

Nuclear Free Local Authorities

briefing



Date: 26th November 2009

No. 70

Subject: Infra-Structure Planning Commission and major changes to planning law in England and Wales – impact on new nuclear build projects

1. Introduction

This NFLA Policy Briefing provides members in England and Wales with an overview of the National Infra-structure Planning Commission (IPC) and the major changes to planning law in the two countries for major developments. The presentations were given to an October meeting of the NFLA England and NFLA Wales Forums at a special seminar held in Liverpool Town Hall. The meeting contained passionate views that NFLA members and non members need to consider seriously as the IPC starts its work in March 2010.

The speakers included:

- Hugh Ellis, Chief Planner of Friends of the Earth – the implications of the IPC on major developments (the briefing below is a summary of a publicly available paper on the Friends for Earth website).
- Pete Wilkinson, Nuclear Waste Advisory Associates and a former member of the independent Committee on Radioactive Waste Management – what are the implications to community groups of the major changes to planning policy?
- David Hunt, Director, Eco-Environment Ltd – the implications of the IPC on the renewable energy sector.
- Pete Roche, NFLA Policy Advisor – Planning Performance Agreements, do they undermine local democracy in the debate on nuclear new build?

Important actions on the Planning changes can be found at Section 2.14 and 2.15. The comments made by each speaker are directly attributable to them and the organisations they are representing. The NFLA are keen to put forward a debate on the IPC and the planning changes and this briefing should be seen in that context.

2. The implications of the Planning Act and the IPC on major developments Hugh Ellis, TCPA / Friends of the Earth Chief Planner*

- 2.1 The 2008 Planning Act, which came into law in December 2008, is the most radical change to the planning system since the Second World War. It creates a new system for approving the construction of major infrastructure projects such as energy and transport developments.

THE LOCAL GOVERNMENT VOICE ON NUCLEAR ISSUES

Key parts of the new law include:

- Development of New Policy Statements (NPS) for major projects including nuclear power. Questions of safety and other technical issues will be determined here, removing these issues from discussion at public inquiry.
- The creation of a New Infrastructure Planning Commission (IPC) of around 35 commissioners to take decisions previously made by the Secretary of State on major infrastructure.
- The end of the public inquiry system and its replacement with a limited open floor hearing. This gives no public right to bring witnesses or to conduct cross-examination.
- Very limited protection from nuisance generated by construction or works with regard to these major projects.

Friends of the Earth fought a long campaign to secure people's rights and the proper consideration of climate change in the new Act. Each proposal will now have to consider the impact on climate change (although how this will happen is still unclear), and the Parliamentary Climate Change Committee is now a statutory consultee.

While our campaign prevented some of the worst excesses of government policy, we could not prevent the new system being both undemocratic and unfair. That doesn't mean that we can all ignore it.

It is vital for our collective future that communities use all possible means to have their voice heard in the process.

This briefing is here to help you understand the new Act, so we need your feedback to make it work best for you.

Many aspects of the new Planning Act and how it will work are still being decided by the Government, which is why we haven't been able to give you more detail here. When the information becomes available we will be updating this briefing with the changes and how they affect you.

2.2 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. The system can be broken down into:

1. National Policy Statements (NPS) will make clear Government policy on major infrastructure projects, including: airports, power stations, major roads, railways, ports, reservoirs and hazardous waste facilities.
2. The Infrastructure Planning Commission (IPC) that will make the final decision on each application.

2.3 National Policy Statement (NPS)

What are they?

- The **NPS** will decide questions of 'policy' e.g. in the case of nuclear power, possible locations, safety and technical issues.
- There will be up to 12 of these statements including energy (with possible separate ones on coal and renewable energy), transport networks, waste, and water.
- There will be NPS on nuclear power and aviation; importantly these two will be site specific, which means that once agreed a local debate will be marginalized.

NPS are one of the most powerful statements of government policy ever produced. This is not simply because they can be site specific but that new law says decision

should be approved in accordance with NPS. The Government has ensured that no part of the content of an NPS can be questioned when the final decisions are made. That means that the safety of a nuclear installation cannot be debated by the IPC or by objectors.

2.4 Do NPS always have to be followed?

The infrastructure Planning Commission must make their decisions in line with the NPS. There are limited circumstances where the IPC can overturn NPS policy. For example, where there are unacceptable impacts on national or international designated conservation sites.

2.5 How do NPS fit in with local and regional plans?

They don't. The relationship between NPS and regional and local plans is unclear. Local development Frameworks should in time reflect the policy contained within NPS. However, it is clear that in the IPC's decision, NPS will normally outweigh the content of regional and local plans.

