



BRIEFING PAPER

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Planning for Nationally Significant Infrastructure Projects

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Summary

What are Nationally Significant Infrastructure Projects (NSIPs)?

Nationally Significant Infrastructure Projects (NSIPs) are large scale developments (relating to energy, transport, water, or waste) which require a type of consent known as “development consent”. The [Planning Act 2008](#) introduced a new development consent process for NSIPs which was subsequently amended by the [Localism Act 2011](#). A Development Consent Order (DCO) automatically removes the need to obtain several separate consents, including planning permission and is designed to be a much quicker process than applying for these separately. An extension of the regime in 2013 now allows certain business and commercial projects to opt into this process.

Development Consent Orders (DCOs)

The DCO process starts when an application is formally accepted by the National Infrastructure Planning Unit and lasts approximately 12-15 months. The process however, is front-loaded with a number of pre-application consultation requirements, which, depending on the complexity of the project, can take a number of years to carry out. The final decision on granting a DCO rests with the Secretary of State for that field. The [National Infrastructure Planning website](#) provides a number of guidance on the processes.

National Policy Statements (NPSs)

Applications for DCOs are decided in accordance with National Policy Statements (NPSs), which after a process of public consultation and Parliamentary scrutiny are formally “designated” by Government. There are currently 12 designated or proposed NPSs, which fall under the categories of hazardous waste, water supply, energy, transport networks, aviation and ports. An *emerging* NPS can carry some weight for decision takers in the development consent process. The amount of weight given will depend on how far along the process the NPS is at and how much consultation has taken place.

Draft airports NPS

On 2 February 2017 the previous Conservative Government published its [draft Airports National Policy Statement](#). This was accompanied by a formal consultation which closed on 25 May 2017. The draft NPS explained the Government’s general policy and reasons for supporting a third runway at Heathrow. It also set out particular considerations relevant to any DCO airport expansion application.

Recent changes to the NSIP regime

- The Infrastructure Act 2015 amended the process for changing and revoking DCOs.
- A National Infrastructure Commission was set up in 2015 to examine the country’s long-term infrastructure needs.
- Onshore wind farms of over 50MW were removed from the NSIP regime in 2016.
- From April 2017 DCOs can include an element of housing when associated with an NSIP.

Extent and further information

This note applies to England and, where specified, to Wales. See the joint Library briefing paper [Comparison of the planning systems in the four UK countries: 2016 update](#) for information about consenting regimes in the other UK countries. The Library briefing paper, [Infrastructure Policy](#) examines the current state of infrastructure in the UK, current levels of investment and recent Government policy.

1. The legal framework

The [Planning Act 2008](#), (the 2008 Act), introduced a new development consent process for Nationally Significant Infrastructure Projects (NSIPs). NSIPs are usually large scale developments (relating to energy, transport, water, waste water or waste) which require a type of consent known as “development consent”.

A Development Consent Order (DCO) automatically removes the need to obtain several consents that would otherwise be required for development, including planning permission and compulsory purchase orders. The idea of this regime is that it is a quicker process for large scale development projects to get the necessary planning permission and other related consents that they would require, rather than having to apply separately for each consent.

Before this, the final decision on whether development consent should be granted rested with the Infrastructure Planning Commission (IPC), a non-departmental public body which would take decisions in line with National Policy Statements designated by Government. The 2008 Act was subsequently amended by the [Localism Act 2011](#), which abolished the IPC.

Responsibility for decisions on these projects now rests with the relevant Secretary of State. In practice the planning inspectors, (known as the “examining authority” in the legislation), from the [National Infrastructure Directorate](#) of the Planning Inspectorate will make recommendations to help inform the Secretary of State’s decision. Further information about the process for making a DCO is set out in section 3 below.

1.1 Categories of NSIPs

Section 14 of the 2008 Act sets out the projects which may be considered to be a NSIP:

- (1) In this Act “nationally significant infrastructure project” means a project which consists of any of the following—
 - (a) the construction or extension of a generating station;
 - (b) the installation of an electric line above ground;
 - (c) development relating to underground gas storage facilities;
 - (d) the construction or alteration of an LNG facility;
 - (e) the construction or alteration of a gas reception facility;
 - (f) the construction of a pipe-line by a gas transporter;
 - (g) the construction of a pipe-line other than by a gas transporter;
 - (h) highway-related development;
 - (i) airport-related development;
 - (j) the construction or alteration of harbour facilities;
 - (k) the construction or alteration of a railway;

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- (l) the construction or alteration of a rail freight interchange;
- (m) the construction or alteration of a dam or reservoir;
- (n) development relating to the transfer of water resources;
- (o) the construction or alteration of a waste water treatment plant [or of infrastructure for the transfer or storage of waste water];
- (p) the construction or alteration of a hazardous waste facility;
- (q) development relating to a radioactive waste geological disposal facility].

