

The Chief Planning Officer

9 November 2009

Dear Chief Planning Officer

National Policy Statements

I am writing to let you know that the first National Policy Statements (NPSs) are being published in draft today for public consultation and parliamentary scrutiny. The Department for Transport (DfT) is publishing its draft NPS for Ports and the Department of Energy and Climate Change (DECC) is publishing its draft NPSs on energy. The energy suite comprises an Overarching NPS for Energy (EN1) plus ones on Fossil Fuel Electricity Generating Infrastructure (EN2); Renewable Energy Infrastructure (EN3); Gas Supply Infrastructure and Gas and Oil Pipelines (EN4); Electricity Networks Infrastructure (EN5) and Nuclear Power Generation (EN6).

I thought it might be helpful to draw your attention to them and provide some general information to explain the expected interaction between NPSs and the town and country planning regime. This is attached at annex A. For copies of the draft NPSs, the consultation document and other supporting documents please go to DfT and DECC's websites. You will also be contacted directly as statutory consultees to the NPSs.

The Planning Act 2008 ("the Act") has provided for the new planning regime which includes the establishment of the Infrastructure Planning Commission (IPC) and the publication of NPSs across a range of infrastructure types - energy, transport, water, waste water and hazardous waste. The aim of the new planning regime is a faster, fairer and more efficient system for the consideration of proposals for nationally significant infrastructure projects.

The IPC will be the decision-making body on applications for nationally significant infrastructure projects, as defined in the Act and NPSs are the statements of Government policy that the IPC will use to determine those applications. NPSs are therefore at the heart of the new planning regime for nationally significant infrastructure. The intention is that NPSs will operate as the primary policy document for the IPC, applicants and other interested parties when considering applications for development consent made under the Act. The IPC can, of course, consider other matters which it considers both important and relevant to its decisions. And this may include, for example, the local development framework.

In order to help local people to understand the new regime we have produced an information leaflet *Infrastructure Planning – How will it work? How can I have my say?* The leaflet explains the new regime and stresses why it is important that people make their views known during NPS consultations, as well as at the pre-application consultation stage and during IPC examination of applications.

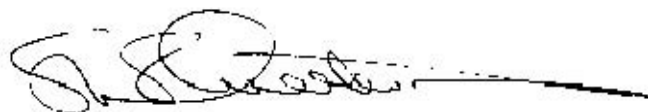
The leaflet, which was produced with advice from Planning Aid, is available on the CLG website at <http://www.communities.gov.uk/publications/planningandbuilding/infrastructureplanningwork>. It points towards some material on the new planning regime at www.direct.gov.uk/infrastructureplanning, which provides links to accessing any of the current NPS consultations, and also gives contact details for Planning Aid if further advice is required.

If you wish to make an order for copies of the leaflet, free of charge, for use within your local community please contact Linda Rawlings at linda.rawlings@communities.gsi.gov.uk.

I hope you find the attached information helpful but if you have any questions about this letter please do not hesitate to contact Alison Cremin at alison.cremin@communities.gsi.gov.uk.

I am copying this letter to Katrine Sporle at the Planning Inspectorate and to Sir Michael Pitt at the Infrastructure Planning Commission.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Steve Quartermain', with a long horizontal flourish extending to the right.

