



The Nuclear National Policy Statement (NPS) and associated documents were published on 9 November 2009. They comprise a wide range of documents but at a minimum, to understand their operation, we suggest the following three documents are read in this order.

- 1 The Overarching Energy NPS (EN-1);
- 2 The Nuclear NPS (DN6); and
- 3 The consideration of alternative sites.

These documents contain a précis of the more specific consideration that has been given to each of the nominated sites. These are found principally in the Assessment of Sustainability and Habitats Regulations Reports and the reports on radioactive waste from new build and the Strategic Siting Assessment consultation.

Which sites are in the NPS?

Ten of the eleven nominated sites have been confirmed within the NPS with only one, Dungeness, excluded on the grounds of inability to mitigate impacts on ecologically sensitive areas.

The nominated sites included in the NPS are Bradwell, Braystones, Hartlepool, Heysham, Hinkley Point, Kirksanton, Oldbury, Sellafield, Sizewell and Wylfa.

NPS commentary on need

The NPS concludes that all ten sites are needed and that the Infrastructure Planning Commission should assume this need has been demonstrated in every particular case.

Outside of this, no specific targets are set for provision of new installed nuclear capacity but an indicator of the contribution that new nuclear can make to meeting the future energy gap is given with the wording that new nuclear is expected to be "*free to contribute as much as possible towards meeting the need for 25GW of non renewable capacity*".

The reason that no more specific target has been given is that the government is keen to allow the energy industry to choose which types of technology to pursue in order that the market determines the optimum mix for diversity of energy sources.

The NPS indication that need will always be assumed for any energy source must theoretically at some point falter if very heavy provision of one type of energy source is pursued. However, a clear indication is given that applications for any of the ten allocated sites will not be refused by the IPC on the basis of lack of need.

NPS guidance on assessing local impacts

One statement in the NPS that may appear surprising is that it is not intending to set new policy but rather to make clear these aspects of existing policy that will be relevant to the IPC's decisions.

This point is stressed in the Assessment of Sustainability conclusions which provide that the consequence of the NPS is not to make an application for a nuclear power station any easier or harder than it would have been before the NPS had been issued.

Disclaimer: This briefing is not intended to be a complete coverage of the law in this area. Legal advice should always be taken in any particular case. ADMINISTRATION\369121\v.2

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The NPS sets about the task of clarifying the assessment criteria for the IPC by listing a wide range of considerations which would be relevant to the IPC's determination. These are listed generally in respect of all energy developments in the Overarching NPS (EN 1) and then specifically from a nuclear perspective in the Nuclear NPS (EN6) and then even more specifically for each site that has been included in the NPS.

Despite the government's assessment of these factors on each site, a wide range of matters are still held over for information to be submitted to the IPC, in essence requiring that appropriate design minimises impact in all these areas.

Whilst the NPS does provide a clear insight into how national need will be balanced against local impacts, at the same time the overall approach of the IPC is stressed to be one of considering whether the terms of the NPS are met at any site and to determine whether the adverse impacts of any development outweigh the contribution to national need. It is very apparent from the drafting that the factors still left for consideration by the IPC after the confirmation of the NPS could lead to the refusal of permission at any of these sites.

Developers will be particularly interested in the key messages on the approach that will be taken by the IPC on the more problematic issues that new build is likely to face, particularly in relation to internationally designated ecological sites, impacts on nationally important landscape designations and the consideration of alternatives.

Internationally designated ecological sites

Most of the coastal sites have the potential to impact upon SACs or SPAs and in doing so the NPS concludes that the potential for adverse impacts from these developments cannot be ruled out. The full impacts will be unable to be modelled until a site specific application has been made. For the time being the government has made its own assessment of the potential arguments relating to imperative reasons of overriding public importance (IROPI) in deciding whether to allocate these sites, despite the potential impacts they could have on internationally protected ecology.

Site promoters will have to undertake a full Habitats Regulation Assessment on most sites, which may require a site specific case to be made on the question of IROPI. In doing so they will need to show sensitive design and mitigation that minimise impacts, but in undertaking any final assessment of those impacts, they and the IPC, will be able to point to the government's assessment for the need to use these sites.

One issue of specific interest on this topic will be the government's statement that the European Commission has not been approached on the assessment of IROPI. This will be a step that will be examined closely both by promoters and potential opponents to new build.

Landscape and visual impacts

Another area where there has been particular concern for developers is the potential impact of new developments in protected landscapes, particularly in National Parks and Areas of Outstanding Natural Beauty which conventionally receive the highest level of protection from landscape impacts of new developments.

Again the NPS will require sensitive design minimisation of impacts but beyond this it allows for the potential development in these areas, including the impacts of associated development such as new roads and grid infrastructure, and in doing so directs the IPC towards the consideration of alternative sites that the government has undertaken to justify such impacts.

NPS consideration of alternative sites

To provide depth to the assessment of sites that were nominated, the government has undertaken a further assessment (commissioned from consultants Atkins) of potential alternative development sites around the whole of England and Wales. This involved a criteria based site search on a wide range of base criteria that eventually identified three sites considered "*worthy of further consideration*". None of these have in fact been included in the final NPS.

This document will be of particular assistance to promoters in advancing their sites when answering any questions on alternatives.

Indeed the NPS sets out particularly clear guidance on how applicants and the IPC should respond to questions about alternatives to their sites. Whilst stressing that nominated sites will not be considered as alternatives to each other (and third parties suggesting an alternative may bear the responsibility of producing evidence on such a site), it is clear there is still latitude for consultees to raise the question of alternatives and to advance arguments about the suitability or viability of alternative sites to those presented.

New build radioactive waste

A significant amount of detail is submitted on potential waste arising from new build with a conclusion reached that sufficient progress has been and is continuing to be made on a long term waste repository tied with the temporary storage facilities that will be required at new build sites in order to satisfy the government's commitment not to proceed with new build unless sufficient progress has been achieved on the waste issue.

Public awareness

The NPS, as is common with government documents such as this, provides a reminder of the public consultation that has lead up to it. Nominators were required to raise public awareness around the nomination sites and to have specifically notified certain key bodies such as the Local Planning Authorities that a nomination had been made. In support of the NPS, the government is likely to point to the statistics they have disclosed of there being in excess of 3,500 specific comments on individual sites and siting criteria made from nearly 850 separate respondents to the nomination process.

What happens next?

A consultation exercise is now starting on the NPS, with comments invited by 22nd February 2010. This is tied to the parliamentary approval stage, with the indication that the Select Committee will draw its evidence from consultation responses received by 15th January 2010. That Committee Report will then be reported to both Houses of Parliament.

Consideration for promoters of sites will now focus on:-

- How much evidence, if any, is needed to support sites through the parliamentary process?
- How extensive will site specific evidence need to be, given the NPS treatment of matters?
- What aspects of NPS treatment prevent issues from being looked at any further by the IPC?
- What area of legal challenge remain to an IPC application on matters such as environmental impact assessment, habitats regulation and justification given the present drafting of the NPS and progress with the justification process?

11 November 2009

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