Act; and

“territorial sea” means the territorial sea within section 1 of the Territorial Sea Act 1987.

## PART 2

### PRIORITY CONSENT FOR NATIONAL PRIORITY INFRASTRUCTURE

#### 3. National priority infrastructure

(1) In this Act “national priority infrastructure” means infrastructure which consists of the development, in England, of—

- (a) a data centre;
- (b) a nuclear power station;
- (c) overhead lines; or
- (d) infrastructure which is the subject of a direction by the Secretary of State under section 4 of this Act,

and is not located wholly or partly in, on, under or over excluded land.

(2) The Secretary of State may by order—

- (a) amend subsection (1) to add a new type of infrastructure or vary or remove an existing type of infrastructure; and
- (b) make further provision, or amend or repeal existing provision, about the types of infrastructure which are, and are not, within subsection (1).

#### 4. Directions in relation to national priority infrastructure

(1) The Secretary of State may make a direction that infrastructure is national priority infrastructure, whether in response to an application under subsection (2) or otherwise, where they are satisfied that development of—

- (a) a type of infrastructure; or
- (b) a specific infrastructure proposal,

is of national or regional importance or for which there is a national or regional need.

(2) A person may apply to the Secretary of State for a direction in relation to a specific infrastructure proposal under subsection (1)(b).

(3) An application made under subsection (2) must specify the development and infrastructure proposal to which it relates, and explain why it is of national or regional importance or why there is a national or regional need.

- (4) The Secretary of State must determine an application under subsection (2) no later than 28 days from the day after such an application is made.

#### **5. Meaning of “excluded land”**

- (1) The following land is excluded land for the purposes of section 3—
- (a) a National Park or the Broads;
  - (b) an area comprising a world heritage property and its buffer zone as identified in accordance with the Operational Guidelines for the Implementation of the World Heritage Convention as published from time to time;
  - (c) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979;
  - (d) an area notified as a site of special scientific interest under section 28 of the Wildlife and Countryside Act 1981;
  - (e) an area designated as a national landscape under section 82 of the Countryside and Rights of Way Act 2000;
  - (f) an area designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
  - (g) a listed building (as defined in section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990);
  - (h) ancient woodland within the meaning of section 136(2) of the 2023 Act;
  - (i) registered common land;
  - (j) agricultural land within grades 1, 2 and 3a which is for the time being used (or was last used) for agricultural purposes;
  - (k) land which is designated by an appropriate authority as being in flood zone 3 or 3b;
  - (l) a registered park or garden or a registered battlefield; and
  - (m) an area comprising open space or a fuel or field garden allotment within the meaning of section 19 of the Acquisition of Land Act 1981.
- (2) In this section, “registered common land” means—
- (a) land which is registered as common land under the Commons Registration Act 1965 and whose registration under that Act has become final; and
  - (b) land which is registered as common land under Part 1 of the Commons Act 2006.

#### **6. Granting of priority consent**

- (1) The Secretary of State may grant consent under this Act (“priority consent”) for development to the extent that it is, or forms parts of, national priority infrastructure or is development specified in subsection (2).
- (2) Development is specified for the purposes of this subsection where it is associated with, or otherwise ancillary to, national priority infrastructure which is included in the same proposal, or for which priority consent has been granted.
- (3) Nothing in subsection (1) prevents the granting of consent or approval under an enactment specified in section 14 in relation to national priority infrastructure until an application for priority consent has been made, or if it has been made, it is withdrawn.