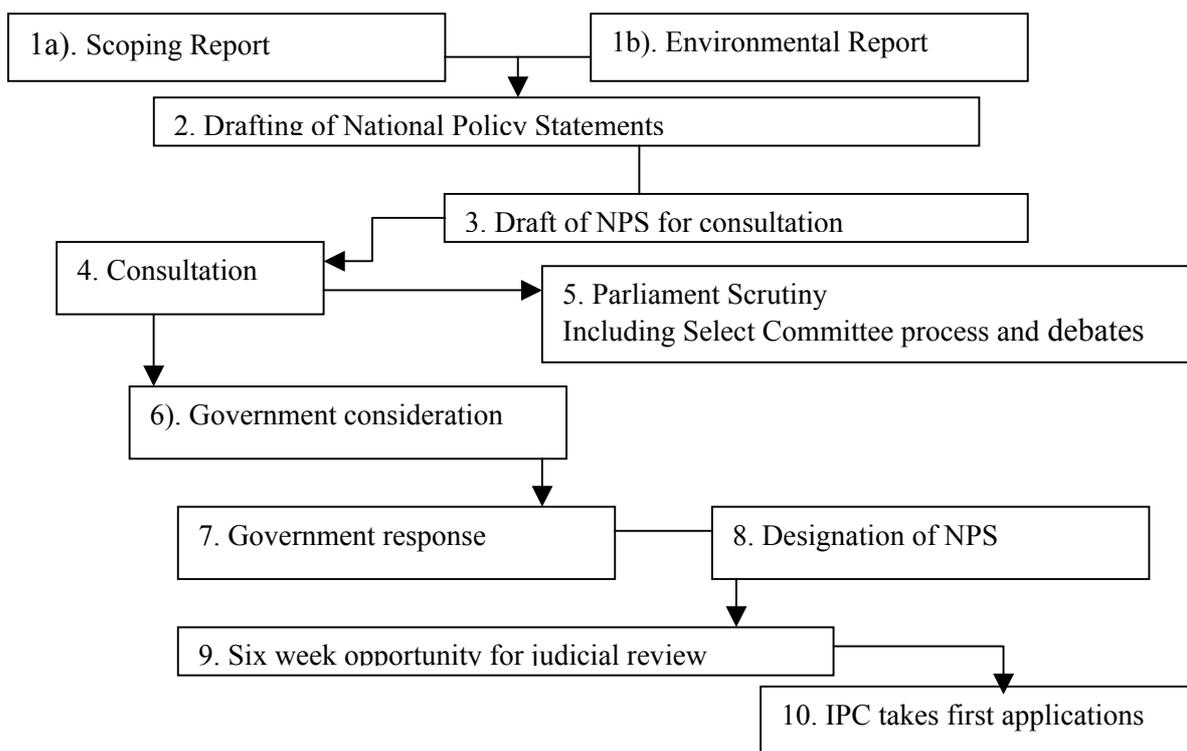
2.6 The role of the Climate Change Committee

National Policy Statements undeniably involve carbon intensive projects. As a result of the Friends of the Earth campaign, the Climate Change Committee (CCC) is now a statutory consultee in the process of drawing up NPS.

This should ensure that NPS contribute to the Government's CO2 reduction targets. There remains a risk that the NPS on fossil fuels could lock us into a carbon-intensive future.

There is currently no explicit requirement for NPS to be assessed for carbon, but we assume and hope that the Government will provide detailed information to the CCC on the potential impacts of the NPS on climate.

The process of drawing up NPS goes through a number of defined stages is as follows:



There is no defined timescale for any of this process as some parts, such as drafting, can be lengthy. The public consultation process will normally be 12 weeks, and will be in parallel to the parliamentary process.

The public have **no right** to be heard in the parliamentary process even when an NPS will result in the demolition of their home. The consultation process is likely to be similar to white papers, although the local council of an affected area may also be involved in talking to communities. It is still unclear how this process will be carried out. Select committees can call a wide range of witnesses, but there is no public right to be heard.

Parliament has a welcome and key role in testing NPS, and this will be done through a special Select Committee, which will be made up of MPs. There may be a vote in parliament on the content of NPS, but this is up to MPs and is not guaranteed.

A Strategic Environmental Assessment (SEA) should be done during the Scoping report (1a). However, there is no obligation to carry out an SEA for National Policy Statements. The one exception to this is with the nuclear NPS; the Government have committed that an SEA will have to be done for the nuclear NPS.

Timescales for publication:

Ports	Autumn 2009
Coal	Autumn 2009
Autumn 2009	Autumn 2009
Gas	Autumn 2009
Renewable	Autumn 2009
Grid	Autumn 2009
Nuclear	Winter 2009
Aviation	Spring 2010
Transport networks	Spring 2010
Water	2010
Hazardous waste	2010

