

National Assembly for Wales
Sustainability Committee

National Policy Statements: Response to the
UK Government's consultation

February 2010



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

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Sustainability Committee

The Sustainability Committee is appointed by the National Assembly for Wales to consider and report on issues affecting Climate Change, Energy, Rural Affairs and Agriculture, Environment and Planning

Powers

The Committee was established on 26 June 2007 as one of the Assembly's scrutiny committees. Its powers are set out in the National Assembly for Wales' Standing Orders, particularly SO 12. These are available at www.assemblywales.org

List of Reports published by the Committee

<i>Report title</i>	<i>Date of publication</i>
Report on the Committee's scrutiny of the UK Planning Bill: Implications for Wales	February 2008

All previous committee reports can be found at www.assemblywales.org

Committee membership

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Mick Bates (Chair)	Welsh Liberal Democrats	Montgomeryshire
Lorraine Barrett	Labour	Cardiff South and Penarth
Joyce Watson	Labour	Mid and West Wales
Irene James	Labour	Islwyn
Leanne Wood	Plaid Cymru	South Wales Central
Angela Burns	Welsh Conservative Party	Camarthen West and South Pembrokeshire
Karen Sinclair	Labour	Clywd South
Rhodri Glyn Thomas	Plaid Cymru	Camarthen East and Dinefwr
Brynle Williams	Welsh Conservative Party	North Wales

The Committee's Recommendations

The Committee's recommendations to the Welsh Government are listed below, in the order that they appear in this Report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions:

Recommendation 1. The National Policy Statements should be amended to reflect the primacy of Welsh Planning Policy in areas of devolved competence. This should include:

The inclusion of references to all Welsh Planning Guidance and Technical Advice Notes where there is reference to the equivalent English document;

Clarification of the status of TAN 8 (Renewable Energy) as a document of which the IPC must take due account when making decisions about renewable energy schemes in Wales.

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Recommendation 2. The final version of the NPSs must make it clear that whilst the NPSs may be a material consideration in future planning decisions made by Welsh Local Authorities, planning policy and guidance from the Welsh Assembly Government will be of primary importance in these decisions.

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Recommendation 3. The NPSs must contain guidance on the resolution of potential conflicts between those parts of schemes subject to a Welsh consenting regime and those parts to be decided by the IPC (e.g. Marine Licenses and applications for ancillary and associated works)

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Recommendation 4. That a separate carbon appraisal of the full lifecycle of each individual project (including construction, working life and decommissioning) must be required and must be made part of the IPC's decision making process.

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Recommendation 5. The National Policy Statements must contain a requirement for the management of nuclear waste from any proposed new nuclear power plant to be scrutinised at the same time as the IPC is considering the application for the new plant.

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Recommendation 6. The National Policy Statements be amended to fully reflect the role of the environment regulators in Wales and that applicants should be encouraged to discuss their proposals prior to submitting an application to the IPC.

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Introduction

1. The *Planning Act 2008* introduced a new system of development consent for nationally significant infrastructure projects.

2. The Infrastructure Planning Commission has now been set up and will soon start to examine applications for development consent, including for those nationally significant infrastructure projects in Wales in the categories listed below:

- The construction or extension of a generating station of over 50 mega watts onshore or over 100 mega watts offshore¹;
- The construction of electricity lines above ground, unless not at or over 132 kilovolts or for a single consumer;
- The underground storage of gas in natural porous strata above certain thresholds and where the proposed developer is a gas transporter;
- The construction of cross-country pipelines (other than by gas transporters) over 10 miles long; and
- The construction or alteration of a harbour with an increase in facilities above certain thresholds.

3. National policy statements (NPS) prepared by the UK Government will set the framework for decisions by the Commission from April 2010.

4. The first set of draft NPS was published by the UK Government for a period of consultation on 9 November 2009.

5. There are six draft NPS on energy that have been issued for consultation²:

- Overarching NPS for Energy (EN-1)
- Fossil Fuel Electricity Generating Infrastructure (EN-2)
- Renewable Energy Infrastructure (EN-3)

¹ The Welsh Government can still consent offshore proposals under the *Transport and Works Act 1992*, where the proposals could interfere with navigational rights.

² <https://www.energygpsconsultation.decc.gov.uk/home/intro/>

- Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)
- Electricity Networks Infrastructure (EN-5)
- Nuclear Power Generation (EN-6)

6. The Sustainability Committee scrutinised the implications for Wales of the Planning Bill in 2008. Several concerns were expressed in their report on the bill about the relationship with the Infrastructure Planning Commission and the planning system in Wales which is largely devolved.

7. In November 2009, the Committee agreed to scrutinise the implications for Wales of the National Policy Statements on Energy which were published for consultation on 9 November 2009.

8. The Committee received written evidence from several stakeholders in Wales and from Jane Davidson, the Minister for Environment, Sustainability and Housing. They held an oral hearing with the Minister on Monday 11 January.

9. The Secretary of State for Energy and Climate Change was also invited to the hearing but to date, no response has been received from his office.

10. The committee raised several issues with the Minister and still has grave concerns about the ways in which the National Policy Statements and the work of the Infrastructure Planning Commission will impact on Wales.

Relationship with the Welsh Planning System and Welsh Ministers

11. In her evidence to the Committee, the Minister reiterated that the aim of the Planning Act 2008 was to be 'devolution neutral' and would not impact on the devolution settlement in Wales.

