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Chartered Institute of Environmental Health

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Dear Mr Clarke

Consultation on draft National Policy Statements for energy infrastructure

I refer to the six draft National Policy Statements (NPSs) for energy infrastructure published by the Department of Energy and Climate Change in November. The comments of the Chartered Institute, a statutory consultee under the Infrastructure Planning (National Policy Statement Consultation) Regulations 2009, follow below. Those comments concentrate on the generic impacts described in the over-arching Policy Statement EN-1 since those are also, by definition, relevant to the technology-specific daughter Statements intended to be read with it, but some comments on selected features of those are included subsequently.

The consultation process

Some of our comments are ones of principle while others are of detail. To begin, however, and in general, we want to record our concern that so much material has been issued by different Departments at the same time (i.e. both these and the Ports NPSs). Together with their various supporting documents amounting to some 2,000 pages of text, even if not designed to do so, this has necessarily restricted the consideration which small organisations like ours (and even larger ones) have been able to give to them.

Compounding the problem, the consultation period allowed, moreover bisected by the Christmas holiday, has been only the minimum. Though the requirements of the Consultation Code of Practice may have been met in the letter, they have not been met in its spirit and that is unsatisfactory. We understand that other organisations will be raising wider issues concerning the consultation process in the context of the Aarhus Convention with you.

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The influence of markets

Turning to the draft Statements, we understand that it is for government to warrant the need for future generation and transmission capacity and (*per* para 4.1.1 of the over-arching NPS) for the Infrastructure Planning Commission (IPC) to accept that. We do not, however, understand how that helps the IPC to consider applications for component infrastructure within their individual contexts, i.e. both of their contributions to future capacity and carbon intensity of supply or, not least, spatially. That is to say that while the IPC may have to accept the forecasts for long-term growth in net demand overall, it is another matter for them to accept that that requires additional capacity of a particular kind at a particular place and at a particular time. In that respect we are concerned at the extent of the reliance the NPSs encourage the IPC to place on market mechanisms to reflect national interests or deliver international obligations. That is not least since elements of the market will be, almost by definition, in competition with one-another and the fragility of this reliance was shown only last week in the decision by Drax to maintain the use of coal over biomass.

Market influences are also likely to affect the choice of sites proposed for many energy developments but in particular in the absence of a national spatial plan which integrates plans especially for jobs, housing and tackling climate change with those for energy, transport and water, we think that all the NPSs need to reflect spatial planning principles. That means taking more overt account of other planning guidance if the nation is to be certain that it will get the right infrastructure in the right place and national needs will be addressed in ways which are also locally sensitive.

Serial and inter-dependent applications

Further on matters of principle, serial applications in respect of related projects (or, perhaps, a series of applications in respect of a single, large project – both illustrated in, for example, section 2.3 of EN-5) raise concerns about cumulative impacts. We accordingly welcome the advice in para 4.9.2 of the over-arching NPS that such applications should generally be brought forward together. The NPS nevertheless acknowledges that they may not be and we also welcome the explicit advice in para 4.9.3 to the effect that consent for one project should not make consent for another a *fait accompli* .

Though that may be a difficult line to hold in practice, the IPC should not be placed in a position where it might feel obliged to consent one scheme for the sake only of the viability of another, in particular where they have been mainly market-driven. We think that means the IPC should be prepared to adopt a more investigative role where such a situation might be anticipated. The issue of serial applications also leads us to suggest that clearer guidance needs to be given on the legitimate limits to “associated developments”

than has been given (elsewhere) so far, in particular concerning its timing relative to that of the principle development and its impacts.

Policy and discretion

The language in paragraphs 4.9.2 and 4.9.3, as elsewhere throughout the NPSs, prompts a wider comment, however, that is that we think the NPSs should generally be more directory in their language. The purpose of policy being more than mere guidance, we think there should be more "must"s than "may"s or "should"s in the texts, directing the IPC more in what (if not also how) to consider rather than, apparently, leaving so much to its discretion or to what might be suggested to it by participants in a particular application. That is necessary in our view both to ensure thoroughness and so that its decisions reflect a truly strategic view.

