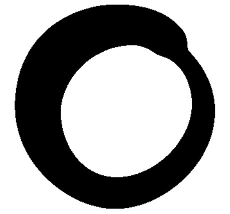
December 2007



Submission of Evidence

Planning Bill Analysis

Annex: Draft Amendments

Summary

The UK has to take long-term infrastructure decisions to achieve sustainable development and in particular a competitive low carbon economy. The decision-making around major infrastructure such as roads, rail, waste and energy should be made more efficient but not at the expense of proper scrutiny, accountability and public engagement. The current proposals risk breaking public legitimacy and therefore incurring greater delay and uncertainty. The proposals are administratively complex and costly, and are likely to result in lengthy legal challenges.

Friends of the Earth has a positive vision of development and has closely engaged in the planning reform process. However, the needs of communities and the opportunities for simpler and more cost effective means of securing development have been ignored.

This document provides an outline analysis of the Bill and proposes a number of detailed amendments (Annex 1) which seek to ensure that the objective of planning remains sustainable development, and that public legitimacy is maintained.

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Background

One of the significant problems with the Planning Bill is that it was framed on the basis of a one sided view of infrastructure provision. The Barker report[1] in particular did not properly examine the need of communities because it was not given that brief.[2] Barker's terms of reference were instead focused on the needs of business and often confused business lobbying positions with hard edged evidence[3]. It is significant that the first Barker inquiry was quite explicit in its desire to '***distance land availability decisions from the political process'*** (Box 2.1 and recommendation 11)[4]. The Planning Bill is the final expression of view strongly present in the mindset of some in Government that people and their representatives are a 'problem'. Despite the subsequent attempts of a variety of non-governmental organisations to constructively engage in the formulation of the Planning White paper and the Planning Bill, the debate has been dominated by meeting the perceived needs of business.

Ironically, because the proposed regime is so controversial it is unlikely to meet business needs, since direct action and legal challenges are likely to slow down infrastructure delivery. The Government had a duty to broker an effective system in which all parties have faith in the process even if they disagree on outcomes. This failure to secure a working consensus is even more regrettable given the social and green sectors' willingness to accept development needs, so long as evidence is tested, people have a voice, and that decisions are democratically accountable. All of these principles are breached by the Bill's proposals.

Overview

While the Planning Bill does contain a small number of measures on local planning it is overwhelmingly focused on the new regime for major infrastructure projects (MIPs). The mechanism for approving MIPs is complex but the impacts can be divided into three broad areas of concern:

- The lack of effective obligations and duties on decision makers to make decisions which reduce carbon emissions;
- The very limited and, in some cases, reduced opportunities for proper public scrutiny and participation;
- The unprecedented powers of the Commission (IPC) and the lack of democratic accountability over individual decisions.

Taken together, the lack of positive obligations coupled with failure to create a legitimate and accountable system means that the Government is likely to achieve precisely the opposite of its intended effect. Without public legitimacy which encompasses the active meditation of wide ranging views, no major project can be delivered in a timely way. Development cannot be secured without a measure of agreement that the process of the decision is fair and the outcome transparent. This is particularly important when these decisions involve fundamental impacts on people's quality of life up to and including the compulsory purchase of their homes.

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[1] Barker Review of Land Use Planning Final Report 2006 http://www.hm-treasury.gov.uk/independent_reviews/barker_review_land_use_planning/barkerreview_land_use_planning_index.cfm
[2] Friends of the Earth's response to the Barker Review of Land Use Planning http://www.foe.co.uk/resource/briefings/barker_review_of_land_use.pdf
[3] Barker Review of Land Use Planning call for evidence: http://www.communities.gov.uk/documents/planningandbuilding/pdf/143483
[4] Barker Review of Land Use Planning 2006

There are two aspects of the Bill which are welcome. First there is no doubt that the drawing together of consent regimes will add much needed coherence to the system. Second, the duty on local planning authorities to consider climate change in preparing policy, while vague, is a welcome step in the right direction.

Detailed Analysis

1. Duties and Obligations

Planning is essential for the UK to meet the challenge of climate change. National Policy Statements and major infrastructure developments must be tested against the UK's climate change policies and international commitments.

