



Department
of Energy &
Climate Change

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Implementation Committee -
Convention on Environmental Impact Assessment
in a Transboundary Context
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Dear Ms Planinšič

RE: HINKLEY POINT C NEW NUCLEAR POWER STATION

1. Thank you for your letter of 14 October 2013 in respect of the proposed development of the new nuclear power station known as Hinkley Point C ("HPC"), and for the opportunity to provide clarification of the processes undertaken in respect of consideration of possible transboundary impacts of that development.
2. The Secretary of State's decision to grant development consent for HPC is presently the subject of a claim to the High Court in England. Please find enclosed, the evidence filed by the Secretary of State in response to that claim. We have drawn on this evidence to answer the Committee's specific questions below. Please also find enclosed, copies of relevant UK and EU legislation, and of the other materials referred to in this response.
3. You raise 6 points. We will address each in turn.
 - (a) **Has the Government of the United Kingdom made the final decision to build an NPP [nuclear power plant] at Hinkley Point C? And if it has, can the Government of the United Kingdom confirm that the decision is in force and provide a copy of the final decision to the Committee? What was the outcome of the judicial review of the final decision?**
4. The Secretary of State granted planning consent for the Hinkley Point C development on 19 March 2013. The Secretary of State's decision is in force and does have legal effect. However, the decision is presently the subject of a legal challenge. That challenge will be considered by the High Court at a hearing on 5 – 6 December 2013. The court will give judgment at some point thereafter. The precise date is not yet known.

5. The grant of the development consent order is a decision about the use of land. It is one of the key consents necessary to enable the construction of the plant to go ahead. The development consent decision is the relevant decision for the purposes of article 2(3) of the Espoo Convention. However, in practice it is only one of a number of decisions that need to be made by Government or regulators before the HPC project can be built and go into operation. It should be noted in particular that through conditions attached to the separate nuclear site licence, nuclear safety-related construction cannot begin until the operator gains a formal consent from the Office for Nuclear Regulation ("ONR").
6. The application for development consent was originally made by the developer, NNB Generation Company Limited ("NNB") to the independent Infrastructure Planning Commission ("IPC"), pursuant to the provisions of the Planning Act 2008 (the relevant English law statutory provision). As a result of changes to the 2008 Act made by the Localism Act 2011, the decision on the application was taken by the Secretary of State (as by the time of the decision the functions of the IPC had been transferred to the Secretary of State).
7. In general terms, the process for considering an application for development consent comprises 5 stages.
 - (1) **The pre-application stage.** Before submitting an application a developer is required to carry out extensive public consultation. This involves providing information about the project to statutory and non statutory bodies as well as the public. The consultation process has to be agreed with the Local Authority and published in a newspaper – this is the Statement of Community Consultation.
 - (2) **The acceptance stage.** All the application documents are looked at during acceptance and this includes the applicant's consultation report. The Local Authority also has to confirm that the consultation was undertaken in accordance with the Statement of Community Consultation.
 - (3) **The pre-examination stage.** Once an application is accepted, Inspectors from the Planning Inspectorate notify the applicant. The applicant must then publicise the fact that the application has been accepted, and explain publicly how to make representations in respect of the application. Members of the public can then make representations, and they may register as an interested party to take part in the next stage of the process, which is the examination stage.
 - (3) **The examination stage.** A meeting is held (the preliminary meeting) to which interested parties are invited to attend. This meeting considers how the application will be examined and after the meeting a timetable for the examination is made available. During the examination all interested parties can make written representations and comment on the representations of others. In certain circumstances public hearings take place. Following the examination stage, the Planning Inspectors make a report. This sets out the representations made; their conclusions; and the reasons for those conclusions. The report is sent to the Secretary of State.
 - (4) **The decision stage.** The final decision is taken by the Secretary of State. The Secretary of State considers the report prepared by the Planning Inspectors. He may also take account of any further representations made directly to him.
8. All the application documents, information about the process and the information from the examination is made publicly available on the National Infrastructure website¹.

¹ <http://infrastructure.planningportal.gov.uk/>

Detailed information on the specific consultation process for HPC was contained in the consultation report which accompanied the application². In addition, the Inspectors held outreach events during the interested party registration stage, and at these events provided information to the public and others about how to register to take part in the examination³.

9. In this case, the examination by the Panel of Inspectors from the Planning Inspectorate was extensive and exhaustive. It took place over a six-month period; during this period all interested parties were given the chance to make representations in relation to the application. The Panel reported to the Secretary of State for Energy and Climate Change. The Secretary of State made an Order granting consent to development on 19 March 2013. The Order came into force on 9 April 2013. Copies of the decision letter and Order are provided with this response⁴. For completeness, we are also attaching a copy of the Hinkley Point C (Nuclear Generating Station) (Correction) Order 2013 which contains corrections to administrative errors although we do not consider these corrections have any bearing on the matters which the Committee is considering⁵.
10. As mentioned above, the Secretary of State's decision is presently the subject of legal challenge before the High Court. Proceedings were commenced both by Greenpeace and by An Taisce, an Irish non-governmental organisation. Greenpeace has discontinued its challenge. The claim by An Taisce has not yet been considered by the Court. A hearing is listed for 5 – 6 December 2013. In that claim, An Taisce contends that when deciding to grant development consent, the Secretary of State failed to comply with regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (which is the provision which gives effect in English law to Article 7 of the Environmental Impacts Assessment Directive 85/337/EC). The claim is strongly contested by the Secretary of State. He considers that the claim is without merit.

