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**Friends of  
the Earth**

# Briefing Note

## National Policy Statements and new major infrastructure development

### Introduction

The 2008 Planning Act has brought in a new system for approving major infrastructure projects. Friends of the Earth has major concerns around the process of scrutiny and the content of the recently published National Policy Statements which are part of this system.

- Time allocated for consultation and examination is not sufficient given that these National Policy Statements set out the planning framework for major developments in energy and ports;
- There is no systematic framework for testing the National Policy Statements;
- The commitments made last year by Government on consultation are not being met.

### **A summary of the new process for approving major infrastructure projects:**

- On 1 March 2010 a new system starts for approving the construction or alteration of **major infrastructure projects** including: airports, power stations, reservoirs, major roads, railways, ports, waste water treatment plants and hazardous waste facilities.
- A new **Infrastructure Planning Commission (IPC)** of around 35 commissioners will take decisions previously made by the Secretary of State on major infrastructure. It was incorporated on 1 October 2009.
- The IPC's decisions will be determined to a large degree by **National Policy Statements (NPS)** removing many issues – such as nuclear safety and need for new coal or gas fired power generation capacity - from discussion in any public examination.
- A new **public examination system** with a limited open floor hearing and no public right to bring witnesses or to conduct cross-examination, will start from 1 March 2010, regulations to be finalised January 2010.

### **The structure and purpose of the new Act:**

The majority of the Planning Act is focused on the creation of a radical new system for the approval of major infrastructure in order to “speed up” the process of approval. The new system is set up so as to decide questions of “policy” e.g. in the case of nuclear power, specific locations, safety and technical issues in the National Policy Statement (NPS).

The new national **Infrastructure Planning Commission (IPC)** is an independent body charged with making the final decisions about major projects. Unfortunately this new body is unelected and therefore unaccountable for its decisions.

7 **NPS** have been published: Overarching Energy, Fossil Fuels, Renewable Energy, Gas Networks, Electricity Networks, Nuclear Energy and Ports. These policies **fail to set out a comprehensive strategy to deliver a low carbon future**. In terms of **need**, the NPS asserts that there is a need for all new energy infrastructure, which risks locking the UK into high carbon infrastructure. In terms of strategy there is no framework which sets out the mix and contribution of technology required to deliver on carbon emissions reduction targets. DECC has refused to consider alternatives to the policy which would require strategic emissions reduction instead leaving it to a flawed **market-led**

**approach.** There is also no means for the Government to be kept informed on the cumulative carbon emissions impact of the IPC's decisions because there is **no life-cycle carbon emissions impact assessment of major projects.**

### **Is consultation and scrutiny happening as promised?**

NPS are the crucial bedrock on which decisions on major infrastructure projects will be based. They will be the guidance on which the IPC bases its decisions on issues such as power stations and ports. The consultation and scrutiny process of the 7 NPS started on the 11 November 2009. The difference between the process as promised and the process which is now happening is as follows:

<b>Government commitment (May 2009)</b>	<b>What is now planned (Nov 2009)</b>
Six months between proposals and report from Committee.	Four months (including Christmas and New Year period)
Four to six weeks at the end of the consultation period for Select Committees to complete their reports. End of consultation period is 22 February 2010. Therefore the Committee should have had until 26 <sup>th</sup> March 2010 to scrutinise.	The Select Committees are scrutinising the NPS at the same time as the first part of the consultation period, with the last evidence session on the 10 <sup>th</sup> February.
Debate to be recommended within 6 weeks of the report.	It is likely that the General Election timings mean that the debate has a limited timeframe in which to occur.
Time to consider the responses and recommendations.	It is likely that the General Election timings mean that there will be limited time to consider responses and the Committee's recommendations.

HC Deb 20 May 2009 cc1533-40 (Ian Wright)

"We have given an undertaking that Committees will have at least four to six weeks after the end of the three-month public consultation period to complete their work. This is an important and valuable part of the parliamentary scrutiny process. It means that the interval between the proposal being laid and the Committee producing its report will not be less than four months and will usually be longer than that. In practice, the relevant period will therefore usually be about six months, but my right hon. Friends the Secretaries of State who will be laying the proposals are fully aware of the need to consult Select Committees about the timing of the scrutiny process at an early stage. I hope that this explanation reassures the House that the process will be timely and focused, but certainly not rushed.

