

*Planning Policy Statement 9:
Biodiversity and Geological
Conservation*

Final Regulatory Impact Assessment

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On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) passed to the Department for Communities and Local Government (DCLG).

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Purpose and Intended Effect

1. The objective is to provide a clear, up-to-date statement of national planning policy (PPS) for biodiversity and geological conservation in England; to ensure that the planning system plays its part in delivering Government policy on biodiversity as set out in *Working with the grain of nature – the biodiversity strategy for England* (Defra 2002) and ensuring that sites of geological importance and geological features are protected in the same way as other nature conservation interests. This statement – to be known as Planning Policy Statement 9 (PPS9) together with its accompanying circular covering statutory requirements and a good practice guide will replace Planning Policy Guidance note 9 (PPG9): Nature Conservation issued in 1994.
2. This planning policy statement applies to England alone as the devolved administrations issue their own planning guidance.
3. PPS9 in itself would not be a regulatory measure, but it would guide planning authorities in the way they carry out their statutory duties under planning legislation. The effect of PPS9 should be that policies in regional spatial strategies and local development documents and development control decisions properly reflect the Government's broader policy objectives for biodiversity and geological conservation.

Background and Options

4. The December 2001 Planning Green Paper, *Planning – delivering a fundamental change*, explained that national planning policies are an essential way for the Government to achieve its objectives. However, the Green Paper noted the shortcomings in current national planning policy guidance. The Paper announced the Government's intention to review its planning policy guidance; to see whether it is needed; to seek greater clarity; to remove from national policy guidance advice on practical implementation; and to omit policies which are better expressed at a regional or local level.
5. Following consultation on the Green Paper, the Government announced (18 July 2002) that it intended to proceed with the proposals for review and reform of national planning policy guidance. In carrying out the review of PPG9, the aim was to reflect, as far as possible in a land use planning context, the Government's wider policy on biodiversity and geological conservation. The review of PPG9 was undertaken, and the draft of PPS9 prepared against this background. This influenced the options considered, including consideration of the 'do nothing' option:
 - *Option 1:* To leave planning policy guidance note 9 as it is.
 - *Option 2:* To cancel PPG9 and so do without specific planning policies, and/or specific planning policy guidance, for biodiversity and geological conservation.
 - *Option 3:* To update the existing policy framework provided by PPG9 and recast this guidance into a shorter PPS, with an accompanying joint Defra and ODPM circular setting out statutory provision, and some accompanying good practice guidance.

6. With regard to *Option 1*, the current PPG9, published in 1994, does not take account of the provisions of the Countryside and Rights of Way Act 2000 as they relate to nature conservation, nor does it reflect the UK biodiversity strategy *Working with the grain of Nature: a biodiversity strategy for England* published in 2002. PPG9 is also not clear that sites of geological importance and important geological features are to be protected in the same way as other nature conservation interests. Government policy on the protection of biodiversity has moved on in the 9 years since PPG9 was issued, with the publication of the England Biodiversity Strategy in 2002. The Deputy Prime Minister's statement of 18 July 2002 pledged the review of all planning policy guidance notes and the intention to reduce the volume of guidance and to prescribe less policy at the national level. This pledge would indicate that doing nothing is not a viable option in these circumstances.
7. With regard to *Option 2*, the Government believes that this option would be both detrimental to biodiversity and geological conservation and unhelpful to planning authorities, developers and businesses. It is essential to have national planning policies that specifically address biodiversity and geological conservation. Some of these policies are already reflected in other PPGs/PPSs, and there may be scope for further integration of these policies into future draft PPSs. However without a dedicated planning policy statement the likely result is the setting of less coherent and less focused planning policies. This in turn may run the risk of nature conservation interests, particularly those not covered by statute, being given insufficient consideration in planning decisions leading to inadequate protection of biodiversity and geological conservation.
8. Pursuing *Option 3* allows the Government to streamline and update established planning policies for biodiversity and geological conservation. Much of the policy in PPS9 is based on policy in PPG9, updated and developed as appropriate. However, there is a clearer focus on nature conservation considerations beyond designated sites and species with statutory protection. There are also new policies, notably on ancient woodlands and other priority habitats.

