



## Planning Act 2008 Implementation

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This note describes the next stage after the *Planning Act* gained Royal Assent in November 2008. The main provisions of the Act are expected to come into force in spring 2010, when the Infrastructure Planning Commission (IPC) will start to operate.

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# 1 National Policy Statements

When the relevant part of the Act is brought into force, major infrastructure projects of national importance will require a new type of “development consent” instead of consent under planning acts and other legislation like the *Electricity Act 1989*. Ultimately, that consent will be decided by the IPC, composed of independent commissioners, on the basis of National Policy Statements. The Secretary of State will play no role in the process. However, there will be an important intermediate stage before the National Policy Statements have been designated. National Policy Statements will be published in draft for consultation and go through a Parliamentary procedure, involving scrutiny by a Select Committee. Until the relevant National Policy Statement has been designated, the application for development consent will be investigated by the IPC, but the final decision will be taken by the Secretary of State. In some sectors, that position is likely to continue for more than a year.

A Press Notice in November 2008 listed the proposed National Policy Statements:

2. Eleven National Policy Statements are currently planned. These are:

- overarching energy (providing an overview of the other 5 energy NPSs)
- fossil fuels
- renewable energy
- electricity networks
- gas and downstream oil infrastructure
- nuclear power
- ports
- National Networks (strategic highway and rail networks)
- aviation
- water supply and waste water treatment
- hazardous waste (not including nuclear waste).<sup>1</sup>

A PQ in February 2009 gave more detail on timing:

**Norman Baker:** To ask the Secretary of State for Transport when he expects the infrastructure policy statements for (a) ports, (b) surface networks and (c) aviation to be published.

**Mr. Hoon** [*holding answer 3 February 2009*]: I expect to publish a draft National Policy Statement (NPS) for ports this summer for consultation, with a view to designation early in 2010; to publish a draft NPS for National Networks (strategic highways and railways, including strategic rail freight interchanges) for consultation this autumn, with a view to designation later in 2010; and to publish a draft NPS for airports by 2011.<sup>2</sup>

A PQ in March 2009 qualified this a little:

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<sup>1</sup> DCLG Press Release, *Planning Bill green light will now accelerate renewable energy*, 27 November 2008

<sup>2</sup> HC Deb 5 February 2009 c1385W

**Margaret Beckett:** (...) Given the complexity of the implementation programme and the need for consultation on, and parliamentary scrutiny or approval for, many aspects of the regime, the timings given may well change. We will keep the Route Map under review and update it if there are significant changes.<sup>3</sup>

A PQ in March 2009 explained the role of National Policy Statements in planning decisions outside the remit of the IPC:

**Mr. Stewart Jackson:** To ask the Secretary of State for Communities and Local Government what account (a) local planning authorities and (b) the Planning Inspectorate will be required to take of national policy statements (i) before and (ii) after the Infrastructure Planning Commission is operational.

**Mr. Iain Wright:** National Policy Statements (NPSs) will be statements of government policy. NPSs will provide a clear policy framework within which the Infrastructure Planning Commission (IPC) will take decisions on nationally significant infrastructure projects (NSIPs). NPSs may also set out policy which could have a bearing on smaller projects consented via other routes, including planning applications determined by local planning authorities (LPAs). Local planning authorities will have to take into account NPSs, as statements of government policy, when preparing their development plan documents, whether or not the Infrastructure Planning Commission (IPC) is operational. Where development plan documents have not yet been updated to take account of a particular NPS, any relevant policy in the NPS should be taken into account by the LPA as a material consideration when making decisions on development applications.

The Planning Inspectorate will have to take account of national policy statements, as statements of Government policy, where they are relevant to a decision on a planning appeal, or when making a recommendation to the Secretary of State on applications which have been called in for determination by the Secretary of State. NPSs may be relevant to PINS [Planning Inspectorate] cases whether or not the IPC is operational.<sup>4</sup>

## 2 Parliamentary Scrutiny – the Motion of 20 May 2009

Hazel Blears' Motion, [Planning: National Policy Statements](#), provides for select committees to scrutinise National Policy Statements. Scrutiny will be undertaken either by an existing Select Committee or by a National Policy Statement Select Committee. A National Policy Statement Select Committee shall be composed of not fewer than seven nor more than fourteen members, all of whom shall be, at the time of nomination, members of one or more of the following select committees— Communities and Local Government; Energy and Climate Change; Environment, Food and Rural Affairs; Transport; Welsh Affairs.

