



Subject: Planning White Paper: Steamroller for Major Infrastructure Projects

1. **Introduction**

The White Paper "Planning for a Sustainable Future" was published on 17 May. Its proposals do not directly affect Scotland or Northern Ireland. The proposals concern two matters:

- nationally significant infrastructure projects
- changes to the town and country planning system.

This briefing focuses on the first, and in particular the relevance of these proposals for the development of new nuclear power stations. These proposals may also apply to a waste repository for the long term management of intermediate and high level radioactive waste (see para. 5.9).

The proposals intend to eliminate local opposition to a project if it is broadly consistent with national government policy. Primary legislation will be required but it is not easy to distinguish within the White Paper between what is window-dressing (e.g. regarding the assertion that the proposals will improve public involvement) and what will be actually legislated for.

2. **Length of Consultation and Response Arrangements**

The deadline for responses is 17 August. Responses can be made by email to planningreformconsultation@communities.gsi.gov.uk (see p195 for further details). The period of consultation is 12 weeks four days. This is completely inadequate for such major proposals. The Government's own Code of Practice on Consultation (<http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>) states:

"1.4 The formal consultation period should always include a written consultation exercise. This written consultation period should be a *minimum* of 12 weeks. Departments should consider the specific circumstances of their stakeholders and consider longer consultation periods at certain times, *for example during the summer holiday period.*"

3. **The Proposals in Brief**

For new nuclear power stations and other "key national infrastructure" Government propose that it will:

- produce, following "thorough and effective" public consultation and Parliamentary scrutiny, national policy statements ("NPS") to provide a clear policy framework for nationally significant infrastructure ("NSI"), including nuclear power stations;

THE LOCAL GOVERNMENT VOICE ON NUCLEAR ISSUES

- require developers of such projects to consult local authorities, statutory bodies, relevant highway authorities and the public on proposals for development before applying for consent;
- create an independent “infrastructure planning commission” (“IPC”) (a) to vet that the application was properly prepared and preceded by appropriate consultation and (b) to take the decisions on such projects (thereby ending the role of the Secretary of State in decision-making on a consent application);
- oblige the IPC to approve any project if it has “*main* aims (sic) consistent with the relevant national policy statement.”: a decision to refuse could *only* be made if “adverse local consequences ... *incompatible* with relevant EC or Domestic Law including Human Rights Legislation” existed.¹ Illegality would therefore *alone* prevent the project being approved regardless of qualitative arguments.
- eliminate the public inquiry as it has been known in the past by:
 - providing that it will be mainly conducted by the provision to it by the promoter and other parties of written information;
 - making cross examination between parties rare;
 - requiring that decisions must be arrived at within 9 months of the opening of the inquiry.

4. Transitional Arrangements

The IPC is unlikely to be established before April 2009. Until then applications for consents for nuclear station projects will continue to be decided under the existing framework by the Secretary of State for Trade and Industry. If an application was made to the IPC before the relevant NPS was in place, then the IPC would nonetheless consider the application but only make a recommendation, leaving the decision to the Secretary of State.² The DTI has stated: “In the event there are delays to the implementation of the reforms to the planning system, we will consider other options to make clear the national case for new nuclear stations.”³

5. National Policy Statements

5.1 PURPOSE

An NPS is designed to prevent the following situation:

“...fundamental issues such as whether there is a need for additional capacity or whether a technology is proven and safe are addressed from scratch in each individual application. This can ... mean that many months have to be spent at the inquiries into these proposals debating high level issues such as need.”⁴

The intention is that anything addressed in the NPS will not be open to re-examination at any subsequent inquiry e.g.:

- “- whether there is a case for the infrastructure development,
- what that case is,
- the sorts of development most likely to meet the need for additional capacity, since this will already have been addressed in the national policy statement.”⁵

and

- whether the project is needed;
- whether it is an appropriate technology;

¹ see e.g. para. 3.14, p49

² para 3.39

³ para 13.13 p179 DTI The Future of Nuclear Power 17 May 2007

⁴ para 1.17

⁵ Para 3.11 There should therefore be no need for inquiries on individual applications for development consent to cover issues such as whether there is a case for infrastructure development, what that case is, or the sorts of development most likely to meet the need for additional capacity, since this will already have been addressed in the national policy statement.

- whether it is safe;
- whether the criteria spelt out in the NPS which the site meets are appropriate.