Risk assessment

9. There are no specific risks in issuing PPS9. The main risk in not issuing it is that planning authorities will adopt planning policies and take development control decisions that are of an inconsistent nature, and which are less likely to be in accordance with the Government's wider policies. This may have adverse consequences for the Government's policies for biodiversity and geological conservation.
10. The Government's preferred option is *Option 3*. There are greater levels of risk, in terms of potential failure of the planning system to deliver the Government's vision and wider policies for biodiversity and geological conservation, associated with *Options 1 and 2*.
11. As the planning policy statement will apply to all areas equally, we believe that it is neutral in effect in relation to issues of diversity. As noted above, PPS9 would not be a regulatory measure.

Business Sectors Affected

12. The revised PPS9 could potentially impact on all business undertaking new development. With or without PPS9, businesses (and others) will need to obtain planning permission for development in accordance with planning legislation. PPS9 seeks to guide planning authorities in the exercise of their statutory planning duties, to ensure the development and use of land is of general benefit to communities and businesses. It also takes account of the need to preserve and where appropriate enhance biodiversity and geological conservation interests, in order to deliver sustainable development in the wider public interest.

Costs and Benefits

13. Environmental impacts are notoriously difficult to value. Hence, the costs and benefits of the options are extremely difficult to quantify. Furthermore, it is difficult to distinguish between the costs of policy and legislation. In drawing up regional and local policies and in development control considerations, many nature conservation issues arise from legislation rather than planning policy.

Option 1 – No change to PPG9

Costs

14. The potential additional administrative costs of *Option 1* are likely to be negligible. This option is unlikely to impose significant additional costs. However, the inconsistency between existing planning policy and emerging policy on conservation may lead to uncertainty and delay in the planning process.

Benefits

15. The economic, social and environmental impacts of *Option 1* are likely to be broadly neutral. However, there may be some benefits associated with the continuity of maintaining the existing guidance.

Option 2 – Cancel PPG9

Costs

16. The absence of guidance on biodiversity and geological conservation would lead to greater uncertainty for both developers and local planning authorities. The lack of certainty is likely to increase the cost of development proposals and lead to delays in the development process.

17. For *Option 2* the social impacts are likely to be negative, since the absence of guidance is likely to mean that the social advantages of biodiversity and geological conservation will be overlooked in the planning process.

18. Similarly, there are significant risks that environmental concerns would not be given sufficient weight in the planning process. Environmental benefits are likely to accrue to the wider community and therefore tend to be undervalued in private development decisions.

Benefits

19. Cancelling PPG9 would reduce the initial administrative burden on planning authorities, since they would not be required to prepare policies on biodiversity. However, this benefit is likely to be offset by greater costs in making individual planning decisions.
20. *Option 2* is unlikely to deliver any additional social benefits.
21. Similarly, this option is unlikely to deliver environmental benefits relative to the current situation.

Option 3 – Publish new PPS9

Costs

22. The costs of pursuing *Option 3* in terms of additional burdens arising from policy requirements as opposed to legislative obligations are likely to be small. There may be additional costs for some local authorities arising from the requirement for policy and decision making to be based upon evidence about biodiversity and geological resources, and the assessments of the potential to sustain and enhance them. Whilst most local authorities will already have access to some level of information, additional survey and secondary data may be needed by some. Local authorities have previously been under an obligation to keep under review the physical and environmental characteristics of their areas and the extent to which additional work is needed is likely to vary widely.
23. Any increased costs for developers arising from *Option 3* are likely to depend on the circumstances of individual planning applications and the conservation interest, and are therefore difficult to quantify. In some cases there may be increased costs for developers arising from specific requirements.
24. There are already costs associated with meeting statutory obligations relating to biodiversity and nature conservation. The changes in planning policy arising from PPS9 are limited and in many cases will be easily accommodated in small adjustments to proposed developments that do not result in increased costs.

