

Insights

NSIP PLANNING: WHAT'S CHANGED IN 2024 AND ON THE HORIZON FOR 2025?

Dec 18, 2024

SUMMARY

2024 has been a year with a continued focus on the Nationally Significant Infrastructure Planning ('NSIP') planning regime by both the predecessor and current government. Reforms to make the regime faster and more effective remain a high political priority given its critical role in delivering infrastructure to support a number of key government objectives.

Operational changes identified in the previous government's various reform programmes and action plans continued to be delivered, with the new Labour government introducing some changes and proposals of its own.

This blog highlights some key changes made to the NSIP planning regime delivered in 2024 with thoughts on what to expect in 2025.

NPS UPDATES

Publication of the updated suite of energy National Policy Statements (NPS) documents (save for the NPS on nuclear power stations which was consulted on in draft) was a welcome start to the year last January, followed by the national networks NPS for transport projects in May 2024.

These updates were long overdue and provided welcome support to promoters bringing forward these types of infrastructure projects as they provide a stronger needs case and a clearer basis for decision makers to take consenting decisions.

The government has said it will carry out more NPS reviews and update all relevant NPSs by summer 2025.

PROCEDURAL CHANGES

Some important changes to the DCO application procedure were introduced, which continue to bed down, including PINS' launch of a new three tier pre-application service, a new fast-track route to consent and cost recovery for some public authorities.

The changes were designed to support the resolution of issues at the pre-application stage and optimise applications to smooth and speed up the post-submission process. Where the fast-track consenting route is opted for, the aim is to provide a DCO decision within 12 months from submission of an application with a maximum examination period of 4 (rather than 6 months). However, greater front-loading in the preparing of application documents to achieve the requisite standards, which will not be possible in every case, is the consequence.

UPDATED GUIDANCE AND ADVICE

Welcome updates were made to both PINS' NSIP Advice Notes and the suite of National Infrastructure Planning Guidance Notes, with the first of three tranches of updates landing in April. A second and third tranche of updated guidance covering (amongst other elements of the DCO process) the application form, changes to DCOs and CPO procedures, were promised in Autumn and Winter 2024 but are still awaited.

STRATEGIC PLANNING

The new Labour administration's most immediate contribution to the NSIP planning process is a stronger emphasis on a more strategic and co-ordinated approach to the delivery of NSIPs.

It intends to strategically join up decisions on housing, business growth and infrastructure at both a national and local level with the promise of a new 10 year national infrastructure strategy in the spring that will cover transport, energy, housing and social infrastructure, coordinated across all government departments.

Other signals of a stronger strategic approach comes with the creation of the new National Infrastructure and Service Transformation Authority (NISTA), to be operational by the spring, which combines the functions of the National Infrastructure Commission and Infrastructure and Projects Authority. This new body will bring infrastructure strategy and delivery together, leading on the strategic planning of major infrastructure projects and supporting the development and implementation of the ten-year infrastructure strategy.

Further, the newly formed National Energy System Operator (NESO) (which replaces the ESO) set up in the Autumn, was tasked with overseeing the strategic planning and design of the country's electricity and gas networks and will produce the first strategic spatial plan for energy to 2050 across land and sea in Great Britain in 2026.

WALES

Perhaps the most radical infrastructure planning changes this year were in Wales, with the legal framework for the wholesale reform of its infrastructure consenting process introduced in The Infrastructure (Wales) Act 2024, which received Royal Assent in June 2024.

When the new consenting regime comes into force it will replace the existing Developments of National Significance (DNS) process with a new “unified system” for major infrastructure projects (similar to the DCO regime under the Planning Act 2008). Certain major infrastructure projects (including those that are currently classed as DNSs) will be classed as ‘significant infrastructure projects’ (SIPs) and will require ‘infrastructure consent’ from Welsh ministers who must decide applications in line with Future Wales: the National Plan 2040 and any relevant ‘infrastructure policy statement’ (yet to be drawn up). Significant secondary legislation is required to bring this new consenting framework into force which was consulted on in 2024 and is expected to come forward in 2025.