The Bill creates no obligations on the Secretary of State or the proposed Commission (IPC) to consider climate change in decision making. The draft Bill requires Local Authorities to ensure that their local planning policies are designed to secure progress towards the mitigation of, and adaptation to, climate change. However, there is no equivalent duty in the Bill requiring National Policy Statements to contribute to the mitigation of or adaptation to climate change.

This is both illogical and wrong particularly as the National Policy Statements are likely to have a major impact on developments that are of greatest concern in climate change terms. If the Government is serious about the challenge of climate change then it must ensure that National Policy Statements are in line with climate change obligations (and any requirements of the Climate Bill when enacted). A legal duty would ensure national policies are designed so as to reduce emissions in line with Government's established targets.

Not requiring major infrastructure projects to be determined by reference to the need to address the challenge of climate change is a serious flaw. The types of projects that are to be determined under the new procedures will often have significant climate change implications and should be measured against the forthcoming climate change strategy set out in the Climate Change Bill[5]. The Planning Bill does contain a Duty on Sustainable Development which mirrors the obligation in the 2004 Planning and Compulsory Purchase Act. However this formulation is the weakest construction possible only requiring the Secretary of State to *'contribute to the achievement of'* sustainable development (Section 9 (2)).

Strategic environmental assessment

The Planning White Paper envisaged that National Policy Statements (NPS) would require Strategic Environmental Assessments (SEA). However, the language of the Bill may not be sufficient to trigger requirement for SEA. This will create a situation where arguably the most important environmental plans and programmes in this country would avoid proper environmental assessment.

Amendments:

Amendment 1: Provides for a stronger obligation on the Secretary of State to deliver Sustainable Development

Amendment 2: Requires the secretary of state to consider climate change when drawing up

[5] http://www.publications.parliament.uk/pa/pabills/200506/climate_change.htm

NPS

Amendment 3: Requires the IPC to consider climate change when making individual decisions

Amendment 4: Makes National Policy Statements mandatory so as to ensure that they are subject to Strategic Environmental Assessment

(See Annex 1 for details)

2. Effective public participation

Effective participation has to be founded on rights. Opportunities for 'involvement' which are wholly at the discretion of decision makers do not provide proper safeguards. Community engagement and participation leads to avoidance of bad projects and improvement of useful ones[6]. Local community knowledge is particularly important in this regard. The right to be heard in person allows for the proper scrutiny of proposals through cross-examination. This process is vital in testing evidence.

Cross-examination

Removing cross-examination rights not only strips the process of its legitimacy but also means that the Infrastructure Planning Commission (IPC) will be deprived of a hugely significant opportunity to test and understand the evidence. That loss will be felt particularly strongly where the IPC is required to make decisions or recommendations in a short timescale. Other measures proposed by the Bill do not compensate for the removal of this essential right. Experience also shows that detailed public scrutiny leads to both the avoidance of projects that are unsound and the improvement of those that go ahead.

The NIREX inquiry which refused an application for deep level nuclear waste disposal partly on the ground of safety is an example of how public scrutiny can be vital[7]. More recently, in 2007, the Thames Gateway Bridge inquiry benefited from Mayoral financial support for the community representatives (£50,000) which ensured proper interrogation of the project proposal[8], in particular the examination of evidence.

Legal opinion

"It is very difficult for members of a tribunal to properly examine a witness's evidence without assistance from other parties. If evidence contains defects these will usually not be readily apparent. We have often had experience of apparently sound technical evidence being exposed as fundamentally flawed by cross-examination and by evidence from an opponent's experts. The more technical the evidence, the greater is the need for cross-examination."