This will leave the inquiry before the PLC to address only “specific and local impacts of individual applications”⁶

5.2 PRIMACY OF NPS OVER ALL OTHER POLICIES

The NPS will “have more weight than any other statement of national, regional or local policy” and so will be determinative where there is inconsistency.⁷ [Thus for example the Airports NPS will carry more weight than the Climate Change Policy.]

The Government expects an NPS: “to be reflected in ...relevant development plans [i.e, Regional Spatial Strategies and local development plan documents.]”⁸

5.3 CONTENT OF AN NPS

5.3.1 *Sectoral*

An NPS will be produced for each “ key infrastructure sector” setting out the objectives for the development of NSI in that particular sector. It is not clear whether nuclear energy would be the subject of a specific Nuclear NPS or form part of an Energy NPS

5.3.2 *Need*

An NPS will set out the national *need* for infrastructure

5.3.3 *Interaction with other policies*

An NPS will explain how it is integrated with other specific government policies e.g. policies on national planning, climate change, security of supply.

5.3.4 *How detailed: Relevance of public/private funding*

“Where projects are dependent on public funding – national policy statements are likely to be relatively prescriptive and detailed in identifying what infrastructure is needed to deliver national objectives. However, where government policy is primarily providing a framework for private sector investment determined by the market, policy statements are likely to be less prescriptive;”⁹

This suggests an Energy NPS would *not* specifically prescribe nuclear energy.

5.3.5 *How prescriptive over choice of energy source*

“... the degree of choice over the means and technology for providing infrastructure differs. Power can be generated from different energy sources, applying different technologies..... National policy statements will need to reflect the relevant choices for the sector;”¹⁰

“[An NPS will] show how actual and projected capacity and demand are to be taken into account bearing in mind however that for energy policy the precise energy mix, and therefore the nature of infrastructure needed to meet demand, will be determined to a large extent by the market.”

This also suggests an Energy NPS would not specifically favour nuclear energy.

5.3.6 *Location*

“[An NPS should] ...be as locationally specific as appropriate, in order to provide a clear framework for investment and planning decisions. ... some national policy statements might, according to circumstances, be locationally specific, while for others where it would not be appropriate, or sensible, for the Government to direct where investment should take place, they might specify certain factors affecting location.”

The NPS for nuclear power will describe criteria for sites or types of sites and also describe *actual specific sites*.¹¹

⁶ Para 3.11

⁷ Para 3.12

⁸ Para 3.20

⁹ para 3.8 bullet 1

¹⁰ para 3.98 bullet 2

5.3.7 *Safety*

An NPS will describe how relevant issues in relation to safety or technology are to be taken into account in infrastructure development.¹²

It seems likely an NPS would be used to endorse the safety of particular nuclear reactor types with a view to preventing consideration of safety issues at a subsequent inquiry

5.3.8 *Adverse impacts and their mitigation*

An NPS would consider “the circumstances where it was particularly important to address adverse impacts of development on people and the environment and the acceptability of different types of mitigation.”

5.3.9 *Catch-all*

An NPS will address “any other particular policies or circumstances that ministers consider should be taken into account”¹³ or “special considerations.”¹⁴

5.3.10 *Form and timing of NPS*

This remains to be stated.¹⁵

5.3.11 *Duration of NPS*

The intention is that an NPS will “look forward 10-25 years in terms of demand and capacity”¹⁶ but be subject to consideration of the need for review at least every five years.¹⁷ The White Paper fails to mention what arrangements, if any, will apply for consulting on any review.

5.3.12 *Use of existing Government policy statements as NPS*

It seems that some existing policy statements eg.on renewable energy, will acquire the status of an NPS provided they “...meet the core elements and standards [for an NPS] with regard to both content and consultation.”or can be modified to meet these requirements.¹⁸ However there is a lack of clarity in the White Paper:

“Departments are considering this, and their proposals for consultation on national policy statements, against the wider policy background of, for example, the Energy Review ... Further details on the Government’s proposals for the form and timing of national policy statements will be set out after this consultation.”

6. **The “Infrastructure Planning Commission” (IPC)**

The Board of the Commission would appoint a panel of 3 to 5 members to examine and determine an application with “...the appropriate mix of expertise and experience for each case, including, if necessary, technical expertise related to the particular sector.”¹⁹ The IPC is further described at paragraph 10 below.

