

For the attention of
Charlotte Littleboy,
Deputy Head (Legislation),
Scrutiny Unit,
7 Millbank,
London SW1P 3JA

and

Planning Reform Team
Department for Communities
and Local Government
3/J2 Eland House
Bressenden Place
London
SW1E 5DU

25 January 2008

Dear Sirs

**Planning Bill:
National Policy Statements and Strategic Environmental Assessment**

The Institute of Environmental Management and Assessment (IEMA) and the Ireland & UK Branch of the International Association for Impact Assessment (IAIA) welcomed the opportunity to comment on the Government's proposals to improve the planning system set out in *Planning for a Sustainable Future* (the White Paper). In light of our joint response to the White Paper in August 2007, and the progress of the Planning Bill through Parliament since November 2007, we consider the following points remain to be made on the application of strategic environmental assessment (SEA)¹ to national policy statements (NPS) for nationally significant infrastructure projects. We therefore wish to submit this response on the Planning Bill for consideration by the Public Bill Committee and by the Department during further proceedings and amendments.

The Planning Bill, at Part 2, clause 5, subsection 3, provides that a National Policy Statement can be designated only if the Secretary of State has first carried out an appraisal of the sustainability of the policy.

However, the White Paper, at paragraph 3.9 also stated that 'National policy statements would be subject to an appraisal of their sustainability to ensure that the potential impacts of the policies they contain have been properly

¹ In line with Directive 2001/42/EC (as amended) on the assessment of the effects of certain plans and programmes on the environment, and associated Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No. 1633)

considered. Wherever appropriate we would expect this to be in the form of an SEA.'

We are therefore disappointed that there is no reference in the Planning Bill as to whether SEA would still be expected to be the format for the appraisal of the sustainability of NPS. It is not our view that the Impact Assessment (formerly known as Regulatory Impact Assessment), which would be conducted of an NPS, would comply with the SEA Directive.

As such, we consider that the Planning Bill has taken a step back from the Planning White Paper in that it may seek to avoid NPS being subject to SEA in line with Directive 2001/42/EC at all. This may be our misinterpretation, but it is considered to be a reasonable assumption given the wording in the Bill. The Bill's discussion of 'appraisal of sustainability' is not a useful position as it does not provide clarity whether SEA would be undertaken.

We therefore wish to understand the following:

- 1) Is it Government's view that certain NPS will not be subject to the requirements of the SEA Directive?
- 2) If this is the case, what proportion of NPS are expected to be exempt from SEA during their initial development?
- 3) For those NPS considered exempt, which specific regulations set out in the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No. 1633) are anticipated to be utilised as justification?

Following from our response to question 3 of the Planning White Paper, the IEMA and IAIA Ireland-UK Branch still believe that the Planning Bill should include a stronger commitment to the application of Strategic Environmental Assessment (SEA) for NPS, particularly in view of the wide benefits that SEA can bring to the planning process. SEA would ensure that the impacts of development on the environment are fully understood and taken into account in national policy statements, including areas of environmental concern that may not be considered if impacts of individual projects are only assessed in isolation.

As the Infrastructure Planning Commission (IPC) must decide an application for development consent in accordance with any relevant national policy statement, except if certain exceptions apply as listed in clause 94 of the Bill, the NPS would inevitably have more weight than other considerations. As such we consider that all NPS will clearly set the framework for future development consents. NPS will be required by legislation, and be produced by an authority at the national level. Therefore, despite the 'policy' title of NPS, the European Commission's SEA guidance is clear that *"documents having the characteristics of a plan or programme, as defined by the*

Directive may be found under a variety of names" ². As a result it is our considered view that all NPS will fall within the scope of the SEA Directive (2001/42/EC) and associated Regulations (SI 1633, 2004) – failure to undertake SEAs in line with the Directive's requirements will leave the Government open to legal challenge and potentially delay any development consent process through the IPC, something that the Bill aims to avoid.

We trust that this response to the Planning Bill will be given due consideration during its progress through Parliament. Should the Scrutiny Committee or Department like to discuss any of the comments made further, we would be happy to do so.

Yours sincerely,

Martin Baxter,
Deputy Chief Executive,
IEMA

& Adam Boyden
Chair of Ireland & UK Branch of IAIA,
Associate, Nicholas Pearson Associates

² See http://ec.europa.eu/environment/eia/pdf/030923_sea_guidance.pdf section 3.3