The Liaison Committee shall have the power to appoint a National Policy Statement sub-committee, composed of: (i) those members of the committee who are members of the Communities and Local Government, Energy and Climate Change, Environment, Food and Rural Affairs, Transport and Welsh Affairs Committees; and (ii) up to two other members of the committee, one of whom shall be appointed chairman of the sub-committee;

Iain Wright, Parliamentary Under-Secretary for Communities and Local Government, described the Parliamentary scrutiny process:

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<sup>3</sup> HC Deb 12 March 2009 cc747-8W

<sup>4</sup> HC Deb 10 March 2009 c321W

It may be helpful if I briefly describe what I expect scrutiny of a national policy statement to entail. As I have implied, the precise details would be a matter for the Liaison Committee and the relevant Select Committee, but we envisage a process along the following lines. The relevant Secretary of State would lay the draft NPS, or draft amendment of an NPS, before Parliament and publish it for public consultation. At the same time, the Secretary of State would specify what is known as the “relevant period” during which consideration of the proposal would take place. We have agreed that this would need to be sufficient to encompass the period of public consultation plus additional time to allow for Committees of either House to report and for debates in this House and the other place to take place if required. (...)

Chairs of Select Committees and the House in general will wish to be reassured that a Secretary of State will not rush through an NPS via a truncated relevant period, and I will in a moment set out how that will not be allowed to be the case. A draft NPS will be screened by the Chairs of the relevant Select Committees and the Liaison Committee. Under this process, it will be decided which of the two routes for scrutiny to take: a relevant Select Committee or the bespoke national policy statement Select Committee. This body will then meet to agree its call for evidence, which will run in parallel with public consultation. The motion before us makes it clear that the Select Committee may invite individuals and organisations to appear before it to give oral evidence; I think that that point will reassure my hon. Friend that the SDC will, where relevant, be able to give evidence and appear before the relevant Select Committee. (...)

**Mr. Paul Truswell** (Pudsey) (Lab): This process will obviously be kick-started by a significant number and range of national policy statements. Are the Minister and Select Committee Chairs confident that they have the logistical capacity to be able to deal with that initial major amount of work?

**Mr. Wright:** We anticipate there being about a dozen national policy statements. My hon. Friend raises an important point, and one of our key pledges is that sufficient discussion will take place between the Government, the relevant Secretaries of State, the Liaison Committee and the Select Committees to make sure that they are not inundated with work and the necessary logistics and administrative arrangements are provided. We have pledged that additional support will be given to relevant Select Committees to ensure that they can properly scrutinise the NPS process. (...)

**Mr. David Drew** (Stroud) (Lab/Co-op): The Minister’s remarks are very interesting. The problem here is that these national policy statements will be overarching and interrelated, and because of the nature of Member involvement they will be interested in a number of different national policy statements at the same time. How will we manage that, unless we allow national policy statement proceedings to last for long periods of time? This point also applies to the various non-governmental organisations that will be interested. They will want to give evidence on a range of national policy statements at the same time. How does the Minister envisage that that will work?

**Mr. Wright:** I anticipate that the relevant Select Committee would look at the logistics and determine which organisations and individuals to call to give evidence. There should be a coherent strategy to allow that consultation and debate to take place. Let me move on, as what I wish to say next might also help provide clarity on these points.

The Committee may also decide to take evidence in specific locations outside Parliament. It is entirely possible, for example, that a location-specific NPS—the nuclear energy NPS, perhaps, on which I should declare an interest as there is a nuclear power station in my constituency—could identify suitable, or potentially suitable, locations for a piece of infrastructure, and the Select Committee might consider it appropriate to visit some of them. (...)

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. (...)

As I said at the start, when a draft national policy statement is published, the relevant Secretary of State will determine the relevant period. That relevant period is the time scale within which this whole process will take place. The reason for the point about the report coming out 40 days before the end of that relevant period is to ensure that there could be a debate in this House or the other place if the Select Committee that scrutinised that NPS thought that that would be relevant, appropriate and worth while. That is an important point. As I said, there is a balance to be struck in respect of ensuring that we have policy statements in place for our national infrastructure projects that are timely, relevant, focused and thorough, and incorporating both public consultation and, crucially, very rigorous parliamentary scrutiny of the process. (...) I said that I thought the relevant period would, in general—in the real world—be about six months.<sup>5</sup>

Robert Neill stated the main Conservative Party objection to the proposed scrutiny process:

There is, of course, merit in Select Committees looking at detailed matters, and I am grateful to the hon. Member for Milton Keynes, South-West (Dr. Starkey) for referring to the discussions with the Quadripartite Committee, because that is one of the issues raised to which I shall return. Although I accept that there has been a degree of constructive discussion and movement from the Government's original proposals, none of the proposals in the motion meets our basic issue of principle: proposals of this kind should ultimately be signed off in a substantive vote following a debate on the Floor of this House. The mechanism by which we achieve that might vary, be it the report of a Joint Committee or a special national policy committee—that matters not. These proposals lack the means whereby every Member can participate in a debate and register their vote. That is the most important issue.<sup>6</sup>

