Department for
Business, Energy
& Industrial Strategy

GOVERNMENT RESPONSE TO THE BEIS COMMITTEE REPORT ON THE DRAFT NATIONAL POLICY STATEMENT FOR GEOLOGICAL DISPOSAL INFRASTRUCTURE

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

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Contents

Introduction

National Policy Statements

1. National Policy Statements (NPSs) were established under the Planning Act 2008, which sets out a methodology for granting development consent for Nationally Significant Infrastructure Projects (NSIPs). NPSs are intended to provide greater clarity and certainty by setting out, in a single document, the Government's national policy in relation to a specified description of development and providing the reasons for that policy.

2. An extensive process of consultation and parliamentary scrutiny is required before a NPS can be designated. This enables a NPS to speed up the development consent process for a NSIP.

3. The NPS in question sets out the need for NSIPs relating to geological disposal of higher activity radioactive waste in England, and the Government's approach to delivering them. The NPS will be used as a primary basis for examination by the Examining Authority of, and for decisions by the Secretary of State on, applications for development consent for geological disposal infrastructure.

4. Along with the NPS, there are two associated documents that consider the potential socio-economic and environmental impacts that geological disposal infrastructure (located in England) would have on the local area, and on Wales and Scotland. These are the Appraisal of Sustainability (AoS) and the Habitats Regulations Assessment (HRA).

5. The Planning Act 2008 requires that before an NPS can be designated, an AoS has to be carried out. This process ensures that the likely socio-economic and environmental effects of a NPS, at a national level, are identified, described and evaluated. If there are adverse effects, the AoS recommends options for avoidance and mitigation. The AoS incorporates an assessment which satisfies the requirements of the Strategic Environmental Assessment (SEA) Directive[1], and the domestic implementing regulations (the SEA Regulations). The Strategic Environmental Assessment Directive aims for a high level of environmental protection and to promote sustainable development. It applies to certain plans that are likely to have significant effects on the environment. Radioactive Waste is a devolved issue, and the NPS applies only to England. However, the AoS and HRA cover Wales and Scotland too, due to their common borders with England.

[1] European Parliament and Council Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment. The Strategic Environmental Assessment Directive has been transposed in England by the UK Strategic Environmental Assessment Regulations, SI 2004/1633.

6. The NPS is also subject to the Habitats and Wild Birds Directive[2], and the implementing regulations (the Conservation of Habitats and Species Regulations 2017) (the 'Habitats Regulations'). These require an assessment of the implications of implementing the NPS for European sites (sites protected due to their importance to European nature conservation).

7. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU[3].

8. This document the NPS and the accompanying documents refer to relevant EU Directives, the status of which within the UK will change once the UK has left the EU. References to a Directive above and within the NPS and accompanying document should, following the UK's departure from the EU, be read as references to the domestic legislation that implemented the Directive (including that domestic legislation as it is revised or replaced from time to time). References to a Directive elsewhere should be read in the context in which they appear.

Draft NPS for geological disposal infrastructure

9. The Department for Business, Energy and Industrial Strategy (BEIS) published the draft NPS for consultation, and the various other supporting documents on 25 January 2018. These documents set out the Government's proposed framework for development consent for geological disposal infrastructure in England. 'Geological disposal infrastructure' covers:

- any deep geological facility for disposing of radioactive waste (geological disposal facilities); and
- the deep borehole investigations necessary to characterise the geology at a particular site to enable its suitability as a site for a geological disposal facility to be considered.

10. It is accepted that a geological disposal facility is currently the best means for disposing of higher activity radioactive waste. It involves disposal of solid radioactive waste in a highly engineered underground facility. The facility uses multiple barriers, such as the packaging, engineered barrier, and the geology itself,

[2] The European Council Directive (92/43/EEC) on the Conservation of Natural Habitats and of Wild Flora and Fauna (the Habitats Directive) and Directive 2009/147/EC (Codified version of Directive 79/409/EEC) on the conservation of wild birds.
[3] In so far as the context permits or requires, a reference to the European Union includes a reference to the European Atomic Energy Community.

that work together to provide protection from the waste for hundreds of thousands of years.

11. Deep boreholes form part of a wider integrated programme of site characterisation which is ultimately required for the successful development of a geological disposal facility. These boreholes provide geoscientific information to, amongst other things, support identification of a potential site for a geological disposal facility, and the development of site-specific design and safety case requirements.

12. The NPS does not identify a specific location where the geological disposal infrastructure should be sited. Rather, it provides guidance relevant to the generic impacts of geological disposal infrastructure anywhere in England. The NPS will be used as the primary basis for the examination by the Examining Authority of, and for decisions by the Secretary of State on, applications for development consent for geological disposal infrastructure that falls within the definition of a Nationally Significant Infrastructure Project as set out in Section 14(1)(q) and Section 30A of the Planning Act 2008 ('the Planning Act').

