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Insights

THE END OF STATUTORY PRE-APPLICATION CONSULTATION AND OTHER DCO REGIME CHANGES

Jul 03, 2026

Summary

From 24 July 2026, most of the remaining changes to the DCO process introduced by the Planning and Infrastructure Act 2025 will come into force. These changes represent the most significant overhaul of the NSIP consenting regime since its introduction, and include the well-publicised removal of the statutory pre-application consultation requirements, which is the focus of this Insight, along with a raft of other changes.

An initial round of changes to the DCO regime introduced by the Planning and Infrastructure Act 2025 (PIA) have already come into force which included changes to the review and amendment of National Policy Statements and measures to reduce legal challenges.

Commencement Regulations[i] made on 16 June 2026 confirm that the remaining PIA DCO reforms will come into force is 24 July 2026, with the exception of the amendments to the process for making post-consent changes to DCOs (under section12 of the PIA) which will come into force on a date yet to be announced.

The key PIA DCO reforms coming into force on 24 July 2026 cover:

- **Consultation** - the PIA removes the statutory pre-application consultation requirements in sections 42, 43, 44, 45, 47 and 49 of the Planning Act 2008 (the 2008 Act), including the requirement for a Preliminary Environmental Information Report (PEIR) and related provisions. Importantly, the common law duty to consult is unaffected and continues to apply, which we discuss in more detail below.
- **Best practice guidance** – the PIA introduces a new duty on the Secretary of State to publish best practice guidance under section 50 of the 2008 Act to assist applicants in preparing applications that are ready for submission and able to proceed to examination.

- **Acceptance test changes** - the PIA amends the DCO application acceptance test in section 55 of the 2008 Act, revising the criteria the Secretary of State must apply when deciding whether an application is suitable to proceed to examination. Of particular note is the shift in focus from consultation adequacy to document quality.
- **Notification duty** - the PIA extends an applicant's existing duty under section 46 of the 2008 Act to notify the Secretary of State of a proposed application to include each host local authority and, where relevant, the Marine Management Organisation.
- **S.48 publicity** - the PIA removes the requirement that publicity regulations made under section 48 2008 Act must prescribe a deadline for receipt of responses, though the core duty to publicise the proposed application remains. This gives greater flexibility in how the publicity regulations are designed. New publicity requirements are expected to be updated to reflect the reformed regime, but have not yet been published as of the date of this Insight.
- **Opting out of the regime** - the PIA inserts a new power for the Secretary of State, under section 35B of the 2008 Act, to direct that a DCO is not required for a proposed development even though it falls within the scope of the regime, where an alternative consenting route is more appropriate.
- **Local Impact Reports** - amendments to the requirements for the preparation of local impact reports in s60 of the 2008 Act so that local authorities must have regard to any relevant guidance issued by the Secretary of State, to bring greater consistency and focus to these documents across projects and authorities.
- **Regard to guidance** - the PIA amends section 96 of the 2008 Act to introduce a new requirement for public authorities to have regard to guidance more broadly when making representations about a DCO application.
- **Examinations** - the PIA amends sections 89 and 97 of the 2008 Act to streamline the examination process, with the aim of ensuring examinations are conducted in a more focused and efficient manner.
- **Entering land** - the PIA amends section 53 of the 2008 Act which governs the right to enter and survey land, replacing the previous system under which Secretary of State authorisation was required before land could be entered, to instead allow defined 'authorised person[s]' to enter land, backed by a new magistrates' court warrant power in order to reduce delays and to align with the approach under the Housing and Planning Act 2016.

The end of statutory pre-application consultation

The headline change is of course the complete removal of the statutory pre-application consultation requirements and consequential provisions, including the requirement to prepare a

Statement of Community Consultation (SoCC), PEIR, and duty to have regard to consultation responses. These have been embedded in the DCO application process for almost two decades but are repealed in their entirety from 24 July 2026 with no transitional arrangements in place.