7. **Decision–making: Consultation with Local Authorities and the Public**

The procedures envisaged apply at three stages

- the formation of a NPS
- pre-application consultation for a particular project by the developer
- consideration of the project application by the IPC prior to its decision

It is asserted that an NPS will only be produced after “thorough and effective public consultation and Parliamentary scrutiny”, a phrase repeated nine times in the paper in this context. One of the “Five core principles” underpinning the Government’s proposals is that: “There must be full and fair

¹¹ see The Future of Nuclear Power: Consultations on the processes for Justification and Strategic Siting Assessment May 2007 DTI para 20

¹² see e.g. para 5.43 bullet 3

¹³ para 3.9 bullet 7

¹⁴ para 5.43 bullet 4

¹⁵ para 3.38

¹⁶ para 3.30

¹⁷ para 3.33

¹⁸ Para 3.36, 3.38

¹⁹ Para 5.21

opportunities for public consultation and community engagement;”²⁰ However, vitally, the detail on a legal structure to guarantee this is not set out.

7.1 CONSULTATION AND FORMATION OF NPS

The White Paper states:

“there would be thorough and effective consultation on national policy statements and certain principles would apply:

- 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.”²¹

7.2 CLOSED PRE-CONSULTATION WITH SPECIFIC INTERESTS

“Before publishing national policy statements in draft, there should be thorough consideration of evidence, which may include informally consulting relevant experts or organizations”

If this is to take place before publication, rely on certain experts and organizations, and consider evidence, its outcome will be clearly affected by the choice of evidence and experts/organizations. Unless this is an open and structured process, allowing presentation of evidence by all parties who wish to participate, it will inevitably favour commercial and vested interests and arrive at conclusions which will be difficult to alter through any further process. This is unacceptable.

7.3 CONSULTATION ON PUBLIC DRAFT OF NPS

“...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”. The reference to “best practice” is elaborated thus:

“Consultation will need in particular to follow best practice, including setting out clearly the proposals on which views are sought, allowing sufficient time for responses, ensuring wide accessibility, encouraging effective stakeholder participation and ensuring that views are taken into account before final policy proposals are developed. Government guidance is explained further in Box 3.3. The aim should be to enable effective and appropriate debate on national infrastructure needs and policy;”

Box 3.3 refers to the Cabinet Code of Practice on Consultation; the current version (2004²²) is an emasculated version of the original Code of November 2000, does not have the force of law and is “under review” with a public consultation until 28 September 2007.²³

There is thus no explicit commitment to anything of reliable detail and it is particularly worrying that the White Paper says:

“The precise nature of consultation will depend in part on the content of the policy. ...The Government would need to consider what methods of consultation are likely to be most effective and provide the most suitable opportunities for public and local engagement for each national policy

²⁰ para 1.37

²¹ Page 41

²² <http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>

²³ http://www.cabinetoffice.gov.uk/regulation/consultation/policy_review/index.asp Cabinet: Government Code of Conduct on Consultation

statement, with involvement of affected local authorities.”²⁴ It seems that Government will not commit to the description of a standard minimum framework for consultation, taking refuge in the view that each will be different and so prescription would be inappropriate. It does spell out that “certain principles will need to be applied...”²⁵:-

- i “thorough consideration of the evidence” where a detailed assessment of demand/capacity/technology/safety/significant climate change policy impact/market development but seemingly this it to take place *prior* to producing a draft for public consultation
- ii “thorough and effective [public] consultation” with “opportunities for public scrutiny ...and [effective and appropriate] debate”
- iii consultation with local, regional, national bodies (and devolved administrations where UK/GB wide policy)
- iv “effective means of engaging local people ...[so they] have an opportunity to give views on...” an NPS which includes proposals which “*may have a particular bearing on local communities*”(sic). “The principles set out in the Community involvement in planning: the Government’s objectives” ODPM 2004 will be *relevant (sic)*..²⁶ Relevance is an extremely vague concept: it is *applicability* that is required.

²⁴ Para 3.24

²⁵ Para 3.25

²⁶ see http://www.communities.gov.uk/pub/472/CommunityInvolvementinPlanningTheGovernmentsObjectives_id1144472.pdf

“The Principles:....

