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## Nationally Significant Infrastructure Projects (IPC regime)

Some of the largest and most controversial development proposals are not dealt with through the normal planning process. This note explains which types of development proposal are affected, what policies and procedures are applied to such proposals, and how you can get involved.

Since the Planning Act 2008 came into effect in 2010, certain types of large infrastructure development called 'Nationally Significant Infrastructure Projects' or NSIPs are granted permission under a new system. They are also known as IPC projects, as until April 2012 the body responsible for dealing with these proposals is the Infrastructure Planning Commission.

The IPC was set up under the previous UK government as an independent body to provide a 'fast-track' system for major developments to ensure that essential infrastructure is not unnecessarily delayed by the planning process.

Decision-making is based on national policy statements issued by the UK government. These started to emerge for certain topics in 2011. The IPC is able to make decisions where a national policy statement is in place. If it is not, then the decision is made by the Secretary of State based on the IPC's recommendation.

### **What happens when the IPC is abolished?**

Many people are aware that the coalition government pledged to abolish the IPC as part of the localism agenda. Following a review of the system, the UK government has confirmed that from 1 April 2012 the functions of the IPC will be taken into the Planning Inspectorate, and that all decision-making will in future be made by the Secretary of State. Other than this, however, **no other changes are currently proposed to the system set up under the Planning Act.**

### **What policy is relevant for NSIPs?**

Applications for NSIPs are determined based on National Policy Statements (NPSs) produced by the UK government. It is intended to produce a NPS for each type of infrastructure.

To date, the UK government has approved a series of six NPSs relating to energy, and one relating to port development. Other statements, relating to railways, major roads, airports, and water and hazardous waste infrastructure are at consultation stage, or being prepared.

NPSs are intended to consolidate existing UK policy. They give reasons for the policy set out in the NPS, and must include an explanation of how the policy takes account of government policy relating to the mitigation of, and adaptation to, climate change. They include the

government's objectives for the development of nationally significant infrastructure in a particular sector and state:

- How this will contribute to sustainable development.
- How these objectives have been integrated with other Government policies.
- How actual and projected capacity and demand have been taken into account.
- Consider relevant issues in relation to safety or technology.
- Circumstances where it would be particularly important to address the adverse impacts of development.
- Specific locations, in the case of nuclear energy, in order to provide a clear framework for investment and planning decisions.

NPSs undergo a democratic process of public consultation and parliamentary scrutiny, before being designated (ie 'adopted').

There will be 12 NPSs in total. Energy is divided into five different technologies (renewable energy, fossil fuels, oil and gas supply and storage, electricity networks, and nuclear), together with an overarching energy NPS. These are produced by the Department for Energy and Climate Change (DECC). All six energy NPSs received designation by the Secretary of State for Energy and Climate Change on 19 July 2011. For further information and to view the NPSs, visit the DECC website ([www.decc.gov.uk](http://www.decc.gov.uk)) and search: 'National Policy Statements for energy infrastructure'.

The only other NPS to be designated is the Ports NPS which was designated in January 2012. To view the Ports NPS, visit the Department for Transport website ([www.dft.gov.uk/publications](http://www.dft.gov.uk/publications)) and search: 'National Policy Statement for Ports'.

Applications for NSIPs will be assessed using criteria on national need, benefits and impacts set out in the relevant NPS, and consideration of evidence put forward on potential local effects.

### **What projects come under the IPC regime?**

There are fewer categories of NSIP in Wales than in England. This is as a result of the agreement between the UK and Welsh Governments of maintaining a 'neutral' devolution regime under the Planning Act. NSIPs in Wales therefore include only the following types of development:

- Construction or extension of an energy generating station
  - Onshore – capacity over 50 megawatts
  - Offshore, capacity over 100 megawatts.
- Electricity lines – above ground, 132kV and above.
- Certain underground gas storage and pipelines.
- Ports facilities over specified cargo capacity.

All the projects that have come forward in Wales so far are energy projects, mainly electricity generation. As of February 2012, there were 10 proposals in the IPC system, mainly at pre-application stage.

### **What is the consenting process?**

NSIPs sit outside the normal planning process. NSIPs are regulated by Development Consent Orders (DCOs), which in effect incorporate planning permission together with other types of consent required for the development. They can also include land acquisition.

One of the reasons why NSIPs are often considered 'fast-track' is because the Planning Act allows for different types of consents to be wrapped up in the DCO. However, in Wales the opportunities for this are more limited than in England. Most importantly, in Wales there is no real concept of 'associated development', which means that development associated with the project, but not part of the main installation, will require planning permission in the normal way from the Local Planning Authority.

### **Is the IPC system democratic?**

The IPC system was set up to take controversial applications for essential infrastructure out of the normal democratic process.

The changes to the system coming in April 2012 will restore a degree of democratic accountability, in that the ultimate decision will be made by the relevant Secretary of State. In the case of energy development in Wales, this is the Secretary of State for Energy and Climate Change. This reflects the previous regime (prior to IPC) where such applications were considered under the Electricity Act 1989 rather than the normal planning system, and so were not determined in Wales.

The Planning Act 2008 recognises the need for local political involvement in the process and sets out a comprehensive consultation procedure (see below). Local Planning Authorities and the Welsh Ministers are statutory consultees for all NSIPs in Wales, as well as NSIPs in adjoining authorities in England.

### **How can I make my voice heard?**

The best way to get involved is to respond directly to consultations undertaken by the developer and by the IPC. You can either do it as an individual or as part of a group (or both). You can also lobby your Local Planning Authority and political representatives – councillors, AM and MP - who may take your comments on board when responding on the consultation themselves.