2.7 The Infrastructure Planning Commission

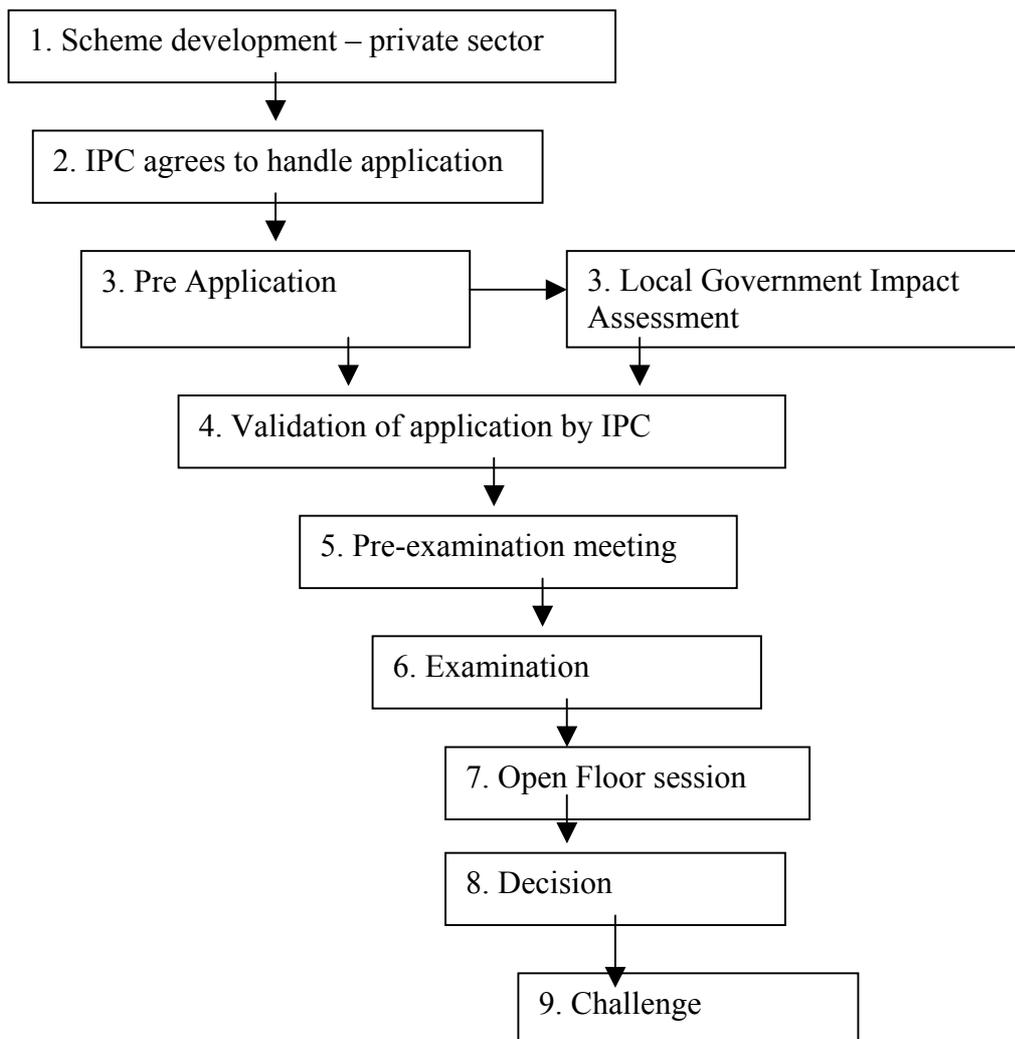
The new national Infrastructure Planning Commission (the Commission or IPC) is a body independent from government charged with making the final decisions about major projects. They have the power to give a unified consent order. This gives planning permission, allows compulsory purchase, stops up highways all in one legal movement and without the need for a further stage or application (see below).

These decisions used to be made by ministers, but the IPC is not directly elected or directly accountable to Parliament for its decisions. Given that these will involve demolishing people's homes, it's likely that the IPC will be the focus of a good deal of public anger. The IPC has to follow a process in determining an application which sets aside the old system of public inquires where people could cross examine and produce witness as a matter of right. The new system gives almost complete power to the IPC about whether and how you will be heard.

There is a Chair of the IPC and there will be around 35 commissioners with an expected workload of around 45 applications year. They are expected to be experienced in the area of major infrastructure, but not necessarily in planning. They will be based in Bristol.

An annual report will have to be submitted to Parliament to account for money spent, but not for the decisions made.

2.8 **Process of application to Infrastructure Planning Commission (IPC)**



This process is supposed to follow a **9-month timescale**.

2.8.1 **Scheme Development**

Once an NPS is in place, developers will come forward with applications for specific sites. Applications will be carried out with the advice of the IPC, who will judge whether the application meets the thresholds required to qualify for the IPC (in other words is it big enough?).

2.8.2 **Thresholds**

There will be a variety of thresholds used to determine a major infrastructure project. To read these in detail for each area, you will need to look at s15 of the Planning Act. This can be found online at:

http://www.opsi.gov.uk/acts/acts2008/ukpga_20080029_en_3#pt3-pb1-l1g14

For example, with energy and electricity, a project over 50 megawatts will be dealt with by the IPC, with anything under this threshold going through the previous planning procedure.

To put this into context, the largest UK onshore wind turbine project is just over 2 megawatts.

2.8.3 IPC agrees to handle application

After the IPC has agreed to handle an application the first phase of public consultation begins.

2.8.4 Pre-application Consultation

Unlike a normal planning decision where the local authority will organize public consultation, the new act creates a duty on the applicant to pay for and run public engagement on their applications. The guidelines and advice on how this should be done are likely to be quite vague, which will make upholding complaints more difficult.

This leaves it hard to see how the quality and impartiality of such consultations can be kept to any kind of account. Because the applicant is not an independent or impartial body their control of public consultation will not be trusted by many local communities, which will reduce the level of public participation even further.

2.8.5 Local Government Impact Assessment

The local authority for the region is now charged with preparing an impact report on the possible impacts of the development on the area. This might be how it affects local planning policy and other council strategies. This report is a key opportunity for the local council to express a direct view to the IPC, and it is important that it contains a proper description of local concerns.

2.8.6 Validation of application by IPC

Both the impact report and the application, together with the results of the consultation are submitted to the Commission and they validate the application.

2.8.7 Pre-examination meeting

This will be held by the IPC in the local area. This meeting is used to agree the process of the subsequent examination before it actually begins.

The Commission will decide whether to have hearings or to rely solely on written evidence. If it decides to take written evidence only, individuals can demand an open floor hearing. The IPC are legally obliged to allow such a hearing but you cannot raise issues about policy, produce witnesses or cross examine. The hearing will be conducted by public examiners.

2.8.8 Examination

This is used to take evidence, mostly in written form.

If the Commission decides to hold some hearings on particular issues, then individuals may be able to make longer representations, but still cannot question the national policy. People affected by compulsory purchase will also be allowed a hearing but with the same restrictions as an open floor hearing.

There will be no right for any individual, even if their property is affected by compulsory purchase (such as in the case of Sipson and Heathrow's Third Runway) to bring expert witnesses in to question the developer's evidence and application. This will be at the discretion of the Commission.

The Commission 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.

2.8.9 **Open floor session**

You have the right to attend this only if you have registered at the pre-examination meeting stage. However, there is no guarantee about how long you will get to speak for.

Everyone who registers has the right to be heard or make a statement. However, there is no requirement for anything said by the public to be taken into account. This stage of the process has been described as being to the public inquiry what Speaker's Corner is to the House of Commons!

