

**EXPLANATORY MEMORANDUM TO
THE INFRASTRUCTURE PLANNING (NATIONAL POLICY STATEMENT
CONSULTATION) REGULATIONS**

2009 No. 1302

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument prescribes the bodies whom the Secretary of State must consult before a policy statement can be designated as a National Policy Statement (“NPS”) under the Planning Act 2008.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is the first exercise of the power to prescribe under section 7 of the Act which was brought into force on 6th April 2009 by the Planning Act 2008 (Commencement Number 1 and Savings) Order 2009 (SI 2009 No 400).

4. Legislative Context

4.1 The Planning Act 2008 (“the Act”) (Parts 1 to 8) provides for the grant of development consent for development consisting of nationally significant infrastructure projects (including the construction of certain generating stations, pipelines, highways, airports, harbours, railways, waste water treatment plants and hazardous waste facilities). Where development consent is required under the Act, there is no need for certain other consents to be obtained – such as planning permission, pipeline authorisation, an order under the Transport and Works Act 1992, consent under the Electricity Act 1989 or listed building consent. The Act also provides for the establishment of the Infrastructure Planning Commission (“IPC”) who will examine and, where a National Policy Statement has been designated, determine applications for development consent.

4.2 Section 5 of the Act provides for the designation by the Secretary of State of NPSs. A NPS may, in particular, set out, in relation to specified descriptions of development, the amount, type or size of development, the criteria in deciding appropriate locations and the weight to be given to specific criteria. Section 74 provides that where a NPS has effect in relation to development of the description to which the application relates, the IPC will examine and determine the application.

4.3 In cases where no NPS has effect, the IPC will examine the application and make recommendations to the Secretary of State who will determine the application. Section 104 sets out how the IPC must approach its decision making. In particular, subsection (3) provides that the IPC must decide the application in accordance with any relevant NPS, except to the extent that one or more exceptions apply.

4.4 Before designating a NPS, the Secretary of State must comply with the consultation and publicity requirements set out in the Act and comply with the Parliamentary requirements in section 9. Section 7 requires the Secretary of State to consult with those persons prescribed by regulation. This statutory instrument prescribes those consultees.

4.5 During the passage of the Planning Bill, a number of specific undertakings to consult were made. The Hansard references are as follows;

Commitment made		Hansard Reference
Water companies	included as statutory undertakers	10 Dec 2007 Commons 2 nd Reading Col 123
Ministers for Scotland, Northern Ireland and Wales	included	17 Jan 2008 8 th Sitting Commons Committee Col 293
Natural England	included	8 Oct 2008 Lords Committee Day 2 Col 281 (and elsewhere)
National Parks Authorities	included	16 Oct 2008 Lords Committee Day 4 Col 872
The Environment Agency	included	25 June 2008 Commons Report Day 2 Col 340
Fire and rescue authorities	included	6 Nov 2008 Lords Report Col414
Police authorities	included	6 Nov 2008 Lords Report Col414
Integrated Transport Authorities	included	6 Nov 2008 Lords Report Col414
English Heritage	included	Nov 2008 Lords Report Day 2 Col 479
Local Authorities	included	HoC 2R 10 Dec 2007 Col.121
Cadw	covered by The Welsh Ministers	Nov 2008 Lords Report Day 2 Col 479
Highways Agency	covered by SofS (as explained on page 4 below)	17 Jan 2008 (pm) Commons Committee Col 274
Network Rail	covered by “approved operators”	17 Jan 2008 (pm) Commons Committee Col 274
Marine and Fisheries Agency	covered by SofS (as explained on page 4 below)	10 Nov 2008 Lords Report Col.462
Marine Maritime Organisation	will be included once the MMO is established	16 Oct 2008 Lords Committee Day 4 Col 875

4.6 This is the first statutory instrument in a series which will implement Parts 1 to 8 of the Act. The next set, covering pre-application procedure, environmental impact assessment and model clauses are currently being consulted on. Future provisions will include examination procedures and fees.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom (see section 240 as to extent of the Act).