Part 3 of the 2008 Act sets out the thresholds which these projects have to meet in order to be considered as nationally significant and require development consent.

The [Infrastructure Planning \(Onshore Wind Generating Stations\) Order 2016](#) removed onshore wind farms of over 50MW in size from the NSIP regime from 5 March 2016.

From April 2017 section 160 of the [Housing and Planning Act 2016](#) allowed for a DCO to include an element of housing when it is related to a nationally significant infrastructure project under the 2008 Act. For further information see the Government guidance, [Planning Act 2008: guidance on nationally significant infrastructure projects and housing](#), March 2017.

Information about all past and current projects decided under the NSIP regime are available on the National Infrastructure Planning Unit's [Register of Applications](#) webpage.

1.2 Procedural rules

The examination procedure for NSIPs is set out in the:

- [Infrastructure Planning \(Examination Procedure\) Rules 2010](#), (SI 103); and
- [Infrastructure Planning \(Interested Parties\) Regulations 2010](#), (SI 102).
- The [application fees](#) for Development Consent Orders are set out by the [Infrastructure Planning \(Fees\) Regulations 2010](#), (SI 106), as amended.

The [Infrastructure Act 2015](#) made provision for changes to the NSIP regime in respect of timing of the appointment of the examining authority, providing for two-person Panels, and amending the process for changes to, and revocation of, development consent orders.

The [Infrastructure Planning \(Environmental Impact Assessment\) Regulations 2017](#) revoked and replaced the previous *Infrastructure Planning (Environmental Impact Assessment) Regulations 2009*, to transpose changes made to EU Directive 2011/92/EU ("the EIA Directive") by EU Directive 2014/52/EU about Environmental Impact Assessment requirements and procedures into the infrastructure planning regime. For further information about the EIA Directive and the changes to it, see the Government's [Explanatory Memorandum](#) to the 2017 Regulations.

1.3 Business and commercial projects

The [Growth and Infrastructure Act 2013](#) introduced an extension of the regime to include certain business and commercial projects. This was to enable developers of certain projects to opt-in to the NSIP planning regime at the developer's discretion, where the projects are judged as being of national significance.

The [Infrastructure Planning \(Business or Commercial Projects\) Regulations 2013](#) (SI 3221) allow the Secretary of State to direct that certain types of projects can be decided under the development consent regime. In summary, the categories include major office, warehousing, manufacturing, research and development facilities as well as significant tourism and leisure schemes including sports stadia. Some extractive industry schemes are included (i.e. deep-mined coal) but the extraction of peat, oil, and gas are excluded, as are housing developments. Retail is not listed in the regulations as a permissible project type. This means that while retail-led schemes are not permitted under these rules, mixed use schemes that contain an element of retail may be allowed. The Secretary of State will therefore consider requests for a direction where retail is not the primary element but is associated development.¹

Further information about the types of business and commercial projects which may opt in to the process are set out in:

- Policy Statement by the Department for Communities and Local Government: [Extension of the nationally significant infrastructure planning regime to business and commercial projects](#), November 2013;
- [Nationally significant infrastructure planning: extending the regime to business and commercial projects – consultation](#), November 2012; and
- [Major infrastructure planning: extending the regime to business and commercial projects: Summary of responses and government response](#), 21 June 2013.

Any developer who wants their business or commercial project to be dealt with under the DCO procedure will need first to ask the Secretary of State for a direction. The Secretary of State must be satisfied that the project both falls within one of the prescribed types of project and is nationally significant. Typically this will mean the project must have a significant economic impact, is important for driving growth in the economy, or has an impact across an area wider than a single local authority area.²

1.4 Wales

The Planning Act 2008 regime for NSIPs is more limited in its extent in Wales. In Wales, development consent is only required for certain

¹ HM Government, [Major infrastructure planning: extending the regime to business and commercial projects: Summary of responses and government response](#), June 2013, p13

² Planning Portal, ['Nationally significant' regime set to be extended](#), 7 November 2013

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energy generating projects, pipelines, overhead electricity line and harbour facility projects.³

Developments of National Significance

The [Planning \(Wales\) Act 2015](#) established a new category of development called Developments of National Significance (“DNS”). This enables the planning applications for certain types of development above specified thresholds to be made directly to the Welsh Ministers.

The provisions in the 2015 Act are supplemented by the *Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016* (“the Regulations”).⁴ Regulation 3 specifies the types of development which can be of national significance: generating stations; underground gas storage facilities; facilities for liquid natural gas; gas reception facilities; airports; railways; rail freight interchanges; dams and reservoirs; transfer of water resources; waste water treatment plants and hazardous waste facilities. Further amendments to the Regulations have now captured those onshore wind projects above 50MW as a DNS. The current DNS threshold for energy generating stations in Wales is therefore between 10 and 50MW, except for onshore wind where there is now no upper limit. The thresholds for where other types of development will qualify as a DNS is specified in Part 2 of the Regulations.