2.5 Active participation in the development of options and proposals should be at the heart of the process. The community must be able to put forward and debate options and help mould proposals before they are settled. People need to feel that their participation can make a difference. This is challenging in terms of resources and effort, and means that councillors and planners have to be ready to listen and to adapt their own ideas. It is also important that all sides know just what to expect at each stage of the process, especially when there will be open debate on wide ranging options, or when consultation is focussed on specific propositions.”

The Objectives also set out principles for community involvement in planning:

– **Community involvement that is appropriate to the level of planning.** Different arrangements for and levels of community involvement will be appropriate depending on the nature of the planning process involved and the authority’s circumstances. Planning authorities should ensure that arrangements are built on a clear understanding of the needs of the community, and put in place arrangements which are fit for purpose.

– **Front loading of involvement.** Community involvement policies should provide opportunities for participation in identifying issues and debating options from the earliest stages. Community involvement should happen at a point at which people recognise that they have the potential to make a difference and, crucially, to experience a sense of ownership of local policy decisions.

– **The methods used to encourage involvement and participation should be relevant to their experience.** Consideration should be given to how people are most likely to get involved and what facilities are available to them and to working with agencies such as Planning Aid that can help communities. There is no ‘one size fits all’ solution if a genuine dialogue is to be established and maintained.

– **Clearly articulated opportunities for continuing involvement.** The process should allow local communities to see how ideas have developed at the various stages, with effective feedback. There should be clear formal stages when involvement should take place, based on the statutory requirements. These stages must occur as part of a continuous programme, not a series of disjointed, one off steps. A ‘tick box’ mentality, which regards community involvement as simply a process step to be ticked off, is not acceptable.

– **Transparency and accessibility.** The processes should be clear, so that people know when they will be able to participate, and the ground rules for doing so. Involvement in the planning system should extend beyond those who are familiar with the system, to difficult to reach groups.

– **Planning for involvement.** Community involvement should be planned in from the start of the process for plan preparation or consideration of significant development proposals, to enable timely involvement. Consideration should be given to how processes for community involvement in planning can best fit with other community involvement processes, particularly in respect of Community Strategies. Project plans should avoid unnecessarily long drawn out processes.”

Para 2.11 of the Objectives

Note also

Statement of Community Involvement

The SCI should set out a policy for community involvement which meets the statutory requirements for consultation while at the same time being tailored to the local authority’s circumstances. The SCI cannot change the legal framework or impose direct conditions on others. An effective SCI would:

– Show that the LPA is meeting legal requirements.

– Set out the LPA’s overall vision and strategy for community involvement, and how this links with other community involvement initiatives, e.g. the local authority’s Community Strategy.

– Identify clearly the range of local community groups who need to be involved.

– Show that the LPA understands how best these communities can be involved in a timely and accessible way, and has identified suitable techniques to use.

– Be clear about the different stages of involvement – information, participation, consultation, feedback etc – and shows that these will be done in ways that work for the different stages and for the particular communities.

– Show that the LPA can resource and manage the process effectively. This should include a clear understanding of the roles of members and officers in the process.

– Show how the results are to be fed into preparation of Development Plan Documents and Supplementary Planning Documents.

– Set out how the LPA will learn from the experience and improve the arrangements where necessary.

The White Paper states

- “Such consultation would also help to ensure that its proposals for national infrastructure have been properly *debated and tested*...”....
- “...stakeholders, communities and individual members of the public must have the opportunity *to participate in and influence* the policy process.”

The words “thorough and effective” and the other italicized vocabulary are all very well but will not guarantee that the consultation will be such. A structure of legal rights is required to ensure this is real and not just spin. The White Paper states that “the key requirements for consultation would be set out in legislation, so that they have full statutory underpinning.” But one can anticipate that apart from requiring consultation, defining a period for consultation and a method for alerting the public to the consultation, any statutory framework will lack the detail to ensure the “thorough and effective” test is met and arguments on the need for a tighter more reliable legal framework will be met by the counter-argument that each draft NPS will require a different approach.