Participation

Having raised the issue of participation in the IPC's process, that of Local Planning Authorities (LPAs) is, of course, a crucial part of that, in particular in the production of Local Impact Reports. Such Reports may be required with little notice and are likely to require considerable effort on the part of planners, supported by their environmental health colleagues and, perhaps, external experts too. Bearing in mind that many of the LPAs involved will be small ones anyway, and while, in addition, both local authority manpower generally is under increasing pressure and the government has said it will not provide additional funding for LPAs for this purpose, the IPC needs guidance on how to proceed where a LPA is unable to take part appropriately. The consequence of such a failure would not lie only in the consideration of technical details, of course, but decisions of the IPC based on inadequate or erroneous reports will be open to legal challenge. Not least, it would concern our national obligation to facilitate adequate public participation in the process too.

Turning to the detail of the Policy Statements, and not to say that aspects such as visual amenity or land use do not carry environmental health implications, our comments focus on those parts in which we have particular expertise i.e. those parts concerning pollution in its various forms.

Pollution control – general

Reflecting current national guidance, the over-arching NPS repeats the explanation given in PPS23 about the relationship between planning and pollution controls, unfortunately including the ambiguity of that. That says that the planning process is concerned with the principle of land use while the various pollution control regimes are concerned with limiting consequent harmful emissions which is, strictly, correct. It goes on to say, however, that they are separate which is, we think, misleading since where that use is a polluting use,

the planning process nevertheless implicitly consents at least the residual pollution and is necessarily thereby part of the pollution control regime. That being so, the IPC needs to be advised to make its decisions in that light and not to subordinate its judgement to that of the pollution regulator.

We agree, nevertheless, that the two regimes are complementary and the draft NPS goes some way towards acknowledging that in para 4.10.6 where it encourages applicants to bring forward their applications for development consent in parallel with those for environmental consents. We believe strongly that this should be a requirement, however. If it is not, such that the proposed polluting processes have not been identified and assessed in detail, it will be impossible for the LPA to provide an adequate Local Impact Statement. Resulting from that, the IPC will be unable to identify potential "residual pollution", i.e. that not covered by predictive pollution control regimes (or, at the time, incapable of sufficiently accurate prediction), and which therefore needs to be controlled through planning conditions. In the same cause, we would like to see a reversal of the advice in para 4.10.8 to say that development consent should not be granted unless there is good reason to believe that any necessary operational pollution controls etc. will be granted.

In some cases, operational controls will allow regulators to require operators to demonstrate continuing compliance with emission limits but where not, we would like to see advice to the IPC to consider applying equivalent conditions to consents. Alternatively, applicants should be required to fund the regulator to undertake necessary monitoring.

Mention above of the relationship between current planning guidance in the forms of Planning Policy Guidance Notes and Planning Policy Statements and NPSs raises another issue. That is that though until the NPSs are adopted by Parliament it is clear that the IPC will simply make recommendations to the Secretary of State, it is not clear on the basis of what guidance it will do even that.

Health

We welcome the conflation of [hard] health with well-being in para 4.13.1 which we think matches public understanding and acknowledge that Local Impact Statements by LPAs are likely to have some focus on human impacts while health will be a material consideration in applications. We would, however, still like to see a recommendation that Health Impact Assessments should be expressly required from applicants alongside their Environmental Statements unless there is a good reason not to. This is, in particular, since while HIAs lack the legislative imperative of EIAs, human health concerns could be over-shadowed by concerns for the wider natural environment.

Common law nuisance and statutory nuisance

We welcome the Department's decision to place the paragraphs in the over-arching NPS explaining the effects of section 158 of the 2008 Act (4.14.1 – 4.14.3) after those on health since that underlines what many nuisances are about and the main (though not only) reason why they need to be controlled. It might be more logical, however, if those sections of the guidance dealing with particular varieties of nuisance, i.e. sections 4.21 (on dust, odour etc.) and 4.26 (on noise), sat between them.

