

National Policy Statement for Ports in England and Wales: Post- Adoption Statement

Department for Transport
February 2012

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1 Introduction

National Policy Statements

- 1.1 Under the Planning Act 2008, national policy statements (NPSs) set out the framework for decision-making on individual applications for development consent for nationally significant infrastructure.
- 1.2 The Secretary of State for Transport has prepared a NPS for Ports and, following confirmation by the House of Commons, has designated this on 26 January 2012.

Appraisal of Sustainability (AoS) and Strategic Environmental Assessment (SEA)

- 1.3 The Planning Act 2008 (s.5(3)) requires that before a statement can be designated as an NPS, the Secretary of State must carry out an appraisal of sustainability of the policy set out in the statement. The Secretary of State must exercise functions relating to the designation of national policy statements with the objective of contributing to the achievement of sustainable development, in particular having regard to mitigating and adapting to climate change and achieving good design.
- 1.4 The Strategic Environmental Assessment (“SEA”) Directive (2001/42/EC) states that, before a required plan or programme which establishes the framework for development consent is adopted, it should be subject to consultation alongside an environmental report which identifies, describes and evaluates the significant effects which its implementation is likely to have on the environment. The objective of the SEA Directive is to provide for a high level of protection of the environment and for environmental considerations to be integrated into the preparation and adoption of plans and programmes, with a view to promoting sustainable development.
- 1.5 Although the NPS for Ports has been prepared at the Secretary of State's discretion and is not a plan or programme in the normal sense of either term, it does contribute to a framework for future port development, and the requirements of the Directive have been taken as a guide in preparing the environmental elements of the AoS.
- 1.6 The AoS Report which was published with the ports NPS for consultation in November 2009 and has subsequently been updated therefore discharges this requirement of the Act and incorporates a strategic environmental assessment. It examines the likely environmental, social and economic and effects of the policies set out in the NPS, considers and compares reasonable alternatives to them, identifies any potential significant adverse effects they may have and at draft stage, recommended options for avoiding or mitigating such effects.

Post-Adoption Statement

- 1.7 Article 9(1)(b) of the SEA Directive¹ requires that when a plan or programme is adopted (in the case of the NPS, this means when it is designated by the Secretary of State under the Act), there should also be made available a statement summarizing:
- how environmental considerations have been integrated into the plan or programme;
 - how the environmental report has been taken into account;
 - how opinions expressed in response to public consultations on the draft plan or programme and the environmental report have been taken into account; and
 - the reasons for choosing the plan or programme, as adopted, in the light of other reasonable alternatives dealt with.

This statement is designed to complete these requirements, which have also been partly discharged through the updated AoS itself.

- 1.8 It also fulfils the requirement to make available details of the measures that are to be taken to monitor the significant environmental effects of implementation of the plan or programme.

- 1.9 This statement is arranged as follows:
- Section 2: Environmental Considerations
 - Section 3: AoS Report
 - Section 4: Habitats Assessment
 - Section 5: Consultation
 - Section 6: The Ports NPS as adopted
 - Section 7: Monitoring

¹ As transposed through regulation 16 of the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633 and of the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656.

2 Environmental Considerations

- 2.1 Ports often occupy environmentally sensitive coastal or estuarial sites.
- 2.2 There may be much or little nearby residential development, but they always have environmental effects on people including port users and employees as well as neighbours.
- 2.3 They may be in or close to protected sites, or not. Either way, they will probably have direct or indirect impacts on flora and fauna, on land (including intertidal mudflats) and under water.
- 2.4 The Government is clear that the development of ports flexibly in response to market demands, is vital for the economy. But it is equally clear that this development must be in sympathy with the environment. Impacts must be avoided where feasible, and appropriately mitigated and/or compensated where they cannot be avoided. And supra-national legal requirements and treaty obligations must be met.
- 2.5 These environmental impacts of ports will need to be assessed on a project-specific basis for any major port development, as is described in the NPS.
- 2.6 The NPS takes each type of environmental impact in turn and explains how applicants should set about making that assessment. It goes on to deal with the decision-maker's consideration of the impacts, as they should be taken into account individually and cumulatively in combination.
- 2.7 Environmental considerations have therefore been central to the NPS from the outset of its development, through consultation (including with statutory environmental bodies) and Parliamentary scrutiny.
- 2.8 In advance of public consultation and the accompanying publication of the AoS at that stage, scoping consultation was undertaken with the statutory bodies and with the Sustainable Development Commission. This is referenced further in the next section.
- 2.9 At the same time, it is important to remember that any major port infrastructure development will be subject to the Environmental Impact Assessment Directive/Regulations. Applications for development consent (or for harbour orders) will be accompanied by Environmental Statements (ES) intended to discharge the requirements of this Directive, and to inform where appropriate the setting of planning requirements or obligations designed to avoid, mitigate or compensate for adverse impacts.
- 2.10 EIA requirements are noted in the NPS and are integral to the consideration and mitigation of environmental impacts in individual applications. They are, of course, a requirement irrespective of the NPS itself. However, detailed components of the ES accompanying future applications should reflect the guidance in the NPS.
- 2.11 Overall therefore, the NPS helps to cement and clarify existing requirements for environmental assessment at project level.

