

Insights

OPERATIONAL NSIP REFORMS TAKE EFFECT

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SUMMARY

Details of how the recently confirmed operational reforms to improve the NSIP planning process will work in practice are beginning to emerge.

We have previously reported on which of the proposed operational reforms are confirmed, but following publication in April 2024 of various amendment regulations, new National Infrastructure Planning Guidance and PINS' launch of a new online platform, we now have a clearer understanding of the changes and how they will work in practice.

PINS' NEW ONLINE SERVICE

As part of efforts to increase accessibility to data and make it easier to participate in the NSIP process, PINS introduced a new online service at the end of March which enables the submission of online representations, viewing of other parties' submissions and for project documents to be searched and accessed from a single platform. This is hosted from a new website, which practitioners will hope is an improvement on its predecessor.

INFRASTRUCTURE PLANNING GUIDANCE PORTAL

Also to improve access to information, is the new Infrastructure Planning Guidance Portal launched by the Department for Levelling Up & Communities (DLUC) in April. It contains links to all current National Infrastructure Planning Guidance, legacy guidance documents that remain in force with expected revision dates, and superseded guidance. Advice prepared by PINS remains relevant and should be read in conjunction with the guidance on this portal, but these notes are available on a separate platform. This means that all relevant guidance is still not contained in a single place.

NEW NATIONAL INFRASTRUCTURE PLANNING GUIDANCE

The existing National Infrastructure Planning Guidance was comprehensively reviewed as part of the NSIP reform process, resulting in the publication of seven new National Infrastructure Planning

Guidance notes in April 2024 and the withdrawal of the previous guidance on the pre-application process and examinations.

The new guidance notes contain important details that in part update and supplement existing guidance as well as providing new guidance that supports the changes to legislation, processes and practice being introduced.

The new guidance has immediate effect and should be applied to live applications. However, it is not the intention for the revisions to compromise the preparation or progress of applications which are already well underway.

The updates aim to strengthen the guidance by providing clearer and more prescriptive details on each stage of the consenting process, particularly around information requirements and the expectations of all parties involved. Read alongside the relevant legislation, it is designed to increase the efficiency and resilience of the system resulting in faster and better decision making.

This Insight is not a full analysis of all the new guidance, but the following is of particular note.

FAST TRACK ROUTE TO CONSENT

The new fast-track route to consent for DCO applications is available to all projects capable of meeting the new fast-track quality standard and aims to achieve a non-statutory twelve-month target timescale from acceptance to decision. This includes a maximum examination timescale of four months (rather than the current six months).

This guidance note is important as it sets out how eligibility to this route will be assessed and contains procedural details. In essence, three tests will be applied to applications hoping to follow this route to establish the principal areas of disagreement and the complexity of the issues, and ultimately whether they are capable of being examined in four months.

Importantly, promoters wishing to follow this route must propose it at the start of the pre-application stage and in the new 'Programme Document'. They must also engage in PINS' new enhanced pre-application service, with further details to be set out in a new Pre-Application Prospectus expected to be published shortly.

Whilst the fast-track route might appear to be attractive to promoters, our view is that there will emerge a class of projects for which it is suitable – likely smaller and less controversial NSIPs – as opposed to the larger projects. For those smaller projects the fast track would seem sensible. But there is also the potential for greater risk as well as benefit under this new route – for example whether issues can be properly examined in 4 months and whether that will bring greater risk of legal challenge and hence undo the programme benefits sought.

CONSULTATION

There are also some important changes in terms of consultation, and in particular the need for further rounds of consultation, including targeted consultation. Promoters have often had to grapple with this when changes have been necessary, including flowing from consultation. As part of this, there is also new guidance on the Preliminary Environmental Information Report (PEIR) and indeed how it is presented (as a draft ES).

Furthermore, there is also now proposed an interim milestone pertaining to the 'adequacy of consultation' – the logic for which makes sense in terms of ensuring 'no surprises' – however it will be interesting to see how practice develops around this.

FEE RECOVERY

The new guidance on the amended regulations that enable the charging of fees by PINS for pre-application services and by prescribed public authorities from 1 April 2024 on new and existing projects, is similarly important.

It provides details of which public authorities can charge for fees (for example the Environment Agency, Natural England, National Highways, Historic England and the MMO), what advice they can charge for and the consequences of non-payment by promoters along with other important details. The expectation is that this resource will enable greater service levels and hence support efficiency in the examination process.

Whilst cost recovery is constrained by requirements of reasonableness and transparency, it is uncapped and costs are recoverable for advice and services at all stages in the consenting process. It may therefore be difficult for promoters to estimate at the outset what this additional cost liability may be.

OUR THOUGHTS

There are numerous other changes which this blog does not seek to comment on, drilling into various detailed matters such as application documents and approach to landowners, which promoters would be well advised to get to grips with.

That said, we are hopeful that the suite of changes will bring more clarity and support at each stage of the application process to the benefit of all those navigating this complex system. However, whether they are enough to make the whole consenting process "better, faster, greener, fairer and more resilient", as intended, will be seen in how they translate into practice. Given that they will be put to the test immediately we won't have to wait too long to find out.

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