Under the terms of the motion, the Select Committee would publish its report no later than 40 days before the end of the relevant period, which would allow time for a debate in either or both Chambers if the Select Committee recommends one. The Secretary of State would revise the draft NPS in the light of the public consultation, the Select Committee's report and any resolutions of either House, and then designate the NPS."

The Planning White Paper also made certain commitments:

*"before publishing national policy statements in draft, there should be thorough consideration of evidence, which may include informally consulting relevant experts or organisations; once published in draft, there should be thorough and effective public consultation, in line with best practice, on the Government's proposals for national infrastructure needs and policy; local, regional and national bodies and statutory agencies with a particular interest should be consulted; where proposals might have a particular bearing on local communities, there would need to be effective engagement to ensure that such communities understood the effect of and could express views on the Government's proposals, in line with best practice on community involvement with planning; the Government would need to take the consultation responses into account and explain how they had influenced policy."*

This means that the IPC will be working to guidance that has not been examined properly, either in terms of the commitment made by Government, nor to similar standards as is usual with other planning documents such as the Local Development Framework or Regional Spatial Strategies.

## **What is the new process of decision-making under the Planning Act?**

A developer comes forward with an **application**. The developer is responsible for running a **public consultation** on its own application. The developer is **not independent** and will not be perceived as such by the local community. The relevant local authority will prepare an **impact report** on the possible impacts of the development on the area although they have received no extra funding to deal with this new role. Both the impact report and the application, together with the results of the consultation are submitted to the IPC.

The IPC decides whether to have hearings as well as take written evidence. Individuals can demand an **open floor hearing** – an opportunity to say their piece. Individuals must still submit a **written application** for the open floor hearing. Individuals cannot raise issues about policy, i.e. about the safety of nuclear power stations at the open floor hearing. Given the limited examination and testing of evidence and policy in the NPS process, this is an extremely risky decision-making process.

If the IPC decides to hold some hearings on particular issues, then individuals may be able to make longer representations, but they still will not be able to question the national policy. People affected by **compulsory purchase** will be able to bring a **legal challenge** if they do not get a fair hearing.

The IPC will have a set of legal advisers to advise them on the process of the hearing, but there will be **no free legal advice** available to the public who are involved.

The IPC will then make a decision guided by the NPS. There is **no democratic safeguard** on the decision of the IPC. A **legal challenge** relating to the procedure of the decision must be brought within 6 weeks of the decision.

### **The risk of poor decision-making**

This new system means that the IPC will normally make decisions without public hearings. They will decide which witnesses are heard and who can cross-examine. The public retain only one right - to an 'open floor' session - where they cannot ask questions or cross examine.

Government has made much of the need to remove cross-examination in order to speed up the process. **Cross-examination is however an indispensable way of testing expert evidence.** 'Expert' testimony will occur, but in practice this is simply an advocacy statement on behalf of one side or another. You can only test whether such evidence stands up by allowing participants the chance to question it. This applies strongly to the argument that the NPS on nuclear for instance will deal with all questions of need and safety. There is no means of ensuring this testing of evidence in the NPS consultation and scrutiny process.

### **Please support EDM 545:**

That this House welcomes the Government's stated intention to enable proper parliamentary scrutiny and debate of National Policy Statements (NPSs); is concerned therefore that the current scrutiny process does not appear to adhere fully to the Government's commitments made last year during debate on the Planning Bill; regrets that the Energy and Climate Change Select Committee's simultaneous scrutiny of all five NPSs has been compressed into an inordinately limited timescale that overlaps with the public consultation period; believes that NPSs and their legitimacy would be considerably strengthened by ensuring a process of select committee scrutiny for each individual National Policy Statement and by allowing the public consultation process to be completed before the parliamentary scrutiny process commences; considers that the public should be given meaningful opportunities to provide evidence or bring expert witness to bear particularly on site-specific NPSs; and calls on the Government to reconsider whether the current process provides the full and proper parliamentary scrutiny process to which such crucial documents should be subjected.

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