The rules about consultations are set out in the Planning Act, and there is lots of advice on the IPC website ([infrastructure.independent.gov.uk](http://infrastructure.independent.gov.uk)). The way it works is that much of the consultation on the project takes place up front, before the application is submitted to the IPC, and is carried out by the developer. This is the only stage in which you can influence the shape of the proposed development.

Once the application is submitted to and accepted by the IPC, no further changes can be made to the project, although you may be able to influence any 'requirements' of the DCO

(similar to planning conditions) and the content of legal agreements (known as Section 106 agreements). At this stage, all the consultation is carried out by the IPC and you will need to register with the IPC at the right time to make sure you are on their list of ‘interested parties’.

### **Pre-application consultation**

The rules for developers to make sure they engage effectively with members of the public and all organisations that may be interested in a project are strictly enforced. Applications will not be accepted by the IPC unless the developer can show in their ‘Consultation Report’ that consultation has been comprehensive.

The IPC will want to see that local people and organisations have been listened to, and that the proposals have been shaped as a result of feedback received. This is not a rubber-stamping exercise, and there is a very real opportunity to get involved.

Each project will have its own consultation plan, which must be widely publicised locally at each stage. An early formal stage is the Statement of Community Consultation, which must be agreed with the Local Planning Authority and then published in the vicinity of the development site. The community consultation will involve a variety of different methods of engagement – these may include exhibitions, leaflets, questionnaires, websites and setting up of local forums.

It is important to understand that there is in effect a ‘presumption in favour’ of NSIPs, unless it can be shown that a particular project will result in damage that outweighs the national benefit.

Whilst this shouldn’t prevent you expressing your views on the principle of the project, it is very important to make sure that you try to get the best out of the development on the basis that it may well go ahead. This can only be achieved by getting a good understanding of the proposals, the site, and proposed ‘mitigation measures’.

Mitigation measures can help reduce the impact of a development, for example by altering the siting of a lorry route to avoid sensitive wildlife areas, or can offer enhancements such as providing new habitats to increase biodiversity. At the pre-application stage, developers are likely to welcome any positive and realistic suggestions in order to demonstrate to the IPC that local views and feedback have been taken into account.

### **Post-application: the ‘examination’**

The examination stage starts after the application has been accepted by the IPC, and normally takes six months. Examination is mainly carried out by written representation, although there may be hearings towards the end of the examination period.

To be fully involved in the process, you need to register as an ‘interested party’ with the IPC. You will then have the right to attend the preliminary meeting and make representations direct to the IPC. You will be given a limited period of time (at least 28 days) in which to register, and this will be publicised locally by the developer, but you need to watch out for this happening – this is where it helps to be working with other interested parties, to make

sure you don't miss the window for registration. Once you are registered, the IPC has an obligation to keep you informed.

The examination process is designed to be streamlined. The IPC is therefore reluctant to hold hearings on any matters that can be dealt with adequately by written representations, and also discourages repetition. Be succinct and focus on what you want to achieve. If an issue is relevant and important, the IPC will consider it – it doesn't really help to keep repeating it and your key message may get lost.

### **Can your Local Planning Authority help?**

Whilst the Local Planning Authorities do not have a direct role in making the decision on NSIPs, they will be important consultees, and have some specific responsibilities. These include 'signing off' the Consultation Report, to confirm to the IPC that the developer has complied with the Statement of Community Consultation, and each Local Planning Authority is invited to prepare a Local Impact Report, which are key documents for the IPC to consider when it examines the application. All Local Planning Authorities in which the proposed development is located, as well as all bordering Local Planning Authorities, can be involved in these activities.

The Local Planning Authority or Authorities in which the proposed development is located will also have a very important role in commenting on the draft DCO and on any Section 106 agreement. The draft DCO includes the draft 'requirements' (equivalent to planning conditions). The draft DCO and an outline of any proposed Section 106 agreement are submitted by the developer at the application stage, and are then an important part of the examination process. Your Local Planning Authority will be very familiar with the preparation of planning conditions and Section 106 agreements, and their views will be a significant factor in the final decision. If you have specific ideas on what should be included in the 'requirements' or Section 106 agreement, then let your Local Planning Authority know as their support will be very helpful.

### **Should I take part in the hearings?**

Any hearings which the IPC decides to hold will be one of two sorts: either an 'open floor hearing', in which anyone registered as an 'interested party' can have their say, or an 'issue specific hearings', where participation is by invitation only.

You may want to speak at an open floor hearing, and many people will feel this allows them to put their case better and more directly than written representations. However, you will also have to put your case in writing, and the IPC as a matter of principle discourages repetition. If you are working with other people with similar interests, it is likely to help if your hearing contributions complement one another – if you tend to repeat earlier statements, you may get cut short!

Issue specific hearings are more likely to hear only representations from 'experts', including officers of the Local Planning Authority, statutory bodies such as CCW and voluntary organisations that have specialist knowledge. The 'specific issues' that may be covered will depend on the project, but may include, for example, impact on birds and other wildlife, landscape impact or noise. Each hearing is likely to last only about one day.

The IPC will not decide until some way into the examination process which issues it considers need issue specific hearings, but you will be informed when they make this decision if you are registered as an 'interested party'.

One other type of issue specific hearing that is likely to be held on most projects is in respect of the proposed 'requirements' and Section 106 agreement. This important topic is also likely to only involve 'experts,' in particular the Local Planning Authority planning officers. If you have any requests to make it may be a good idea to liaise with them.