Dan Rogerson stated the Liberal Democrat view:

There is a great deal of work to be done. National policy statements, if handled properly, can make a significant contribution to ensuring that the planning process is more transparent and efficient, and is up to being challenged, as it should be, by the people out there. They may challenge its accuracy and ability to reflect the aspirations of the country as a whole, and the aspirations of local communities. If there are few points at which the democratic process is involved in the part of the planning system

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<sup>5</sup> HC Deb 20 May 2009 cc1533-40

<sup>6</sup> HC Deb 20 May 2009 c1541

that we are discussing, and if decisions on individual applications are to be taken by appointed people, rather than elected people, we should remember, as the Minister for Local Government said in Committee, that it is when policy is set that the democratic voice must be heard. Ultimately, the only way that that can happen is if there is a vote in the House.<sup>7</sup>

The Government motion was passed.

### **3 Implementation timetable**

In January 2009 the DCLG published the IPC route map, including an implementation timetable:

#### Implementation Timetable

40. The attached diagrams show our implementation plan, as of January 2009, with what is under way and our current plan for further work. They also identify the points at which interested parties will be able to input to help ensure that the scheme is effectively implemented. Given the complexity of the implementation programme and the need for consultation on, and parliamentary scrutiny or approval for, many aspects of the regime, the timings given may well change. We will keep the route map under review and up date it if there are significant changes.

41. The overall route map is summarised in figure 1. The work to establish the new Commission, set out detailed procedures for the making and examination of applications, and draft the NPSs is being taken forward in parallel so that the new regime can be rolled out as quickly as possible:

- following recruitment of the Chair, Commissioners, Chief Executive and staff of the IPC, we plan to establish the IPC as a legal body so that is able to start advising potential applicants from autumn 2009 and be ready to receive applications in the first half of 2010 (see figure 1)
- we plan to consult on the detailed procedures for making applications under the new regime in the second quarter of this year, with a view to putting in force the necessary secondary legislation and guidance in October 2009. Following this, we plan to consult on the detailed procedures the IPC will then use to examine these applications, with a view to those being in place by April 2010. The timetable for SIs and guidance is summarised in figure 2
- in parallel with this work we will conduct the appraisal of sustainability and draft the first tranche of NPSs (Non-nuclear Energy and Ports), for consultation and parliamentary scrutiny (of the draft NPS and AoS Report), in the summer and NPS designation early in 2010
- our current plans for the later NPSs are as follows. We plan to start the consultation on the Nuclear NPS in 2009 following on from the package of non-nuclear NPSs, and we are aiming to designate this NPS in the spring of 2010. The National Networks NPS is scheduled for consultation and Parliamentary scrutiny in draft, alongside its AoS Report, in autumn 2009 with designation later in 2010. We expect consultation on the draft Waste Water NPS late in 2009, with the Hazardous Waste NPS published in draft in spring 2010, the Water Supply NPS later 2010, and the Airports NPS planned for publication in draft by 2011. The timetable for the early NPSs is summarised in figure 3

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<sup>7</sup> HC Deb 20 May 2009 c1550

- our current intention is to “switch on” the regime for different sectors on a phased basis. We will discuss with potential promoters and other interest groups the appropriate lead-in time for the commencement of the new system for each major infrastructure sector.<sup>8</sup>

In April 2009, the Government announced 11 credible sites for nuclear power stations nominated by potential developers. The announcement explained how this related to the National Policy Statement:

Following the one month public comment window, information from the public will be used alongside the advice of regulators and other specialists. Sites which are judged to be potentially suitable will be included in the draft National Policy Statement (NPS) on nuclear power which will be published later this year for public consultation. This is part of the new planning system under the new Planning Act 2008. The NPS will set the policy framework for the new independent Infrastructure Planning Commission's decisions on new nuclear power.<sup>9</sup>

#### 4 The Infrastructure Planning Commission Chairman

On 10 March 2009, Margaret Beckett nominated Sir Michael Pitt as preferred candidate to chair the IPC:

Housing Minister Margaret Beckett has today named Sir Michael Pitt as the preferred candidate for the post of Chair of the new Infrastructure Planning Commission and announced it will be located in Bristol. Sir Michael will be the first Chair of the IPC, which is being set up under the 2008 Planning Act to take decisions on planning applications for infrastructure proposals that are of national significance. (...)