Joint Advice from Matthew Horton QC and Richard Harwood for Friends of the Earth

September 2007

This is particularly important in the UK context where all the environmental evidence on the impacts of a development is prepared by the applicant and their consultants. Experience shows that this evidence can often be incomplete or simply incorrect and this only becomes clear though public scrutiny and cross-examination. Minsters have alleged that inquiries are

[6] 'Listen Up! Community Voice in the Planning System' http://www.foe.co.uk/resource/briefings/listen_up.pdf
[7] Nirex Inquiry examination of evidence http://www.foe.co.uk/resource/press_releases/19960130122214.html
[8] Documents relating to the inquiry http://www.persona.uk.com/thamesgateway/DECISION/Decision_letter.pdf

simply an opportunity for barristers to earn large fees, and that this can be an intimidating environment for third parties. This argument is flawed because:

- The Planning Inspectorate is trained to be sensitive to non-expert community representatives;
- No one is obliged to submit to cross-examination in a planning Inquiry;
- Fairer access to legal representation rather than restricting it altogether would be a fairer and more sensible outcome.

Currently people have a statutory right to be heard in person in the preparation of Local Plans (Section 20 of the Planning and Compulsory Purchase Act 2004). Regional plans (RSS) are examined in public but the sessions are invitation only. In appeals in planning cases, the public has a right to heard in person and to cross-examine[9].

Major projects (Town and Country Planning) are dealt with under the 2005 rules. These sought to respond to the need to make the system faster and more efficient. ODPM Circular 07/2005 stated: "*The purpose of the new inquiry procedures is to achieve significant improvements in the time taken to handle major infrastructure projects by streamlining the process and reducing unnecessary delays whilst continuing to ensure that adequate opportunity is given for people to have a say, to test evidence and to make a sound decision*"[10].

This regime is embodied in the Town and Country (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005 (SI 2005 2115). These Rules incorporate some significant reform measures but include a right to be heard. This right is qualified and has been evolved through custom and practice. There is no right enshrined on primary legislation. The rules were not evaluated before the latest round of reform began and the Government's own circular stated: "*The new arrangements will be monitored over a five-year period. Given the infrequency with which major infrastructure projects of national or regional importance come forward, it is thought that to monitor over a shorter period would not be constructive.*"[11]

The rights in this process are good test of the new proposals.

The 2005 system operates as follows:

- Rule 6 of the 2005 Inquiry makes clear that anyone may register to be a major or ordinary participant at an inquiry.
- Once having registered formally as a participant Rule 15 makes clear that those bodies will have a right to be heard.

In short the right is qualified in the sense that an individual must opt in at the beginning. Having once 'opted in' a participant has additional opportunities to exercise the right to be heard. In explaining Rule 19 of SI 2115, Circular 07/2005 makes clear that major participants have an "entitlement to cross-examine". The rules and guidance also afford discretion to the Inspector to **hear anyone who has not formally registered in the process but wishes to be heard.** Paragraph 44 of the Circular makes clear "*in practice anyone who wishes to appear at an inquiry will usually be allowed to do so*".[12]

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[9] See our consultation response to the White Paper on Planning http://www.foe.co.uk/resource/consultation_responses/pwp_consultation_response.pdf

[10] ODPM Circular 07/2005, paragraph 4

[11] ODPM Circular 07/2005, paragraph 5

[12] http://www.communities.gov.uk/publications/planningandbuilding/circularplanninginquiries

Examinations in these cases are usually held in the form of a public hearing, there being no presumption in favour of written representations.

In other consent regimes there are not always clear statutory rights. However, for those inquiries held by the Planning Inspectorate similar rules are taken to apply[13]. A right to be heard does apply to compulsory purchase hearings.

Public inquiries for major infrastructure projects provide an effective system of testing evidence and are trusted by the public. The Government has produced no comprehensive research about sources of delay in the process nor ever made clear what they mean by 'delay' as opposed to the time it takes to properly examine a proposal.

Who creates delay in the system?

Eight and half months is the time taken by Ministers to make decisions after an inspector's report according to an analysis of the information, presented by the Planning Inspectorate to the CBI Major Infrastructure Projects Conference, London, 30 October 2007, relating to 74 inquiries since 1999 into nationally significant infrastructure projects.

In terms of Heathrow Terminal 5 application, the applicants' lack of preparation and subsequent changes to the application, along with Ministerial thinking time were key sources of delay. The inquiry had to consider not just one but nearly 40 linked applications. Some applications could have been the subject of a major inquiry in their own right. Around half the planning applications were submitted after the inquiry had begun. Six new planning applications, including a scheme to divert two rivers which cross the site, were submitted as late as Spring 1998. It is significant that the Terminal 5 promoter used the entire first year of the inquiry just to present their case.