### **PART 3**

#### **PROCEDURE FOR OBTAINING PRIORITY CONSENT**

## 7. Applications for priority consent

- (1) A person may make an application to the Secretary of State for priority consent under this Part.
- (2) An application under subsection (1) is a “relevant application” if it—
  - (a) relates to development within the meaning of section 6;
  - (b) is made using an application form published by the Secretary of State from time to time;
  - (c) is accompanied by—
    - (i) a draft of the national priority infrastructure order which includes any requirement or condition required under Part 4 of this Act;
    - (ii) plans which set out the extent of the development to which the order mentioned in subsection 2(c)(i) relates;
    - (iii) confirmation that the land included in an application is not and does not form part of excluded land; and
    - (iv) such further information as may reasonably be required for the Secretary of State to determine the application.
- (3) The Secretary of State must confirm whether an application is a relevant application within 28 days beginning with the day after the day on which the Secretary of State receives the application, and if such confirmation is given—
  - (a) the person making the relevant application must publish the application documents on a website; and
  - (b) publish at least one notice on a website or in a newspaper circulating in the area to which the proposed national priority infrastructure order relates informing persons that the Secretary of State has confirmed that a relevant application has been made, and that representations in respect of that application may be made to the Secretary of State within the time period specified in subsection (4).
- (4) Following the publication of a notice in accordance with subsection (3)(b), any person may submit a representation in writing to the Secretary of State in relation to the relevant application no later than 42 days following the date on which the notice is first published (“the representation period”).
- (5) Within 42 days following the end of the representation period, the Secretary of State must determine whether any further information is required to be provided in relation to the relevant application.

## 8. Decisions on applications for priority consent

- (1) Except where section 13(4) applies, as soon as reasonably practicable, and no later than 120 days following the end of the representation period (unless subsections (4) and (5) apply), or the date on which a request for further information is made under section 7(5), the Secretary of State must determine whether to make or refuse the order granting priority consent in accordance with subsections (3) to (8).
- (2) Where section 13(4) applies, as soon as reasonably practicable, and no later than 180 days following the end of the representation period (unless subsections (4) and (5) apply), or the date on which a request for further information is made under section 7(5), the Secretary of State must determine whether to make or refuse the order granting priority consent in accordance with subsections (3) to (8).
- (3) The Secretary of State may—
  - (a) make the order, either unconditionally save for developer contribution conditions under section 11 and section 12 of this Act (except where section

- 13(4) applies) and or subject to such conditions as the Secretary of State considers appropriate or necessary to avoid a refusal of the order, or
- (b) refuse to make the order.
- (4) If refusing the application, the Secretary of State must give a written statement of reasons for refusal to either the House of Commons or the House of Lords on two successive weeks.
- (5) The Secretary of State must make a decision whether to make or refuse an order granting priority consent in accordance with the applicable presumption under section 9 of this Act unless—
- (a) there are wholly exceptional circumstances why the order should not be made;
- (b) part or the whole of the land or area for which the consent is sought is excluded land;
- (c) the contributions which are provided for by a direction or conditions prescribed for the purposes of Part 4 are not included in the order which purports to grant consent;
- (d) where section 13(4) applies, the Secretary of State considers, in their absolute discretion, that the conditions proposed to be secured by a developer in a draft order are not equivalent to, or better than, the conditions imposed under Part 3 of this Act; and
- (e) the making of the order granting such consent would be inconsistent with any other legal duty imposed on the Secretary of State by any enactment.
- (6) Where the Secretary of State is minded to refuse to make the order under subsection (1) or (2), they must publish an interim decision setting out the reasons, and provide the developer with 42 days from the date of publication to make representations on those reasons.
- (7) The Secretary of State must consider the representations received under subsection (5), and determine the application no later than 42 days from the date that representation is received.
- (8) The Secretary of State is, for the purposes of subsections (1), (2) and (6), under a duty to use reasonable endeavours to impose conditions which would allow the making of the order where imposing such conditions would prevent the refusal of the order.
- (9) For the purposes of this section, “wholly exceptional circumstances”—
- (a) may arise in relation to a matter raised in a representation made under section 7; and
- (b) must be construed from the starting presumption that any adverse impacts are outweighed by the urgent need for national priority infrastructure and the clear, substantial and exceptional benefits arising from national priority infrastructure.

### **9. Applicable presumption for national priority infrastructure**

Development which is national priority infrastructure, and which complies with the requirements of Part 4 of this Act, is to be treated as infrastructure for which priority consent should be granted.