Benefits

25. Revised guidance is likely to reduce costs for developers and local authorities. Planning authorities would have a clearer, up to date statement of the Government's aims and objectives for biodiversity and geological conservation and the relevant national policies to achieve their delivery, consistent with other PPG/PPS and *Working with the grain of nature – the Biodiversity Strategy for England* (Defra 2000). It will also provide developers with greater certainty when putting forward development proposals.

There is potential for increased social benefits from adopting *Option 3*. PPS9 aims to ensure that planning for biodiversity and geological conservation contributes to improving people's quality of life and the well being of communities.

26. There are likely to be substantial benefits to the environment arising from revised advice to those managing the planning system on how to take account of the needs of biodiversity and geological conservation. The new guidance should help meet national biodiversity targets by ensuring that development proposals more often contribute to them. In particular, the guidance will:

- seek to enhance biodiversity and geological conservation interests;
- recognise the biodiversity value of previously developed sites and, where such sites have substantial biodiversity interest of recognised local importance, to consider the extent to which the biodiversity interest can be retained and incorporated into development of the site;
- identify any areas of ancient woodland in their areas that do not receive statutory protection (e.g. as an SSSI) and not grant planning permission for some developments that would result in loss or deterioration of the woodland habitat; and
- ensure that at-risk species are protected from the adverse effects of some developments by using planning conditions or even by refusing permission.

Small firms Impact Test

27. PPG9, and its replacement with PPS9, are non-sector-specific. PPS9 will apply in all areas where there is a recognised biodiversity and/or geological conservation interest. The Small Business Service was consulted as part of the wider consultation exercise and they subsequently confirmed that they are content with the proposal.

Competition Assessment

28. Both ODPM and Defra, who have also considered this document, do not believe the policies expressed in PPS9 will distort or restrict competition in the markets affected. PPS9 will apply equally to all developments where there is a biodiversity or geological conservation interest and no individual developer is likely to be more affected than another. It will bring benefits to the wider community both now and in the future.

29. Neither PPG9 nor its replacement with PPS9, are sector-specific. In applying the competition filter test we concluded that there would not be impacts on specific markets. We believe that the guidance would affect all businesses equally and that there would not be any particular impacts for new firms that are different to those affecting existing firms.

Enforcement and Sanctions

30. PPS9 will not have any direct statutory effect on businesses. Accordingly, there are no direct compliance requirements. Planning authorities must have regard to PPG/PPS in formulating local planning policies, and they may also be material to the consideration of individual planning applications. Adherence to PPG/PPS by planning authorities is monitored in the first instance by Government Offices for

the Regions (through their scrutiny of local development documents and planning policies), and by The Planning Inspectorate through local development framework inquiries and planning appeals. The First Secretary of State has powers of intervention, but uses these powers sparingly.

Monitoring and Review

31. The Government keeps its planning policies and associated guidance under regular review, usually in consultation with other arms of government and interested parties. It may also commission research on these policies' effectiveness where appropriate.