Source: Department for Transport, T5 inquiry

How will the new system work?

The Government claims that the new Bill provides people with proper rights to be heard in the process. In fact, taken together, the proposals represent a significant reduction in public participation. The complexity of the Bill makes it hard to see the effect on the public in the round.

From the public's perspective the process would work like this:

- The secretary of state would draw up a National Policy Statement (NPS) which would be the key document in determining applications.
- The public would be consulted (no minimum standards for the procedure)
- If site specific, it would be publicised to this effect after consultation with the relevant Local Authority (no requirements are described)
- Some NPS would not even go through this process, but would be retrospectively designated
- There is no requirement for parliamentary scrutiny

[13] http://www.planning-inspectorate.gov.uk/pins/appeals/planning_appeals/guides.htm#links

National Policy Statements

Any decision must be made in line with the National Policy Statement (NPS) unless there are defined exceptional circumstances. Section 95 (3) appears to create a presumption in favour of the NPS in the same way that there is a presumption in favour of the development plan in local planning decisions. NPS documents can be site specific, and despite their power and influence over peoples' lives there is no right to be heard in the preparation process. This right does exist for local planning documents in the 2004 Planning Act (Section 20 (6) PCP Act 2004). There is in fact no obligation for there to be any formal examination process. The Bill simply enables the Secretary of State to designate (Section 5 (1)).

Once the National Policy Statement is designated the following process would be set in motion:

- A promoter puts together an application
- The promoter runs the pre-application consultation process (with no safeguards to ensure impartiality)
- A pre-inquiry meeting is held to discuss how the inquiry should run, but there is the presumption that the Commission will deal through written representations rather than a public hearing (Section 82). This inevitably favours those with access to written professional expertise and against those less familiar with formal proofs of evidence.
- The Commission has discretion as to whether to hold an oral hearing (Section 83).
- Section 84 does allow for open floor session to be held and people do have a right to be heard at this stage. However, this is essentially an opportunity to 'say one's piece'.
- There are no rights to cross-examine or ask questions, and no obligation for other parties to even be in attendance.

In short it provides much less opportunity than currently enjoyed by an individual registered as a 'rule 6 party' under 2005 rules[14].

There is nothing positive in the Bill to help the public deal with the complexity of the process despite experts recommending the funding of third parties to help create a level playing field (Armstrong, TCPA 1985 and Lord Justice Brooke).

In summary:

- Under the current proposals the default position would be that applications are to be decided by written representations with no oral hearing.
- The only guaranteed oral hearing stage would be an open-floor session at the end allowing people to 'say their piece'. No opportunity to challenge evidence and ask questions.
- The preparation of National Policy Statements includes no right to be heard
- The proposals give the Secretary of State the power to designate existing policies as National Policy Statements without any of the consultation and publicity safeguards

[14] Major Infrastructure inquiry rules 2005 (SI 2005 2115)

(such as they are) that exist for new National Policy Statements. Retrospective designation of current policies would give those policies huge weight in the new planning structure without them having been properly considered by Parliament or the public.

- The National Policy Statement consultation processes are vague and inadequate. National Policy Statements will carry enormous weight in those decision making contexts. In that situation it is essential that the statements are subject to robust and guaranteed public consultation.

Amendments:

The amendments below would address the lack of accountability and participation in the Bill

Amendment 5A: Examination in public of site specific National Policy Statements (option 1)

Amendment 5B: Right to be heard in the preparation of site specific National Policy Statements (option 2)

Amendment 6: To require the Infrastructure Planning Commission to hold public hearings

Amendment 7: Right to cross-examine during inquiries

(See Annex 1 for details)

1. The power of the proposed Infrastructure Planning Commission

The Infrastructure Planning Commission (IPC) has two extraordinary sets of powers which raise profound constitutional issues.

Powers over individual decisions

The proposed IPC would take decisions over individual applications in all cases where there was a relevant National Policy Statement (NPS). In other cases the Secretary of State would decide (Section 93 and 94). Because of the wide ranging scope of NPS (Section 14 to 26) and the wider ranging power for the Secretary of State to add to the list of 'nationally significant projects' (Section 13 (3)), it is likely that most decisions will made solely by the IPC. The Minister made clear in the second reading debate that up to 45 applications a year would fall into this category[15].

