

The Draft National Policy Statements on Energy (EN-1 to EN-6)

Written evidence of the Infrastructure Planning Commission to the House of Commons Energy and Climate Change Committee

Summary

The IPC welcomes the publication of the draft National Policy Statements on Energy. While we consider that the draft is fit for purpose, we have identified a number of areas where it should be improved to achieve greater clarity.

Introduction

1. The IPC was established on the 1st October 2009, under the Planning Act 2008, to examine applications for development consent for Nationally Significant Infrastructure Projects (NSIPs), including energy infrastructure developments above the thresholds specified in the Act. Once the National Policy Statements (NPSs) have been designated by the Secretary of State, the IPC will have the power to decide such applications, and must do so in accordance with the relevant NPSs.
2. An important feature of the new infrastructure planning regime is the separation of policy making from decision making. Government sets the policy and the IPC is the planning authority which determines applications in accordance with it, taking account of other factors as set out in statute. It follows from this separation of powers that it would be wrong for the IPC to comment in any way on the policy of the Government. Our comments in both written and oral evidence to the Committee will therefore be restricted to the clarity with which policy is set out in the NPSs and other aspects of their fitness for purpose.
3. The IPC considers that the Appraisals of Sustainability, Strategic Sites Assessments and Alternative Sites Study associated with the NPSs lie behind the policy, rather than forming any part of the NPSs themselves, and it would not therefore be appropriate for us to pass any comment on these documents at all.

Overall fitness for purpose

4. The IPC considers that the draft NPSs on Energy are all fit for purpose. The NPSs provide a sufficiently clear statement of Government policy and appropriate guidance to applicants and interested parties. They give the IPC sufficient guidance on how various aspects of policy should be considered in determining applications.

Areas for improvement

5. We have identified some areas in which we believe there is scope to improve the clarity and fitness for purpose of the whole suite of Energy NPSs, and some specific opportunities to add clarity to individual components of the suite. Addressing the issues with the current draft in these areas, before the NPSs are designated by the Secretary of State, would offer significant benefits for Commissioners and all other parties who need a clear understanding of Government policy in relation to energy NSIPs. Some further observations on the drafting have been set out directly in correspondence with Government lawyers.
6. The cross-cutting issues are as follows:

- a. Summarising policy separately from contextual discussion. The Energy NPS suite is a set of lengthy documents, and while policy is clearly stated within them, it is not always as clearly highlighted as it might be. Distinguishing statements of policy from contextual discussion, perhaps by means of a highlighted text box in each chapter or major section, would help accessibility for all users of the NPSs. This is particularly the case for EN-2, EN-3, EN-4 and EN-5.
- b. Use of language which risks creating tensions with statutory provisions. At certain points in the text (for example, EN-1 paragraph 4.1.1) the drafts run the risk of appearing to restate provisions of the Act in their own terms. This has no value as the terms of the statute obviously take precedence. Moreover, while we fully accept that it is not the Government's intention, the use of very directive language (e.g. "the IPC *must*") may be seen as running contrary to the statutory requirement for Commissioners to take account of all evidence before them in reaching their decision.
- c. Inconsistency of language. It is perhaps inevitable that in such a long and complex suite of documents there will be some inconsistencies of language. This by no means renders the NPSs unfit for purpose, but it may help to limit unproductive debate about the nuances of meaning in different turns of phrase if the department was able to introduce a greater degree of consistency. We might suggest that a simple, neutral formulation such as "the IPC *should take into account*" (EN-1 para 4.1.1) might be used as a standard, replacing many instances of more complex forms of words including "the IPC *should have regard to* the possibility that" (EN-1 para 4.4.3); "*it should/may be reasonable for the IPC to*" (EN-1 para 4.4.3); "*these [considerations] should not be used in themselves to refuse consent*" (EN-1 paras 4.18.13, 4.24.10, 4.24.11, 4.28.9).
- d. Status of evidence cited in the NPSs. The IPC expects that applicants and interested parties will submit a diversity of expert evidence on some issues where it is the responsibility of Commissioners to weigh benefits against adverse impacts. Examples of such issues include (but of course are not limited to) the extent of shadow flicker and noise from onshore wind farms, and the implications of undergrounding electricity transmission lines. The NPSs draw attention to evidence relating to issues of this nature and in some instances appear to suggest that the evidence cited is conclusive. Commissioners will, however, wish to consider all evidence presented to them, and it might be appropriate for the wording of the NPSs to acknowledge this more explicitly.
- e. Carbon footprint. Consideration of climate change impacts is likely to form an important part of the IPC's examination of proposed energy NSIPs, and Commissioners must consider all relevant evidence submitted. The National Policy Statements make clear (EN-1 paragraph 2.1.5) that the IPC "does not need to assess individual applications in terms of carbon emissions against the [carbon] budgets". However, it is assumed that the wider carbon footprint of an NSIP, including impacts along the supply chain and over the whole life of the installation, would be a relevant factor in IPC decision making. Further clarification in the NPSs, on this area would be welcome.

- f. Role of the applicant. There is an occasional appearance of confusion between the role of the applicant and the role of the IPC. In all cases the onus for ensuring a high-quality and compliant application lies with the applicant. For example, in EN-1 paragraph 4.18.15, it is for the applicant to maximise opportunities for biodiversity in their application.
- g. Design. The NPSs refer in a number of places to the importance of good design. Given the policy significance thus attached to good design, it would be helpful for the NPSs to set out a clearer high-level framework for the consideration of design issues, indicating more explicitly what components of good design the Government considers applicants should be incorporating into their proposals, and referring to the most relevant consultees.
- h. Devolved administrations. The IPC has a different and more limited role in Wales, and a very limited role in Scotland. While these differences are appropriately acknowledged at different points in the NPSs (notably EN-3 section 2.2), it would be helpful for there to be a single analysis – perhaps extending the discussion of geographical coverage in EN-1 section 1.4 – of how the policy framework differs between England and the devolved administrations.
- i. Security. In EN-1 section 4.15, the role of the IPC in relation to security matters is left unclear. The IPC has already asked the Government to clarify its position in this regard with respect to all National Policy Statements

7. Issues relating to individual National Policy Statements are as follows:

- a. EN-1 paragraph 4.27.6. It would be helpful if the NPS could spell out rather more substantively the Government's policy on socio-economic impacts. It is self-evident that the IPC will give little weight to unsupported assertions in this or in any other matter.
- b. EN-3 paragraph 2.5.32. The policy on development in the green belt set out here is not explicit. Any renewable energy project will provide wider environmental benefits, and the policy articulated here does not enable the IPC to determine in any way whether these should normally or only rarely be deemed to outweigh the harm of inappropriate development.
- c. EN-5 paragraph 2.9.15. The decision tree as currently presented detracts from the clarity of the NPS. Its implications are not identical to the draft text and need to be spelled out explicitly in the text. For example the implied expectation of optimal phasing is much stronger in the diagram than it is in the text (paragraph 2.9.12), where it is simply identified as common good practice. If the decision tree is to be retained at all, the assessment criteria it presents must correspond fully with the text.

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Chair
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