5.2 The devolved administrations have responsibility for planning for the most part, but there are certain narrow categories of infrastructure where decision making is not devolved, including in Wales, nationally significant harbours, major energy infrastructure projects generating over 50 megawatts onshore; and in Scotland, oil and gas pipelines which cross the border into England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Act makes provision for the creation of a new independent body, the IPC, which will take over responsibility for considering and deciding on major infrastructure applications; and for the Government to produce NPSs which will provide clarity on what the national need for infrastructure is and set the policy framework for IPC decisions. The Act provides for:

- the Government to produce NPSs for nationally significant infrastructure. These will integrate environmental, social and economic objectives, including climate change commitments, in order to help deliver sustainable development. They will set out the national need for infrastructure development and set the policy framework for IPC decisions.
- a new duty on promoters to ensure that proposals are properly prepared and consulted on before they submit an application for nationally significant infrastructure projects.
- a new independent body, the IPC, to take over responsibility for considering and deciding such applications. The IPC will determine the application in accordance with the NPS subject to the exceptions in section 104. The examination process will be streamlined. Questioning at hearings will be led by commissioners rather than being adversarial.

Under the Act, when the Secretary of State proposes to designate a statement of policy as a NPS or to amend a NPS she must ‘carry out such consultation, and arrange for such publicity, as the Secretary of State thinks appropriate,’ unless she considers that a proposed amendment, taken with any other amendments, does not materially affect the policy set out in the NPS (section 7(1)).

NPSs will also be subject to Parliamentary scrutiny. However, section 7 of the Act also allows the Secretary of State to prescribe certain organisations as statutory consultees. The Secretary of State would be under a legal obligation to consult these organisations before designating a document as a NPS.

In preparing this list of prescribed bodies, the Government has reflected on the views expressed during the consultation on the Planning White Paper and during the passage of the Planning Bill through Parliament.

- ***Consolidation***

7.2 Not applicable

8. Consultation outcome

8.1 A 12 week consultation on the draft instrument was carried out between 26 Jan 2009 and 17 Apr 2009. Amendments were made to the draft instrument in accordance with the consultation responses. Where requested amendments were not accepted, the consultees will be able to see the reasons for this on our general consultation response on the CLG website.

The consultation generated responses from 75 bodies, organisations or individuals. Responses were received from a range of bodies, including:

- Local councils
- District councils
- Regional Assemblies
- Industry
- Conservation organisations
- Heritage organisations
- Transport representatives

The majority of consultees stated that they were content with the list, provided that we included their suggestions. In most cases, CLG were able to do this.

There were nine responses asking for additions to the list which were not accepted, of which three asked for the same body to be included. The bodies in question were a mixture of trade associations, aviation, heritage and environmental bodies, none of which have a relevant statutory duty, so they were not included.

In four cases, respondents asked CLG to remove a body from the list of statutory consultees, which the Department complied with. Their reasons were primarily that the body in question was either a subsidiary to a Government Department, or was represented by another organisation which was already included in the list.

The bodies which are listed in Table 1 and Table 2 of the instrument are therefore either bodies which have a relevant statutory duty, or bodies to which a commitment was made during the passage of the Act.

The primary purpose of prescribing statutory consultees in this way is to ensure that those organisations which have statutory roles which could be affected by the policies contained in a draft NPS must be consulted. As a result, CLG have only named a limited number of organisations in the list of statutory consultees in the Instrument.

The Department would expect to consult on a draft NPS more widely than this statutory list. A decision will be made on a case by case basis in accordance with section 7 at the point of consultation.

9. Guidance

9.1 No guidance will be issued.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to the involvement those bodies have with the statutory consultees listed in the instrument.

10.2 The impact on the public sector is limited to the involvement that the public sector bodies have with the statutory consultees listed in the instrument, specifically the consultation activity required when designating or amending a NPS.

10.3 An Impact Assessment has not been prepared for this instrument as the policy options do not have an additional impact on business, charities or the public sector beyond that examined in the Impact Assessment that accompanied the Planning Act 2008.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This list of consultees may need to be updated over time. CLG will revise it as appropriate. Subsequent additional legislation may affect the bodies who need to be statutory consultees, and CLG will continue to work with Other Government Departments to ensure that the list is appropriate and up to date.

13. Contact

Lucy Hagg at the Department for Communities and Local Government Tel: 0207 944 2597 or email: lucy.hagg@communities.gsi.gov.uk can answer any queries regarding the instrument.