

The Government Response to Parliamentary Scrutiny of the Draft National Policy Statement for Hazardous Waste

June 2013

www.gov.uk/defra



Department
for Environment
Food & Rural Affairs

Department for Environment,
Food and Rural Affairs

The Government Response to Parliamentary Scrutiny of the Draft National Policy Statement for Hazardous Waste

Presented to Parliament pursuant to Section 9(5) of the Planning Act 2008.

© Crown copyright 2013

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

ISBN: 978-0-10-851241-4

Printed in the UK for The Stationery Office Limited on behalf of the Controller of Her Majesty's Stationery Office.

06/13

Printed on paper containing 75% recycled fibre content minimum.

PB13926

Contents

Introduction 2

Parliamentary Scrutiny 4

EFRA Committee recommendations and Government response 5

Introduction

Background

1. Through the Localism Act 2011 (“the Localism Act”), the Government made significant changes to the major infrastructure regime by abolishing the Infrastructure Planning Commission and transferring responsibility for decision making to the Secretary of State. As a result of the abolition of the Commission, an Examining Authority will make recommendations to the Secretary of State who will take the final decision on whether consent should be granted for infrastructure projects. In the case of hazardous waste applications, this will be a decision by the Secretary of State for the Department for Communities and Local Government.
2. The NPS will be used by the Secretary of State as the primary basis for decisions on development consent applications for hazardous waste infrastructure that fall within the definition of a Nationally Significant Infrastructure Project (NSIP) as defined in the Planning Act 2008 (“the Planning Act”). The NPS provides a framework for the Secretary of State, but also provides guidance throughout for potential developers and in particular advises on what should be included in their assessment of the potential impacts of a particular project. It is expected that the Secretary of State would review the NPS approximately every five years and that, subject to those reviews, the NPS itself, and the policy contained therein, would continue to apply.

Consultation and Parliamentary scrutiny of the draft Hazardous Waste National Policy Statement 2011

3. In July 2011, the Government published the draft Hazardous Waste NPS and associated documents for public consultation and Parliamentary scrutiny. The public consultation was held between 11 July and 20 October 2011. The Government received 28 responses to the public consultation.
4. A debate on the draft NPS was held in the Grand Committee House of Lords on 12 October 2011. The Environment, Food and Rural Affairs (EFRA) Committee published its report into the draft Hazardous Waste NPS on 14 December 2011.
5. This document is laid pursuant to Section 9(5) of the Planning Act. Section 9(5) says: The Secretary of State must lay before Parliament a statement setting out the Secretary of State’s response to the resolution or recommendations. This is the Government’s response to the EFRA Committee report.
6. A separate Government Response to Consultation has been issued alongside this document, to respond to the public consultation that the draft Hazardous Waste NPS underwent. Both this document and the response to consultation are available electronically at www.gov.uk.

Designation of National Policy Statements

7. A National Policy Statement must be “designated” by the Secretary of State, published and laid before Parliament before becoming the primary statement on national policy for consideration of applications for development consent in relation to the specified description of development. The Planning Act requires NPSs to undergo both Parliamentary scrutiny and public consultation before they can be designated.
8. However, to ensure increased democratic accountability the Government decided that draft NPSs should be laid before Parliament for scrutiny before they can be formally designated. Further, the Localism Act 2011 amended section 5 of the Planning Act 2008 to provide that designation of a proposed NPS can only take place after the NPS is laid before Parliament and the statement is either formally approved by resolution of the House of Commons within 21 sitting days, or a period of 21 sitting days expires without the House of Commons resolving against it.

Parliamentary scrutiny

9. As part of its scrutiny of the revised draft Hazardous Waste NPS, in November 2011 the EFRA Committee took oral evidence from:

Lord Taylor of Holbeach, CBE, Parliamentary Under Secretary of State

Environmental Services Association

Environment Agency

Chartered Institution of Water and Environmental Management

Written evidence was received from these witnesses and from

Infrastructure Planning Commission (IPC)

Whitemoss Landfill Limited

Chartered Institution of Wastes Management

10. The EFRA Committee published its report on the draft Hazardous Waste NPS on 14 December 2011. This, along with the uncorrected transcript of hearings and written evidence, can be found at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/environment-food-and-rural-affairs-committee/inquiries/hazardous-waste-nps/>

11. The EFRA Committee's report made 15 recommendations and conclusions. The Government issued an interim response on 23 July 2012 setting out its intentions for taking those recommendations forward. That interim response can also be viewed at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/environment-food-and-rural-affairs-committee/inquiries/hazardous-waste-nps/>.