## **PART 4**

### **DEVELOPER CONTRIBUTIONS AND CONDITIONS FOR NATIONAL PRIORITY INFRASTRUCTURE**

### **10. Model conditions which must be included in an order granting priority consent**

- (1) An order granting priority consent must include provision securing any condition which is prescribed for the purposes of this section.
- (2) The Secretary of State must, within 4 months of the coming into force of this Act, carry out an assessment of, and prescribe, any appropriate conditions, by reference to the scale of the development, which, having due regard to the removal of consents under section 14 of this Act, would so far as reasonably practicable protect the environment and minimise adverse effects which may arise during the construction or operation of national priority infrastructure in relation to—
  - (a) effects on the environment;
  - (b) effects on public transport and road networks; and
  - (c) effects on amenity.
- (3) Conditions under subsection (2) may only be prescribed where the Secretary of State is satisfied in its absolute discretion that those conditions seek to provide mitigation for, and protection against, the adverse effects of the development on the environment, public transport and road networks and amenity to a degree which is comparable with that which would ordinarily be required pursuant to the planning Acts.
- (4) Conditions prescribed under subsection (2)—
  - (a) must, wherever possible, not include provision for further approval or consent to be required to be given by any person;
  - (b) must include a requirement for the payment of money (“community payment”) to a person or persons in a prescribed proximity to the development by reference to its type and scale of development (and, for these purposes, a community payment shall be lawful notwithstanding the provision of any other enactment);
  - (c) may relate to a type of development, or specify the circumstances in which they are likely to be applicable to development generally.

#### **11. Developer contributions to protect the environment**

- (1) A developer must include in a draft order for the purposes of section 7(2)(c)(i) a condition which secures a contribution in accordance with the direction to be made by the Secretary of State under this section.
- (2) The Secretary of State must, within 4 months of this Act coming into force, carry out an assessment, by reference to the scale of development which may reasonably be brought forward, of a contribution to be made by a developer which would provide appropriate protection for the environment in connection with applications under section 7.
- (3) The Secretary of State must within 2 months of completing an assessment under subsection (2), make a direction specifying the contribution to protection of the environment required to be made by a developer by reference to the type of development and its scale, in connection with national priority infrastructure.
- (4) A contribution specified in a direction under subsection (3) must ensure, in the Secretary of State’s view in their absolute discretion—
  - (a) the effect of national priority infrastructure which is the object of that direction will, incorporating the contribution specified, be unlikely to affect the overall condition of the environment and provide for its protection,
  - (b) the implementation of national priority infrastructure which is the object of that direction will materially contribute to ensuring compliance with the targets established under the Climate Change Act 2008, or



- (c) the environmental impact of national priority infrastructure which is the object of that direction can, on the basis of the contributions specified, be minimised so far as reasonably practicable.
- (5) For the purposes of subsection (4), and without limitation, the Secretary of State may set the contributions required by this section at a level which is at least 10% greater in value than the value of environmental measures (adjusted for inflation) incorporated in a consented or permitted development where—
  - (a) that development has been consented in England, Scotland, Wales and Northern Ireland no more than 5 years prior to the date this Act comes into force; and
  - (b) the Secretary of State is satisfied that development is comparable to, or reflects a reasonably worst case scenario, to the national priority infrastructure which is the subject of the direction.
- (6) Where a contribution is specified in accordance with subsection (5), the conditions of subsection (4) are deemed to be satisfied.
- (7) The Secretary of State must expend any contribution paid by a developer under a condition under this section for the purposes of environmental mitigation, protection or enhancement.
- (8) The Secretary of State may, for the purposes of subsection (7), grant or transfer the contribution to another person.

## 12. Developer contributions to protect transport networks

- (1) A developer must include in a draft order under section 7(2)(c)(i) a condition which secures a contribution in accordance with the direction to be made by the Secretary of State under this section.
- (2) The Secretary of State must, within 4 months of this Act coming into force, carry out an assessment, by reference to the scale of development, of an appropriate contribution to be made by a developer to ensure that any severe permanent adverse impact on the road network as a whole can be avoided and, so far as reasonably practicable, other adverse impacts on the network are reduced, in connection with applications under section 7.
- (3) The Secretary of State must within 2 months of completing an assessment under subsection (2), make a direction specifying the contribution required to be made to by reference to the type of development and its scale, in connection with national priority infrastructure.
- (4) A direction under subsection (3) may only be made where the Secretary of State is satisfied, in its absolute discretion, that the effect of national priority infrastructure which is the object of that direction ensures, with the contribution specified, is unlikely to lead to a severe permanent adverse impact on the road network overall.
- (5) For the purposes of subsection (3), and without limitation, the Secretary of State may set the contributions required by this section at a level which is at least 10% greater in value than the value of traffic measures (adjusted for inflation) incorporated in a consented or approved development where—
  - (a) that development has been consented in England, Scotland or Wales no more than 5 years prior to the date this Act comes into force; and
  - (b) the Secretary of State is satisfied that development is comparable to the national priority infrastructure which is the subject of the direction.
- (6) Where a contribution is specified in accordance with subsection (5), the condition of subsection (4) are deemed to be satisfied.