Steve Quartermain
Chief Planner

Attachments: annex A

National Policy Statements

A framework for decision making

1. The Government is publishing national policy statements (NPSs) across a range of infrastructure types, specifically on energy, transport, water, waste water and hazardous waste. NPSs will vary in content depending on the infrastructure type, the need for that infrastructure and whether the Government has determined that it should establish through the NPS where that infrastructure should be located. The Government has made clear that the Nuclear NPS and the Airports NPS will be location-specific. NPSs may also set out criteria to be applied in deciding whether a location is suitable, or potentially suitable for a specified description of development.
2. The intention of NPSs is to make clear Government policy on the need for new nationally significant infrastructure projects (NSIPs) thereby eliminating the need to debate this at public inquiries. NPSs will give the Infrastructure Planning Commission (IPC), applicants and those affected by development proposals, greater clarity about what forms of development are, or are not, in line with Government policy. This will therefore provide the IPC with a clear framework for decision making.
3. NPSs will be the primary consideration for all IPC decisions on proposed development, whether onshore or offshore, although when taking decisions in the marine area the IPC will also have regard to the forthcoming Marine Policy Statement and relevant marine plans. Our intention is to ensure consistency between NPSs and the Marine Policy Statement, the latter of which would be established under the Marine and Coastal Access Bill.

Sustainable Development

4. The Planning Act 2008 (“the Act”) places requirements on the Secretary of State in certain respects. Specifically, the Secretary of State, in designating or reviewing an NPS, has a duty to do so with the objective of contributing to the achievement of sustainable development, having regard to the desirability of mitigating and adapting to climate change and achieving good design. NPSs will therefore bring together the Government’s objectives for infrastructure provision with its strategic environmental, social and economic policy objectives, including its climate change objectives, in order to help to deliver sustainable development.
5. To help ensure that policies within NPSs contribute to the achievement of sustainable development, all NPSs will be subject to an Appraisal of Sustainability (AoS)¹ covering the economic, environmental and social effects of the policies within the NPS. This analysis is carried out in parallel with the drafting of the NPS so that it can inform its development. Where necessary, NPSs will also be subject to Strategic Environmental Assessment.

¹ See section 5(3) of the Planning Act 2008.

Consultation and publicity

6. All NPSs, or material amendments to NPSs, are subject to public consultation and Parliamentary scrutiny. The Secretary of State must have regard to the outcome of public consultation and Parliamentary scrutiny when deciding whether or not to proceed to designate the NPS. Separate regulations have been published regarding consultation requirements for potential applications to the IPC.
7. Where an NPS identifies one or more locations as suitable, or potentially suitable, for a NSIP the Secretary of State must ensure that appropriate steps are taken to publicise the proposals. The Government wants to ensure that those who may be affected by future NSIP development are given the opportunity to comment on those proposals. Any relevant local authority must be consulted as to what steps are appropriate to publicise the proposals.

When will the IPC start making decisions?

8. It is intended that the IPC will be able to receive applications from the energy and transport sectors from 1 March 2010 irrespective of whether the NPSs which are being published in draft today have been designated. If, for any reason, the relevant NPS is not designated when a particular application reaches decision stage, the IPC would have to make a recommendation to the Secretary of State rather than make the decision itself. The Secretary of State is under a duty to make the development consent decision within 3 months of the recommendation from the IPC (although the Secretary of State may extend this deadline).

Local issues

9. Applicants will be required to consult local communities and local authorities before submitting an application to the IPC. Under section 60 of the Act, in accepting an application for an order granting development consent, the IPC will give notice in writing to the relevant local authority, inviting them to submit a local impact report by a specified deadline. The Planning Act is not prescriptive about what should or should not be included in local impact report – it is for the local authority to determine what they regard as relevant having considered the likely impact of the proposed development on the authority's area (or any part of that area).

How long will national policy statements remain in force?

10. NPSs will continue in force until such time as they are withdrawn or replaced. There is no set period for NPSs although each individual NPS may suggest a time-frame, for example, up to 2025 or 2030. While it is important that NPSs have a long shelf-life it is also important that they remain up to date and reflect changing circumstances. The Act² therefore places a duty on the Secretary of State to review each NPS whenever the Secretary of State thinks it appropriate to do so.
11. The Secretary of State may review the NPS partially or in its entirety. Following that review the Secretary of State can amend the NPS, withdraw its designation as an NPS or leave it as it is. If the Secretary of State does

² See section 6 of the Planning Act 2008.

decide to amend the NPS the amendment will again be subject to Appraisal of Sustainability and, where necessary, Strategic Environmental Assessment, public consultation and Parliamentary scrutiny (unless the amendment does not materially affect the policy as set out in the NPS).