That said, however, we think there are some more fundamental drafting problems with these crucial paragraphs, in the first place the suggestions in para 4.14.1 that applicants need to request a grant of the defence from the IPC whereas section 158(1) makes it clear that it attaches automatically to any consent and, in the second place, that the same paragraph might suggest that it is available in the case of any nuisance, including any statutory nuisance, arising at any time in the life of the infrastructure. In the first case, the final sentence of para 4.14.1 could make it clearer that the defence does not in any event extend to statutory nuisances which are likely to cause injury to health but in the second case particularly, we think that the guidance misunderstands the statute such that the application of the defence is actually more limited than it suggests. That is to say that it applies only for "carrying out [the] development" (see s.158(1)(a)) e.g. "the construction of the [plant] described in the application etc" and, in particular in the light of the clause in the Planning Bill which what is now s.158 replaced (which referred to "operations" in addition and as something separate to "development"), that it is clearly restricted to the development phase and does not extend to any subsequent operation.

That is not, however, to diminish the importance of the guidance offered in paras 4.14.2 and 4.14.3 since no immunity should be given lightly, nevertheless inherent in the doctrine of statutory authority is that a defendant may only take advantage of it where he can show that the nuisance was an inevitable consequence of the consented activity and that he took all reasonably practicable steps to abate it. For completeness, both conditions for immunity deserve to be mentioned, to which needs to be added that what may be condoned by way of the defence will not be fixed at the point of consent; advancing technology and changes of circumstances mean that what may, in particular, be reasonably practicable by way of abatement is likely to change over time and notwithstanding any quantitative limits placed on nuisance emissions in a consent either, enforcement action may still follow.

Air emissions

Though para 4.17.1 says, correctly, that [much] energy infrastructure development can have adverse effects on air quality, the omission from this introductory paragraph of any explicit mention of combustion products needs correcting; notwithstanding environmental

permitting, large scale combustion for energy production cannot fail to have adverse effects on air quality, including sometimes off-site too. We have in mind here not simply any effects on any surrounding or neighbouring Air Quality Management Areas but, given the ability of air-borne pollutants to travel, their effects on the achievement of the National Air Quality Strategy generally. Full consideration needs to be given (or, through an indication as to future permitting, at least be shown to have been given) to both primary and any secondary effects.

Dust, odour etc

As we have written, we think these paragraphs would sit better directly above those headed "common law and statutory nuisances" discussed above. That is so that the NPS explains firstly why nuisances in general should be controlled (i.e. for broad health reasons), secondly sets out the nature, sources and impacts etc of various nuisances and then, finally, advises that while the Act nevertheless provides a prospect of immunity to developers for unavoidable nuisances, the IPC should limit or even remove that immunity where the impacts would be unacceptable.

Whereas para 4.21.1 refers to infestations of insects, para 4.13.3 refers to pests. Though the former paragraph is concerned with a range of sources of potential nuisances, that is not exclusively so and we would prefer to see the use of the latter term.

As the NPS states, significant energy infrastructure developments almost inevitably bring with them some additional dust (in particular during their construction and demolition but also in transporting fuel and waste), odour (e.g. from combustion sources) etc, together with needs for lighting for operational and security purposes. We are not, however, convinced that much of the impacts on amenity for local communities is necessarily unavoidable and we welcome the calls in para 4.21.3 to the IPC to keep them to (or below) a level which is acceptable (though to whom should be specified) and in para 4.21.2 to examine them thoroughly before allowing any immunity. Wherever possible we recommend that that immunity is limited to the minimum and it might be helpful if this paragraph illustrated how that might be done, e.g. in relation to particular parts of the development or particular activities or temporally (or some combination).

