Construction Industry Council

Infrastructure (Financial assistance) Bill

Ciaran Molloy examines the new Bill which gives statutory effect to the programme announced in July which is designed to stimulate infrastructure investment. This Bill is currently being fast-tacked through parliament.

The Infrastructure (Financial Assistance) Bill will enable the Government to guarantee up to £40 billion of investment in projects relating to infrastructure and up to £10 billion in respect to new homes. The scope of this Bill covers not only the transport, energy, communications and environmental sectors set out in the National Infrastructure Plan 2011 but also the wider housing sector. This will include guaranteeing the debt of Housing Associations and private sector developers.

The new Bill gives statutory backing to the UK Guarantees Programme announced in Parliament on 18 July and also to the housing guarantee schemes announced on 6 September 2012.

When the proposals in respect to infrastructure investment were introduced in July, it was stated that to be eligible projects will have to meet criteria including: the commencement of work within 12 months; that they are nationally significant ; that the project will have a positive impact on economic growth; that planning and other consents have been (or about to be) granted and; that the projects should be financially credible, so that they "must not present unacceptable fiscal or economic risk".

In the July statement it was declared that applications in relation to this initiative should be sent to Infrastructure UK by project authorities or sponsoring authorities.

It is interesting to compare the original statement with the subsequent legislation.

Nationally Significant

Although the July 18 statement stated that "eligible projects should be …..nationally significant as identified in the Government's National Infrastructure Plan 2011" no mention of "national significance" is present in the Bill. One reason for this might be that the question of "Nationally Significant" infrastructure projects was considered in the Planning Act 2008, the legislation which set up the Infrastructure Planning Commission. As this body has now been abolished, a consultation was launched in April 2008 entitled "Planning Act 2008 Nationally significant infrastructure projects – application form guidance". Consultation on this document only ended on July 6 and the results have not been issued.

Commenting on this issue before publication of the Bill, Angus Walker, a lawyer at Bircham Dyson Bell stated that: “It will be interesting to see whether the phrase 'nationally significant' will correspond to the same definition in the Planning Act 2008. If it does, then only projects consented before the regime started or about a dozen of those so far applied for would be eligible, since all the rest would not be ready to start construction within 12 months”

Definition of infrastructure in Bill

The original statement only referred to “infrastructure”. Section1 (2)(e) of the Bill, however, includes “housing” as coming within the ambit of infrastructure. The National Infrastructure Plan 2011 at 4.23 states that “housing supply and infrastructure development are intrinsically linked”, a fact which is recognised by implication with the new Community Infrastructure Levy but is this the first time that housing has been statutorily defined as infrastructure? Utilities, transport, health, education facilities and even courts and prisons are included in the definition of infrastructure under the Bill. So too, is “telecommunications”.

This is significant as the roll-out of broadband is major aim of the current Government. Some £680m has already been pledged towards this. The last budget outlined that £150m would be spent to create 10 super-connected cities by 2015. A sum of £530m was also taken from the BBC licence fee to help boost speeds in the countryside. On September 7 2012, the culture secretary Maria Miller stated that the government was changing planning permission rules to aid the rollout of faster internet speeds in the UK.

Housing

The original statement referred to £40 billion (i.e. £40,000 million) worth of projects which would qualify but the limit on expenditure and liabilities in Section 2 states that the amount of the Government’s expenditure and liabilities under the Act must not at any time exceed £50,000 million.

The extra £10 billion in support presumably relates to the housing element of the Bill but there are no details as to how these guarantees would be available to housing associations or developers. James Hastings of Exeperion asks “How will this work? Does this mean that if house builders cannot sell the houses they build, the taxpayer will effectively indemnify them?”

This initiative in relation to housing is part of a wider housing stimulus package.

Underwriting housing bonds

Presumably one way in which the new guarantee scheme will work is by underwriting housing association bonds. There is some uncertainty however as to whether this measure will result in any additional house building.

‘It all depends on terms,’ says David Montague, chief executive at 66,000 home London & Quadrant and an avowed fan of the bond guarantee plan. ‘If we are talking about a 30-year guarantee then that could help us to raise money just a bit above gilts [the price government pays for its debt]. Thirty-year money at 3 per cent could really help.’

The basic thinking is simple: with landlords currently raising funds at up to 6 per cent, cutting that rate in half would be the equivalent of offering 50 per cent grant for developing associations.

In an article in the magazine Inside Housing on 7 September 2012 it was stated that “From an investor point of view, the sector knows there are takers for housing association bonds as they are currently priced - typically at 4.5 to 6 per cent. But offering underwritten paper brings in uncertainty when it comes to take-up.” In a separate article in the same issue of the magazine, Legal & General, one of the biggest buyers of social housing bonds, has reportedly said that it “may look elsewhere’ if government guarantees drove down the price of housing association bonds.”

How the underlying scheme will work

On 24 July 2012, Lord Sassoon, the Commercial Secretary to Treasury has said in the House of Lords in relation to the loan guarantee scheme that the guarantees will cover key project risks such as construction, performance or revenue risk. The scheme will also apply throughout the United Kingdom, a point which has been welcomed by Alex Salmond. He has said that “the Scottish Government submitted a list of shovel ready projects to the UK Government in February”. Given the effect of the recession (particularly in construction) in Northern Ireland, Scotland and Wales, any stimulus effect from the new legislation is likely to be welcomed in the home nations.

The timing

This is a very (very) short Bill which is being fast-tracked to the Statute book in just two months. Lord Sassoon on 24 July indicated that “we hope to have the first guarantees granted this autumn”. He also said that “some £40 billon of projects in the national infrastructure plan could well be eligible for guarantees under the scheme”.

The timing has led some commentators such as Jackie Sadek of the Regeneration and Property website to say that “Will it really stimulate action for the long term? Or only help a few schemes in the crucial period before 2015 (aka the next election)”.

The effect on Government Finances

The underlying aim of the guarantee scheme, as stated on 18 July, is to use the "Government's hard won fiscal credibility ….to support growth in critical areas of the economy".

In answer to a question of how the costs of the new scheme will impact on the public accounts, Lord Sassoon explained on 24 July that "the infrastructure guarantees will be financial transactions and will have no impact on the PSNB". As Stephanie Flanders explained in her column on the BBC website, "the guarantees will be 'off-balance sheet' like the investments carried out under the Private Finance Initiative (PFI). In other words, the cost will only show up in government spending, when and if the government actually has to hand over any cash."

However as Ms Flanders explained the there are so many qualifications for consideration under this scheme, that the end result is that to qualify a project "has to be a perfect project in every possible respect, but somehow not quite perfect enough to get up and running entirely on its own". She ended by expressing doubts as to whether the scheme will accelerate large numbers of infrastructure projects.