No issues of policy are allowed to be discussed.

2.8.10 **Decision**

The Commission will then make a decision.

There is no democratic safeguard on the decision of the Commission.

The decision has the power to override other environmental legislation – it can make orders that override existing legislation through a Unified Consent Order.

2.8.11 **Unified Consent Orders**

These cover the:

- Consent to build
- Compulsory Purchase
- Changes to highways/footpaths
- Statutory Nuisance

2.8.12 **Changes to Statutory Nuisance laws**

When the development goes ahead, even if this includes 24-hour disruption to the surrounding area in terms of environmental impacts, the local authority is no longer able to stop the work by pursuing statutory nuisance.

People affected will merely be able to claim compensation.

Unified Consent Orders are extremely powerful. They remove the need to seek consent from other environmental legislation. This has a major implication for local communities, who can no longer rely on being able to use their local authority to uphold statutory nuisance claims, or on separate public inquiries into the removal of things like public footpaths.

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2.8.14 Challenge

A legal challenge relating to the procedure of the decision must be brought within 6 weeks.

There is always the chance to bring a Judicial Review of the decision, which can be used on a range of issues. These can be such as covered by the Human Rights Act, or related to environmental legislation such as under the Strategic Environmental Assessment and Environmental Impact Assessment.

2.9 Friends of the Earth Rights and Justice Centre – Advice Line

Our lawyers in the Rights and Justice Centre may be able to help you, and are particularly interested in legal challenges arising out of the IPC process.

We're only able to take on a few public interest legal cases every year, but we have an Advice Line that you can call for professional legal advice:

- Freephone 0808 801 0405, Wednesdays 6:30-8:30pm.
- Or email legal@foe.co.uk

2.10 How the Act will threaten your democratic right to be heard

2.10.1 *The risk of poor decision-making*

The new Act will mean that the Infrastructure Planning Commission will normally make decisions without public hearings. Commissioners will decide whether any part of the process will be heard in public. 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.

2.10.2 *Cross-examination*

The 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. What the supporters of the Act fail to understand is that 'expert' testimony is often in practice 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. It is not as if this expert testimony will be trivial in relation to hazardous waste or a nuclear power station.

2.10.3 *Unconstitutional, unaccountable*

There is quite simply no constitutional precedent for the Infrastructure Planning Commission. The Commission will have powers over legislation and can grant consent orders, which remove all other forms of environmental regulation at a stroke. You will no longer be able to complain about the noise of development to your local council because the Commission's consent order removes local authority powers to pursue a statutory nuisance.

The decisions taken by the Infrastructure Planning Commission are not directly accountable to anyone. As a result it is hard to see how they will ever be accepted as legitimate. The decision over whether to demolish thousands of houses for the third runway at Heathrow should ultimately be a political judgment.

2.11 Will the new Act help tackle Climate Change?

The Government has argued that the Planning Act is vital to deliver the technology to tackle climate change. However, previous to the Friends of the Earth campaign, the Act did not include any mention of climate change. Friends of the Earth's campaigning resulted in the concession that Ministers now have to think about climate change during the formation of National Policy Statements.

The Government has also conceded that the Climate Change Committee should be a consultee in the preparation of NPS (see p3). However, there is no duty on the Infrastructure Planning Commission to consider climate change in making their final decision.

2.12 Opportunities for Activism - how you can get involved – summary and ideas

The Rights and Justice Team at Friends of the Earth is sadly now only able to offer limited planning support. But we will be doing what we can to get information to you about the new system and how it will work as it becomes decided, and suggestions for how you can get involved in the process.

We hope that the Take Action points in the briefing and the ideas below will help give you some ideas.

The main advice we can give is don't be intimidated! It may seem daunting, but any action you take will make a difference – what is most important is that you are using your right to be heard, getting involved in the process and hopefully encouraging others to do this too.

2.13 During formation of NPS

Each individual NPS is an opportunity for a campaign – a chance to voice your opinions on the new proposals.

1. Consultation process

Go to the relevant departmental websites and give feedback on the proposals. Encourage others to do the same.

2. Lobby your MP

Ask them to speak up during the parliamentary scrutiny process, show that there is a strong feeling in your constituency.

Once the application process begins:

3. Engage with private sector consultation

Know what developments are being built near you; spread awareness among the affected communities by:

- Arranging a local meeting
- Inviting councillors and your MP. Arrange a meeting with them beforehand so that they understand the issues and why this is important to the local area.
- Using the local media – write a letter to the local paper; try to get a photo in.

4. Get involved in the Local Government impact assessment - Lobby your local councillors on issues that concern you.

5. Register for open-floor session – get as many people as possible to register

You must register to be heard. However, EVERYONE who registers must be heard.

6. Submit a written statement

7. Demand a hearing at the examination - particularly on the climate issue.

8. Judicial Review – legal challenge is the only real way to challenge decisions made by the IPC and bring issues to attention that have not been covered.

9. Stunts, protest, spread awareness, use local media, generate local feeling, and use the power of numbers! Fight for your right to be heard!