Sir Michael's appointment is subject to endorsement by the Communities and Local Government Select Committee. The Committee will hold a pre-appointment hearing and report on his suitability for the post, in line with proposals announced last year to increase democratic scrutiny of key public appointments.<sup>10</sup>

Before confirmation of the appointment, he gave evidence to the Communities and Local Government Select Committee. This evidence showed how he viewed the IPC, although perhaps without great surprises. The following exchange dealt with technical knowledge:

**Q20 Sir Paul Beresford:** What about wind farms and nuclear power stations? Do you think you need some technical knowledge there? How are you going to fill those gaps?

**Sir Michael Pitt:** Good point. I think it is going to be vital that I have a good understanding of those sorts of applications: I think it is important that the Commission is not just seen to be dealing with one application after the other but has a strategic view of what is going on in the country, how individual applications fit into the much bigger picture, so I think it is right, and you are right, to draw attention to the fact that I would need to ensure that I do have that wider understanding.

**Q21 Sir Paul Beresford:** Would you be choosing some of your commissioners to fill those gaps in your knowledge?

**Sir Michael Pitt:** I think that brings us then to a really important issue about who do we want as commissioners, we are looking at probably up to 35 commissioners. I am

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<sup>8</sup> DCLG, [Infrastructure Planning Commission implementation Route map](#), January 2009

<sup>9</sup> DECC Press Release, *Have Your Say on Potential Sites for New Nuclear Power Stations*, 15 April 2009

<sup>10</sup> DCLG News Release, *Sir Michael Pitt recommended for Chair of new Infrastructure Planning Commission*, 10 March 2009

anticipating that I would be involved in that recruitment process, and clearly we will be looking for commissioners who have a wide range of knowledge, not just of those sectors like energy, transport, water and so on but who have a good understanding of planning law, I think that is going to be vital given the nature of the IPC, and commissioners who can understand environmental issues and the social impact of projects. So we are looking for a wide variety of experts who can be brought together onto panels for the major applications, and I hope come through with the right decisions at the end of the day.<sup>11</sup>

Sir Michael's salary will be £184,000 for four days a week. The overall annual IPC costs will be between £5m and £9.3m.<sup>12</sup>

A PQ in March 2009 gave an idea how often the IPC would be used:

We have identified 34 cases during 2008 that would have required reference to the Infrastructure Planning Commission. We do not hold information on applications to local planning authorities which have not been called in, as it is not held centrally. A comprehensive list could be provided only at disproportionate cost. Details of the above cases have been deposited in the House Library.<sup>13</sup>

Another PQ said that around 45 major projects a year would be considered by the IPC, but this figure would vary from year to year.<sup>14</sup>

## **5 Applications submitted before the Planning Act comes into force**

An application for consent under current legislation – for example the *Electricity Act 1989* s.36 - might be submitted in 2009 but not be approved or rejected for some years in the case of a complex public inquiry. A DCLG March 2009 consultation paper makes clear what would happen:

### **Arrangements for applications submitted prior to April 2010**

35. The government intends that the IPC will be ready to take applications for development consent orders in April 2010, but we plan to “switch on” the new regime for different sectors on a phased basis.

36. The white paper *Planning for a Sustainable Future* (Cm 7120) makes clear in paragraph 10.10 that “Nationally significant infrastructure projects received before the commission is established would be decided by the Secretary of State. They would not be transferred to the commission.”

37. We intend therefore to clarify that development consent under the Planning Act will not be required for development where this development is authorised by an existing consent regime and the new regime has not been ‘switched on’ for that sector. Development consent will also not be required for development contained in an application that is submitted under an existing consent regime prior to the commencement of the new regime, where final decisions have not been taken on that application. Instead, the application will continue to be considered under that consent regime, and the relevant consents and authorisations may be continued to be granted under that regime, irrespective of when the final decision is taken.

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<sup>11</sup> Communities and Local Government Committee, *Appointment of the Chair of the Infrastructure Planning Commission*, 23 March 2009 HC 354 2008-9

<sup>12</sup> HC Deb 17 March 2009 c1108W

<sup>13</sup> HL Deb 11 March 2009 c261WA

<sup>14</sup> HC Deb 24 March 2009 c222W

## **Applications which may come within the scope of transitional provisions**

38. We believe that where an applicant intends to make an application for a nationally significant infrastructure project, and commences a consultation exercise to this effect after October 2009, the applicant should ensure that this consultation exercise is in accordance with the new standards for pre-application consultation.