Powers of legislation

The Bill also provides the IPC with extraordinary and unprecedented powers to apply, modify or exclude provisions in primary legislation and to amend, repeal or revoke local Acts (also primary legislation) where 'expedient' (Section 105 (6)(b)). The purpose of these powers is unclear. In each case, such actions can be taken without any parliamentary scrutiny. The Secretary of State's only power is to give a direction in very narrow circumstances where the revocation etc. would be contrary to European Law or the European Convention of Human Rights.

Taken together these powers are unprecedented in the post-war planning regime. Constitutionally it is reasonable to expect that the greater the power of an unelected body the greater the level of safeguards and scrutiny. In this the case IPC is unaccountable for

[15] See Hansard 10th December 2007, Second Reading Planning Bill debate

individual decisions and the consequential powers to, for example, compulsorily purchase and remove highways or agree charging schemes for roads (Section 105 (4) (a –z)).

The lack of clear democratic accountability is not simply wrong in the context of good governance. It automatically undermines the legitimacy of the IPC. Planning is not by its nature a solely technical activity. It involves complex judgements not least about what is the public interest. Ultimately the public interest can only finally be arbitrated by elected representatives.

In seeking to improve the Major Infrastructure Projects process, it is useful to note that the Planning Inspectorate (PINS) has widespread public support, particularly for its perceived fairness and objectivity, and should be considered as the administrator of these inquiries. The examining body, be it PINS or the IPC, should remain as now advisory, with Minsters taking the final decision. Parliament must retain a role in overseeing changes to primary legislation by acting as arbiter of last resort. Significantly, the powers to create a Planning Inquiry Commission with a more sensible remit and functions remains on the Statue from 1968.

Amendments:

Amendment 8: Remove the power of the Infrastructure Planning Commission to exclude, amend or revoke legislation

Amendment 9: Infrastructure Planning Commission to advise Secretary of State rather than determine

(See Annex 1 for details)

Annex: Draft Amendments

AMENDMENT 1: Provide for a stronger obligation on the Secretary of State to deliver sustainable development

Part 2 Section 9 (2)	Amend Section 9 (2)
What is the current wording?	The Secretary of State must, in exercising those functions, do so with the objective of contributing to the achievement of sustainable development.
Why is an amendment needed?	To provide for a robust duty for decision makers on sustainable development
What is the proposed solution? **Amendment**	Section 9 (2) delete (2) and insert (2) The Secretary of State must exercise the function with the objective of achieving sustainable development (3) For the purpose of subsection (2) the Secretary of state must act under guidance, including as to the meaning of sustainable development, set out in the UK Sustainable Development Strategy
For further information:	The UK Government, Scottish Executive, Welsh Assembly Government and the Northern Ireland Administration have agreed upon a set of principles that provide a basis for sustainable development policy in the UK. For a policy to be sustainable, it must respect all five principles. This means to live within environmental limits and achieve a just society, and to do so by means of sustainable economy, good governance, and sound science. http://www.sustainable-development.gov.uk/what/principles.htm

AMENDMENT 2: Require the Secretary of State to consider climate change when drawing up NPS

Part 2, CL 8	Introduce new section 9A 'Climate Change'
What is the current wording?	None
Why is an amendment needed?	To require the Secretary of State to consider Climate Change in the preparation of National Policy Statements.
What is the proposed solution? **Amendment**	Introduce new section: "5A: Climate Change (1) A statement may only be designated under section 5 if the Secretary of State is satisfied that (taken as a whole) the policies in the statement contribute to the mitigation of, and adaptation to, climate change. (2) A statement designated under section 5 must contain a statement to the effect that it is the Secretary of State's view that the requirement of subsection (1) is satisfied.
Evidence	The UK Government has international commitments to the mitigation of and adaptation to climate change (Kyoto) and national commitments (the Climate Change bill) expressed in the UK Climate Change programme. As a matter of common law, the UK's commitments are relevant to any infrastructure statement.