Responses to consultation

32. It was agreed following the Countryside and Rights of Way Act 2000, that PPG9 should be revised and updated. It was further agreed in discussion with Defra that the revision of PPG9 should lead to a shorter, more policy rich PPS accompanied by a Circular covering statutory obligations in respect of biodiversity and geological conservation and by a Good Practice Guide. Following inter-departmental consultations, including with the SBS, ODPM published a draft of new PPS9 and the accompanying joint ODPM/Defra Circular for public consultation. The consultation period lasted for twelve weeks from 8 September to 9 December 2004.
33. A total of 367 responses to the consultation draft were received, of which 133 were from local authorities, 69 from nature conservation, biodiversity or geodiversity bodies and 148 from individuals. Responses also came from public bodies/ statutory bodies; planning bodies/planning consultants; government departments/agencies/bodies; business sector/ utilities and others. In broad terms, the Government's proposal to continue to provide a distinct set of planning policies for biodiversity and geological conservation has been welcomed. The majority of respondents also broadly supported the general thrust of PPS9 policies, however there were many, wide ranging views on some of the specific policy proposals.
34. Only a relatively small number of respondents (27, representing 7% of respondents) commented specifically on the initial Regulatory Impact Assessment that accompanied the consultation draft of PPS9. Of these the majority supported Option 3 to recast PPG9 into a shorter PPS with an accompanying Circular on statutory provision plus a Good Practice Guide. None of the respondents identified any, distinct, quantifiable costs arising from PPG9, although some local authorities expressed concerns about possible resource implications for them through the implementation of some of the proposed policies.
35. The Government's overall conclusion from the consultation is that the draft version of PPS9 does not require fundamental re-appraisal or re-drafting. Its view is that the general policy approach and framework, along with most of the detailed policy proposals set out in the draft, are appropriate for adoption at the national level. However, it is proposed that some changes are made to the text, principally to provide greater clarity to the policies. Some of the concerns raised at consultation have been met through the publication of PPS1: Delivering

Sustainable Development, published in 2005, subsequent to publication of the consultation draft of PPS9. The Government also proposes to respond to a number of the concerns and comments expressed through the consultation in the final version of PPS9.

36. The most significant of the proposed changes from the consultation draft are:

- some re-ordering and redrafting to provide greater clarity;
- regional spatial strategies to include policies on the conservation and enhancement of biodiversity, and targets for restoration and re-creation of priority habitats and species populations;
- references to the existing policy protection given to listed Ramsar Sites, and to potential Special Protection Areas (pSPAs) and candidate Special Areas of Conservation (cSACs) ;
- local development documents to include policies to protect those SSSIs that are not international sites;
- local authorities to consider the cumulative effects of development on SSSIs;
- additional protection for important natural habitat types, identified under the Countryside and Rights of Way Act 2000, as being of principal importance for the conservation of biodiversity in England.

37. The principal potential benefits of these changes will be greater clarity and certainty for users of PPS9. In particular we have clarified the position on the policy protections which currently apply to European nature conservation sites, and which continue to apply under PPS9. We have said the where SSSIs are not also protected as sites designated under EU legislation, they should be protected through policies in local development documents. Local authorities are also required to consider the cumulative effects of developments on SSSIs. We have also extended the protection given to ancient woodland in the consultation draft for other important natural habitat types.

38. Government does not believe these changes would result in any significant additional costs.

Summary and Recommendation

39. The Planning Green Paper announced the Government's proposals for review and reform of its national planning policy guidance. PPG9 has been reviewed in this context and three broad options considered.

40. We do not believe that *Option 1* is a viable one given the statutory changes that have occurred affecting nature conservation and the developments in understanding of our biodiversity heritage and the decline occurring in certain habitats and species. Furthermore we do not believe that *Option 2* would be helpful to planning authorities, or to other 'users' of the planning system. It is more likely to lead to inconsistency and uncertainty. We believe that *Option 3*

satisfies the Green Paper proposals for review and reform, as well as facilitating the achievement of the Government's wider nature conservation policy objectives. We also think it is most helpful to planning authorities and other 'users'.

41. It is therefore **recommended that option 3 be adopted through the publication of PPS9**, amended as noted above.
42. Collective ministerial agreement to announce publication of PPS9 and the accompanying Circular, before commencement of the Parliamentary recess and to publish the final version of PPS9 during Parliamentary Recess was given by the Deputy Prime Minister, as Chair of Domestic Affairs Committee on 20 July 2005.
43. I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed

A handwritten signature in black ink that reads "Kay Andrews". The signature is written in a cursive, slightly slanted style.

Minister for Housing and Planning

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