12. Although the National Policy Statements will guide the decisions of the Infrastructure Planning Commission in England and Wales, the fact that planning is a devolved issue in Wales has led to a differentiation of responsibilities for the IPC between England and Wales.

13. In England, the IPC will grant permission for an energy scheme including its associated and ancillary works.

14. In Wales, permission for the associated and ancillary works is a devolved issue and subject to approval by a Welsh Local Authority or Welsh Minister.

15. We are very concerned about the potential conflicts, confusion and delay that could be caused by this dual permission regime.

16. A Welsh local authority could potentially have the power to veto a scheme approved by the IPC if it did not give planning approval to the ancillary works such as sub stations and cabling required for the scheme.

17. There is little guidance within the NPSs as to how such conflicts should be addressed.

18. Although this situation maintains the status quo, we are deeply concerned that the number of projects which could be seeking approval in Wales is far greater than has been experienced under the previous regime of Secretary of State consents. As seven sites have already been identified in Wales for approval by the IPC, the scenario may well be tested within the first few months of the IPC's work.

19. We do not think that this issue should be ignored in the National Policy Statements.

20. Of even more concern to us in this context is the statement in the Draft Overarching NPS for Energy that:

In England and Wales this NPS may also be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended).

21. It will ultimately be for the Courts to determine what is considered to be a material consideration for a particular planning application and the relative weight that should be given to the NPS. However we think the implication of the statement that the NPSs may be a material consideration in decisions made where planning policy is clearly devolved potentially undermines Welsh Ministers' authority and could potentially undermine the devolution settlement. In short, has this statement been put in to ensure that planning permission for ancillary and associated works has to be granted by Welsh planning authorities? The final version of the NPSs need to make it clear that whilst the NPSs may be a material consideration in future planning decisions made by Welsh Local Authorities, planning policy and guidance from the Welsh

Assembly Government will be of primary importance in these decisions.

22. Welsh Ministers may also still give consent to offshore wind farms in Welsh territorial waters if applicants apply directly to them under the Transport and Works Act 1992, rather than to the IPC.

23. It is not clear in the NPSs under what circumstances applicants would decide to apply to the Welsh Ministers or to the IPC.

24. Welsh Ministers will also be responsible for issuing marine licenses for any offshore development given planning consent by the IPC in Welsh waters.

25. Again, there is no reference to how any potential conflicts between the granting of development permission by the IPC and marine licenses by Welsh Ministers will be handled.

26. Both the Minister and the stakeholders we consulted expressed concern about the lack of primacy given to Welsh planning policy within the statements. Many of the references to planning guidance refer only to the relevant English Planning Policy Statement (PPS) where an equivalent Welsh Technical Advice Note (TAN) which has the same status in Wales exists.

27. In particular we are concerned that draft Renewable Energy Infrastructure NPS does not clearly explain the importance of the Welsh Government's current planning guidance on Renewable Energy (TAN 8) and the role of the Strategic Search Areas. The final NPSs should make it clear that when considering applications for renewable energy infrastructure in Wales the IPC must take due account of Welsh planning policy and guidance, including TAN 8.

28. It is also unclear as to what the process will be for making amendments to the NPSs in future to reflect any changes in Welsh planning policy.

29. The Minister also stated in her evidence that the final NPSs should fully reflect the role of the environment regulators in Wales and that applicants should be encouraged to discuss their proposals prior to submitting an application to the IPC. We support this view and wish to see the NPSs amended accordingly.

Carbon appraisal

30. We are concerned that there is no requirement for a separate carbon appraisal to be undertaken for individual projects submitted to the IPC. In their evidence, the Royal Society for the Protection of Birds Cymru said that this means that the IPC is effectively 'carbon blind'.

31. As carbon reduction is widely acknowledged at Ministerial level as a key priority, we do not understand why such large infrastructure schemes will not have to demonstrate if and how they are contributing to carbon reduction in the UK.

Nuclear waste

32. In her evidence to the committee, the Minister for Environment, Sustainability and Housing said:

The Assembly Government has responsibilities over the management of radioactive waste. The Assembly Government is concerned to ensure sufficient public consideration of the issues surrounding the management of waste from new nuclear power stations and supports calls for a public inquiry over the justification process for new nuclear power stations specifically in respect of radioactive waste management.

33. We are concerned that the Draft NPS on Nuclear energy states that radioactive waste management is an issue that need not be considered by the IPC. We support the Minister's view on the management of nuclear waste and consider that it is an area which should be subject to scrutiny at the same time as the proposal to build a nuclear power plant is being considered.

Recommendation 1: The National Policy Statements should be amended to reflect the primacy of Welsh Planning Policy in areas of devolved competence. This should include:

- **The inclusion of references to all Welsh Planning Guidance and Technical Advice Notes where there is reference to the equivalent English document;**
- **Clarification of the status of TAN 8 (Renewable Energy) as a document of which the IPC must take due account when making decisions about renewable energy schemes in Wales.**

Recommendation 2: The final version of the NPSs must make it clear that whilst the NPSs may be a material consideration in future planning decisions made by Welsh Local Authorities, planning policy and guidance from the Welsh Assembly Government will be of primary importance in these decisions.

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Recommendation 4: That a separate carbon appraisal of the full lifecycle of each individual project (including construction, working life and decommissioning) must be required and must be made part of the IPC's decision making process.

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Recommendation 6: The National Policy Statements be amended to fully reflect the role of the environment regulators in Wales and that applicants should be encouraged to discuss their proposals prior to submitting an application to the IPC.