AMENDMENT 3: Require the IPC to consider climate change when making individual decisions

Part 6 Chapter 5 Section 94 (2)	Introduce new subsection 94(2)(d)
What is the current wording?	(2) In deciding the application the Panel or Council must have regard to— (a) any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”), (b) any matters prescribed in relation to development of that description, and (c) any other matters which the Panel or Council thinks are both important and relevant to its decision.
Why is an amendment needed?	To require IPC to consider Climate Change in the decision making process
What is the proposed solution? **Amendment** **Consequential amendment**	Amend clauses Clause **94,** page **43**, line **40** Insert after end of clause 94(2)(c) - ‘; and (d) the desirability of contributing to the mitigation of, and adaptation to, climate change.’ Clause **94,** page **43**, line **38** Delete ‘and’
Evidence:	The UK Government has international commitments to the mitigation of and adaptation to climate change (Kyoto) and national commitments (the Climate Change bill) expressed in the UK Climate Change programme. As a matter of common law, the UK’s commitments are relevant to any infrastructure statement.

AMENDMENT 4: Makes national policy statements mandatory so as to ensure that they are subject to Strategic Environmental Assessment

Part 1 Section 5	Amend Section 5
What is the current wording?	"The secretary of State may designate a statement as a national policy statement for the purposes of this act if:"
Why is an amendment needed?	To ensure that National Policy Statements are subject to Strategic Environmental Assessment
What is the proposed solution? **Amendment**	Section 5(1) Replace 'may' with 'must' such that 'The Secretary of State must designate…'

AMENDMENT 5A: Examination in public of site specific of National Policy Statement

Part 2, Section 7	Insert section 7A
What is the current wording?	None
Why is an amendment needed?	To require an examination in public be held prior to the designation of an NPS which include site or location specific development (as is undertaken for other spatial plans across the UK).
What is the proposed solution? **Amendment**	Introduce additional text for 7A 7A: Procedure for locationally specific national policy statements (1) This section applies where the proposal identifies one or more locations as suitable (or potentially suitable) for a specified description of development. (2) In the case of a proposal under section 7(3)(a) the Secretary of State must cause an examination in public to be held. (3) In the case of a proposal under section 7(3)(b), and subject to subsections (4) and (5), the Secretary of State may cause an examination in public to be held. (4) In deciding whether an examination in public is to be held in respect of a proposal under section 7(3)(b) the Secretary of State must have regard to: a. The extent of the amendments proposed; b. the extent and nature of any previous examination in public of the national policy statement; c. the extent and nature of any previous consultation on the national policy statement; (5) Where any amendments under Section 6 identify for the first time any locations as suitable (or potentially suitable) for a specified description of development the Secretary of State shall cause an examination in public to be held. (6) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with such examination in public. (Cont'd)

Continuation of amendment	(7) Such regulations may in particular provide that such examination in public be limited to issues concerned with locations identified as suitable (or potentially suitable) for specified descriptions of development. (8) In this section "the proposals
Evidence:	"Consequently, we consider that procedural fairness and quite likely the Human Rights Act 1998 will mean that landowners affected by compulsory purchase will be able to play a full role in examinations. Proper decision-making and fairness will require that these people and concerned public authorities are able to call witnesses and cross-examine opposing evidence. This process is not usually particularly long." Joint Advice from Matthew Horton QC and Richard Harwood for Friends of the Earth. September 2007

AMENDMENT 5B: Examination in public of site specific of National Policy Statement

Part 2, Section 7	Insert section 7A
What is the current wording?	None
Why is an amendment needed?	To require a right to be heard for members of the public in the examination in public of the National Policy Statement
What is the proposed solution? Amendment	Introduce new section 7A: Independent examination (9) Any persona who make representations seeking to change a national policy statement must (if they so request) be given the opportunity to appear before and be heard by the person carrying out the examination.
Evidence	Same as above

AMENDMENT 6: To require the Infrastructure Planning Commission to hold public hearings