- (7) The Secretary of State must expend any contribution paid by a developer under a condition under this section for the purposes of surface access or public transport improvements.
- (8) The Secretary of State may, for the purposes of subsection (8), grant or transfer the contribution to another person.

## PART 5

### ORDERS FOR NATIONAL PRIORITY INFRASTRUCTURE

#### 13. What may be included in an order granting priority consent

- (1) An order granting priority consent may impose further requirements in connection with the development for which consent is granted in addition to those specified in Part 4 of this Act.
- (2) An order granting priority consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.
- (3) An order granting priority consent may—
  - (a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;
  - (b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of a provision of the order or in connection with the order; or
  - (c) include any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provisions of the order.
- (4) An application for an order may include provision for reducing a contribution or modifying a condition which would otherwise be imposed under Part 4 of this Act.

## PART 6

### OTHER CONSENTS AND PROCEDURES WHICH DO NOT HAVE THE EFFECT IN RELATION TO NATIONAL PRIORITY INFRASTRUCTURE

#### 14. Effect of requirement for priority consents on other consent regimes

- (1) Except in relation to a licence or permit specified under section 15, where priority consent has been granted for development, no consents, approvals or requirements under planning law or environmental law are required to be obtained or applicable in relation to that development.
- (2) Without limitation to subsection (1), the following is not required in relation to development where priority consent is granted for that development—
  - (a) planning permission under the Town and Country Planning Act 1990;
  - (b) development consent under the Planning Act 2008;
  - (c) any authorisation, consent or approval required under the following legislation—
    - (i) Harbours Act 1964;
    - (ii) Highways Act 1980;
    - (iii) Countryside and Rights of Way Act 1981;
    - (iv) Land Drainage Act 1991;
    - (v) Planning (Listed Buildings and Conservation Areas) Act 1990
    - (vi) Merchant Shipping Act 1995;
    - (vii) the Justification of Practices Involving Ionising Radiation Regulations 2004;

- (viii) Commons Act 2006;
  - (ix) any statutory provisions of local application; or
  - (x) any other byelaws made under section 235 of the Local Government Act 1972 or otherwise; and
- (d) any authorisation, consent or approval contained in any enactment or instrument specified in section 33 of the Planning Act 2008.
- (3) The grant of a priority consent which includes a condition for an environmental contribution under section 11 is deemed to discharge the duty imposed under section 85 of the Countryside and Rights of Way Act 2000 and section 11A of the National Parks and Access to Countryside Act 1949.
- (4) Section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply to an application granting priority consent.
- (5) Section 158 of the Planning Act 2008 applies to an order granting priority consent as though that order was an order granting development consent.
- (6) Reference to legislation or regulation in this Part includes reference to any enactment of substituted legislation or regulation.
- (7) In this section—
- “planning law” means any legislative provision to the extent that it is mainly concerned with planning or development control; and
- “environmental law” means any legislative provision to the extent that it is mainly concerned with environmental protection.

#### **15. Preservation of environmental and safety consents**

- (1) A licence required under the Nuclear Installations Act 1965 (“the 1965 Act”) will be required in relation to national priority infrastructure unless the Secretary of State certifies that they are satisfied, in their absolute discretion, that any conditions in an order granting priority consent would provide an equivalent level of protection as a licence required under the 1965 Act.
- (2) A permit required under the environmental permitting regulations will be required in relation to national priority infrastructure unless the Secretary of State certifies that they are satisfied, in their absolute discretion, that any conditions in an order granting priority consent would provide an equivalent level of protection as required by those regulations.
- (3) In this section “environmental permitting regulations” means Environmental Permitting (England and Wales) Regulations 2016 or any other regulations which substitute or replace those regulations.

