

# Parliamentary Brief



The Law Society

## Planning Bill

Committee - House of Commons

15 January 2008

**Joint Law Society and City of London Law Society**

**briefing on selected amendments**



The City of London Law Society

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**Schedule 1, Page 109, line 4**

Delete sub-paragraph (2).

**Purpose**

To protect the independence of the decision making of the Council of the Infrastructure Planning Commission.

**Briefing**

Paragraph 6 of Schedule 1 deals with the Council of the Infrastructure Planning Commission, its composition and functions. Sub-paragraph (2) provides the chair of the Commission with the power to end the appointment of a person as a member of the Council. In our view this power could lead to potential abuse with serious implications.

Under the Bill a single Commissioner can be appointed to handle a particular application for a development consent order (Clauses 70 -77). In those cases dealt with by a single Commissioner the procedure concludes with the submission of a report to the Council for decision.

The power of the chair to remove a Commissioner from the Council could be used, for example, to remove an individual who has adopted a consistent approach in opposing the grant of development consent for a particular type of nationally significant infrastructure project.

### **Clause 5, Page 3, line 3**

Insert new sub section –

“( ) The Secretary of State must consider any request from an applicant for the production of a national policy statement on an issue on which no national policy statement has been produced”.

#### **Purpose**

To provide a means whereby the Government can be requested to produce appropriate National Policy Statements on issues not addressed by existing Statements.

#### **Briefing**

The promoter of a major infrastructure project, for example a gas pipe line, may be faced with the situation where the Government has not yet produced a National Policy Statement. In the absence of such a Statement the promoter could be faced with the prospect of a protracted process before obtaining consent, a process which could take longer than waiting until the appropriate National Policy Statement has been made before bringing forward an application. There is no mechanism in the Bill for a developer to prompt the Government to bring forward National Policy Statements. This amendment would provide such a mechanism.

## Clause 5, Page 3, line 6

Insert new sub section –

“( ) The Secretary of State must seek the views of Parliament and must have regard to its views in deciding whether to proceed with or revise the proposal”.

### Purpose

To secure the involvement of Parliament in the approval of National Policy Statements.

### Briefing

The White Paper *Planning for a Sustainable Future* stated that National Policy Statements would be subject to Parliamentary scrutiny and suggested that a possible mechanism might be examination by the relevant Select Committee. The Government response to the consultation replies on the Planning White Paper indicated that it would be a matter for Parliament itself to decide how to scrutinise Government proposals and that the Government would encourage the House of Commons to establish a new Select Committee with the main purpose of holding inquiries into draft national policy statements in parallel with public consultation. In the view of the Government the Committee should be comprised of members from the existing Select Committees on Business, Enterprise and Regulatory Reform, on Transport and on Environment, Food and Rural Affairs. The Government would consider the Committee's reports together with responses to the public consultation and revise draft national policy statements where appropriate before designating them.

These thoughts are not reflected in the Bill itself which contains no reference to the involvement of Parliament in the production of National Policy Statements. The suggested amendment would make clear that each National Planning Statement is to be subject to Parliamentary scrutiny, not just at the discretion of the Secretary of State, while leaving the mode of that scrutiny to be determined by Parliament itself. The Select Committee should in any case include a members from the existing select Committee for Communities and Local Government, omitted from the Government's list in the paragraph above

Indeed our preference would be to treat National Policy Statements like secondary legislation to which both Houses would be required to indicate their support, preferably by vote. That process would reinforce the standing of the National Policy Statements and endow them with democratic credentials. The element of democratic accountability is essential because provided an application for an order granting development consent is in conformity with the relevant National Policy Statement, consent is virtually guaranteed. MPs and Lords must have responsibility for National Policy Statements. Such Statements without such democratic approval risk not commanding public acceptance. This makes serious opposition, such as that at the Newbury Bypass, more likely. Comments from a Select Committee would not persuade the public that Parliament has considered and endorsed the Statements and rendered them persuasive for the purposes of determining applications for major infrastructure projects, notably new nuclear power installations.

Without the involvement of Parliament in the production of National Policy Statements the referral of major infrastructure projects to the Infrastructure Planning Commission would constitute a reduction in democratic accountability. At the moment such a project is likely to be subject to call in from the Secretary of State who would also determine the application following a public inquiry, the scope of which is not delimited as in future it will be under the new National Policy Statements. The Secretary of State ultimately is accountable to Parliament for her decisions. In future the decision will be reached by the Infrastructure

Planning Commission, with no accountability, on the basis of the National Policy Statements.

**Clause 5, Page 3, line 16**

Delete sub section (5)(d).

**Purpose**

To establish how site specific National Policy Statements are intended to operate.

**Briefing**

This is a probing amendment to provide the Government with an opportunity to explain how site specific recommendations in National Policy Statements will work in practice.

The sub section permits a National Policy Statement to identify one or more locations as suitable for a specified type of development. If the Statements are site specific, then they will fall within the ambit of the requirement to produce a Strategic Environmental Assessment. Once the Statement has gone through that process it will have determined the environmental impact of the type of project covered by the Statement and will in effect pre-judge any application for a consent order in relation to the particular site. If the Statement is framed in much broader terms it will not help in speeding up the processing of applications for major infrastructure projects as the applicant will have to undertake the Assessment before submitting the application and the issues raised in the Assessment could be the subject of debate before the Infrastructure Planning Commission.

## **Clause 12, Page 6, line 1**

Delete the clause.

### **Purpose**

To clarify the purpose of introducing a new procedure for legal challenge against a National Policy Statement.

### **Briefing**

This is a probing amendment to provide the Government with an opportunity to explain why it is relying on judicial review for legal challenges relating to National Policy Statements instead of the customary statutory challenge under section 288 of the Town and Country Planning Act 1990.

We cannot understand the need to introduce a new process for judicial review rather than relying upon the existing statutory challenge especially as it is unlikely to achieve the Government's objective of expediting any legal challenge. The clause prescribes a short period of only six weeks from the designation of a National Policy Statement as the deadline for bringing a judicial review. This compares with the three months allowed under the statutory challenge which is based upon the Civil Procedure Rules. The shorter period allowed to make a legal challenge is likely to encourage far more judicial reviews than at present against Government planning policies as objectors hasten to institute proceedings to avoid missing the deadline.

Moreover the Government is likely to be defeated if the object is to provide certainty by closing down the possibility of a legal challenge being brought against the designation of a National Policy Statement after six weeks. *Boddington v British Transport Police 1999*, the smoker who challenged a fine for smoking on the train to Brighton, indicates that validity can be raised several years after a decision has been made by a public authority. An ouster clause such as section 284(1) of the Town and Country Planning Act 1990 is more likely to prevent mischief.