3 Developing the Appraisal of Sustainability (AoS) Report

- 3.1 The ports AoS and NPS were developed alongside each other in an iterative way, covering economic and social as well as environmental objectives and the way in which the policies set out in the NPS respond to these.
- 3.2 This process of iteration is summarized in the final version of the AoS itself.
- 3.3 The scoping report on the AoS (incorporating, of course, scoping on environmental aspects) was first produced in March 2009 and issued in July of that year.
- 3.4 More detail of the evolution of the drafts in relation to environmental objectives and criteria may be traced through the series of Phase 1-4 assessments given in Appendices 2-5 to the AoS as published at consultation stage. These are available on the Department's closed consultations web archive at:
<http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/consultations/closed/portsnps/>
- 3.5 This feedback process is not reproduced in detail here. Those interested in the details are referred to the AoS documentation referred to above.
- 3.6 Internal iterations of the AoS and NPS drafts helped to ensure that the coverage of the NPS (including economic and social as well as environmental impacts) was appropriately covered.

4 Habitats Assessment

- 4.1 Although the ports NPS is not in itself a plan or project in the normal sense of these terms, the Department undertook, at NPS draft stage, a separate habitats assessment (incorporating Appropriate Assessment) along the lines that could be required of a plan or project by the habitats (and wild birds) Directives and Regulations.
- 4.2 This remains available for inspection at <http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/consultations/closed/portsnps/appropriateassessment.pdf> .
- 4.3 The Department is confident that the findings of this habitats Assessment remain valid in all essentials, in relation to the final NPS.
- 4.4 The Assessment makes clear that, because the NPS is not spatially directive, it was not possible to predict whether or in what way future applications for ports development would prospectively affect protected sites or species. The AoS considers alternative, more directive policies and why these were rejected.
- 4.5 The benefits from greater certainty about the location of development that would have been possible from a centrally planned policy for ports, or a geographically highly restrictive one, would have been outweighed by the adverse economic impacts due to forgoing the resource allocation benefits that continuance of a market-oriented approach enables.
- 4.6 Any individual application, where the likelihood of adverse impacts on protected sites or species cannot be ruled out, will need to be subject to assessment as stipulated in the Directives and Regulations, including the 'IROPI' and 'alternatives' tests specified in article 6, as well as meeting the other assessment criteria set out in the final NPS. Alternatives can include alternative means of supplying capacity, not necessarily within the control of the developer.
- 4.7 This ensures that the prospective habitats impacts of individual development applications will be assessed in a wider context as necessary.

5 Taking account of the results of consultation

- 5.1 The consultation on the draft ports NPS was undertaken between 9 November 2009 and 15 February 2010. A Government Response to that consultation has been produced and published,² which identifies the key themes and responds to them.
- 5.2 Rather than repeat the detail here, the Department offers the Response to Consultation to be associated with this Post-Adoption Statement as helping to explain how opinions expressed in response to public consultation on the draft NPS and associated documents have been taken into account in producing the final NPS as designated.
- 5.3 Broadly summarizing, the environmental policies and guidance as set out in the NPS were extensively grounded on existing policies and guidance, including planning policy guidance and planning policy statements, which had previously been subject to separate consultation.
- 5.4 Consequently, the majority of respondents, being acquainted in varying degrees with the planning system, were not surprised by the environmental guidance and requirements as set out and summarized in the NPS.
- 5.5 Inevitably, consultees' views were diverse, and could not all be satisfied in the final NPS. The Response to Consultation explains instances where we have concluded, despite representations against the drafting in the consultative NPS, that the drafting should stand in close to its original form, and other instances where the drafting has been amended with a view to accepting comments in whole or in part.
- 5.6 The consultation asked specifically (Q20) whether consultees agreed that the environmental component of the AoS constituted a SEA.
- 5.7 Of the 15 respondents who answered this question specifically, 10 thought that the environmental component of the AoS constituted a SEA for the purposes of Directive 2001/42/EC. The Response summarizes at some length views expressed alleging shortcomings in the AoS for this purpose. However, having assessed these comments, the Government remains of the view that the environmental component of the AoS may be regarded as a SEA, even though the NPS does not match the typical pattern of a "plan or programme".
- 5.8 The ports NPS is not considered likely to have any significant effect on the environment in any other Member State of the European Union.