#### **16. Requirement for environmental assessments**

- (1) Where an application for priority consent has been made—
- (a) an assessment is not required to be carried out pursuant to environmental assessment legislation, the habitats regulations or otherwise; and
  - (b) the process in environmental assessment legislation, and the Habitats Regulations is not applicable, or required, in relation to the national priority infrastructure.
- (2) Reference to legislation or regulation in this Part includes reference to any enactment of substituted legislation or regulation.
- (3) In this section—
- “environmental assessment legislation” means any enactment or provision referred to in Schedule 14 to the 2023 Act; and

“habitats regulations” means any legislative provision to the extent that—

- (a) is referred to in section 164(4) of the 2023 Act; or
- (b) is otherwise mainly concerned with the protection of the national sites network;

“national site network” has the meaning given by regulation 3 of the Conservation of Habitats and Species Regulations 2017.

## PART 7

### MISCELLANEOUS

#### 17. Duty on public bodies in relation to national priority infrastructure

- (1) A public authority must act in a way which is compatible with the timely consenting and delivery of national priority infrastructure.
- (2) In this section “public authority” includes—
  - (a) a court or tribunal, and
  - (b) any person certain of whose functions are functions of a public nature.

#### 18. Modifications to a priority consent

- (1) The person with the benefit of a priority consent may apply to the Secretary of State to modify any provision of an order granting priority consent.
- (2) An application under subsection (1) is to be treated as a fresh application for priority consent, except that the Secretary of State may determine that there is no requirement for a representation period, and the provisions of this Act are to be construed so as to require a decision on that application to be made 90 days from the date of the application.

#### 19. Legal challenges to the grant of a priority consent

- (1) A person who has interests which are substantially and seriously prejudiced and who is aggrieved by the making of a priority consent order may apply to the High Court to question its validity on the grounds that—
  - (a) in making the order, the Secretary of State exceeded the powers to make the order under this Act; or
  - (b) any applicable requirement of this Act has not been complied with in relation to that order.
- (2) An application under this section may only be made with the leave of the High Court.
- (3) Notwithstanding any other provision, where a person brings a claim under subsection (1) and that person has had three or more relevant claims dismissed in the five years prior to that claim—
  - (a) that person must make an application for the purposes of any costs protection which is provided for by the Civil Procedure Rules; and
  - (b) for the purposes of considering any such application, a court must not provide any such protection unless wholly exceptional circumstances apply.
- (4) Notwithstanding any other provision, where a person brings a claim under subsection (1) and that person has had five or more specified claims dismissed in the five years prior to that claim with no claims decided in their favour in that period, a court must not grant an application for costs protection.
- (5) Notwithstanding any other provision of this Act or any other enactment, a court or tribunal must not consider—
  - (a) any claim or complaint which relates to a determination, decision or direction under sections 10 to 12 of this Act (except where a claimed alleges that

- determination, decision or direction is manifestly and wholly irrational, having significant regard to the discretion afforded in those sections and no statement of reasons has been provided for such a determination, decision or direction); or
- (b) any claim or complaint which would have the effect of nullifying or otherwise affecting such a determination, decision or direction; or
  - (c) a claim which is sought to be renewed orally in the same court which has dismissed or disposed of that claim.
- (6) In any proceedings under this section or otherwise, so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect to in a way which is compatible with this Act and otherwise ensures the implementation of national priority infrastructure in a timely manner.
- (7) Subsections (3) and (4) are to be construed so that if those subsections would apply to a person (the “first person”) but that person finances another person (the “second person”) to bring a claim under this section, or a court determines the first person exerts significant control over the conduct of a claim brought under this section by the second person, then the claims brought by the first person are to constitute a relevant claim brought by the second person.
- (8) A claim brought under this section must include a statutory declaration from the legal representatives of the person bringing the claim that—
- (a) there is a reasonable prospect of success, and that it does not substantially seek to adjudicate a matter which has been the subject of an unsuccessful relevant claim;
  - (b) a statement that subsection (5) does not prevent a claim from being made; and
  - (b) a statement which would allow a court to determine whether subsection (7) has effect.
- (9) In this section—
- “costs protection” means any cap or limit on the costs which would be payable or due as a result of a claim being dismissed or decided against the person who brings a claim; and
- “relevant claim” is an application or challenge under this section, section 118 of the Planning Act 2008, or section 289 of the 1990 Act, or any other claim by way of judicial review on a matter which relates to planning or the environment for which costs protection has been provided.

## 20. Extent

This Act extends to England.