2.14 Take Action

- The most important message for members of the public is that they have to get involved in the formation of National Policy Statements if they are worried about a development, which might affect their area.
- These documents will be published on the relevant departmental website (i.e. Department for Energy and Climate Change for the energy NPS, Department of Transport for the transport NPS).
- A request for Judicial Review of an NPS must be launched within the six weeks after the NPS has been published – during this time you only have to have registered your challenge, not completed the process.
- Our lawyers may be able to help you – see below
- Ask your MP to help you get a place in front of the Select Committee as a witness to get your voice heard - this is the only opportunity for witnesses to be heard during the process.
- Put pressure on your MP to demand a vote in Parliament on the content of an NPS, and ask them to speak up for how the environmental impacts have not been fully taken into account.
- It is vital that communities keep a critical eye on how developers deliver their consultation; whether they feel it is fair and reasonable, and has included representative section of the affected people.
- Do not be afraid to submit complaints, which should be directed to the IPC.
- Make sure that your local councillors know your opinions and concerns about the proposal.
- Communicate with community groups in the affected area, and arrange to meet with your council officials.
- Make sure you register to speak at the open floor session; everyone who registers must be heard!
- It is still unclear how you will be able to register, but it is likely that you will be able to do this by letter, email, phone and by attending the pre-examination meeting.
- You can ask for open floor hearing and argue for other hearings at the pre-examination meeting, or by writing to the IPC.
- Include climate change as a key issue in your hearing.

You will be told at the pre-examination meeting when deadline for the submission of written statements will be.

- Guidance will be issued by the Government on the IPC website on how to present written statements. Make sure you use this to help you when it's made available.
- Make a request to the IPC to be able to call a witness or cross-examine.

- While you cannot do this as a matter of right, it is at the discretion of the IPC and therefore still possible.

2.15 Frequently Asked Questions

1. How big does a scheme have to be to be treated as major infrastructure?

For detailed classification see the Planning Act, Part 3:

http://www.opsi.gov.uk/acts/acts2008/ukpga_20080029_en_3#pt3-pb1-l1g14

2. Will any other categories of Major Infrastructure Projects (MIPs) be added, beyond those mentioned in the briefing note?

We can't rule out that this could happen – in theory the Government does have the power to add more categories. However we know of no current plans for the Government to do this.

3. Can you use the Environmental Impact Assessments (EIA) to challenge scheme development?

Yes. If it is not up to standard i.e. missing key information or is inaccurate. You can find out more information about EIAs and how you can use them using section 4.2 of our Community Rights Resource Pack which you can find online at:

http://www.foe.co.uk/resource/local/planning/rights_resource_pack.html

4. How do Local Government powers impact on National Policy Statements (NPS)? Can they override them? Are they bound by them?

National Policy Statements will be higher order policy documents so will outrank the plans of Local Government.

The only role for local authorities in the new system, and the only way for them to have input, will be to prepare a Local Government Impact Assessment when a planning application has been made.

This will be a formal process by which the local government can comment to the Infrastructure Planning Commission (IPC), although it remains unclear how this will happen.

Local Government will therefore be bound by NPS and cannot override them.

5. If Heathrow goes ahead, will it go through the new Planning Act system?

Any application for major infrastructure (as defined by the new Act) submitted once the National Policy Statements (NPS) have been finalised will go through the new system. It is highly likely that proposals for Heathrow will not be submitted until the NPS for airports have been finalised, and therefore that it will go through the new system. Any current application should therefore go through the old planning system.

6. Will core regional strategies, Local Development Frameworks and Planning Policy Statements stay the same? How will they be affected by/impacted on by this new system?

7. What's the point/role of Statements of Community Involvement?

These will still be very important for local planning, but will have no influence over the Infrastructure Planning Commission or National Policy Statements.

8. What policies are they using to draw up National Policy Statements (NPS)? Who and what is/will inform these policy statements?

Individual departments will draw up the NPS for their area, e.g. Department for Energy and Climate Change will produce NPSs for energy. NPSs will be based on existing national policy and other relevant documents, e.g. the Energy White Paper.

9. How can we lobby Local Government on the National Policy Statements?

One way would be to find out which authority/department is responsible for the particular National Policy Statement/s (NPS), and to get involved with their consultation process.

For example, the first round of National Policy Statements (NPS) is due to be completed this winter. These will relate to energy; renewables, fossil fuels, gas storage, pipelines, electricity, ports and nuclear power. The relevant department to input into will therefore be the Department of Energy and Climate Change (DECC).

Planning Policy Statements and core regional strategies will stay the same. However, there will be changes to the process for producing Local Development Frameworks – one stage of the consultation will be removed.

10. What about the Sustainable Communities Act? Why can the Infrastructure Planning Commission do what it likes and not be accountable or have to comply with this bit of the law?

The Sustainable Communities Act (SCA) covers the process of consultation for local authorities and has no jurisdiction over the Infrastructure Planning Commission (IPC). The IPC is not accountable to any local authority. Decisions taken by the IPC can override the SCA.

11. Even if there will be no free legal advice available to the public at open hearings, can people *hire* a lawyer?

You cannot have a lawyer present as a right, only at the discretion of the Infrastructure Planning Commission (IPC). You would have to write to the IPC to request permission for this.

12. If you've submitted written evidence, can you still refer to that or make the same points in an open hearing?

As in any hearing, you can refer to your submitted written evidence, but are not encouraged to read or repeat it. Doing this could shorten your speaking time.

13. Has this been referred to the EU? Is there a Human Rights breach to this new Act?

Our legal opinion (see below) suggests that there are vulnerabilities to European Union and Human Rights law in the new Act. Our lawyers will continue to pursue possibilities to take on cases that challenge the new Planning Act.

3. Changes to the planning laws in England and Wales and how they affect local communities and interest groups

Pete Wilkinson, Nuclear Waste Advisory Associates and former member of the Committee on Radioactive Waste Management

We have suffered a democratic deficit in this country for a long time. What we are seeing in the planning and nuclear arenas today is the natural consequence of the

contempt government has for 'public and stakeholder engagement' which it and its various agencies treat as a 'tick box' exercise.

