

# NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS: AN INTRODUCTION

**THE PLANNING ACT 2008 CREATED A NEW CONSENTING PROCESS FOR NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS (NSIPS). THIS BRIEFING NOTE ACTS AS AN INTRODUCTION TO THE REGIME, OFFERING A SUMMARY OF THE KEY LEGISLATION AND ASSISTING YOU IN UNDERSTANDING WHEN AND HOW IT IS APPLIED.**

## THE ESSENTIALS

The Planning Act 2008 created a new consenting process for NSIPs. Some projects are automatically NSIPs if they go over a clear threshold, whilst others require an element of judgment. In addition, the Secretary of State can choose to designate a project as an NSIP, subject to certain criteria.

If a project is an NSIP it requires Development Consent. It is a criminal offence to build a project without development consent if it is required. The Development Consent Order (DCO) is drafted by the applicant, submitted along with supporting documents to the Planning Inspectorate (PINS) for examination and determined by the Secretary of State.

The DCO, once confirmed, is often a statutory instrument, depending on the powers it contains. It grants planning permission for the proposed development and can contain other secondary consents including the compulsory acquisition of rights and / or land, licenses and highways powers.

The process is heavily 'front-loaded', meaning the applicant is required (by statute) to carry out meaningful pre-application consultation, and to help ensure there are no shocks or surprises during the Examination.

The adequacy of the pre-application consultation is one of the criteria for the acceptance of an application by PINS for Examination.

The cost of an application is dependent on a number of factors, including the number of Inspectors appointed to examine the application (between one and five).

Applications fees increased significantly in April 2017 and the Secretary of State has issued updated guidance on calculating fees.

The timescale for examining an application is set down in the legislation and is approximately 16 months from application to decision. Pre-application timescales are in the control of the applicant but on average take between 1 and 2 years.

**The Planning Act 2008, as amended by further Acts, defines:**

- What qualifies as an NSIP
- What can be included in an application for a Development Consent Order (DCO)
- The process for making an application
- The process for examining an application
- The 'tests' for making a decision on an application – including the status of National Policy Statements.
- Compulsory acquisition tests



\*Timescales in **bold** are **statutory maxima**

## WHAT QUALIFIES AS AN NSIP?

### Pre-designated NSIPs, subject to thresholds<sup>2</sup>

Sections 14-30 of the Planning Act 2008 establish the types of development project that, subject to defined thresholds (see Annex 1), qualify as NSIPs.

Energy	Transport	Water	Waste Water	Waste
Generating stations (on and offshore)	Highways	Dams and reservoirs	Waste water treatment plants	Hazardous waste facilities
Electric lines	Airports	Transfer of water resources	Transfer / storage of waste	Radioactive waste geological disposal facilities
Underground gas storage	Harbour facilities			
Liquid Natural Gas Facilities	Railways			
Gas reception facilities	Rail Freight interchanges			
Gas transporter pipelines				
Other pipelines				

### PROJECTS SUBJECT TO SECRETARY OF STATE DIRECTION

Section 35 of PA2008 as amended provides that the following projects can be 'directed into' the regime by the relevant Secretary of State (SoS).

A project that:

- a) *Is or forms part of a project in the Energy, Transport, Water, Waste Water or Waste fields*
  - b) *Is a prescribed Business or Commercial project<sup>5</sup>*
- and
- c) *The Secretary of State considers the project is of national significance.*

Direction requests are made directly to the Secretary of State; but the Planning Inspectorate can offer advice before a request is submitted.

Section 35 (a) offers the scope for projects such as regional airports, local authority highways schemes and strategic rail projects that fall outside of the thresholds but are of more than local significance to benefit from, for example, compulsory acquisition powers, certainty of timescale and the national policy statements.

Section 35 (b) offers the scope for a much wider range of projects with significant economic benefits to be considered as NSIPs under the Business or Commercial regulations – see our guidance note 'Nationally Significant Infrastructure: Business & Commercial Development' for more details.

### LEGISLATION AND GUIDANCE SUMMARY

Legislation is at the heart of the National Infrastructure process, and a strong understanding is essential for any project.

***The golden rule – always start with what the legislation says!***

All legislation, guidance and advice can be found on the Planning Inspectorate's dedicated National Infrastructure webpage.