Further information about the DNS consenting process is available from the Welsh Government’s website on [Developments of National Significance](#) and its [Guidance on Developments of National Significance](#).

The [Wales Act 2017](#) devolves further responsibility for all energy generating development consents for projects up to 350MW onshore (other than wind) and offshore in Welsh territorial waters and for associated overhead lines to the Welsh Ministers. Energy generating projects from 50MW-350MW have not yet been brought into the definition of a DNS. Energy generation development above 350MW continues to be determined by the UK Secretary of State under the Planning Act 2008 development consent regime.

For further information about the different regimes that different sized energy generating developments go through in Wales see the National Assembly for Wales Research Service briefings: [Developments of National Significance](#), 21 January 2016; and [The Planning Series: 14 - Developments of National Significance](#), November 2016.

³ National Infrastructure Planning website, [Frequently Asked Questions](#) [on 6 May 2014]

⁴ Welsh Government, [Developments of National Significance Explanatory Memorandum](#), 2 February 2016

2. National Policy Statements

Applications for development consent orders (DCOs) are decided in accordance with National Policy Statements (NPSs), which set out the national policy in relation to the different categories of NSIPs. NPSs undergo a process of public consultation and parliamentary scrutiny, before being officially designated by Government. The consultation and Parliamentary requirements are set out in part 2 of the Planning Act 2008, as amended by the Localism Act 2011.

A DCO application is normally determined in accordance with an NPS, subject to the exceptions listed in section 104 of the [Planning Act 2008](#). Under section 104, the Secretary of State must decide any DCO application in accordance with any relevant NPS unless he or she is satisfied that to do so would:

- Lead to the UK being in breach of its international obligations;
- Be unlawful;
- Lead to the Secretary of State being in breach of any duty imposed by or under any legislation;
- Result in adverse impacts of the development outweighing its benefits; or;
- Be contrary to legislation about how the decisions are to be taken.⁵

An *emerging* NPS can carry some weight for decision takers in the development consent process. The amount of weight given will depend on how far along the process the NPS is at and how much consultation has taken place.⁶

Section 105 of the 2008 Act gives the Secretary of State the power to take the decision on a DCO in the *absence of an NPS*. In the absence of a NPS for a particular project decisions will be taken in accordance with the National Planning Policy Framework and any relevant local plan for the area where there development would be located.⁷

There are currently 12 designated or proposed National Policy Statements, which fall under the following categories:

Hazardous waste

- The [National Policy Statement for Hazardous Waste: A framework document for planning decisions on nationally significant hazardous waste infrastructure](#), officially designated by the Secretary of State as an NPS on 18 July 2013.

Water supply

- A water supply NPS has not yet been published in draft for consultation.

⁵ HM Government, [Draft Airports National Policy Statement](#), para 1.16

⁶ Planning Inspectorate [National Infrastructure Planning website](#) [accessed 13 April 2017]

⁷ National Infrastructure Planning, [National Policy Statements](#) [on 25 May 2016]

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- The [National Policy Statement for Waste Water](#), officially designated as a NPS on 26 March 2012.

Transport networks

- The [National Policy Statement for National Networks](#) which was [officially designated](#) on 14 January 2015.

This followed a [Consultation on a Draft National Policy Statement for the National Road and Rail Networks](#), December 2013. In December 2014 the Government published its [response to this consultation](#). At the same time the Government published its final version of the [National Policy Statement for National Networks](#) to lay before Parliament. On [13 January 2015](#) the House of Commons resolved to approve the national policy statement. A debate on a motion to take note of the NPS was held in the House of Lords on [20 January 2015](#).

Aviation

- On 2 February 2017 the previous Conservative Government published its [draft Airports National Policy Statement](#).⁸ This was accompanied by a number of technical reports⁹ and a formal consultation, which closed on 25 May 2017.¹⁰ The draft NPS states:

The Airports NPS provides the primary basis for decision making on development consent applications for a Northwest Runway at Heathrow Airport, and will be an important and relevant consideration in respect of applications for new runway capacity and other airport infrastructure in London and the South East of England.¹¹

It explains the Government's general policy and reasons for supporting the third runway at Heathrow. It also sets out particular considerations relevant to a DCO application to which the Airports NPS relates.¹²

Before the dissolution of Parliament for the 2017 general election, the Transport Select Committee began an [inquiry](#) into the the Government's draft Airports National Policy Statement. No report was published before dissolution. The [committee's website](#) notes that all Select Committees cease to exist until after the general election. If an inquiry on this subject is held in the future, the Committee may refer to the evidence already gathered as part of this inquiry. Select committees have not yet been reestablished following the election.