This new report confirms how the Government has taken the recommendations and conclusions of that Committee forward.

Grand Committee House of Lords

12. As part of the scrutiny into the draft Hazardous Waste NPS a debate took place in the Grand Committee House of Lords on 12 October 2011.

EFRA Committee recommendations and Government response

The EFRA Committee's report made 15 recommendations and conclusions.

Recommendation 1:

We recommend that the NPS be amended to make clear that renewals of time-limited planning permission for existing landfill sites will continue to be dealt with under the planning consent regime set out in the Town and Country Planning Act 1990. Similarly, the NPS should make clear that increases in void space will only be dealt with under the NPS process where the capacity of the site would be increased by more than 100,000 tonnes per annum.

The Government's response

The Government agrees that this issue was causing some confusion amongst consultees. Section 1.2.1 of the NPS has been amended to make the position clearer.

Recommendation 2:

We recommend that Defra amend the NPS so that the language used to describe the interaction between the IPC, developers and consenting bodies is consistent and accurate throughout the document. A failure to achieve legal standards of drafting in the NPS will increase the likelihood of legal challenge in the planning process, increasing costs and introducing delay.

The Government's response

The Government agrees. A consistency check was made on the text as it was reviewed. The text has also been amended to reflect the abolition of the Infrastructure Planning Commission.

Recommendation 3:

It is clear that there are significant concerns about the way that the draft NPS deals with the interaction between applications for Environmental Permits and development consent. We recommend that Defra consider how the two application processes could be streamlined with a view to avoiding unnecessary duplication and bureaucracy, thereby reducing costs for developers. Opportunities for the information provided by developers to be shared between the IPC and the Environment Agency rather than submitted separately should be exploited.

The Government's response

The interface between planning and environmental permitting is wider than this NPS. However, the interface between the two regimes has been examined as part of wider work. Defra has worked jointly with DCLG to develop a protocol on the sequencing of applications and the interface between the planning and permitting regimes under the current legislation to help businesses, planners and regulators. In September, the Prime Minister set out a commitment to work to extend the principle of the 'one stop shop' for non-planning consents for major infrastructure. DCLG consulted on a range of proposals for expanding and improving the operation of the 'one stop shop' approach, including by establishing new arrangements to improve the coordination and communication between the Planning Inspectorate, the applicant and other consenting bodies. Following a positive response to this consultation, a new Consent Service Unit has been established in the Planning Inspectorate, with secondees from the Environment Agency and Natural England. This new Unit has been open for business since 22nd April. Developers are encouraged to begin pre-application discussions with the unit as early as possible. The Government has also made clear through recently updated pre-application guidance that where an applicant would prefer to include non-planning consents within the Development Consent Order, the relevant consenting body should make every effort to facilitate this and should only object to the inclusion of such non-planning consents with good reason, and after careful consideration of reasonable alternatives.

Recommendation 4:

We recommend that the NPS be amended to require the IPC to attach greater weight to flood risk considerations. With the exception of ship recycling facilities, hazardous waste infrastructure should be located in Flood Zones 2 and 3 only in the most exceptional and compelling circumstances.

The Government's response

The Government has considered this carefully. Flood Zones 2 and 3 cover relatively limited areas and it is considered unlikely that developers would choose to build new infrastructure in these zones. However, it is possible that there may be some facilities in addition to those for ship recycling where access to the coast and shipping may be an advantage. The Government would not want to rule out such developments, but agree that it is important that the NPS includes sufficient safeguards. The Government believes there are already sufficient safeguards in the NPS to balance the flood risk with the need for any development. As stated in the NPS, all proposals for hazardous waste projects located in Flood Zones 2 and 3 should be accompanied by a flood risk assessment (FRA). This should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account. As stated in the NPS, the assessment must take account of the nature of the particular types of hazardous waste and consider whether there is an increased pollution or accident risk during flooding. Furthermore the NPS states that in determining applications for development consent for nationally significant hazardous waste infrastructure in flood risk areas, the Secretary of State must be satisfied that the project is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed over the lifetime of the development. The Government remains of the view that this is sufficient safeguard.

Recommendation 5:

We recommend that Defra ensure that the consideration of flood risk in the NPS remains as detailed and robust as that currently set out in PPS 25 and its associated guidance, and is not watered down by proposed changes to broader planning policy.