Here's a summary of key legislation, guidance and advice:

Primary Legislation	Secondary Legislation	Guidance	Advice
Acts of Parliament	Gives effect to primary legislation	Statutory guidance which must be taken into account	Non-statutory, non-binding advice produced by Planning Inspectorate
<p>1. Planning Act 2008</p> <p><b>Amendments</b></p> <p>2. Localism Act 2011 <i>Abolished IPC</i></p> <p>3. Growth and Infrastructure Act 2013 <i>Business and Commercial included as NSIP category</i></p> <p>4. The Infrastructure Act 2015 <i>Process changes</i></p> <p>5. Housing and Planning Act 2016 <i>Introduced new infrastructure-related housing category</i></p> <p>Wales Act 2017 <i>Increased threshold for energy generation projects in Wales; allowed associated development to be included for DCOs in Wales.</i></p>	<p><b>Rules</b></p> <ul style="list-style-type: none"> <li>Examination procedures</li> </ul> <p><b>Regulations<sup>4</sup></b></p> <ul style="list-style-type: none"> <li>EIA</li> <li>Interested parties</li> <li>Business or commercial</li> <li>Prescribed forms and procedures</li> <li>Conservation of Habitats and species Compulsory acquisition</li> <li>Fees</li> <li>Decisions</li> <li>Changes to applications</li> </ul> <p>A number of parliamentary <b>Orders</b> have amended primary legislation.</p>	<p><b>Key Guidance</b></p> <ul style="list-style-type: none"> <li>Pre-application</li> <li>Application forms</li> <li>Examination</li> <li>Associated Development</li> <li>Compulsory acquisition</li> <li>Post application changes</li> <li>Infrastructure related housing</li> <li>Fees</li> <li>Costs</li> </ul>	<p><b>Advice Note series</b></p> <p>Including making an application, EIA matters and working with statutory bodies.</p> <p><b>Bespoke Advice</b></p> <p>Section 51 of the Act - PINS publishes all advice it gives.</p>



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## NATIONAL POLICY STATEMENTS

**National Policy Statements (NPS)** are the primary policy documents for NSIPs and establish the principle of national need.

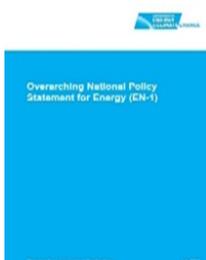
They are issued by the relevant department's Secretary of State and must be laid before Parliament before they can be issued.

Where there is a designated NPS, NSIP applications must be decided in accordance with them except where, among other things:

- The decision would be in breach of international obligations (eg European legislation)
- The adverse impacts would outweigh the benefits.

See section 104 of PA2008 for the full test.

Where there is no designated NPS a different test applies – see section 105 of PA2008. Here, the Secretary of State must have regard to the Local Impact Report, prescribed matters and any other matters the SoS thinks are both important and relevant. Our experience is that the development plan becomes a primary consideration.



## Current National Policy Statements

Energy	Transport	Other
<p>EN1 – Overarching</p> <p>EN2 – Renewable energy</p> <p>EN3 – Fossil Fuels</p> <p>EN4 – Oil and Gas Supply and Storage</p> <p>EN5 – Electricity Networks</p> <p>EN6 – Nuclear Power</p> <p>All designated 19 July 2011</p>	<p><b>Ports</b></p> <p>Designated 26 January 2012</p> <p><b>National Networks</b></p> <p>Designated 14 January 2015</p> <p><b>Airports</b></p> <p>Revised Draft NPS published 24 October 2017</p>	<p><b>Hazardous waste</b></p> <p>Designated 6 June 2013</p> <p><b>Waste water</b></p> <p>Designated 9 February 2012</p> <p>Radioactive Waste NPS also expected.</p>

## IN CONCLUSION

The NSIP regime remains complex and continues to be tested and tweaked as projects progress through it. As such our best advice is if, having read this Guidance Note, or our others on this topic, you are still unclear as to how the NSIP process might be applied or its relevance to your proposals, please do contact Ben Lewis or Tom Carpen in our Infrastructure Team, who will be more than happy to offer some advice.

