

# The Infrastructure Forum

Strengthening Consensus and Certainty on Infrastructure Investment

The Future Status of the National Infrastructure Commission

A proposal from The Infrastructure Forum

Introduction

1. The Infrastructure Forum (TIF) brings together investors, operators, professional advisors and regulators of the UK's critical national infrastructure.
2. Its working groups assist the development of policy in the areas of investment, taxation, planning, energy and procurement.
3. In recent discussions of sectoral leaders, concern has been expressed about the increased need to develop cross-party consensus on long term infrastructure investment goals, in order to generate growth and a resilient national infrastructure; and to boost certainty, transparency and parliamentary scrutiny in these areas.
4. This proposal provides means by which these objectives can be achieved, building upon structures used elsewhere in national life.

National Infrastructure Commission

5. Critical to the development of national infrastructure is the UK National Infrastructure Commission (NIC). It has achieved a high reputation for the rigour of its National Infrastructure Assessments (NIA). It is held in high regard by public authorities and market participants alike. Under the chairmanship of Sir John Armitt it has set out long term visions for the development of national infrastructure within a financing envelope set by the government

6. When the NIC was established, George Osborne, the then Chancellor of the Exchequer, said that the time had come for “an independent national infrastructure commission set up in law, free from party arguments, which works out... calmly and dispassionately what the country needs to build for its future... and holds any government's feet to the fire if it fails to deliver”<sup>1</sup>.
7. When the Commission was finally set up on 24th January 2017, it was established as an Executive Agency of HM Treasury. This decision was not seen to achieve the perceived requirement of legal independence and in an open letter to the Chancellor, the heads of The Infrastructure Forum, the British Chambers of Commerce, the Confederation of British Industry and London First noted that the overwhelming response of the government's extensive consultation was in favour of the Commission becoming a statutory body, and its NIA being required to be laid before and voted on by Parliament.
8. The business organisation leaders asked the government to reconsider the status of the Commission noting that “the ultimate purpose of the commission is to provide a stable vision of the UK to infrastructure needs over the long term well beyond the period in office of this government or the next. Just as the Office for Budget Responsibility needs statutory protection to ensure that it is properly independent of government and properly accountable to the public with the sanction of Parliament, so does the Commission”.
9. It is clear from the government's own categorisation that the National Infrastructure Commission should not be an Executive Agency. The Cabinet Office Public Bodies Handbook describes an Executive Agency as “a public body that acts as an arm of its home department”. In this case the home department is HM Treasury and it is quite inappropriate for the Commission either to be seen or categorised as an arm of the Treasury.
10. The Cabinet Office handbook notes “If independence is needed, the category of Arms Length Body is best suited for delivery of the function by virtue of the degree of freedom it requires from the Department in order to fulfil its function”<sup>2</sup>

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<sup>1</sup> Speech 5 October 2015

<sup>2</sup> Public Bodies Handbook Part 1 Classification Of Public Bodies: Guidance For Departments (no date).

11. A strengthened and more independent body would be able to ensure that it continues to possess the right blend of commissioners and executive staff, properly remunerated, with the skills, authority and expertise effectively to fulfil its designated role.

## Recent Developments

12. Market participants in the infrastructure sector were concerned by the decision to cancel HS2 North of Manchester and create uncertainty about its connection to Central London. Leaders of TIF's investment work noted the adverse effect of such decisions on international investor confidence in the stability and predictability of the UK infrastructure policy.
13. They noted an asymmetry between the many years, and sometimes decades, of work needed to reach the point where major infrastructure projects are shovel ready, with economic and social benefits which could last a century; and snap decisions to cancel such projects, in which the consensus and market confidence built up over many years, and their associated multiplier effects, disappear overnight.
14. The former Chairman of the Office of Rail and Road and distinguished transport economist Professor Stephen Glaister has said that current systems ignore statutory and expert bodies, local and regional authorities, the National Infrastructure Commission, the economic regulators and Parliament<sup>3</sup>.
15. Professor Glaister also drew attention to sudden announcements of alternative spending of funds previously allocated to HS2 without the usual consultation scrutiny or prioritisation.

## Statutory Independence & Parliamentary Accountability

16. There is a model by which greater perceived independence and parliamentary accountability can be built into important public bodies in the UK constitutional system. It is the model of a statutory corporation. This is a form of the Arms Length Body structure described by the Cabinet Office as appropriate for an organisation requiring independence from Departments of government.

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<sup>3</sup> Prospect Magazine, October 2023

17. Two of Britain's most successful economic regulators - the Civil Aviation Authority and Ofcom - have been established under this framework. The Civil Aviation Authority was established by Parliament in 1972, following the passing of the Civil Aviation Act 1971. Its role and status are governed by that act and by subsequent parliamentary legislation.
18. Ofcom was established by Parliament as the independent communications regulator on 29 December 2003 following the passing of the Office of Communications Act 2000. By contrast with public bodies established as Non-Departmental Government Departments or as Executive Agencies, the two regulators have demonstrated that the form of a statutory Corporation allows considerably greater independence, flexibility in its operation and direct accountability to Parliament.
19. In recent evidence to the House of Lords Industry & Regulators Committee Dame Patricia Hodgson, a former Chair of Ofcom, said "Ofcom is a statutory corporation. That is enormously important because it appoints its own staff; it can decide, within sensible reason, on pay; and it accounts directly to Parliament, which creates a virtuous circle of authority, independence and accountability".<sup>4</sup>
20. The process of establishing statutory corporations is familiar and legislatively straightforward. The Office of Communications Act provides an obvious template. There are many other examples available.<sup>5</sup>
21. Because statutory corporations are not themselves part of the Civil Service structure, they are able to set their own pay and conditions, which allows better alignment with labour market conditions and the ability to hire world-class talent.
22. Because the Board of a statutory corporation is responsible for the decisions of the authority, there is clear accountability for executives, independent of Ministers
23. Because statutory corporations must give an account of their behaviour to Parliament there is full transparency and accountability.
24. These benefits also help to insulate arms length bodies from short-term swings in government policy or sudden government spending crises. As the NIC needs to be able to identify and plan national infrastructure requirements for decades ahead, statutory corporation status would assist its long term role free from go-stop episodes in the national economy. To maximise this, the advantages set out by George Osborne

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<sup>4</sup> Inquiry into UK regulators; oral evidence 29 November 2023.