The Government's response

The approach taken in the NPS is consistent with the National Planning Policy Framework with the exception of ship recycling facilities. The NPS allows ship recycling facilities to be located in Flood Zone 3b for pragmatic reasons – the facilities need to be located at a coastal or estuarine location because they deal with ships. The new National Planning Policy Framework published in March 2012 is accompanied by technical guidance and retains many of the key elements of PPS25. The Government does not consider that the text included in the final NPS has been watered down.

Recommendation 6:

The draft NPS should be amended to direct the IPC to refuse development consent where the Environment Agency advises against a development on flood risk grounds.

The Government's response

As stated above, the NPS only allows the decision maker to consent to a development where they are satisfied that project is appropriately flood resilient and resistant. In making this decision they would need to take account of the advice from the Environment Agency. Were the Government to accept this recommendation it would create a difference between the consideration of nationally significant infrastructure projects for hazardous waste and those for other types of infrastructure, which does not seem justified. It would essentially give the Environment Agency, which is a statutory consultee for the purposes of the Planning Act, a right of veto over a development. It is appropriate that the Secretary of State retains the ability to weigh all material considerations when making a decision.

Recommendation 7:

We recommend that Defra provide clarity to developers by including a definition of whole-life costing in the NPS.

The Government's response

The intention in requesting whole-life costing had been to require applicants to demonstrate, through provision of an assessment of the impacts, that the proposed development would be beneficial to the local, regional and national economies. The intention was that the assessment

would take a “whole-life” approach by looking at the potential impacts during the whole lifespan of the project from the construction phase through the operational phase to decommissioning. Section 5.12.2 of the NPS has been amended to make this intention clearer.

Recommendation 8:

We recommend that insect infestation be removed from the generic impacts section of the draft NPS. In light of Government’s stated intent to remove the regulatory burden on businesses, it is unsatisfactory that the inclusion of irrelevant impacts in this NPS has been justified as being part of a “belt and braces” approach.

The Government’s response

Insect infestation was included in the draft NPS on the basis that it had been identified as a potential impact of other nationally significant infrastructure and while it was not seen as particularly significant for hazardous waste facilities, it was not seen as necessarily less significant than for all other types of infrastructure. However Industry experts also expressed confusion about the mention of insects. Government has therefore reconsidered the issue. The Environment Agency has provided reassurance that pests and vermin are taken into account in the consideration of any application for a permit and account would therefore be taken of insects in the rare cases where these might prove an issue. The Government has therefore concluded that the requirement to assess the impacts of insect infestation can be deleted from the NPS.

Recommendation 9:

We expect Defra in its response to this report to set out how it will seek to improve public awareness and perceptions of hazardous waste facilities. This could include production of a short factual guide which developers could make available to local communities as part of the consultation process.

The Government’s response

The Government agrees that there is merit in improving public awareness and perceptions of hazardous waste facilities. The Government is currently carrying out a wider review of waste guidance and will consider how to take forward this recommendation in the context of that review.

Recommendation 10:

It is very disappointing that despite our criticisms of Defra’s consultation on the draft Waste Water NPS, the consultation on the draft Hazardous Waste NPS has received even fewer responses. This underlines the need for the Department to do far more to engage with the public in this policy area.

The Government's response

The Government took seriously criticisms made by the Committee of Defra's consultation on the draft Wastewater NPS. In addition to publishing the consultation on the draft Hazardous Waste on the Defra website, a leaflet was sent to the Society of Chief Librarians for display in approximately 4000 libraries and Defra arranged for Planning Aid to publish a note summarising the NPS on its website. Stakeholder workshops were also offered both here and in the Regions. The lack of response is likely to be, at least in part, because the general public is less interested in a non-location specific NPS such as this one than in specific development proposals. However, the Government accepts more could be done to engage with the general public, for example considering using its existing stakeholder networks as intermediaries, and Defra will look for opportunities to do so.

Recommendation 11:

We recommend that the draft NPS be amended to include guidance on how Community stress and anxiety assessments should be carried out.

The Government's response

Having given this further thought, the Government has decided to drop the requirement for this assessment. The NPS will require the decision maker to take account of health concerns when setting conditions for the development. Consultees will be able to express concerns and anxieties both during pre-application consultation and while the application is being determined. To require the developer to carry out a separate assessment therefore seems unnecessary.

Recommendation 12:

We recommend that Government amend the guidance to developers on conducting pre-application consultations so that developers are required to invite local communities to propose specific mitigation measures.