² <http://assets.dft.gov.uk/consultations/dft-20091109/responses.pdf>

6 Reasons for designating the Ports NPS in light of other reasonable alternatives

- 6.1 The Government is clear that National Policy Statements have an important role to play in streamlining the planning system and ensuring that there is appropriate democratic oversight of the policy framework for decisions that can have important economic, social and environmental consequences.
- 6.2 There is no legal requirement in the Planning Act to produce a NPS for ports, nor for any other particular form of infrastructure. Not drafting or designating a ports NPS would therefore have been a feasible alternative, and a reasonable one considering that there was extant planning guidance (much of which is subject to possible supersession by the National Planning Policy Framework on which the Government has consulted).
- 6.3 However, NPSs are an integral part of planning reform designed to make the planning process more transparent, faster and efficient. Before designation, the Government needed to have some assurance that the ports NPS would:
- play its part in procedural terms as an element in the reformed planning process, enabling decisions on applications for development consent to be taken more quickly under the Planning Act than has often been the case under the pre-Planning Act regime, especially in more controversial cases; and,
 - more substantively, that new port developments would continue to facilitate trade and growth in the wider economy.
- 6.4 The AoS helps to provide assurance that the policies and guidance as set out in the NPS are appropriate to these ends.

7 Monitoring

- 7.1 DfT is responsible for monitoring the ports NPS.
- 7.2 The Secretary of State is under a duty to review each NPS whenever he thinks it appropriate to do so (s.6(1) Planning Act) and the review may relate to the NPS in whole or part (s.6(2)).
- 7.3 The Department's monitoring of the NPS will take account of the criteria set out in s.6(4) of the Act.
- 7.4 The NPS is not spatially directive and it is not known what applications for development will come forward in future, during its currency. So the location, type and quantity of proposed port infrastructure developments that will be granted development consents is not known.
- 7.5 Accordingly a wide range of potential effects may occur and that will depend on a number of factors, including the speed and proportion of infrastructure development that is successfully developed across the ports sector and the application of mitigation measures as set out in the NPSs.
- 7.6 Moreover, given the series of consents recently granted for port development, it is not expected that there will be a large number of new applications for major port development in the short term. The lead-time for implementing consented developments is a further factor which means that evidence from the implementation of consented projects is unlikely to be available on a wide scale for some years to come.
- 7.7 It follows that the 'population' of new developments is unlikely to be sufficiently dense to allow a systemic monitoring approach based on sampling outcomes from applications and relating these to the application of the requirements and guidance in the NPS, to be usable for this purpose.
- 7.8 As noted at para 2.10 above, applications for major port development will be accompanied by Environmental Statements that should reflect, in detailed content, the guidance for the applicant in the NPS. The Department intends to sample ES from ports applications for development consent
- 7.9 Where casework reviews or monitoring published by the Infrastructure Planning Commission (IPC) or, subject to passage of the Localism Bill and its subsequent intended abolition, by the Major Infrastructure Planning Unit of the Planning Inspectorate (PINS/MIPU); or by the Marine Management Organization (MMO) summarizes or comments on the compatibility of applications and of their accompanying ES with the guidance set out in the NPS, the Department will examine these reviews, and consider whether anything in them should trigger a s.6 review of the NPS.
- 7.10 Where such evidence exists, the Department intends to rely upon them in the first instance³. It may, however, conduct its own independent

³ Art. 10(2) of the SEA Directive provides that existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication of monitoring.

analysis if there is any evidence to suggest that the planning body's monitoring/review is flawed.

- 7.11 The case review monitoring process will consider whether the NPS guidance for the applicant's assessment has been followed and, if there appears to be any significant failure to do so, will examine whether or not this appears to be due to any shortcoming of clarity in the NPS itself.
- 7.12 It will then consider whether the guidance for the decision-maker appears to have been followed and again, if not, whether this seems to be attributable to deficiencies in the NPS.

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