A PM-dominated Cabinet decides a strategy largely based on the views of a small number of advisers and that, influenced hugely not by genuine and fulsome public consultation but by what another set of advisers tell the government the public is thinking or what they believe the government can get away with, largely sets policy.

That policy is then exposed to selective and narrow consultation, the results from which are basically ignored if they contradict the perceived wisdom, a policy statement is made and then the entire issue is handed over to an un-elected, unaccountable planning body to decide. It has little to do with speeding up the process. In those cases cited by the 'modernisers' as the reasons why the new process is so sorely needed - Sizewell B and T5 - long periods of time were spent in the writing of the reports and in the time taken to for the inspector to arrive at a decision.

In addition, while they were not perfect by any means, public inquiries served democracy, which is a painful, slow but wholly necessary process if there are to be checks and balances, which allow confidence in the public to be generated. The new arrangements are laughably characterised as open and transparent. We apparently live in an era which is dripping with 'open and transparent' consultations, an age in which public participation is the cornerstone of the democratic process, but in my experience, the reverse is true.

If you say we are 'open and transparent' enough times and if you flood the public and the NGOs with consultation after consultation, you create the illusion of openness and transparency when in fact we have a system which is closed and opaque through stakeholder engagement fatigue, resource stretch and the constant impression that no-one is listening. Neither the government nor industry wants to hear criticism or constructive challenge.

3.1 **The Energy Review**

The Energy Review which asked for views on 'The role of nuclear in a low carbon economy' was found wanting, biased and wholly inadequate by the courts. Tony Blair declared, 'This verdict will change the process but not the outcome.' And he was, right.

Consultation responses - some of them 100 pages in length raising very serious and searching issues – often go unanswered and unmentioned. The nuclear waste issue and its corollary, new nuclear build, are ushered along by enabling bodies, not scrutiny bodies. From CoRWM to the NII to the Environment Agency, the language is one of enablement and the processes they are engaged in are, for the most part, impenetrable at worst and, at best, inadequate to the job of constructive and positive engagement.

I was a member of CoRWM for three years. We reported in July 2006. The report we produced cited our own stakeholder engagement programme and its outcomes. What choice did we put before the public and the stakeholders we consulted? We told them that disposal removed a burden to future generations, which it doesn't in my view, as it merely alters the nature of the burden we pass on.

The 'removal of burden' issue came with a big guilt tag: we, this generation - the beneficiaries of the current nuclear programme - had an obligation to 'remove the burden' to those in the future who will not reap any of those putative benefits from electricity which left us with the nuclear waste legacy.

We also told those we consulted that there were benefits in storage as it benefited from being a flexible option which allowed monitoring and retrieval, something that disposal could not offer as the definition of disposal was to manage material in a way so as to remove the ability to retrieve (unless it was by excavation or mining it out for some

unforeseen vital purpose). But hey-presto! Here's an option which allows you to have your cake (removal of burden) and eat it as well (flexibility) and it's called 'phased disposal' which means that you go to the expense of finding a deep geological repository and constructing the underground chambers or vaults a kilometre deep, fill it up with waste but then leave it open for 300 years.

The fact that such an option removes the putative benefits of disposal (by making the waste available and therefore requiring management by future generations) and those of storage (in that flexibility is hugely compromised by having waste emplaced a kilometre underground while calling it monitorable and retrievable and of course it is still available to would-be terrorists) seemed to concern us not a lot.

We falsely offered people a 'retrievable disposal option' and, unsurprisingly, they grabbed it with both hands and CoRWM allowed that to influence it as evidence of public support for disposal. This retrievable disposal option is what is being peddled to local authorities today and it begs many questions.

If disposal is safe and if a safety case can be made for disposal (as the EA seems to think, once it has answered what the EA itself admits are potentially unanswerable questions), why bother to monitor? And what would happen if remote monitoring of a backfilled repository showed that there was a leak of radioactivity? Do you think for a second that a government would spend billions in digging it all up or even tunnelling to the problem area? No, it would not. For there has been a known and calculable health impact arising from the radioactive discharges from Sellafield to the Irish Sea for 40 years yet the discharges still continue. There will be a five-fold increase in aerial discharges on antimony at Sellafield to accommodate the increased throughput of spent Magnox fuel coming out of decommissioned stations so the risk at Sizewell, for example, will be transferred to Cumbria.

Every time CoRWM engaged with the public, the majority demand was for retrievability which only comes in a realistic and implementable form as storage, yet CoRWM recommended disposal. I wrote to sponsoring ministers to point this out after the report was published and it is unsurprising that I no longer sit on CoRWM, because the incumbents are today not challenging the government or the NDA but ushering in government policy along with every other agency.

The CoRWM report was used by HMG as the green light for new build. In 1976, Brian Flowers said at the Windscale Inquiry that no large-scale nuclear renaissance should be embarked upon in this country until an effective waste management programme had been demonstrated as being available. The requirement has not been met - far from it as it remains only a twinkle in the NDA's eye - yet HMG is about to announce the sites on which these plants are likely to be sited and, through its national policy statement in November, to commit us to a nuclear future.

The NII is still undergoing a process to validate the designs of new plant yet the national policy statement will pre-date that 'generic design assessment' process. We are implementing a programme in a rush and trampling underfoot due democratic processes. Such processes as were in place - despite their imperfections - have been swept away and along with them the ability of people to challenge, question and critique across the wide range of issues which have been deemed 'proven' through the one-sided preaching to the converted the government and industry call 'consultation' and engagement'.

3.2 The Main Issues

We are about to embark on a programme which will not help climate change nor energy security - the two cornerstones of the government's justification - which will detract from investment in renewables and which will generate huge radioactive waste and proliferation problems for generation after generation to come.