However, as we previously discussed in this BCLP Insight pre-application consultation will remain a crucial part of the DCO process, both as a matter of law and process. The Government's stated policy intent behind this change was to make this stage more flexible and proportionate; accordingly, the PIA moves consultation from a statutory to a non-statutory footing. From 24 July 2026, applicants must instead follow new guidance to be issued by the Secretary of State under the new duty in section 50 of the 2008 Act , which will set out "the steps they might take" to prepare applications that are ready for submission.

The new approach to pre-application consultation

The new section 50 guidance will replace the structured framework that promoters have previously relied upon to plan and evidence their pre-application consultation. Without prescribed consultees, timescales, and a duty to have regard to responses, promoters will need to think carefully about how they approach pre-application engagement and ensure that approach is developed in accordance with the guidance. Importantly, any consultation undertaken will still need to comply with common law principles, the so-called 'Gunning' principles.

These common law principles are applicable to all public consultations and require:

- Consultations must take place when proposals are at a sufficiently formative stage, and hence open to change. Applicants must be demonstrably open minded.
- Consultees must be given sufficient information, including environmental information, and rationale to permit intelligent consideration and response;
- Adequate time must be given for consideration and response;
- Consultation responses must be considered and taken into account, before the applicant decides what to do.

These tests must also be satisfied where an applicant seeks compulsory acquisition powers, which will necessitate meaningful engagement with affected landowners. More broadly, DCO applicants should bear in mind the range of other engagement obligations that arise in practice: with statutory consultees such as local authorities and nature conservation bodies; with the general public; and with the Examining Authority, which will scrutinise the representations of all parties during the examination.

In that context, it is worth recalling that 'front loading' was one of the guiding principles of the 2008 Act when originally enacted. The regime was designed to place greater emphasis on the pre-

application stage, with the quid pro quo being a highly condensed examination and decision-making stage and, consequently, higher rates of approval. The PIA reforms alter that balance and in doing so create both opportunities and risks for promoters.

Whilst the PIA reforms offer greater flexibility and potentially shorter pre-application programmes, the removal of a clear statutory consultation framework carries its own risks. In particular, there is a real prospect of inconsistent practice across projects, uncertainty at the acceptance stage, and exposure to legal challenge. Critically, applicants may not discover whether their pre-application consultation was lawful until after the judicial review period has expired or judgement is given if a judicial review challenge is mounted on such grounds, which will only arise after the DCO decision has been made.

The new s50 guidance will therefore warrant close scrutiny and will assume critical significance in application preparations. The extent to which applicants have followed it will be considered by PINS and no doubt the Examining Authority at the examination stage.

However, with the switch to the new non-statutory consultation framework less than a month away, the new s50 guidance has still not been published.

What it means in practice

The recent Commencement Regulations do not contain any transitional provisions relating to the end of statutory pre-application consultation, so 24 July 2024 marks a clear switch to the new non-statutory consultation requirements.

Until this date was confirmed, there was uncertainty as to when this particular PIA reform would commence, making it difficult for promoters preparing applications to organise pre-application consultation, not knowing which framework to follow. Central guidance published in March 2026 offered little clarity (see here) noting only that “any adjustment to the approach to consultation and engagement in anticipation of the commencement of the relevant PIA 2025 provisions is for the applicant to determine”.

While earlier publication of these Commencement Regulations would have been welcome, now that the switch-over date has been crystallised, applicants and their advisers at least know where the line is drawn. However, this still does not help applicants preparing for submission post-24 July 2026, as the crucial s50 guidance has still not been published. Although the consultation in September 2025 indicated the direction of travel, there is no substitute for certainty and clarity. Promoters need this new s50 guidance urgently to provide the structure for the pre-application stage, on which the whole application hinges. For the time being, legal risk appetite will likely offer guiderails to promoters, and we may see ‘stat cons’ in all but name, at least for the time being.

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[i] The Planning and Infrastructure Act 2025 (Commencement No. 4 and Transitional Provisions) Regulations 2026

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- Infrastructure

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