

Insights

UK ENERGY NATIONAL POLICY STATEMENT REVIEW: OVERVIEW OF CONSULTATION DRAFTS

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The Department for Business, Energy and Industrial Strategy (BEIS) launched a consultation into revisions to the Energy NPSs earlier this month (which closes on 29 November) in line with the Planning Act 2008 which requires the review of an NPS whenever it is considered appropriate to do so. NPSs are the primary policy against which all applications for Development Consent Orders (DCOs) for so-called Nationally Significant Infrastructure Projects (NSIPs) are promoted and determined.

This is an important consultation for the energy industry because the revised NPSs will be in place for a number of years and will set the framework for decision making for all energy infrastructure that falls within the NSIP regime.

This contrasts with the Airports NPS, the review of which is deferred until after the Government's Jet Zero Strategy (which will set out policies for aviation to meet net zero emissions by 2050) has been finalised following a consultation.

The principal purpose of the consultation on the energy NPS suite, is to identify whether the draft revisions to the NPSs are fit for purpose and to seek views on the accompanying Appraisals of Sustainability and Habitats Regulations Assessments that have been carried out to help to ensure that NPSs take account of environmental considerations.

Proposed changes to current NPSs

The current energy NPSs were first designated ten years ago, in 2011. Since then the topic of climate change has become a climate emergency, and in turn technology, policy, scientific evidence, and best practice methodologies have advanced. The Energy White Paper 'Powering our Net Zero Future' was also published in December 2020 which sets out the Government's more ambitious objectives and targets to transition to clean energy (net zero) by 2050 and shift away from fossil fuels. The draft revisions to the NPSs aim to ensure the documents reflect the current regulatory and policy framework and the new Government objectives as set out in the Energy White Paper and are based on up-to-date analysis and understanding of energy infrastructure and technologies.

Of the six existing energy NPSs (EN-1 to EN-6), only five are proposed to be revised. The NPS on Nuclear power Generation (EN-6) which sets out the development framework for nuclear projects deployable before 2025, was subject to a standalone consultation in 2018 and does not form part of this consultation. The consultation confirms that a new Nuclear NPS, to replace the existing EN-6, will be developed separately from this consultation. In the meantime EN-6 will continue to apply to new nuclear stations deployable by 2025 as described in 7 December 2017 Ministerial Statement on EN-6. EN-6 will also be a material consideration in applications for new nuclear stations deploying after 2025, which will be determined under section 105 of the Planning Act 2008 (Decisions in cases where no NPS has effect) until such time as the new Nuclear NPS is designated.

Overarching themes

Many of the proposed changes to the NPSs are designed to build more flexibility into the policy framework to reflect the fact that the future energy generation mix will be more complex with energy coming from a wider range of sources (for example renewables, low carbon, hydrogen, with residual use of unabated natural gas and crude oil fuels for heat, electricity, transport and industrial applications) and these will all play a role in the transition to net zero. The NPSs must therefore be flexible enough to support and accommodate the infrastructure requirements of the emerging and future energy network.

Save for the need for new coal and large-scale oil-fired electricity generation which is removed, the need and urgency for new largescale energy infrastructure to meet government objectives is strengthened by the revisions.

There is also more detail on environmental principles, biodiversity net gain (with technology specific guidance on suitable types of biodiversity net gain schemes) and on good design.

Substantive specific changes

More specific changes that are worth highlighting are that EN-1 (the overarching energy NPS), which currently has effect only in combination with the relevant technology-specific NPS for energy developments that fall within scope, will continue to have effect where there is an appropriate technology specific NPS. But EN-1 may now also have effect in its own right where there is no technology specific NPS, for example for Carbon Capture and Storage (CCS) and hydrogen infrastructure schemes, or in cases where the Secretary of State directs an energy infrastructure project into the NSIP regime under section 35 of the 2008 Act.

In the context of EN-2 which covers natural gas, the policy recognises its ongoing role in the transition to net zero and in the phase out of coal and largescale oil-fired electricity generation. The policy also deals with the emerging potential for the use of low carbon hydrogen in electricity generation, but refers to an 'upcoming hydrogen strategy' that will provide further detail on the Government's approach (the [Hydrogen Strategy](#) was published in August 2021).

EN-3 sets out the policy on renewable energy which is amended to address the impacts that are specific to the different types of renewable energy. It no longer provides specific information on onshore wind as this was removed from the NSIP regime. New sections on environmental compensation, marine planning and co-ordination of onshore transmission are included and there is new guidance on solar PV and tidal stream energy.

EN-4 deals with gas supply infrastructure and oil and gas pipelines which will still be required over the coming decades as a secure, reliable, and affordable energy supply during the decarbonisation of the energy system. The revisions address specific impacts and considerations for the import, storage, and transmission of gas and oil products.

In the context of EN-5 which covers electricity network infrastructure, the policy on undergrounding of new electricity lines has substantively changed. Pylon-supported overhead conductors remain the strong starting presumption for new electricity lines generally, but this situation is reversed in National Parks, Broads and Areas of Outstanding Natural Beauty. In these areas, and where harm to the landscape cannot feasibly be avoided by mitigation or re-routing, the strong starting presumption is that new lines should be undergrounded, unless it is not feasible in engineering terms or where the harm of doing so outweighs the landscape and visual benefit. In addition, developers are now strongly encouraged to pursue permanent land rights (which are more economic and efficient) wherever possible, rather than relying on terminable wayleaves as has been the case under the current policy.

Geographic coverage

The energy NPSs have effect across England and Wales, adjacent territorial waters and the offshore Renewable Energy Zone (except that part in respect of which Scottish Ministers have functions). The NPSs only have direct effect in Scotland in respect to cross country pipelines between Scotland and England or Wales. However, as energy policy is a matter reserved to UK Ministers the NPSs may be relevant considerations to planning decisions in Scotland.

Transitional arrangements

The consultation proposes that the amended NPSs, once in place, will only effect applications for development consent accepted for examination after designation. Until then, the current suite of NPSs (or for nuclear development the position set out in EN-6 and the Written Ministerial Statement of 7 December 2017) remain relevant and will form the basis on which applications should be prepared, examined and decided upon.

Comment

Overall, the revisions will be welcomed by the sector. The new flexibility should mean the NPSs will stand the test of time in an evolving and very important sector if the UK is to meet its climate change commitments, and the renewed clarification on the need for infrastructure and on targets will help

examinations to remain focused on the impacts of infrastructure and assist timely decisions. Clarification in other policy areas will also help to remove some opportunities for judicial review of decisions and reduce delays in infrastructure delivery. However, the devil is in the detail and given the importance of these policy documents in the energy NSIP regime, close scrutiny by stakeholders and participation in the consultation process is recommended to ensure the designated NPSs create a robust and workable framework within which energy DCOs can be taken in the foreseeable future.

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