The Government's response

The Committee recommended that Government amend the guidance "Planning Act 2008: Guidance on Pre-application Consultation" so that developers are required to invite local communities to propose specific mitigation measures. A public consultation was launched in April 2012 for the Light Touch Review of the six guidance documents underpinning the Planning Act. As a result of this, the revised guidance on the pre-application process was published in January 2013. This guidance makes it clear that local communities have a vital role to play at the pre application stage and it is therefore critical that they are engaged with project proposals at an early stage. Because they live, work and socialise in the affected area, local people are particularly well placed to comment on what the impact of proposals on their local community might be; or what

mitigating measures might be appropriate; or what other opportunities might exist for meeting the project's objectives.

The Planning Inspectorate's Advice Notes also cover this point adequately, by encouraging local communities to suggest how the impacts of a development may be mitigated.

Recommendation 13:

The IPC's How to have your say advice note should also be amended to encourage local people to suggest how the impacts of a development may be mitigated.

The Government's response

The Planning Inspectorate's Advice Notes 8.1 and 8.2 have been updated. These now include revised wording that address the Committee's concerns. Advice Note 8.1¹ now includes the following advice:

"The length of time taken to prepare and consult on the project will vary depending upon its scale and complexity. Responding to the developer's pre-application consultation is the best time to influence a project, whether you agree with it, disagree with it or believe it could be improved. This is also the best time to make any suggestions to the developer about how the impacts of a project could be mitigated. Taking part by commenting at this stage does not prejudice your ability to object to the scheme later in the process and may enable you to influence the design of the project."

Advice Note 8.2² now includes the following:

"Even if you oppose a project in principle, you should seek to learn as much as you can about it by taking part in the pre-application consultation. This is also the best time to make any suggestions to the developer about how the impacts of a project could be mitigated."

Taking part by commenting at this stage does not prejudice your ability to object to the scheme later in the process and may enable you to influence the design of the project."

Recommendation 14:

We recommend that Defra develop guidance about the factors which the Secretary of State should take into account in deciding whether to exercise the power set out in Section 35 of the Planning Act 2008 in the context of Hazardous Waste infrastructure. Such guidance should be published alongside the final NPS.

1 <http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/04/Advice-note-8-1v4.pdf>

2 <http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/04/Advice-note-8-2v3.pdf>

The Government's response

This has been carefully considered, but the Government is not minded to take forward this recommendation. Government believes the thresholds set in the Planning Act are the most appropriate to determine whether or not a hazardous waste facility is nationally significant. It is therefore unlikely that the powers under Section 35 would be used to allow a proposal that does not meet those thresholds to be treated as nationally significant. The circumstances in which a facility would be genuinely nationally significant and yet not meet the thresholds are likely to be unusual. The Secretary of State would need to consider evidence from the applicant and such other information available and relevant to the particular facts of the case. Drawing up generic guidance does not seem the best approach. The Government considered making an amendment to the NPS to explain that requests for Directions would be considered in the light of evidence from the applicant and such other information available to the Secretary of State that is relevant to the particular case. However, the final conclusion was that this was not necessary. Section 35 of the Planning Act already contains a test of "national significance". The Department for Communities and Local Government will shortly be drawing up general criteria for section 35 directions on business and commercial projects.

Recommendation 15:

We recommend that decisions on hazardous waste NSIPs be made jointly by the Secretary of State for Communities and Local Government and the Secretary of State for Defra in the same way that they are for wastewater infrastructure.

The Government's response

Under the Town and Country Planning Act, the Secretary of State for Communities and Local Government has historically taken decisions on applications for significant infrastructure for hazardous waste. The Government wishes to maintain this position for decisions under the Planning Act. It is true that decisions for Wastewater developments will be made jointly, but this is because section 266 of the Town and Country Planning Act has historically given Defra Ministers a part in decisions on applications submitted by statutory undertakers. Joint decision making for nationally significant infrastructure for Wastewater therefore maintains the status quo.



Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich NR3 1GN

Telephone orders/general enquiries: 0870 600 5522

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

Email: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Houses of Parliament Shop

12 Bridge Street, Parliament Square,
London SW1A 2JX

Telephone orders/general enquiries: 020 7219 3890

Fax orders: 020 7219 3866

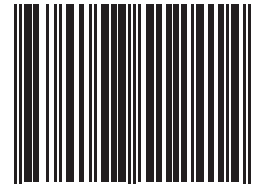
Email: shop@parliament.uk

Internet: <http://www.shop.parliament.uk>

TSO@Blackwell and other accredited agents

PB13926

ISBN 978-0-10-851241-4



9 780108 512414