39. We also recognise that some applicants may have already engaged in public consultation exercises as regards proposals about which they intend to submit an application for development consent. It is not our intention that the establishment of new standards for pre-application consultation in October 2009 should cast doubt on the value of consultation activities undertaken prior to this date. The government does not believe that it serves the public interest for applicants who have undertaken high-quality local community consultation to be required to repeat this work solely for the purpose of complying with the new standards of pre-application consultation that we will prescribe under the Planning Act 2008. To do so would be unnecessarily bureaucratic, would cause unnecessary delays and expense for applicants, and might jeopardise the chances of nationally important schemes being brought forward.

40. Therefore the government intends that where consultation exercises which are part of an NSIP [nationally significant infrastructure project] application were commenced prior to the entry into force of the new standards, these consultation exercises should in certain circumstances be deemed for a transitional period to have met the new standards.<sup>15</sup>

## **6 Planning and the General Election**

A major complication is that there has to be a General Election by June 2010, soon after the IPC comes into operation. The position might potentially change if another party were to win the election. The 2009 Conservative Party Green Paper also states that a Conservative Government would cancel most of the *2008 Planning Act* changes to planning for major infrastructure development:

### **Removing the Infrastructure Planning Commission**

As well as reforming the regional planning system, the Planning Act 2008 creates a new Infrastructure Planning Commission – a new central quango with the power to approve planning applications for major infrastructure projects, superseding local authorities. The Commission will have the power to build over the Green Belt, demolish listed buildings, compulsorily purchase land, and ignore local planning rules and guidance, despite having no democratic accountability. This lack of democratic legitimacy means that the Commission is liable to be subject to challenges through judicial review, the European Court of Human Rights and the European Court of Justice, and therefore is likely to actually slow down the planning process. The Planning Act 2008 also introduces National Policy Statements for specific types of development such as airport expansion and nuclear power stations, including specifying locations for the new types of development. There will be no proper Parliamentary ratification of such statements – Parliament can discuss them, but cannot approve, amend or reject them. The Infrastructure Planning Commission will just follow these Statements to the letter. The combination of the Commission and Statements will mean that Whitehall will be able to impose any development, without

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<sup>15</sup> DCLG, [Planning Act 2008: Consultation on the Pre-Application Consultation and Application Procedures for Nationally Significant Infrastructure Projects](#), March 2009 pp18-9

any serious local consultation. The Government intend to use this process to push through their plans for Heathrow expansion, against the wishes of local residents.

**We will abolish the Infrastructure Planning Commission and focus instead on speeding up planning inquiries, such as for new power stations, by ensuring that they focus on material planning considerations instead of questioning the appropriateness of the project in principle. As part of achieving this goal, we accept the principle of National Policy Statements. But we will ensure that they are subject to Parliamentary approval in both Houses of Parliament.**

Our approach will remove the possibility of projects like a third runway at Heathrow being imposed on local communities by an unaccountable quango. And in the rare cases where the direct intention of a project is to achieve a goal of real national significance then – rather than giving the decision to an unelected quango – the right method is normally a Private or Hybrid Act in Parliament that gives the opportunity for open national debate on a sensible timescale. For example, the Crossrail Act 2008 provided a fast-track planning process for the complex Crossrail scheme.<sup>16</sup>

The Liberal Democrats have also criticised the idea of the IPC, although without such a clear-cut commitment to abolish it:

Liberal Democrat response

Our main area of concern [in the Planning Act 2008] remains the new Infrastructure Planning Commission (IPC) which we opposed from the outset. To the British people it is the elected government or their local council who make planning decisions about major projects such as airports and power station. But now a quango will make these decisions. The government hopes it will speed up decision making. We remain sceptical that it will and remain especially concerned that it will not refuse permission and that local people will not be sufficiently consulted.

We continue to share the concerns of organisations such as Friends of the Earth and the CPRE that major national infrastructure projects could be pushed through with little or no public consultation. There's a real risk the IPC will lead to bulldoze local opinion in a bogus quest for faster decisions. All the indications suggest the changes will help Labour's friends in the nuclear and supermarket industries, rather than giving local people a genuine say in planning.

The Act should have given local communities the powers they need to tackle climate change and mitigate the changes we've already seen, such as the terrible floods this summer. There needs to be more assistance for communities in developing local policies, and we would like to have seen community enquiries incorporated into the planning process. The planning system needs more, not less, leverage for local communities. Despite winning a concession to improve the process of cross examination of planning proposals we remain deeply concerned that the processes put in place by the Act are untested and probably unworkable.<sup>17</sup>

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<sup>16</sup> Conservative Party, *Control Shift: Returning Power to Local Communities*, 2009

<sup>17</sup> Liberal Democrats, [Planning Act 2008](#), 12 January 2009