In a written statement to Parliament on 2 February 2017, the Government proposed initially to lay an airports NPS before the

⁸ HM Government, [Draft Airports National Policy Statement](#), 2 February 2017

⁹ HM Government, [Heathrow Airport expansion](#) [updated 22 February 2017]

¹⁰ HM Government, [Consultation on Draft Airports National Policy Statement: new runway capacity and infrastructure at airports in the south-east of England](#), 2 February 2017

¹¹ HM Government, [Draft Airports National Policy Statement](#), para 1.10

¹² HM Government, [Draft Airports National Policy Statement](#) para 1.11

House in winter 2017-18.¹³ This timetable has now been amended, through a further written statement, as follows:

The consultation closed on 25th May and the work to analyse the over 70,000 responses is progressing well. I would like to thank all of those who contributed their views.

This government is fully committed to realising the benefits that a new Northwest runway at Heathrow would bring, in terms of economic growth, boosting jobs and skills, strengthening domestic links and – critically – increasing and developing our international connectivity as we prepare to leave the European Union.

The timing of the election, in particular the need to re-start a Select Committee inquiry into the draft Airports NPS means we now expect to lay any final NPS in parliament in the first half of 2018, for a vote in the House of Commons.

I will provide a further update to the House after the summer recess on our next steps following analysis of the consultation responses.¹⁴

For further information about Heathrow expansion, see Library briefing paper, [Heathrow Expansion](#), 24 April 2017.

Ports

- The [National Policy Statement for Ports](#) was designated on 26 January 2012.

Energy

Six Energy NPSs were designated on 19 July 2011 as follows:

- EN-1 [Overarching Energy NPS](#)
- EN-2 [Fossil Fuel Electricity Generating Infrastructure](#) NPS
- EN-3 [Renewable Energy Infrastructure](#) NPS
- EN-4 [Gas Supply Infrastructure & Gas and Oil Pipelines](#) NPS
- EN-5 [Electricity Networks Infrastructure](#) NPS
- EN-6 [Nuclear Power Generation NPS - Volume I](#) and [Volume II](#)
- The Department of Energy and Climate Change has also [consulted](#) on producing a National Policy Statement on the **geological disposal of higher activity radioactive waste**.¹⁵ A [Government Response](#) was published in July 2014. In the response, the then coalition Government said that:

We intend to consult on the proposed National Policy Statement before the beginning of any formal discussions between communities and the developer. We are committed to making the National Policy Statement available as early as practicable, to ensure that communities have access to as much information as possible.¹⁶

¹³ [HC Deb 2 February 2017, c30WS](#)

¹⁴ Aviation update: Written statement - [HCWS41](#), 13 July 2017

¹⁵ DECC, Consultation: [Review of the Siting Process for a Geological Disposal Facility](#), September 2013

¹⁶ HM Government, Government Response: Review of the Siting Process for a Geological Disposal Facility, July 2014, para 77

In response to a PQ in February 2017 the previous Conservative Government indicated that consultation on a draft NPS may begin “in the coming months”:

In the 2014 *Implementing Geological Disposal* White Paper Government set out three initial actions which will provide greater clarity on issues such as geology, development impacts and community representation. Good progress is being made on these initial actions and Government expects to consult on the draft National Policy Statement and Working with Communities policy in the coming months, ahead of the launch of the official siting process.¹⁷

Business and commercial projects

When extending the DCO regime to business and commercial projects, the then coalition Government [consulted](#) on whether to produce NPSs for them.¹⁸ It decided that new NPSs would not be necessary as the majority of these projects would not use this process and the decisions would be taken by local planning authorities, who would be able to include relevant policies on these sorts of projects in their local plans. The [response](#) to this consultation highlighted disagreement by respondents:

42% of respondents disagreed with the proposal not to have a National Policy Statement or Statements for this new category of development. Those who disagreed with the Government proposal highlighted a number of concerns, including the lack of a clear policy framework for decision-making; the importance of Parliamentary scrutiny of National Policy Statements; and concern about the Government’s commitment to National Policy Statements more generally. One respondent suggested that a “light touch” version of a National Policy Statement should be prepared.¹⁹

2.1 Parliamentary procedure

Under the provisions of the *Planning Act 2008* a draft NPS (called a “statement” in the legislation), may be designated as an NPS only if the consultation and publicity requirements set out in section 7, and the Parliamentary requirements set out in section 9, have been complied with in relation to it.

Under section 9 if either House of Parliament makes a resolution with regard to a proposed NPS, or a committee of either House of Parliament makes recommendations with regard to the a proposed NPS, the Secretary of State must lay before Parliament a statement setting out his response to the resolution or to the recommendations.