7.4 PARLIAMENTARY PROCESS

“...there should be an opportunity for Parliament to consider proposed [NPSs]”²⁷

“...draft national policy statements should be subject to Parliamentary scrutiny. Further work is needed to identify the most appropriate mechanisms for ensuring Parliamentary scrutiny, for example, through examination by the relevant Select Committee.”²⁸

7.5 LOCAL AUTHORITIES

The paper is strong on rhetoric in this connection but very short on detail:

- “Local authorities, in particular, will have a strong part to play in representing their communities and helping shape national infrastructure in their area.”²⁹
- “And we propose that local authorities should have an important role in ensuring that national decision makers, including the proposed infrastructure planning commission, take full and proper account of relevant local and regional factors and considerations.”³⁰

“There would need to be thorough and effective consultation on national policy statements in order to provide an opportunity for the Government’s proposals to be scrutinised and debated. Where a policy statement identified particular locations, the local authorities for those areas would have an important role in consultation, representing their communities.”³¹

“...Provide clearly defined opportunities for public consultation and engagement at each key stage in the process and enable local authorities to ensure that local views are reflected in debate.”³²

“ - consultation on national policy statements should include, in particular, consultation with local, regional and national bodies likely to have a particular interest. Such bodies could include local authorities, regional assemblies and Regional Development Agencies, the Environment Agency, the Sustainable Development Commission, relevant highway authorities, CABE, English Heritage and others. They would include the devolved administrations where policy statements were UK or Great Britain wide.

- where national policy statements include proposals which may have a particular bearing on local communities, consultation will need to include effective means of engaging local people

– Set out the LPA’s policy for consultation on planning applications.

²⁷ Para 3.27

²⁸ Para 3.28

²⁹ Para 1.36

³⁰ Para 1.51

³¹ Para 2.13

³² Para 2.14

and ensuring that they understand the effect of, and have an opportunity to give views on, the Government's proposals. The principles for community involvement set out in the *Community involvement in planning: the Government's objectives* ODPM, 2004, will be relevant, and particular attention will need to be given to addressing the needs of hard to reach groups. Local authorities will have an important role to play in representing these communities and helping to facilitate such engagement."³³

7.6 CONSULTATION WHERE LOCATION PROPOSED OR IDENTIFIABLE

The White Paper states: "Where a policy statement identified particular locations, the local authorities for those areas would have an important role in consultation, representing their communities."³⁴ However the role is not identified in any detail.

The White Paper also says with alarming vagueness:

"... a national policy which was specific about identifying locations for development would require more extensive local consultation than one which was less specific. The Government *would need to consider* what methods of consultation are likely to be most effective and provide the most suitable opportunities for public and local engagement for each national policy statement, with involvement of affected local authorities."³⁵

The DTI intend that the NPS for nuclear power will:

- set out agreed exclusionary and discretionary criteria that potential developers of nuclear power stations could apply in order to determine whether a proposed site was compatible with the strategic siting criteria for a new nuclear power station;
- indicate areas of the UK which had not been ruled out through the application of exclusionary criteria, and within which therefore there may be sites that meet the discretionary criteria; *and*
- *list those actual sites proposed previously which meet the criteria.*³⁶

The White Paper states:

"Where [an NPS] includes proposals for development at particular or likely locations, this should include local and community engagement."³⁷

The White Paper also indicates that:

- "Where national policy statements are more locationally specific, they would need to set out clearly how national interests and local impacts had been considered and balanced in setting the policy. This would include taking into account relevant national planning policy and the development plan for the locations being considered. This, in turn, has implications for the nature of consultation needed on national policy statements, especially the regional and local dimensions, which is discussed further below. If a Secretary of State were to issue a safeguarding direction to ensure that land identified in a national policy statement was protected against incompatible development, then residential and agricultural owner occupiers directly affected by such safeguarding would have access to existing statutory blight provision."³⁸

8. Procedure to be Adopted by Developer Before Making Application to Commission

8.1 OUTLINE

³³ para 3.25

³⁴ para 2.13

³⁵ para 3.24

³⁶ para 20 The Future of Nuclear Power Consultations on the proposed processes for Justification and Strategic Siting Assessment May 2007 DTI

³⁷ para 1.44 bullet 1

³⁸ para 3.9 bullet 6

- “It is intended that promoters of nationally significant infrastructure projects would be required to:
- prepare applications to a defined standard before the infrastructure planning commission would agree to consider them;
 - consult the public and, in particular, affected land owners and local communities on their proposals before submitting an application to the commission;
 - engage with the affected local authority or authorities on their proposals from early in the project development process;
 - consult other public bodies, such as statutory environmental and heritage bodies, regional directors of public health, and relevant highway authorities, depending on the nature of their project, on their proposals before submitting an application;

In addition, the Government is proposing that:

- where the promoter is required to consult an organisation, that organisation should give its views promptly – we propose to impose a limit on the time that statutory consultees have to respond when consulted;
- the infrastructure planning commission would issue written guidance on the application process, procedural requirements and consultation;
- the commission would also advise promoters at the pre-application stage on whether the proposed project falls within its remit, the application process, procedural requirements, and consultation;
- there would be rules to maintain propriety, and ensure that the commission did not, in engaging with any party, prejudice its independence or impartiality; and
- the commission would refuse to consider applications for projects which were not within its remit, and send back applications which had either not been adequately prepared or not been adequately consulted on.”³⁹

8.2 DEVELOPER’S CONSULTATION: HOW INTENSIVE?

It is clear that the Government wishes to keep the developer’s consultation modest. The White Paper says:

“...we want to avoid making consultation requirements unnecessarily onerous for either promoters or consultees.”⁴⁰ and

“...these [consultation] requirements would not impose a significant burden on promoters.”

“The combination of minimal statutory requirements and best practice guidance that we are proposing will provide consistency, without being overly burdensome for all parties involved.”⁴¹

The Commission would send the application back if it was not satisfied the promoter had carried out *adequate* consultation.⁴² Adequacy would be judged by the standard of written guidance in the issue to be issued by the Commission or previously by Government.⁴³

“- Guidance on consultation might also usefully set out *best practice*, helping promoters to understand what works well, and communities to understand what they could expect in terms of consultation. This would make the system more predictable, as promoters would know that, if they followed the guidance, their consultation would be more likely to be regarded as adequate by the commission. It might recommend:

- that where appropriate, promoters carry out both an early consultation on options for the development and a further consultation on a preferred option. The options will vary from project to project. In some cases there will only be one suitable location for a project, but there are still likely to be options within that location. We believe that once a promoter has selected its preferred option, it should carry out further consultation to inform the public of its choice and gather their views on the preferred option;
- methods that a promoter could use to engage with the local community and, in particular, how to engage with hard to reach groups;

³⁹ page 59

⁴⁰ para 4.9

⁴¹ para 4.33

⁴² para 4.14

⁴³ para 4.17 bullet 3

- a minimum time for which the promoter should consult, to ensure that members of the public, affected landowners and local communities have a fair opportunity to comment; and
- the types of local organisations the promoter might consult.
- Initially, the Government might be best placed to issue this guidance, given its experience of determining applications to construct major infrastructure projects and of carrying out public consultation. But over time the commission might wish to update this guidance to reflect experience, and we would expect it to take over responsibility for issuing it.⁴⁴

“The commission could also give advice to the promoter on consultation, supplementing the written guidance, such as how to most effectively engage hard to reach groups. This would help to ensure that the promoter carries out a consultation which the commission would be likely to consider adequate. The commission could also advise other parties on what they could expect in terms of the promoter’s consultation.”⁴⁵

9. Consideration of Application

The Government propose to replace the consent regime under the Electricity Act to incorporate it within a single application process for all major infrastructure projects.⁴⁶ They would harmonise the procedural rules governing the examination and determination of applications. This might lead to reduced publicity requirements or reduced periods for objection for local authorities under the guise of harmonization.⁴⁷

The Government intent that the infrastructure planning commission will:

- be empowered to amend, apply or disapply local and public legislation;⁴⁸
- take decisions on individual applications for , inter alia, nuclear power stations in England and Wales, including authorising the compulsory purchase of land, granting consents for any necessary overheads lines for any station and any related project necessary to the operational effectiveness and resilience of the electricity transmission and distribution network.⁴⁹ and, quite probably, deal with any application for a radioactive waste repository;⁵⁰
- in most cases, appoint a panel to consider each major infrastructure project application;⁵¹
- gather and probe the majority of evidence in writing, and use direct questioning rather than cross-examination by opposing counsel as the basis for oral examination. The commission would work to a statutory time limit of nine months for its examination and decision;
- include an open floor stage in the examination to allow interested parties to express their views about an application, within a defined period of time;
- approve any application for development consent for a nationally significant infrastructure project which had main aims consistent with the relevant national policy statement, unless adverse local consequences outweighed the benefits, including national benefits identified in the national policy statement. Adverse local consequences, for these purposes, would be those incompatible with relevant EC and domestic law, including human rights legislation. Relevant domestic law for infrastructure sectors would be identified in the planning reform legislation;
- in granting permission, specify any conditions that the promoter would have to comply with – these would usually be enforced by local authorities.