Part 6, Chapter 4 Section 82	Amend Section 82 in order that there is no presumption that Commission proceedings are determined without a hearing.
What is the current wording?	(1) The Examining authority's examination of the application is to take the form of consideration of written representations about the application.
Why is an amendment needed?	To provide the Infrastructure Planning Commission with greater scope to hold public hearings where it is appropriate and to remove presumption in favour of written representations
What is the proposed solution?	
Amendment	Section 82, page 38, line 19, - Leave out 'is to' and insert 'may'
Amendment	Section **82**, page **38**, line **20** at end insert 'subject to the right of interested parties to make oral representations'
Amendment	Consequential amendment to section 83. Section **83**, page **38**, line **34** - Leave out 'necessary' and insert 'desirable'
Evidence	"For centuries, people whose rights have been directly affected by another's projects have been entitled to be heard and to present their case orally before the project has been approved." Joint Advice from Matthew Horton QC and Richard Harwood for Friends of the Earth. September 2007

AMENDMENT 7: Right to cross examine during inquiries

Part 6, Chapter 4 Section 85	Delete section 85(7)
What is the current wording?	(7) In making decisions under subsection (4)(a), the Examining authority must apply the principle that any oral questioning of a person making representations at a hearing (whether the applicant or any other person) should be undertaken by the Examining authority except where the Examining authority thinks that, exceptionally, oral questioning by an interested party is necessary in order to ensure— (a) adequate testing of any representations, or (b) that an interested party has a fair chance to put the party's case.
Why is an amendment needed?	The draft Bill provides that oral questioning is to be by the examining authority thereby depriving interested parties of the right to test evidence through cross-examination other than in exceptional circumstances
What is the proposed solution? **Consequential amendment**	Leave out clause 85(7) Section **84**, page **39**, line **12**, at end insert 'and to cross-examine witnesses'
Evidence	"It is very difficult for members of a tribunal to properly examine a witness's evidence without assistance from other parties. If evidence contains defects these will usually not be readily apparent. We have often had experience of apparently sound technical evidence being exposed as fundamentally flawed by cross-examination and by evidence from an opponent's experts. The more technical the evidence, the greater the need is for cross-examination." Joint Advice from Matthew Horton QC and Richard Harwood for Friends of the Earth. September 2007

AMENDMENT 8: Remove the power of the Commission to exclude, amend or revoke legislation

Part 7 Chapter 1	Delete Section 105(6)(a) and (b)
What is the current wording?	(6) An order granting development consent may— (a) apply, modify or exclude a provision of or made under an Act which relates to any matter for which provision may be made in the order; (b) make such amendments, repeals or revocations of provisions of or made under a local Act as appear to the decision-maker to be necessary or expedient in consequence of a provision of the order or in connection with the order;
Why is an amendment needed?	The powers provided to the Commission are unconstitutional and unprecedented, and would permit the Commission to amend or revoke primary legislation.
What is the proposed solution? **Amendment** **Consequential amendment**	Remove these powers Section **105**, page **50**, line **12** - Leave out sections 105(6)(a) and (b) Section **106**, page **50**, line **27** - Leave out sections 106

AMENDMENT 9: Infrastructure Planning Commission to advise Secretary of State rather than determine

Part 6 Chapter 5	Amend Section 66, 75 and 93 to provide that the Commission makes recommendations to the Secretary of State for the Secretary of State to make the final decision on any development consent.
What is the current wording?	Section 66 Panel to decide, or make recommendation in respect of, application (1-4) Section 75 Single Commissioner to examine and report on application (1-4) Section 93 Cases where the Secretary of State is, and meaning of, decision-maker (1-2)
Why is an amendment needed?	To ensure final decision on development consent applications are made by the Secretary of State on advice from the Infrastructure Planning Commission
What is the proposed solution? **Amendment**	Amend sections to provide accountability Section 66, page 32, line 39 - Leave out ‘to decide, or’ and ‘,’
Amendment	Section 66, page 32, line 40 - Leave out subsection (1)
Amendment	Section 66, page 33, line 3 - leave out ‘In any other case’
Amendment	Section 75, page 36, line 8 to line 23 - Leave pout from ‘where’ to application’
Amendment	Section 93, page 43, line 24 - After ‘consent’ insert ‘ the Secretary of State’ - Leave out sections 93(2)(a) and (b)