House of Commons standing order 152H ([11 October 2016 addendum](#)), shows that an NPS can be considered by either a

¹⁷ [Radioactive Waste: Written question – 62478](#), holding answer 3 February 2017

¹⁸ Department for Communities and Local Government, [Nationally significant infrastructure planning: extending the regime to business and commercial projects: Consultation](#), November 2012

¹⁹ Department for Communities and Local Government, [Major infrastructure planning: extending the regime to business and commercial projects: Summary of responses and government response](#), June 2013, p13

designated select committee, or a dedicated National Policy Statement Committee established for that purpose.

NPSs should be approved by Parliament before they are designated. Under section 5(4) and 5(4A) of the Planning Act 2008 (as amended by the Localism Act 2011), approval of an NPS can occur either by “deemed consent”, after a “consideration period” of 21 sitting days passing without a vote, or if the House of Commons votes to approve the NPS within the 21 day period.

Neither Standing Order No 152H nor section 9 of the *Planning Act 2008* specify that a debate has to take place before the end of the relevant period (in which a committee makes recommendations or a resolution of either House with regard to the proposal).

Commitments made about NPS scrutiny in Parliament

In a debate on [Planning: National Policy Statements](#) in May 2009, Phyllis Starkey MP highlighted that “there is no statutory requirement for a vote to take place before a statement can be designated as an NPS”.²⁰

John McDonnell MP moved an amendment to provide that recommendations from committees should be debated by the House before Ministers could proceed to designate national policy statements. He explained:

The amendment suggests that when the Select Committee process has ended, a report is provided to the House. If it is uncontentious and the Select Committee recommends approval, we have a debate for a maximum of one and a half hours, the Question is put and the statement is agreed or not. If it is contentious, and there are recommendations from the Select Committee not to approve the national policy statement, a debate of up to three hours is held, and then we vote on the matter.²¹

His amendment was rejected.²²

During the debate, Alan Whitehead asked for a reinstatement of the Government’s commitment hold a debate on an NPS in Parliament:

Notwithstanding all that, the amendment tabled by my hon. Friend the Member for Hayes and Harlington (John McDonnell) underlines an important point about what happens at the end of a Select Committee’s scrutiny. When the Planning Bill was introduced, the Secretary of State for Communities and Local Government stated:

“In addition, if the Committee has recommended that a national policy statement raises issues which should be debated by Parliament as a whole, we will make available time in each House for a debate before we designate it.” — [*Official Report*, 27 November 2007; Vol. 468, c. 14WS.]

That was a clear commitment, and I should be grateful for, at the very least, a reinstatement of it today. However, I am not sure

²⁰ HC Deb 20 May 2009 c1545

²¹ HC Deb 20 May 2009 c1552

²² HC Deb 20 May 2009 c1565

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whether it is sufficient to guarantee debate on the Floor of the House.²³

In responding to the debate, the then Minister stated that:

The relevant period needs to be long enough to incorporate three important underlying elements: the period of public consultation, which is normally three months; the overhang period of four to six weeks after the close of public consultation during which the relevant Select Committee scrutinising the matter will conclude its report; and the crucial further period of six weeks or 40 days in which the Government would—not might—make time for debate if the Committee recommended that that was warranted. In reality, the relevant period would be about six months, but we did not want the motion to impose a rigid time scale because we think it is important for the Select Committee to have flexibility. That third element that I mentioned is crucial: whether there should be a debate and a vote is decided not by the Government, but by the Select Committee.²⁴

An example of an NPS's route through Parliament

Looking at what has happened previously with other NPSs is perhaps the best way to understand how the Parliamentary process works and the reasons for it.

The draft National Policy Statements for energy infrastructure were laid before Parliament on 9 November 2009 by the then Labour Government. This suite of NPSs set out the then Government's policy for delivery of major energy infrastructure. The draft NPSs were subject to a [consultation exercise in 2009](#) under the Labour Government to which the [Government response](#) was published under the coalition Government in October 2010. The coalition Government's response launched a "re-consultation" on [certain aspects](#) of the draft NPSs and revised versions of the draft NPSs were published.

As well as a public consultation exercise, draft NPSs were also subject to parliamentary scrutiny. The 2008 Act requires the Government to lay each draft NPS before Parliament, and to respond to the recommendations of a Committee of either House or a resolution of either House made within a specified period. The House of Commons Energy and Climate Change select committee took evidence on, and published a report, [The proposals for national policy statements on energy](#), 23 March 2010. It recommended that House be given the opportunity to debate the NPSs:

5. This Report makes a number of recommendations, which we expect the Government to take account of before designating the energy NPSs. Given the importance of the Statements in delivering our energy and climate change objectives, we recommend that they be subject to a debate in the main Chamber on an amendable motion, offering the possibility of a vote. If there is not time to schedule a debate before the dissolution, it is imperative that this take place at the earliest opportunity in the next Parliament.²⁵

²³ HC Deb 20 May 2009 cc1562-1563

²⁴ HC Deb 20 May 2009 c1564

²⁵ Energy and Climate Change Committee, *The proposals for national policy statements on energy*, 23 March 2010, HC 231-I 2009-10, para 5