In general, we think that the potential impacts of lighting are under-played in the daughter Statements, *vide* the single sentences in para 2.6.3 of EN-2 and para 4.6.4 of EN-6 but no mention at all in EN-3 or EN-4. Though the effects may be generic, it seems to us that they can be magnified by the scale and location of the particular development and we should have thought something more might be said about it in the various sections on landscape and visual impacts.

Noise

As we have written, we think these paragraphs would sit better directly after those discussed above so that the NPS considered all the potential nuisances together.

In relation to para 4.26.1, it ought to be noted that of the nuisances likely to arise, noise is probably the most intrusive. Explaining the attention we give to it here and below, there is a growing body of evidence that even at low levels it can cause a variety of non-auditory effects in addition to sleep disturbance. Maybe making reference to recent WHO Guidelines here, this paragraph needs to be expanded accordingly to emphasise the imperative of controlling noise effectively and in the first place we have a difficulty with the concept of "excessive" noise since all noise could be defined as such. Secondly, though the paragraph notes that “noise” should include vibration, it might also note that it includes ultrasound and infrasound, perhaps hinted-at in the first bullet point of para 4.26.3, and further reference could be made in that respect to the recent report of the Advisory Committee on Non-ionising Radiation. We would nonetheless still have a concern that the reference to sustainable development here could be misunderstood as an invitation to compromise noise abatement for the sake of the development concerned whereas a proper interpretation of the concept would emphasise the need to reconcile opposing social, economic and environmental factors and it strikes us that sustainability itself deserves separate treatment as an over-arching assessment criterion within the NPS.

Notably absent from the list of factors in para 4.26.3 is local background noise levels which need to be considered at least on a day/evening/night basis and possibly daily and seasonally with respect to human receptors as much as to ecology too. The growing influence of the Environmental Noise Directive ought, also, to be mentioned, including in relation to transport links to generating sites.

We disagree strongly with the advice in para 4.26.4 which seems to pre-judge the outcome of the assessment and can only serve to undermine it while, though the list in para 4.26.5 is useful, we recommend applicants should be encouraged (as they are analogously in para 4.21.6) to discuss the scope of their assessments with the relevant regulators at an early stage.

Like other “amenity” nuisances too, additional noise can alter the character of an area against which the occurrence of further nuisance is assessed, giving rise to and, indeed, condoning “creep”, and we are concerned that the first bullet point in para 4.26.11 suggests that only “*significant* adverse impacts on health…” should be avoided. Quite apart from the uncertainty in this statement, it is inconsistent with the aim stated in para 4.21.3, it appears to condone lesser adverse health effects and we feel strongly that consents should be dependent on all noise impacts on sensitive locations being minimised and that noise limits should be applied *per* para 4.26.13 as a matter of course. In the case

of construction and demolition works it ought to be noted, however, that the provisions of the Control of Pollution Act 1974 will apply.

Land

Though the over-arching NPS devotes some space in section 4.25 to issues of land use, that focuses on amenity and we would like to see more explicit consideration of contamination issues. Though many of the developments contemplated by the NPSs will be on previously unused sites, others will be on sites adjacent to existing similar developments or, as para 4.25.6 encourages, re-use older sites, many of which are likely to exhibit some contamination whether directly because of that use or through migration. Though at the same time, their future uses may suggest this will present little risk to some potential receptors, i.e. people or buildings, that may not be true for others, e.g. groundwater, and the process of development itself may increase that risk. In such cases, recently highlighted examples illustrate the need for care in their remediation apart from the general principle that that should be as sustainably done as possible. Similarly, design opportunities should be taken where possible to minimise soil-sealing and provide for sustainable drainage.