The waste we have at present is 500,000 cubic metres in volume and represents 78 million units (terrabecquerels) of radioactivity. New build will add to that by 10% of volume but by at least 500% in terms of radioactivity burden. We already have a waste burden which others will have to deal with for tens of thousands of years to come: new build compounds the problem many, many times over. The fact that CoRWM urged government to subject new build waste to a separate process as it raises an entirely different set of issues seems to have been lost in the dust created by the rush to use the CoRWM 'recommendation for disposal' as the fig leaf for an era of new build.

Also, there is the issue of low-level radiation. A recent report from Germany indicates that within a 5km radius of every nuclear power plant in Germany, the incidence of childhood leukaemia in the under fives is between 2 and 3 times the national average. One hypothesis is that the exposure occurs when the reactor is refuelled during a three to four weeklong processes known as an outage.

On the grounds that pregnant women around Sizewell B might want to take precautions in the light of the German report's findings during this 'outage' at Sizewell B, I asked their Site Director to tell us when the outage would take place so that local potentially vulnerable people could be warned. I was told that the information was 'commercially confidential'. BE puts private profit before public health.

At every step in this tortuous path towards a future strewn with nuclear waste and opportunities to proliferate nuclear weapons, the democratic process has been steadily and consistently eroded.

The processes we have been required to accept along the way have lacked legitimacy and have been demonstrably pre-determined. From the CoRWM report, through the entire MRWS programme to the point we are today when the Minister is about to commit this country to a destabilising and worrying future based on uneconomic, antiquated and dangerous nuclear technology; the process has been one of a lack of clarity, sleight of hand and obfuscation. I was not even allowed to speak at a BE public meeting in a village three miles away from where I lived because I was 'not local' (to the village in which the meeting was being held).

3.3 Responsibility of Local Authorities

Local authorities have a significant responsibility in this brave new world. They have to confront 'Newspeak' and to hold government to account. They have to ensure that when the agencies we have to rely on for a retention of the democratic process say open and transparent, they mean it: they have to demand on behalf of their electorates that these issues of a trans-generational nature, which impinge directly on the security of future generations and which will directly impact those alive in 12009, let alone 2020, are aired, examined and responded to.

They have to demand that issues of proliferation, waste management, siting, climate change impacts at the sites, longevity of containment of wastes, gas percolation, low level radiation uncertainties, perturbations in the geology, carbon 14 emissions, water ingress and egress, power line siting and routing, leukaemia in children and a host of other issues are put before the electorate in a way that they have hitherto been avoided. Anything less is a dereliction of duty.

4. How is the renewable energy sector affected by current planning law and how will the changes affect it?

David Hunt, CEO, Eco Environments Ltd

Eco Environments are Triple MCS accredited installers of solar and wind power. As a leading renewable energy company based in Merseyside we also install solar thermal, air source heat pumps, rainwater harvesting, and energy efficient lighting. We provide a consultancy service as well.

Eco Environments are based in Bootle, Merseyside and service the construction and property sectors for new build and refurbishment of commercial and residential schemes across the North West of England.

4.1 What is MCS?

The Micro generation Scheme (MCS) is owned by the Department for business, Enterprise and Regulatory reform (BERR formerly DTI) and is 'designed to evaluate products and installers against robust criteria for micro generation technologies, providing greater protection for consumers and ensuring that the Government's (Taxpayer) grant money is spent in an effective manner'- BERR.

4.2 Planning issues relating to Renewable Energy

At all levels there is a disparity between government policy and rhetoric on renewable energy and planning policy and its implementation. In short, the words say yes, the planners say no!

At all levels from major wind farms to micro-generation on an industrial scale, planning is inhibiting the roll out of renewable energy projects. So clearly something needs to change!

If all energy infrastructure projects take 7 years to go through planning, and even then may be rejected, there is a very real prospect of power shortages and blackouts within the decade.

4.3 Infrastructure Planning Commission and Renewable Energy

If the IPC was purely for renewable energy projects the renewable sector would be very happy. Particularly as the caveats listed below exist at pre-application stage.

The applicant is required to:

- Consult relevant local authorities and any persons with an interest in the land - secondary regulations may list further categories of people.
- Prepare a statement, in consultation with relevant local authorities, on how they will consult 'people living in the vicinity of the land', and then carry out this consultation.

4.4 However!

As you know the IPC also covers nuclear, coal, road and rail, and airport expansion, and other issues with a potentially high negative environmental impact.

Is the IPC a quick route therefore to railroad through Nuclear and Clean Coal (sic) power stations?

4.5 The role of councils and local authorities

Despite apparent inbuilt safeguards the IPC is an undemocratic mechanism, taking power away from local stakeholders.

On the other hand, there is such a difference of planning interpretation and outcomes for renewable energy applications between councils and local authorities.

4.6 **Concluding comments**

As a member of the renewable sector, Eco Environments believe planning should remain with the local authorities. However, the new legislation creating the IPC can only assist the renewable energy sector if it makes the default position on approving such projects as yes, not no as often occurs in local authority planning regimes. It will also be only of benefit if it assists the sector in its totality not just the large projects. Most renewable energy projects will not be considered by the IPC because they are not large enough, and so will have to go through all the current hurdles of the local authority planning system.

5 **EDF & Planning Performance Agreements: A Conflict of Interest? Pete Roche, NFLA Policy Advisor, on behalf of Nuclear Spin.com**

Nuclear Spin.com aims to:

- Document PR and propaganda activities of the nuclear industry intended to manipulate public opinion.
- Catalogue activities of nuclear lobbyists. Ask whether connections – family, financial or otherwise – between politicians and industry exert undue influence and distort the democratic process.