⁴⁴ para 4.18 and 4.19

⁴⁵ para 4.27

⁴⁶ see paras 5.13 to 5.20

⁴⁷ see para 5.15 bullets 4 and 5

⁴⁸ para 5.18 bullets 2 and 3

⁴⁹ page 73 bullet 4, para 5.4, para 5.7

⁵⁰ para 5.9: the Government will include in its summer consultation on radioactive waste disposal whether it will be appropriate for the Commission to be the consenting body for such a project.

⁵¹ For more minor or less complex projects, it would have discretion to delegate the examination of the application to a single commissioner with the commission’s secretariat

The role of the Environment Agency vis a vis the authorization of radioactive discharges or the Nuclear Installations Inspectorate vis-a vis the regulation of safety and the nuclear site licensing regime would not alter.⁵²

10 The Commission

This is described as “an independent body of experts of considerable standing and and experience drawn from a range of relevant fields ...”⁵³ The commissioners would be appointed by ministers, two or three of them on the advice of the Welsh Assembly Government, reflecting the role of the commission in determining e.g. whether to grant consent for a nuclear power station in Wales. “Commissioners would be appointed for their expertise in fields such as national and local government, community engagement, planning, law, engineering, economics, business, security, environment, heritage, and health, as well as, if necessary, specialist technical expertise related to the particular sector.” “They would not be appointed as representatives of particular organisations, interests or political parties.”⁵⁴

There must be real concern that those appointed might be chosen for their predisposition in favour of development. This would undermine the notion that the Commission is independent.

11. Treatment of Applications

11.1 THE PANEL

The Government propose that

“the board of the commission would appoint a panel of members (usually three to five) to examine and determine the major applications. Each panel would be constructed to ensure that it had an appropriate mix of expertise and experience for the case, including, if necessary, specialist technical expertise related to the particular sector. Each panel would also be able to draw on the expertise of other commissioners and the commission secretariat as necessary, in a way that ensures transparency.”⁵⁵

The panel would considering the merits of the application, identify issues that need to be tested further, manage any oral hearings, decide on the application and attach conditions to any consent. The panel would operate collectively, to reflect the equal role of members and their skills.⁵⁶

11.2 PRELIMINARY STAGES

“As soon as an application had been accepted, the commission would begin the process of securing consultation on the proposal, including for the purpose of ensuring the requirements of the Environmental Impact Assessment Regulations had been complied with, gathering preliminary evidence, and organising its consideration. Although this process is likely to be time consuming, it is essential to ensure that people and communities are informed about proposed developments, that they have the opportunity to make their views heard, and that the commission has the right information to identify and test all the issues and reach an informed decision.

This is likely to involve:

- notification of and consultation with affected individuals, the public, relevant local authorities and Members of Parliament, and relevant statutory consultees on the application, including securing that EIA requirements had been complied with where necessary. ...;
- setting up a formal process to govern the consideration of the application – registering the details of all interested parties, determining the appropriate structure for the consideration stage, and drawing up a detailed timetable;

⁵² Para 5.19

⁵³ para 5.2

⁵⁴ para 5.58

⁵⁵ para 5.21

⁵⁶ para s 5.22 and 5.23

- preliminary evidence gathering (organised around outline statements) to identify the key points likely to be at issue and identify whether there are any relevant issues which are in danger of not being properly covered;
- organising pre-meetings to reach as much consensus between parties as possible, possibly appointing mediators to help facilitate agreement where this might be beneficial, so that the consideration stage can focus on key issues; and
- inviting detailed submissions of evidence from relevant parties, allowing at least one further stage to allow written counter evidence to be submitted from anyone who wants to provide it. Local authorities would provide their views on the project and its relationship with local strategies.”⁵⁷

11.3 THE EXAMINATION STAGE

The Government envisage that the Commission would

- set the detailed timetable;
- consider the written evidence;
- call additional written evidence where necessary e.g to test technical questions;
- circulate correspondence to interested parties who requested it
- have discretion but no obligation to call witnesses to give oral evidence in public hearings in a location reasonably accessible to affected parties if judged would help it to understand the issues, or “asking a witness to give evidence in writing might disadvantage them”.
- in such circumstances test oral evidence itself by means of direct questions, rather than relying on opposing counsel to test it via a process of cross-examination
- in such circumstances have discretion but no obligation to conduct or invite cross-examination of witnesses, if it judged that this would better test the evidence.
- organise an “open floor” stage “where interested parties could have their say about the application within a defined period of time, where there was demand for it.”
- arrive at a decision within nine months (six months for the examination and three for the decision)
- have discretion to take longer in “particularly difficult cases “