13. The NPS sets out the technical, ethical, and legal need for geological disposal infrastructure, as well as the assessment principles for applications for geological disposal infrastructure, and impacts that will occur as a result.

Working with Communities

14. The Implementing Geological Disposal – Working with Communities policy document[4] sets out the UK Government's framework for managing higher activity radioactive waste in England over the long term through geological disposal, which will be implemented alongside on-going interim storage and supporting research. This policy document:

- outlines the policy background and the activities undertaken by the UK Government since the previous published policy[5];
- outlines the relationship between the planning process and regulatory regimes;
- and sets out the Working with Communities process, including community investment and the siting process that will be undertaken by Radioactive Waste Management Ltd (RWM), a subsidiary of the Nuclear Decommissioning Authority, as the developer of the geological disposal facility.

15. The Working with Communities process and associated process for identification of a suitable site applies only to work being carried out by RWM; however, the NPS

[4] Implementing Geological Disposal – Working with Communities, 2018: https://www.gov.uk/government/publications/implementing-geological-disposal-working-with-communities-long-term-management-of-higher-activity-radioactive-waste
[5] 2014 White Paper can be found here: https://www.gov.uk/government/publications/implementing-geological-disposal

applies to any developer wishing to apply for development consent for geological disposal infrastructure.

16. The NPS does not identify areas or sites where a geological disposal facility could or should be located, nor where deep borehole investigations could or should take place. Neither does the NPS describe a siting process for a geological disposal facility, which is a separate process from any application for development consent

Public Consultation

17. The public consultation on the draft NPS was launched on 25 January 2018 and closed on 19 April 2018. There were 7 public consultation events, with 86 individual responses from within the UK. In addition, there were 350 campaign responses from members of the German public.

18. The questions contained in the consultation were centred around whether the NPS is fit for purpose and considered what information may need to be included.

Parliamentary Scrutiny

19. As part of the parliamentary scrutiny of the draft NPS for geological disposal infrastructure, the House of Commons BEIS Committee launched an inquiry on 25 May 2018. At the same time, it launched a request for submissions of written evidence to provide responses to a list of questions, with a deadline of 15 June 2018. This request received 12 submissions from various origins, including the Nuclear Legacy Advisory Forum (NuLeaf), various local authorities, individuals, environmental groups, and trade unions.

20. The Committee took oral evidence on 10 July 2018 from NuLeAF, the Campaign for National Parks, the Planning Inspectorate, Radioactive Waste Management Ltd (RWM), the Committee on Radioactive Waste Management (CoRWM), the NGO Forum, BEIS officials and Richard Harrington (Minister for Business and Industry). After taking into account all of the written and oral evidence available, the Committee published its report on 31 July 2018.

21. The Committee was broadly supportive of the draft NPS for geological disposal infrastructure and made 6 recommendations which have been addressed in this response.

22. A debate on the draft NPS for geological disposal infrastructure took place in the House of Lords on 6 September 2018.

23. The Government welcomes the Committee's report on the draft NPS on geological disposal infrastructure following its detailed inquiry into the proposal and has accepted the Committee's recommendations except where only a clarification of the position was felt appropriate. The following chapter demonstrates how those

changes have been responded to in the revised NPS and where, in some areas, additional clarification has been provided.

Government response to BEIS Committee's recommendations

Recommendation 1

BEIS Committee Recommendation

24. We understand that the Government thought it would be enough to rely on references to CoRWM's recommendations in the NPS. However, we think that advice from both RWM and CoRWM that further justification for geological disposal is needed in the NPS should be taken seriously. We therefore recommend that the Government work with CoRWM and RWM to strengthen the justification for geological disposal in the NPS.

Government Response

25. The Government welcomes this recommendation and Chapter 3 of the NPS, which describes the need for a geological disposal facility, has been revised to clarify the need case and noting that it does not rely solely on the CoRWM recommendation.

26. In addition to the 2006 CoRWM recommendations, the Government also relies on the following areas of need that are discussed in chapter 3:

- the technical need – that geological disposal provides a permanent solution;
- the ethical need – that we should not adopt solutions that place a burden on future generations;
- the legal need – for example, obligations under the Spent Fuel and Radioactive Waste Directive[6] and the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management[7]; and
- the energy capacity and climate change need.

27. Chapter 3 concludes that there is international consensus that geological disposal is the best means of dealing with the final disposal of higher activity radioactive waste.