A debate on the NPSs were held in the House of Commons on [1 December 2010](#). The Energy and Climate Change Committee then examined *The revised draft National Policy Statements on energy* (January 2011).²⁶ The Committee noted how the debate in the House had informed its deliberations:

10. During our inquiry, in response to our predecessor's recommendation,^[10] the Government scheduled a debate on the draft energy NPSs on 1 December 2010.^[11] This helped inform our deliberations. We are grateful to all those who gave evidence to us or took part in the House of Commons debate.²⁷

The House of Lords scrutinised the original draft energy NPSs in a series of 3 Grand Committee meetings on 23 February, 9 and 11 March 2010. Five motions were then laid for a debate in the full House of Lords. The debate was held on [29 March 2010](#). In the debate, Lord Jenkin of Roding set out the procedure and how the motions came to be debated in the Lords though an "invented" process:

The Motions today deal with national policy statements. The Act requires both public consultation and parliamentary scrutiny by both Houses-I emphasise both Houses. Some of the volumes have been amended, while others have not. It was originally said that this would be done by the House of Commons, for which the noble Lord, Lord Hunt, apologised generously and profusely.

The two Houses have adopted different processes. In another place there are departmental Select Committees, so the six energy national policy statements have been the subject of detailed scrutiny by the Select Committee on Energy and Climate Change. It heard evidence over many weeks; indeed, I sat in on many days to listen to what was going on. Its report-an interesting document-was published last week.

In this House we do not have departmental Select Committees, so an entirely different procedure had to be-well, "invented" is not too strong a word. It was to be based on debates in Grand Committee. We had three debates, which took place in the Moses Room on 23 February, 9 March and 11 March. The procedure also envisaged that there could be resolutions to amend the national policy statements, which could be debated on the Floor of the House. We had undertakings from the Leader of the House that time would be provided. As noble Lords will have seen, and as I have mentioned, there are five Motions tabled: the first three are in my name, while my noble friend and the noble Lord, Lord Teverson, have the other two.

I should perhaps mention one matter. The Government are obliged to consider all the issues raised, both in public consultation and parliamentary scrutiny, before finally designating the national policy statements in their final form.²⁸ ([HC deb 29 march 2010 cc1191](#))

As part of the scrutiny of the revised draft energy NPSs published in October 2010, the House of Lords Grand Committee also held debates on:

²⁶ Energy and Climate Change Committee, *The revised draft National Policy Statements on energy*, 26 January 2011, HC 648 2010-12

²⁷ Energy and Climate Change Committee, *The revised draft National Policy Statements on energy*, 26 January 2011, HC 648 2010-12, para 10

²⁸ [HC deb 29 March 2010 cc1191](#)

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- the Overarching Energy NPS (EN-1) and the non-nuclear technology specific NPSs (EN-2 to EN-5) on [11 January 2011](#); and
- the Nuclear Energy NPS (EN-6) on [13 January 2011](#).

The [Government's response](#) to the Parliamentary scrutiny and to the "re-consultation" was published in June 2011. On 23 June 2011 the Government the final versions of the [National Policy Statements \(NPS\) for energy infrastructure](#) to lay before Parliament.

On 18 July 2011 there was a debate in the House of Commons on [motions to approve the national policy statements on energy](#). Following the debate the question was put to the House that each energy NPS should be approved. The question was resolved without division (vote) and approval was given for each of the energy NPSs, with the exception of the Nuclear NPS. There was a division called for the Nuclear NPS, where it was approved by [267 votes to 14](#).

The final versions of the [National Policy Statements for energy infrastructure](#) were then officially "designated" by the then Secretary of State for Energy and Climate Change on 19 July 2011.

On 19 July 2011 in the House of Lords, Labour peer Lord Berkeley expressed regret that the Lords did not have a debate on the approval on the NPSs:

It is interesting that, yesterday, the House of Commons debated and approved the six national policy statements for energy. They have been around for a long time in draft form and been subject to consultation, and it is good that the House of Commons debated them, and it is good that the House of Commons debated them, but I suggest that there is an equal need for this House to debate such national policy statements, because there is a great deal of expertise among your Lordships about issues that are likely to come within the national policy statement framework. It seems equitable that we should debate them too. I am sure that noble Lords will have good contributions to make, and I hope that the noble Lord or the noble Baroness-I do not know which of them will reply-will take that seriously. It should have happened under the 2008 Act, but it did not, so here we are today.²⁹

Responding for the Government, Earl Attlee set out why the House of Lords did not have a role in approving NPSs:

National policy statements are policy documents, not legislation. This House has never had a role in approving policy documents and it does not automatically follow that because the Localism Bill provides for the other place to have such a role, this House should also. If both Houses had the authority to approve a national policy statement, but one were to reject it and the other approve it, this would call into question the legal standing of the document and any planning decisions that were to rely upon it. This could lead to extensive delay to both the national policy statements and the provision of vital infrastructure.