5.1 **Planning Performance Agreements (PPAs)**

Planning Performance Agreements or PPAs were formally introduced into the planning system in England on 6 April 2008

They are an agreed framework between the planning authority and the applicant to manage complex development proposals. It allows the developer and the planning authority to agree a project plan with the appropriate resources necessary to determine the planning application to a firm timetable.

5.2 **PPAs: 2007 National Consultation**

Planning Performance Agreements are seen by the Government as a new way to manage large-scale major planning applications.

The National Consultation was initiated in May 2007 by the Department for Communities and Local Government.

It created a system of fees and Local Authorities have the option to charge for the PPA pre-application phase under section 93 of the Local Government Act 2003.

This creates a real concern that financial arrangements could compromise the impartiality of the planning authority.

5.3 **Collusion between applicant and developer?**

Concerns have been raised by a number of community groups about the perception of potential collusion between the applicant and the developer. The “perception” of collusion could also strain relationships between the local authority and its citizens.

Nuclear Spin.com would argue that the PPA system can potentially compromise the impartiality of the Local Planning Authority.

There was an expectation that the issue of impartiality would have been addressed in the Government guidance note – but it was not directly.

But the Guidance does say the PPA is fundamentally about improving the quality of applications not about a fast application process; but there are real concerns it is democracy that will suffer.

The PPA process should ensure collaboration with all relevant stakeholders. The vast majority of issues should be addressed before the application is submitted. Charges for services under the PPA must not exceed the cost of providing them, so in theory the planning authority has no vested interest in supporting a developer.

5.4 **Community Engagement**

The Planning system in England and Wales requires substantial community engagement. The PPA could be the ideal opportunity to structure this. It is important in this process that the Local Planning Authorities (LPAs) and the developer start communication early. The PPA's should identify the communities to involve, the process of engagement, and approach to incorporating their views, feedback and evaluation methods.

When it comes to new nuclear reactors and the PPA process there is a considerable amount of sensitivity. It should be noted that support around new reactor sites fragile – 38% reluctantly accept it if it is essential to tackle climate change only. (Source: Living with Nuclear Power in Britain - Methods Study).

5.5 ***EDF and Councils in Somerset – PPA around Hinkley Point consultation***

It was against this background that Nuclear Spin put in a series of Freedom of Information requests about contact between local authorities with nuclear sites and the nuclear industry. We discovered that:

- Sedgemoor District Council had written to BE/EDF to request funds on 18th July 2008.
- It had asked for £100k pa over 5 years.
- Plus a technical consultancy budget of £200 - £250k for the first 2 years.
- And it said it would work with a 'Nuclear Energy Board' of Somerset County Council, West Somerset District Council and Sedgemoor District Council.

5.6 **Somerset Nuclear Energy Board**

It would appear natural to assume Sedgemoor District Council had consulted West Somerset District Council and Somerset County Council in reference to the above information.

But when the Independent on Sunday reported on the 4th January 2009 that the three local councils had asked for £750,000 to fund a planning officer and legal advice from EDF, West Somerset District Council & Somerset County Council denied any possibility of a 'secret deal' with EDF / British Energy. The article noted that Somerset County Council had told Sedgemoor District Council it did not want to be party to such a deal.

Somerset County Council also said it does not support asking the nuclear industry for such resources and it has gone to strenuous lengths to make this position clear.

West Somerset District Council councillors say they were 'shocked and horrified' to hear about this potential agreement.

5.7 PPA and the IPC

The above three councils will eventually advise the Infrastructure Planning Commission on the new build reactor site at Hinkley Point. The IPC will make the final decision on planning approval.

There is a duty to the community and the environment to ensure that any proposals put forward are robustly examined and challenged, and that the communities affected are at the heart of any decision on the proposals.

However, council taxpayers should not be burdened which creates a tension in considering such major developments, particularly in times of deep economic recession. Councils often also have no major expertise to deal with large-scale complex major applications of this unique nature – the last major new nuclear reactor at Sizewell was approved over 18 years ago.

5.8 3 councils in Somerset consider PPA with EDF in summer 2009

According to media reports, repeated requests to the Government by the Councils for funding a planning process for Hinkley Point have proved unsuccessful. As a result, despite some opposition in two of the three councils, the 3 Councils agreed in mid-July to consider a PPA with EDF.

The Councils say firmly that it does not commit them to any particular decision or consultation response. It will also not affect the quality of investigation into a future planning application.

5.9 Concluding comments

The 'Stop Hinkley' nuclear campaign group says there is a conflict of interest. They also suggest it is a 'u-turn' for Somerset County Council having given in January 2009 to it a "categorical assurance" that it "does not support asking the nuclear industry for resources".

Nuclear Spin.com argue that there is a danger any funding from the developer will compromise final recommendations.

It also suggests:

- Any perception of collusion could strain relations with local citizens.
- There are concerns over the ethics of such a PPA .
- Councils are trying to allay fears by promising transparency, but legal agreements with EDF could compromise their ability to be transparent.

* - These presentations were provided to councillors and local nuclear campaigning groups at the NFLA England / NFLA Wales joint meeting in Liverpool Town Hall on the 9th October 2009.

Hugh Ellis's presentation was a shortened version of a policy paper he has developed for Friends of the Earth, which is produced here in full. It can be found on the Friends of the Earth website. The personal, passionate views given by all four speakers are brought to NFLA members in its key role of opening up the debate on this important issue. It should also be useful to NFLA members when considering the current consultation on the national energy (and particularly, the nuclear) policy statements, which is open until the **22nd February 2010**. The national policy statements will determine the overall policy response of the IPC for major developments.

Sean Morris, NFLA Secretary