[6] Council Directive 2011/70/Euratom, recital 23, July 2011
[7] https://www.iaea.org/topics/nuclear-safety-conventions/joint-convention-safety-spent-fuel-management-and-safety-radioactive-waste

Recommendation 2

BEIS Committee Recommendation

28. Given the changing nature of inventories and the timescales at stake, we reject the idea that the total of the UK Derived Inventory should be finalised before proceeding with the final NPS. However, we agree with the evidence that before communities are asked to volunteer to host the geological disposal infrastructure, it should be made absolutely clear to them that the inventory is uncertain and likely to change. As currently drafted, the NPS does not make that point clearly enough, especially to lay readers. Although the NPS is primarily aimed at the Planning Inspectorate and the developer, it should also, be helpful to communities that are thinking of volunteering to host the geological disposal infrastructure. We recommend that the Government clarifies in the NPS the level of uncertainty regarding the inventory and explains to prospective host communities how this will affect their right to reject the geological disposal infrastructure at any point during the siting process.

Government Response

29. The Government is grateful for the Committee's recommendation, and in response has now added several references in the NPS to sections within the 'Implementing Geological Disposal – Working with Communities' document.

30. The Government agrees with the Committee that the total of the UK Derived Inventory should not be finalised before proceeding with the final NPS. The NPS clarifies that there is a certain level of uncertainty of volumes of wastes in paragraph 2.3.15 and 2.3.16, although it is also stated that it is not anticipated that the categories of material already listed would change significantly.

31. In paragraph 2.3.5 of the NPS it states that in an application for development consent for a geological disposal facility, there is a requirement for the developer to provide a statement clarifying what inventory of waste is intended to be disposed of in the geological disposal facility.

32. With regards to the host community, the detail on the process for establishing and communicating the inventory is set out within the new paragraphs 6.54 and 6.55 of the published 'Implementing Geological Disposal – Working with Communities' policy document published in December 2018. In 6.54 it says 'a process for agreeing any future material changes to the categories of waste to be disposed of in a GDF would need to be agreed before the Test of Public Support.' In 6.55 it also says 'The Government would need to discuss and agree the disposal of any additional spent fuel and ILW with communities participating in the siting process.'

Recommendation 3

BEIS Committee Recommendation

33. Volume of waste and underground footprint are two separate but crucial issues which will affect the type of facility required. It is essential that communities understand what responsibility – both in terms of volume of waste and level of radioactivity – they would be signing up for by hosting the geological disposal infrastructure. For transparency purposes, the Government should clarify in the NPS the level of radioactivity that, to its knowledge, waste from the 16 to 18 - gigawatt electrical new nuclear build programme would add to the total volume of radioactivity in the geological disposal infrastructure and how that will impact the infrastructure requirements of the facility. The Government should also provide details in the NPS on the level of radioactivity from new nuclear build waste as a proportion of the total level of radioactivity in the geological disposal infrastructure.

Government Response

34. The Government is grateful to the Committee for its recommendation and has made amendments to the NPS to make it clearer what the inventory of waste to be disposed of within a GDF will be.

35. As has been noted in the response to Recommendation 2, there is uncertainty as regards the inventory. The predicted level of nuclear new build waste is based on an industry ambition for the construction of new nuclear and not Government policy. At the time of the 2014 White Paper, this was set at the intermediate level waste and spent fuel arising from new nuclear development up to 16 gigawatts electrical. However, this may fluctuate according to industry ambition at any time until the development consent application for the construction of a geological disposal facility. This information is now contained within paragraph 2.3.17 of the NPS.

36. The UK radioactive waste inventory[8] is the latest national record on radioactive wastes and materials in the UK – this records the radioactivity and detail of the inventory, and is referenced in the NPS in section 2.3.16 under the heading 'Inventory for disposal'. The Inventory for Geological Disposal[9] consists of a number of reports, including 'Inventory for geological disposal Implications of the 2016 IGD for the generic Disposal System Safety Case', which take the information from the UK radioactive waste inventory and explain how the changes in predicted volumes of waste affect the design of the GDF. The information on indicative volumes of waste related to new nuclear, provided to the Select Committee in July 2018, was published in these reports in December 2018. These reports also provide more granular information on the volumes of different types of waste, the radioactivity of the waste, as well as defining how changes to the volumes of waste since the last report have changed the expected footprint of a GDF in the 3 rock types considered

[8] The UK Radioactive Waste Inventory can be accessed online: https://ukinventory.nda.gov.uk/
[9] The 2016 Inventory for Geological disposal can be accessed online: https://www.gov.uk/government/publications/2016-inventory-for-geological-disposal

suitable for hosting a GDF. This level of information is reported every three years by RWM and is considered the most complete source of current information for communities. The NPS by contrast, as per the Planning Act 2008, part 2 section 6, is only reviewed 'whenever the Secretary of State thinks it appropriate to do so'. Therefore, reference is now made within section 2.3.16 of the NPS to the Inventory for Geological Disposal, with an extensive footnote that mentions the volumes of different categories of waste including waste related to new builds.