Turning to the technology-specific Statements,

EN-2: fossil fuels

Para 2.7.2 asks for an assessment only in the case of "excessive" noise which, despite a reference back to the over-arching NPS, is not defined. An appropriate assessment, defined in discussion with the relevant regulator, should of course be required to be incorporated into the environmental statement (or equivalent) in every case. Elsewhere, this section notes that noise from the milling of coal and other materials is unavoidable but the IPC should, of course, consider whether it needs to be done on site or might be carried on elsewhere, perhaps at the point of origin, if that would have a lesser noise impact. Though such processes may be subject to control by the EA (para 2.7.4) the IPC should not take it that that necessarily renders the noise from them acceptable in a given location.

EN-3: Renewable energy

Para 2.5.42 says that the IPC need not be concerned with the optimisation of chimney heights from biomass plant. That, strictly, is correct for the reason given nevertheless if that gives the impression that the IPC need not be concerned with emissions, that would be wrong. As paras 2.5.39 and 2.5.40 imply, the IPC will need to consider the effects of emissions on local air quality standards and that should be made explicit.

As this daughter Statement notes in para 2.7.9, noise is one of the two main impact issues that determine the acceptability of commercial scale onshore wind turbines in proximity to dwellings. Apart from that the assessment needs to take account of effects on any occupied building, including commercial buildings, whereas paras 2.7.64 - 2.7.66 says that compliance with ETSU-R-97 should lead the IPC to dismiss any concerns of adverse noise impacts, as the Department knows, that report is now some 14 years old and its relevance to modern (generally larger) wind turbines has come under increasing question. Not least, pending the review which the report itself called-for, we understand it is being unofficially modified by acousticians. In the light of this we suggest that decisions based on it will be unsafe. It also appears to us that notwithstanding the recommendation that consents for wind turbines should be time-limited, the likelihood is that as pressures for renewable energy increase, most sites will be re-powered and their impacts should accordingly be considered to be indefinite.

EN-4: Gas supply infrastructure etc

We welcome the recommendation in para 2.9.11 to consider noise impacts along a corridor straddling gas and oil pipelines but while the reason seems to relate to associated infrastructure above ground, it might be noted that the passage of gas through high-pressure mains themselves has been implicated in the generation of low frequency noise.

EN-5: Electricity networks

While we understand the additional monetary costs of under-grounding, paras 2.7.6 – 2.7.9 seem to under-play the environmental reasons for it, contrary to the final "Holford" rule in para 2.7.4, among which is the elimination of noise though the possibility of the technique is not mentioned in section 2.8 and, perhaps, should be. Noise in the form of "hum" from substations is, however, probably a more familiar problem due to their frequent location in population centres where the need to "step-down" high voltages arises. This can be a cause of significant nuisance and the NPS needs to pay more attention to it.

While we acknowledge that the possibility of ill-effects arising from extremely low frequency EMFs is remote and does not alone justify the high economic cost of undergrounding or of a corridor approach to developments, we think the NPS ought nonetheless to recognise that public concerns persist, as evidenced by the 2007 cross-party inquiry into childhood leukaemia and electromagnetic fields. We suggest that notwithstanding they may be within ICNIRP guidelines, the advice should be that new lines should avoid over-flying homes, schools etc wherever possible.

EN-6: Nuclear power

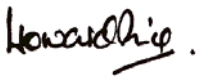
Not least among public concerns about nuclear power are those to do with the disposal of wastes and while we note the government's confidence that effective arrangements for that are already, or at least will be, in place we think the advice in para 3.8.20 goes too far in preventing any discussion of those. That is even if not in relation to their final disposal, then in relation to their handling on-site and their transport off-site to those points of final deposit.

Para 4.8.3 says that new nuclear power stations are unlikely to be associated with significant noise. That may be (though it is not explained) because they tend for other reasons to be located at some distance from any numbers of dwellings but it is not to say that they are quiet, in particular when clustered.

This NPS is understandably keen to balance fears of negative health impacts with positive ones but our understanding is that beyond the construction phase nuclear power stations employ only modest numbers of people, and many of those specialists, and the call in para 4.8.7 to the IPC to "give significant weight to the effect of [implicitly local] employment on human health" looks over-stated.

We hope these comments are of assistance.

Yours sincerely,



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