<sup>1</sup> [Infrastructure Planning \(Fees\) Regulations Guidance 2017](#)

<sup>2</sup> See Annex 1

<sup>3</sup> See Annex 2

<sup>4</sup> Also note [European TEN-E legislation](#) for trans-European energy networks

## ANNEX 1 – SUMMARY OF NSIP THRESHOLDS

See Planning Act 2008 (as amended) sections 15-30 for specific details for each threshold

Field (sector)	Development type	General thresholds (Planning Act 2008 contains more detail)		
		Size	Location	Any other threshold
Energy	Generating stations (onshore)	Construction or extension > 50 MW Construction or extension >350MW	England Wales	
	Generating stations (offshore)	Construction or extension > 100 MW Construction or extension >350MW	England Wales  In waters and up to seaward limits of territorial sea or Renewable Energy Zone	
	Electric lines	132KV or above; 2km or more	England and / or Wales  Part England - Scotland	Above Ground; caveats apply for <2km
	Underground gas storage	Creating or starting to use at least 43 million standard m <sup>3</sup> or at least 4.5million m <sup>3</sup> max flow rate	England Wales	
	LNG	At least 43 million standard m <sup>3</sup> or at least 4.5million m <sup>3</sup> max flow rate	England	Construction or increase of
	Gas reception facilities	least 4.5million m <sup>3</sup> max flow rate	England	Construction or increase of
	Gas transporter pipelines	>800mm diameter and 400 km; > 7bar gauge; at least 50,000 customers of more than one supplier	England (whole or part)	Or likely significant effect on environment; Gas transporter applicant
	Other pipelines		England and / or Wales Part England - Scotland	Cross country; would have required Pipelines Act 1962 authorisation
Transport	Highways	Construction, alteration <sup>3</sup> or improvement <sup>4</sup>	England	Secretary or strategic highways company applicant
	Airports	Construction, alteration, increase in permitted use; at least 10 million passengers/year or at least 10,000 cargo movements	England or English Waters	
	Harbour facilities	Container ships - 500,00 TWU Ro-ro ships – 250,000 units Cargo (other) – 5 million units	England or Wales or waters adjacent up to seaward limits of territorial sea	
	Railways	Construction or alteration >2km	England	Approved operator; not operational land or permitted development
	Rail Freight Interchanges	Construction or alteration At least 60 ha At least 4 goods trains / day	England	From and to more than one consignor/ consignee
Water	Dams and reservoirs	Construction or alteration >10 million m <sup>3</sup>	England	One or more water undertaker

Field (sector)	Development type	General thresholds (Planning Act 2008 contains more detail)		
		Size	Location	Any other threshold
	Transfer of water resources	>100 million m <sup>3</sup> a year	England	
Waste Water	Waste water treatment plants and transfer / storage of waste water	Construction or alteration Capacity > population of 500,000. Storage / Transfer capacity >350,000 m <sup>3</sup>	England	
Waste	Hazardous waste facilities	Landfill/deep storage >30,000 tonnes Other > 30,000 tonnes	England	Final disposal / recovery
	Radioactive waste geological disposal facilities	Depth >200m	England or English waters adjacent up to seaward limits of territorial sea	Final disposal / recovery

<sup>1</sup> Wales will have a separate threshold of >350MW onshore or offshore, but has yet to. Projects under that establish a consenting regime. threshold will be devolved to the Welsh Government.

<sup>2</sup> Definition of sea limits included.

<sup>3</sup> For construction and alteration, speed limit 50 mph or greater, and more than 12.5 ha development area.

<sup>4</sup> For improvement, likely to have a significant effect on the environment.

## ANNEX 2 – PRESCRIBED BUSINESS AND COMMERCIAL ACTIVITIES AND THRESHOLDS

See separate briefing note on Business and Commercial projects for more detail

Category	Indicative threshold
Office use	No less than 40,000m <sup>2</sup> GIA
Research and development of products or processes	No less than 40,000m <sup>2</sup> GIA
An industrial process or processes	No less than 40,000m <sup>2</sup> GIA
Storage or distribution of goods	No less than 40,000m <sup>2</sup> GIA
Conferences	No less than 40,000m <sup>2</sup> GIA
Exhibitions	No less than 40,000m <sup>2</sup> GIA
Sport	No less than 100 hectares / no less than 40,000 seats for stadia
Leisure	No less than 100 hectares
Tourism	No less than 100 hectares
The winning and working of minerals, not including peat, coal, oil or gas.	Strategically important industrial mineral or over 150 hectares surface or underground area

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