<sup>5</sup> Establishing Statutory Corporations, Dennis Morris, *Statute Law Review* Vol 19 No 1 1998 pp 41-62.

as Chancellor when he announced the establishment of the Commission should now be granted to the NIC. It should be given the statutory status originally contemplated but which was later changed to that of an Executive Agency of HM Treasury.

#### How Would Statutory Status Assist Long-Termism?

25. Upgrading the NIC to the status of a statutory corporation would fit well with its responsibilities to advise on long term infrastructure needs and plans. This role is carried out primarily through the Commission's five yearly National Infrastructure Assessment. The authority and independence of the NIA would be strengthened if the government was required to publish a National Infrastructure Strategy (NIS) by statute, which took account of the NIA and was subsequently approved by Parliament. (This would mean that the government retained ultimate decision making power over the NIS and its costs but was formally obliged to take into account the NIA produced by the NIC; a parliamentary vote of approval would confirm the serious long term nature of the strategy.)
26. The NIS, in this new structure, could be reviewed annually for progress on its delivery by the NIC as an independent and expert body.
27. Parliament in both houses could debate this NIC report. Accountability would be established and it would become more difficult to chop and change important infrastructure plans. Investors are clear that certainty and predictability are essential to securing private capital.
28. A strengthened NIC might also proactively engage with major project decisions at an earlier stage, rigorously scrutinising and challenging the foundations of decision milestones. This proactive involvement might extend to directing changes or offering recommendations for investment decisions.
29. The stronger role for the NIS would also assist economic regulators in planning their work in key infrastructure sectors. And it would assist the government in producing Strategic Policy Statements for the regulators themselves. The new annual cycle would help keep these documents precise and up to date. The strengthened NIS would also assist in developing nationally significant infrastructure planning policy.

## Reducing Go-Stop Episodes

30. Certainty in public investment is essential if major projects are to succeed. The public sector only loses when it operates in a go-stop fashion. Stop-starting tends to increase project costs especially when, as now, high inflation increases labour and material costs as time goes on.
31. Government has stated its intention to facilitate more private investment in major infrastructure projects, especially given the scale of transformation required to achieve Net Zero targets, but an arbitrary process for making cancellation decisions is clearly not reassuring for investors.
32. To date, investors in The Infrastructure Forum's network do not consider that the UK has yet developed a structure demonstrably able to attract large scale international investment into the initiatives and plans set out in the NIA.
33. Resolution Foundation work funded by the Nuffield Foundation<sup>6</sup> has said that UK public investment is too low, with the average OECD advanced economy seeing public investment of 3.7% of GDP a year since the turn of the century, nearly 50% more than the UK. It has also said that UK public investment is far too volatile, with the variation in UK public investment growth between 1960 and 2019, the second highest among advanced economies. Growth investment spending by government departments has been six times as volatile as day to day spending, the Foundation notes.
34. One of the proposals of the Resolution Foundation to address these problems would sit well with statutory independence for the NIC. It is that a Public Investment Act should be passed at the start of each new Parliament setting out headline levels of investment for a period no shorter than until the first year of the following Parliament. "While it would be for a new government to propose those levels, Parliament should receive independent advice from the NIC about the implications of different choices" says the Foundation. It considers that a sensible initial target for public sector net investment would be one that is broadly equivalent to 3% of GDP.

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<sup>6</sup> The Economy 2030 Inquiry, Cutting the Cuts, Resolution Foundation 2023.

## Conclusion

35. In a recent study on infrastructure planning issues, The Tony Blair Institute noted that according to the International Institute for Management Development, World Competitiveness Ranking, UK infrastructure has fallen from its place at 10 in 2018 to 18 in 2022. When it comes to “basic infrastructure”, which includes transport, energy and water, the UK ranks 31st.
36. All parties agree on the need to invest more in critical national infrastructure. Investment is a proven creator of economic growth and long term social benefit. But if major projects are uncertain, subject to go-stop decisions under fiscal pressure, or subject to insufficient scrutiny, not least by Parliament, the consequences are grave. Not only is international investment deterred; local communities are disappointed and disadvantaged; the planning system for major infrastructure projects is disturbed; economic regulators are less able to address the strategic needs of their own sectors; and market participants are less able to plan, including in terms of labour supply and supply chains generally.
37. A fundamental cause of these difficulties is a system in which infrastructure projects are asymmetric - extraordinarily difficult and complex to prepare and build, but easy to cancel in snap decisions, which bypass expert bodies, local and regional authorities, regulatory and public agencies and Parliament itself.
38. The proposal from TIF that the NIC, as originally intended, should now be given the status of a statutory corporation will act as a powerful improvement in predictability, certainty, transparency and scrutiny of the UK’s infrastructure policies, given the already high credibility of the Commission and the opportunity to strengthen its independent and expert work.
39. We have illustrated how statutory status would fit neatly with improved opportunities to hold the government to account for thought-through infrastructure policies which are financeable and have taken proper account of the NIA. That proposal could allow Parliament itself to give greater weight to assessment and review of infrastructure projects, in so doing helping to maintain and develop informed consensus on the UK’s national infrastructure plans.