The discretion to approve a national policy statement using the negative procedure and the introduction of a timetable of 21 sitting days are intended to ensure that the approval process is both efficient and flexible. Their removal could ultimately result in

²⁹ HL Deb 19 July 2011 [c1314](#)

further delay. It is important to note that the DPRRC [Delegated Powers and Regulatory Reform Committee] raised no concerns about these provisions. Given this, and the explanations I have given, I hope that noble Lords will not press their amendments.³⁰

2.2 Amendment of an NPS

Section 6 of the Planning Act 2008, as amended, sets out the process for review and amendment of an NPS. Under section 6(7) the Secretary of State may amend a national policy statement only if the consultation and publicity requirements set out in section 7, and the parliamentary requirements set out in section 9, have been complied with in relation to the proposed amendment, and:

- (a) the consideration period for the amendment has expired without the House of Commons resolving during that period that the amendment should not be proceeded with, or
- (b) the amendment has been approved by resolution of the House of Commons—
 - (i) after being laid before Parliament under section 9(8), and
 - (ii) before the end of the consideration period.

(7A) In subsection (7) “the consideration period”, in relation to an amendment, means the period of 21 sitting days beginning with the first sitting day after the day on which the amendment is laid before Parliament under section 9(8), and here “sitting day” means a day on which the House of Commons sits.³¹

Section 6(8) provides that the publicity and Parliamentary scrutiny requirements do not apply if the amendment to the NPS is not considered, (by the Secretary of State), to “materially affect the policy”:

- (8) Subsections (6) [to (7A)] do not apply if the Secretary of State thinks that the proposed amendment (taken with any other proposed amendments) does not materially affect the policy as set out in the national policy statement.

2.3 National Infrastructure Delivery Plan 2016-2021

On 23 March 2016 the previous Government published a [National Infrastructure Delivery Plan 2016-2021](#). This plan sets out key projects and programmes in each infrastructure sector, as well as details of the then Government’s ongoing work.

³⁰ HL Deb 19 July 2011 [c1319](#)

³¹ Section 6(7)(a) and (b) and 6(7A) of the Planning Act 2008

3. The Development Consent process

The development consent process starts officially when an application is formally accepted by the National Infrastructure Planning Unit at the Planning Inspectorate. This is when a formal timetable begins which lasts approximately 12-15 months until development consent is granted or refused. Before this starts however, the developer must carry out extensive consultation on the proposed development which can take several years. For full information about this process see the [National Infrastructure Planning](#) website.

The National Infrastructure Planning website also has a [dedicated page for each project](#) on its website for projects which have been accepted or are close to being accepted. This page provides links to all the documents associated with the project, the timetable and the latest developments.

Pre-application

Prior to formally submitting an application for development consent the developer is required to carry out extensive consultation on their proposals. The length of time taken to prepare and consult on the project will vary depending upon its scale and complexity. Applicants for a proposed NSIP must, amongst other documents, submit a draft of the Development Consent Order (DCO) with their application, together with an explanatory memorandum. The DCO should be written in the form of a statutory instrument. For further information see [Planning Act 2008: Guidance on the pre-application process](#).

Acceptance

When the developer submits a formal application for development consent the Planning Inspectorate (on behalf of the Secretary of State) then has a 28 day period in which to determine whether the application meets the requirements for formal examination.

Once a DCO application is submitted and accepted there is a process for members of the public (including MPs) to register as an “interested party” to be able to take part in the examination process, provide written evidence and speak at meetings.³²

Pre-examination

Before the formal examination stage begins the public can register with the Planning Inspectorate and submit a summary of their views about the application in writing. A preliminary meeting for these people will be run and chaired by an Inspector. This stage of publicising the application and gathering representations takes approximately three months, but the timeframe is not set out in legislation.

³² For further information see, [Nationally Significant Infrastructure: how to get involved in the planning process: Advice note 8.3](#)

Examination

The Planning Inspectorate will invite interested parties to submit their views, hold hearings and will carefully consider all the evidence submitted. It is focused on written representations rather than a public inquiry, with hearings on issues only being held where necessary. The examination is done by the “examining authority”. The Secretary of State decides whether the examining authority should be either a single inspector or a panel of inspectors. In making this decision the Secretary of State will consider the complexity of the case and the likely public interest. Examination takes approximately six months. For further information see [Planning Act 2008: examination of applications for development consent](#).

Decision

The Planning Inspectorate will prepare a report on the application to the Secretary of State, including a recommendation on whether development consent should be granted, within three months of the end of the examination period. The Secretary of State then has a further three months to make the decision on whether to grant or refuse development consent.