The intention is to radically limit the consideration of the issues in public and to prevent the local authority for the community and other objectors cross-examining the developer’s case. We agree with the following description of these proposals: “The right of local people to participate fully in the inquiry process, including by giving evidence and cross-examining the developer’s witnesses, is replaced by the sop of a right to be consulted and an “open floor” soap box to permit them to voice their grievance.”⁵⁸ The double-speak is particularly evident here: “...it would make the process more accessible to members of the public because it would be easier to understand the issues without having to attend.” As all public inquiry documents are currently open for study by to the public, this is completely disingenuous. Inaccessibility is equated with accessibility. Yet the White Paper says

“We are determined to ensure that affected individuals and communities can participate effectively and make their views heard in the process.....we will increase grant funding for such bodies by *up to* (sic) £1.5 million a year....this extra money will *ensure* (sic) the members of the public and particularly hard-to-reach groups, can engage in the planning process for major infrastructure. We are also considering other ways in which the proposed commission might engage groups who are hard to reach and help build their capacity to participate fully in the inquiry process.”⁵⁹ This passage reeks with insincerity.

⁵⁷ pafas 5.27 and 5.28

⁵⁸ P. Kolvin, CPRE Letter to Guardian 5/6/7

⁵⁹ para 5.38

11.4 DECISION CRITERIA

“The commission *would* approve any application for development consent for a nationally significant infrastructure project which had *main aims consistent* with the relevant national policy statement, unless adverse local consequences *incompatible* with relevant EC and domestic law outweighed the benefits, including benefits identified in the national policy statement.”⁶⁰

The effect of this is that application will always be granted consent unless objectors can show that it's development would be *unlawful*: showing that the development would be inadvisable or inappropriate or highly damaging will not be enough unless it is also unlawful. This narrows the scope of the Commission's inquiry immensely to the point of impotence on the principle of granting or refusing consent. Furthermore showing that an application is inconsistent with the NPS: “would not necessarily lead to rejection of the statement if, for example, mitigating conditions could bring the application into conformity.”⁶¹ Further scope for avoiding objections may arise by the intention to write into an NPS so-called “special considerations.”⁶²

The objective is to avoid consideration of e.g. need/national interest⁶³, location⁶⁴, safety or technology⁶⁵ at any inquiry.

11.5 ADVERSE LOCAL CONSEQUENCES

As indicated above these are defined as those “incompatible” with certain laws. These laws are listed as

- relevant EC law
- relevant domestic law to be specified in the planning reform legislation and
- human rights law.⁶⁶

As amplified in the paper⁶⁷, it is clear that the consequences envisaged are to people and the environment and that the likelihood of any consequences being so adverse as to be illegal is remote. Laws provide for these effects to be assessed in advance⁶⁸, to be limited where there are imminent threats to safety⁶⁹ and for pollution to be limited. However control of both pollution and safety will not be matters for the Commission as these will remain the provinces of the Environment Agency/SEPA

12. Conclusion

Despite the many references to consultation, the essential thrust of the White Paper is to diminish the ability of local authorities and their communities to influence decisions relating to national infrastructure projects, including nuclear power stations in England and Wales. The dominant motive is to clear the path for development at the cost of local accountability and popular participation. There is widespread opposition against these proposals and real opportunities to prevent their being implemented. Although confined to England and Wales it is clear that Westminster intends to urge the devolved administrations to introduce similar proposals.

⁶⁰ para 5.41

⁶¹ para 5.44

⁶² para 5.43 bullet 4

⁶³ para 5.45

⁶⁴ para 5.43 bullet 2 [where location identified in NPS or consistent with locational criteria where not identified]

⁶⁵ para 5.43 bullet 3.

⁶⁶ Para 5.46

⁶⁷ see Box 5.2 p88

⁶⁸ e.g. Assessment of impacts for the purposes of the Environmental Assessment, Habitats and Birds directives but these require processes be followed but do not prohibit development where adverse impacts are identified.

⁶⁹ Human Rights Act