37. As mentioned in the response to Recommendation 2 above, the NPS now references the 'Implementing Geological Disposal – Working with Communities' policy document'. Within this document, which clarifies how RWM should engage with potential host communities, the requirement to update communities with information on the inventory is explicitly stated in 6.54 and 6.55.

38. Paragraph 2.3.5 has been added into the NPS, requiring that any application for development consent for a geological disposal facility must be accompanied by a statement setting out the nature and amount of waste expected to be disposed of at the relevant site. This paragraph recognises that there may not be the capacity at any one site to take the entirety of the inventory, but that any geological disposal facility should be sized according to the inventory intended for disposal at that site, and the available capacity of the geology.

Recommendation 4

BEIS Committee Recommendation

39. We conclude that what may be a clear framework to the developer and Planning Inspectorate may not be as easily accessible to a lay audience. It is of paramount importance that prospective host communities understand how their 'right of withdrawal' interacts with the development consent orders for boreholes and geological disposal. We do not suggest that community consent should become an Assessment Principle as we think the 'Working with Communities' policy already guarantees to communities that no geological disposal infrastructure could be granted development consent without their express approval. However, the NPS as currently drafted does not explain clearly how these two frameworks interact. The Government should clarify the degree of priority afforded to community consent in the NPS in a way that is accessible to a lay audience so as to give prospective communities all the tools they need to engage with the siting process.

Government Response

40. The Government is grateful to the Committee for its recommendation and has revised the NPS and the 'Implementing Geological Disposal – Working with Communities' policy document to clarify the relationship between the two documents.

41. The 'Implementing Geological Disposal – Working with Communities' policy framework is entirely separate and in addition to the requirements of the NPS. It sets out how RWM, as the developer for the UK Government's GDF, will engage with communities to identify a suitable location for a GDF. In section 5.19 it also states that RWM cannot apply for a Development Consent Order to build a GDF unless the community has expressly given its consent through a positive Test of Public Support.

42. Section 6.88 of the 'Implementing Geological Disposal – Working with Communities' policy framework says the following, 'The community can withdraw from the siting process at any point up until it takes the Test of Public Support.' So the community could choose to withdraw if it did not want to progress to deep borehole investigations, prior to any Test of Public Support. The Government has set out in the same document, how this consent-based process to be followed by RWM relates to the NPS. In addition, paragraph 2.1.6 of the NPS clarifies the distinction between the NPS and the 'Implementing Geological Disposal – Working with Communities' policy, noting that the NPS applies to anyone wishing to apply for development consent for geological disposal infrastructure.

43. Any developer of a Nationally Significant Infrastructure Project, is required to consult during the development consent process as set out in the Planning Act 2008. This means that the Act places an onus on the developer of deep boreholes and the geological disposal facility to engage with the local community through pre-application discussions – this would include the relevant local authorities. The process also allows any member of the public to make relevant representations on any applications for development consent, and to request Local Impact Reports from the relevant local authorities.

Recommendation 5

BEIS Committee Recommendation

44. …the Government should refrain from drawing connections between the Industrial Strategy and geological disposal in order to justify its policy choices. If it wants to maintain the link between the two policies, the Government should justify in detail how geological disposal will be integrated within the Industrial Strategy framework.

Government Response

45. The Government acknowledges this recommendation and does not include references in the NPS to the Industrial Strategy. However, there are a number of benefits of a GDF, which will contribute towards the delivery of the Industrial Strategy and the Nuclear Sector Deal. The siting, construction and operation of a GDF will attract significant investment over its 100 plus year lifetime. This will deliver: highly skilled jobs, more investment in science and innovation, regional growth, infrastructure upgrades and increase opportunities for the supply chain to participate in the ongoing work to deliver a facility. The GDF project will also help

progress the UK's new nuclear programme, which is an important part of the Government's long-term energy and climate change plans, as it will provide a safe solution to the disposal of the UK's nuclear waste.

Recommendation 6

BEIS Committee Recommendation

46. The Government must clarify in the NPS how the Secretary of State will have regard to local skills and employment opportunities when considering development consent orders for geological disposal. The Government should also place stronger requirements on the developer in the Impacts section of the NPS to establish robust local skills partnerships with the host community and to rely on local employment and sourcing opportunities.

Government Response

47. In response to this recommendation, the NPS has been revised at 5.7.12 to state that developers should work to establish robust local skills partnerships with the host community, in order to maximise local benefits. It is imperative that the eventual host community of the geological disposal facility benefits from hosting the facility over such a long period of time. The updated wording at 5.7.15 also states that the Secretary of State should have regard to elements of applications that have a focus on improving the skills and employment opportunities of the local area, including the extent to which it will benefit the local economy.

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