12. Where an NPS, or part of an NPS, is being reviewed, the Secretary of State may direct that the IPC's examination of an application be suspended until that review is complete. However, Ministers may determine that, despite the review of the NPS, it is in the national interest that the application be decided quickly. In these circumstances the Secretary of State has the power to intervene and take the decision, ensuring that proposals for nationally significant infrastructure can be considered without delay.

Implications for the town and country planning regime

13. The new single consent regime for NSIPs will operate alongside the town and country planning regime. Although the two regimes are legally distinct, there are close interactions between them.
14. NPSs are not part of the statutory development plan for the purposes of the town and country planning regime but are statements of national policy on nationally significant infrastructure. Regional planning bodies (or new style responsible regional authorities when in place³) and local planning authorities (LPAs) must therefore have regard to NPSs when preparing their plans at regional and local level⁴. Emerging policy in a published draft NPS may also be relevant.
15. However, the designation of an NPS should not unnecessarily delay the process of preparing development plans, including regional strategies. LPAs and responsible regional authorities should consider the extent to which emerging plans and strategies can reasonably have regard to emerging NPSs, depending on the stage which the development plan has reached. Where it is not practical for changes to be made to emerging plans to take account of policy in an NPS, LPAs and responsible regional authorities should consider the steps they will need to take to address any issues arising from emerging policy through an early plan review.
16. Under existing planning law, decisions by LPAs on planning applications must be taken in accordance with the development plan unless material considerations indicate otherwise⁵. In cases where development plans have not yet been updated to take account of a particular NPS, the NPS is likely to be a material consideration which the LPA (and the Secretary of State on appeal or call-in) will have to take into account when determining planning applications. Whether or not the NPS is a material consideration in this or any

³ Under Part 5 of the Local Democracy, Economic Development and Construction Bill, Responsible Regional Authorities, comprising Regional Development Agencies and local authorities Leaders' Boards, will be required to prepare new integrated Regional Strategies which will replace Regional Spatial Strategies currently prepared by the Regional Planning Bodies and Regional Economic Strategies currently prepared by the Regional Development Agencies.

⁴ Sections 5(3)(a) and 19(2)(a) of the Planning and Compulsory Purchase Act 2004.

⁵ See section 38(6) of the Planning and Compulsory Purchase Act 2004.

other circumstance and the weight to be applied to it by the decision-maker will have to be determined on a case by case basis.

17. NPSs may specifically set out policies which will need to be taken into account by decision-makers other than the IPC. The Ports NPS, for example, has set out the Government's policies for all types of ports infrastructure – both above and below the thresholds set out in the Planning Act. LPAs and other decision-makers should therefore take account of those policies when determining applications for consent for below-threshold infrastructure applications made under the town and country planning regime. The policies in a draft NPS may also be relevant to planning applications for below-threshold infrastructure or any appeals made under the Town and Country Planning Act.
18. Locationally-specific NPSs may result in a conflict with local or regional plan policies. Statutory consultees are encouraged to highlight these when NPSs are published in draft for public consultation so that any conflicts can be taken into account. If, following designation of the NPS, the conflict remains, the more recent policy in the NPS will normally prevail for decisions made under the TCPA.
19. Applicants may bring forward proposals for nationally significant infrastructure on a site that already has an extant planning permission. The IPC will determine such applications in accordance with the Government policies set out in any relevant NPS except to the extent one or more specific exceptions apply⁶.

Applicability to the devolved administrations

20. The new consent regime for NSIPs established by the Act makes no changes to the devolution settlement. It introduces a new simpler planning system for applications to build NSIPs in England and Wales, and cross-border oil and gas pipelines into Scotland. In Wales the new system will only apply to ports and certain energy applications. The IPC will not take any decisions on sites in Northern Ireland.

⁶ See section 104 (4) to (8) of the Planning Act 2008.