

Insights

NSIP ACTION PLAN: WHAT DOES IT MEAN FOR PROJECT PROMOTERS?

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SUMMARY

The Government's Action Plan on how it proposes to improve the NSIP planning process has some good ideas, most of which amount to fine-tuning rather than a fundamental change. Whilst some of the changes may increase the cost and time burden for promoters at the pre-application stage, this is balanced against the potential benefits of a higher quality and more robust service offered by PINS, policy clarity and the availability of a 'fast track' examination process for certain applications. However, complex projects may experience more limited improvements to the planning process, which may be a concern for promoters of these schemes.

The Government has now published its Action Plan on proposed improvements to the NSIP planning process. This Action Plan has been a few years in the making, and follows a decline in the level of certainty the current consenting system offers, delays in the time it takes to secure a decision and a recent rise in successful DCO challenges.

Previously, the Government has acknowledged the infrastructure consenting process could be 'better, faster and greener'^[1], and it carried out an operational 'end to end' review of consenting regime in 2021. Many of the proposed actions for reform are not new and consist of existing commitments and announcements, but the Action Plan is helpful in that it incorporates them all into a single document and provides a clearer direction of what improvements will be made and when, and how they will be funded.

FIVE REFORM AREAS

A key Government priority 'is to get back to decision-making within the statutory timescales as a minimum and make improvements wherever possible'^[2].

To do this the reforms are designed to incentivise early engagement between promoters and stakeholders so issues can be identified and ideally resolved at the pre-application stage, allowing a

more focused examination and shorter decision stage. The pre-examination stage is flexible, in contrast to the examination and decision stages which are fixed by the Planning Act 2008 at (up to) six months for the examination and three months for a recommendation to be made to the Secretary of State.

The actions for reform are grouped into the following five areas:

1. Setting a clear strategic direction with more regular reviews of the NPSs to reflect government priorities and to reduce policy ambiguity. With some NPS's now more than ten years old, they do not always reflect current government policy and it can be difficult for both promoters and decision makers to take robust decisions.

The Action Plan confirms the following target dates for the:

- New NPS for Water Resources to be designated by Q1 2023
- Updated Energy NPSs (EN-1 – EN-5) to be designated by Q2 2023:
- NPS for Nuclear Power Generation (EN-7), to be designated by early 2025, and a separate NPS for nuclear fusion is also planned.
- Updated National Networks NPS to be designated during 2023

2. Operational reform to speed up the consenting process which focuses on incentivising promoters and consultees to identify and resolve complex issues before an application is submitted and the introduction of a 'fast track' examination process for certain applications (to be piloted from September this year). An amendment to the Levelling Up and Regeneration Bill (made in August 2022) will allow a shorter statutory timeframe for the examination where quality standards are met, and a consultation on these standards is due in the spring.

3. Realising better environmental outcomes with a new system of Environmental Outcome Reports (with statutory provision contained in the Levelling Up Bill) intended to reduce bureaucracy and focus on the environmental outcomes of development along with proposed amendments to the existing framework governing protected sites and species (including HRA) (a consultation is already under way);

4. Strengthening engagement with local communities through increased funding, support and guidance on community engagement expectations and a separate consultation expected shortly on how communities can benefit from hosting electricity transmission network infrastructure;

5. Improving system capability with improvements to the capacity and service offered by PINS and measures to address the skills gaps in government agencies, funded by increasing fees and establishing cost recovery by PINS and key statutory consultees for their work in engaging in the process.

WHAT DOES THIS MEAN FOR PROMOTERS?

The burden of delivering some of these reforms (particularly those to speed up the consenting process) will fall most heavily on scheme promoters, as they may need to spend more time and resource at the pre-application stage and seek a greater level of collaboration with stakeholders.

'FAST TRACK' EXAMINATION

Whilst the 'fast track' examination process is welcomed, this will only be available for projects that meet quality standards which will determine whether outstanding issues are capable of being handled through this track.

To qualify for the 'fast track', promoters will need to prepare a targeted and issues-focused pre-application programme identifying its approach to pre-application engagement, enter into agreements with statutory consultees and planning authorities to support the delivery of the programme, and buy into the enhanced pre-application service from PINs to be delivered under the reforms. Engagement between infrastructure developers and those with an interest in their project must be 'meaningful' so that project issues are identified 'collaboratively'.

For less complex projects a more 'proportionate' examination procedure is also proposed. It is not clear what type of projects would qualify for this route or how long the examination would be, but the Action Plan suggests a greater reliance on written representations.

However, all applications regardless of whether they qualify for the 'fast track' or not, should benefit from the proposed digitisation of the examination process.

FEWER STATUTORY CONSULTTEES

The current NSIP regime is already front-loaded and requires pre-application consultation, but the increased scope of pre-application duties as identified above means the process becomes even more front-loaded. However, this may be partially offset because the number of statutory consultees with which promoters must consult will be more streamlined according to project type.

COMPLEX PROJECTS

It is acknowledged that some sectors face more complex and strategic challenges than others and this might limit the availability of the 'fast track'. Offshore wind projects and transmission network developers are given as examples. However, the Action Plan does not offer any potential solutions to sector specific challenges, other than to say the Government will continue to work with these sectors. In practice, as it currently stands the Action Plan may deliver only limited improvements for these types of NSIPs.

ENHANCED ADVICE

Along with the streamlining of the consultation requirements with statutory consultees, promoters may find the additional pre-application burdens more palatable when balanced against the promise of more expert support and an enhanced pre-application service available from PINS, along with stronger project management, authoritative planning advice and the tracking of project issues. At a practical level, it will be interesting to see how this is delivered.

SUMMARY

In practice, whilst the Action Plan may increase the cost and time burden for promoters at the pre-application stage, this is balanced against the potential benefits of a higher quality and more robust service offered by PINS, policy clarity and a 'fast track' examination. The Action Plan has some good ideas, most of which amount to fine-tuning rather than fundamental change and, provided they deliver, are welcomed. However, complex projects may experience more limited improvements to the speed at which consents can be granted, and this may be a concern for promoters of these schemes.

[1] In the National Infrastructure Strategy in 2020 and the British Energy Security Strategy in April 2022

[2] The statutory timescales under the Planning Act 2008 for decisions to be delivered within 17 months of an application being submitted

RELATED PRACTICE AREAS

- Planning & Zoning
- Infrastructure
- Energy & Natural Resources

MEET THE TEAM



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