Section 107 of the 2008 Act and section 23 of the *Infrastructure Planning (Examination Procedure) Rules 2010* ([SI 2010/103](#)) (the ‘procedure rules’) allows for further time to be taken in the decision making process. Under section 107 any extension to the statutory timetable would require the Secretary of State to make a statement to Parliament and would *not* be a decision which “would be taken lightly”.³³

The Secretary of State may reach a different decision on the DCO to that recommended by the Examining Authority. Government guidance states that the Secretary of State:

... is required under the Procedure Rules to notify all interested parties if he is inclined to disagree with the Examining Authority’s recommendation because he differs from the Examining Authority on any matter of fact mentioned in, or appearing to be material to, a conclusion reached by the Examining Authority, or because the Secretary of State proposes to take into consideration any new evidence or any new matter of fact.

The Secretary of State will set out the reasons for disagreement with the Examining Authority and will give interested parties the opportunity to make representations in writing, in respect of any new evidence or new matter of fact, by an appropriate deadline.³⁴

Post decision legal challenge

Once a decision has been issued by the Secretary of State, there is a six week period in which the decision may be challenged in the High Court by way of Judicial Review.

³³ HM Government, [Planning Act 2008: Guidance for the examination of applications for development consent](#), March 2015, para 108

³⁴ *ibid.*, paras 117-118

4. National Infrastructure Commission

A National Infrastructure Commission (NIC) was initially set up by the previous Conservative Government as an independent body on 5 October 2015. Its purpose is to provide expert, impartial analysis of the country's long-term infrastructure needs. It also reports on high-priority issues and produces an in-depth, independent assessment of the UK's major infrastructure needs on a 30-year time horizon. These needs will then be articulated into National Infrastructure Assessments (NIAs).

It was originally announced, in the [Government's background briefing paper](#) to the Queen's Speech 2016, that the NIC would be established on a statutory footing. The Government later informed the House that the NIC would, instead, be established on a permanent basis as an Executive Agency of HM Treasury in January 2017.³⁵ The Government said it considered that the NIC could achieve the same objectives without legislation.³⁶ The NIC was then formally established as an executive agency of the Treasury on 24 January 2017.³⁷ A [Framework Document](#) was published to set out the broad framework within which the NIC will operate, and outlines its roles and responsibilities.

The Framework Document sets out how the Government will respond to the NIC's reports and about how recommendations from the NIC endorsed by the Government may become planning policy:

1.7 The government will lay the NIC's reports before Parliament, and will respond to the NIC's national infrastructure assessment and specific studies. The government will respond as soon as practicable; it will endeavour to respond within 6 months, and not longer than a year. The response will set out clearly any further work required to take forward the recommendations. Recommendations the government agrees should be taken forward will become known as 'endorsed recommendations'. Where the government does not agree with a Commission recommendation, it may put forward an alternative proposal.

1.8 Where the government is responsible for delivering endorsed recommendations, the government's endorsement will be a statement of government policy. Where recommendations have wider implications for the planning regimes, the government will highlight any further steps needed to confirm the endorsed recommendation as planning policy. The government will use the levers at its disposal to deliver endorsed recommendations – whether through spending, regulation, deregulation, market stimulation, or by setting strategic priorities for regulators as appropriate. In some cases, endorsed recommendations will not be directly taken forward by the government, but may be relevant for decisions made by other bodies such as economic regulators. The NIC will monitor progress in delivering endorsed

³⁵ [National Infrastructure Commission: Written statement - HCWS181](#), 12 October 2016

³⁶ [National Infrastructure Commission: Written statement - HCWS181](#), 12 October 2016

³⁷ [National Infrastructure Commission: Written statement - HCWS431](#), 24 January 2017

recommendations, and will comment on this in its annual monitoring report.³⁸

The Framework document follows from earlier consultation on how the NIC should operate. See:

- HM Treasury, [National Infrastructure Commission: consultation](#), January 2016; and
- HM Treasury, [National Infrastructure Commission: response to the consultation](#) May 2016.

³⁸ HM Treasury, [National Infrastructure Commission framework document](#), January 2017

5. Potential future change

The [Conservative Party manifesto](#) for the 2017 General Election contained a commitment to bring major shale gas applications into the “national planning regime”. It stated:

We will legislate to change planning law for shale applications. Non-fracking drilling will be treated as permitted development, expert planning functions will be established to support local councils, and, when necessary, major shale planning decisions will be made the responsibility of the National Planning Regime.

We will set up a new Shale Environmental Regulator, which will assume the relevant functions of the Health and Safety Executive, the Environment Agency and the Department for Business, Energy and Industrial Strategy. This will provide clear governance and accountability, become a source of expertise, and allow decisions to be made fairly but swiftly.³⁹

Following the election the new Government has not yet confirmed whether it will go ahead with this proposal.

³⁹ The Conservative and Unionist Party [2017 General Election Manifesto](#), May 2017, p23

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