EIA

The Supreme Court’s judgment in *R(Finch) v Surrey County Council* in the summer (and applied by the High Court in the Cumbrian coal mining case [2024] EWHC 2349) complicated further the already complex process of environmental assessment, with potentially significant implications on how environmental impacts of some major projects are assessed and how far ‘downstream’ from a development project the decision-maker has to look when assessing its likely environmental effects. Whilst this case is distinguishable on its facts and the assessment of downstream environmental impacts will be limited to specific cases, it will nonetheless warrant consideration when preparing EIAs for DCO applications going forward.

NPPF

The Government’s response to its consultation on changes to NPPF published over the summer also included some infrastructure planning reform proposals. In its consultation response on 12 December 2024 the Government confirmed that it will bring onshore wind back into the NSIP regime, and raise the threshold of projects for both onshore wind and solar to 100MW. It will also follow through with prescribing data centres, gigafactories and laboratories as types of business or commercial development capable of being directed into the NSIP consenting regime, depending on the scale of the project.

IMPROVING PROCESSES AROUND JUDICIAL REVIEW CHALLENGES

The independent review commissioned by the Sunak government at the start of the year examined ways of streamlining the process for judicial review of DCOs to minimise delays caused by unsuccessful legal challenges, whilst at the same time respecting constitutional principles.

The review made ten recommendations designed to reduce process and delay by a few weeks or months, which included a reduction in the number of attempts a claimant can make to get permission to proceed to judicial review from what is currently three attempts to two (or just one) and a reduction in the Court of Appeal timescales. However, there was no recommendation to change the threshold for permission to apply for judicial review.

Following consultation of the current consultation on these recommendations, further changes to legislation or the Civil Procedure Rules may follow next year.

WHAT'S ON THE HORIZON FOR 2025?

PLANNING AND INFRASTRUCTURE BILL

Promised to be introduced in early 2025 the forthcoming Planning and Infrastructure Bill is expected to include legislative changes to take forward the infrastructure planning changes confirmed in the Government's NPPF consultation response (see above), a simplification of the NPS review process to enable five yearly updates, amending the current ad hoc process of reviews by the Secretary of State when considered appropriate. Other measures to "streamline and simplify the infrastructure consenting process" may also be included.

BNG FOR NSIPS

The target date of applying mandatory biodiversity net gain (BNG) to DCOs for NSIPs is November 2025. Consultation on how BNG will be applied to DCO projects was delayed over the summer and expected imminently.

The size of some DCO projects which can straddle more than one local authority area, and built in flexibilities are likely to affect biodiversity baseline units scores and will make the application of BNG to the NSIP regime potentially more complex, so it will be important this consultation includes appropriate accommodations in this respect.

POSSIBLE NEW EOR REGIME

The Levelling Up and Regeneration Act 2023 introduced a broad framework for a new environmental assessment regime to replace EIAs, SEAs and sustainability appraisals, with a new 'Environmental Outcomes Reports' ("EOR") procedure. However, the regulations setting out the detail of this new regime and that would bring it into force have not yet been made nor consulted on. The Government has not signalled whether or not it intends to do so, but there may be some movement one way or another in 2025.

CONCLUDING THOUGHTS

The infrastructure planning regime is likely to remain in a state of flux over the coming years as it remains under pressure to help deliver on a number of the government's key objectives. However, with progress over perfection a more realistic expectation, the more incremental changes that emerge should assist in delivering a faster, smoother and more efficient system to navigate.

RELATED PRACTICE AREAS

- Planning & Zoning
- Real Estate

MEET THE TEAM



James Parker

London

james.parker@bcplaw.com

[+44 \(0\) 20 3400 4132](tel:+442034004132)



Clare Eccles

London

clare.eccles@bcplaw.com

[+44 \(0\) 20 3400 4267](tel:+442034004267)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.