(b) Has the Government of the United Kingdom undertaken the environmental impact assessment (EIA) for Hinkley Point C NPP project in accordance with the provisions of the Espoo Convention? And if it has, can the Government of the United Kingdom provide information about the procedure?

11. A detailed environmental impact assessment of the HPC development was carried out in accordance with the requirements of UK and EU law (which give effect to the provisions of the Convention).
12. The Espoo Convention has been implemented in EU law by the Environmental Impact Assessment Directive (Council Directive 85/337/EEC, as amended). The Directive has

² <http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/2.%20Post-Submission/Application%20Documents/Reports/3.1%20-%20Consultation%20Report/3.1%20-%20Consultation%20Report.pdf>

³ The following link is to a flyer which sets out the range of events that took place - <http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/2.%20Post-Submission/Meetings-Agendas-Minutes/Hinkley%20outreach%20poster.pdf>.

⁴ They are also available online at http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/130319_EN010001_SoS%20HPC%20Decision%20Letter.pdf (decision letter) and http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/130319_EN010001_SoS%20HPC%20Decision%20Letter%20Annex%20B.pdf (Order).

⁵ It is also available at - <http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/%20Hinkley%20Point%20C%20Corrections%20Order%20.pdf>

been transposed into English law by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) ("the EIA Regulations"). All applications relating to nationally significant infrastructure projects in England and Wales must comply with the EIA Regulations. Regulation 3 of the EIA Regulations precludes development consent without consideration of environmental information. Regulations 9-13 of the EIA regulations detail the requirements in respect of consultation and publicity in connection with an application for consent. Schedule 4 to the EIA regulations sets out the information that must be included in an Environmental Statement.

13. So far as trans-boundary effects are concerned, Regulation 24 of the EIA Regulations states that where the Secretary of State is of the view that a development is "*likely to have significant effects on the environment in another EEA state*" he must take specified steps to make information about the proposed development available to the other EEA state concerned and consult with that other EEA state. As part of his consideration of the application for a Development Consent Order, the Secretary of State therefore had to consider whether the development was likely to have significant effects on another EEA state.
14. The environmental impact assessment for HPC included consideration under Regulation 24 of whether the development was likely to have significant effects on the environment in another EEA State. The conclusion reached was that the HPC development was not likely to have significant effects on the environment in another EEA state. For this reason no formal transboundary consultation process was undertaken prior to the decision to grant development consent.
15. In this case, the Regulation 24 decision was taken as follows. On 20 October 2011, the Infrastructure Planning Commission ("IPC")⁶ prepared a pre-application screening matrix⁷. This matrix was based on the framework for considering the potential significance for adverse impacts across borders, as set out under publications associated with the Espoo Convention, and the selection criteria under the EIA Regulations.
16. Consideration of the information included in the screening matrix resulted in the conclusion that through (a) the design measures built into the development, (b) the delivery of mitigation measures, (c) effective control by the relevant regulatory bodies by means of conditions and monitoring, impacts on another EEA State would not be significant. The probability of a radiological impact was considered to be low on the basis of the regulatory regimes in place. The IPC concluded that transboundary impacts from accidents during operation or decommissioning will be so low as to be exempt from regulatory control. Accordingly, the IPC concluded that on the basis of the information then available, the proposed development was not likely to have significant effects on the environment in another EEA State. No further action was needed under regulation 24 of the 2009 Regulations at this stage. The IPC noted that this duty continued throughout the application process and the matter would be kept under review.
17. On 31 October 2011, NNB made its formal application to the IPC for the Development Consent Order for HPC. The application included a substantial body of information, including a comprehensive Environmental Statement (submitted in accordance with the

⁶ At the time of the application, the application was to be made to the Infrastructure Planning Commission ("IPC"). The IPC was later abolished by the Localism Act 2011, and decisions were subsequently taken by the Secretary of State.

⁷ <http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/Enquiries/04-11-2011%20-%20Richard%20Mayson%20-%20Enquiry%20918820/Hinkley%20Transboundary%20Screening%20Matrix.pdf>

requirement of the EIA Regulations to undertake an environmental impact assessment), extending to 11 volumes of detailed information and technical appendices.

18. The information provided in the Environmental Statement included an assessment of trans-boundary impacts.
19. That stated the following conclusion:

“...the likely impacts determined through a thorough environmental impact assessment do not extend beyond the County of Somerset and the Severn Estuary.”

20. The Environmental Statement noted the following.

(1) The nearest Espoo Convention states outside the UK are the Republic of Ireland (230km to Irish territorial waters off South Eastern Ireland) and France (160km to French territorial waters off the Cherbourg peninsula). They are well beyond the areas in which significant impacts are likely.

(2) The extent of any possible adverse effects on nature conservation sites of European and national importance did not extend beyond the Severn Estuary, and therefore there was no possibility that any adverse effects would have a trans-boundary impact on another EEA area.

21. On 11 April 2012, following acceptance of the application, the likelihood of significant trans-boundary effects was re-assessed by the Planning Inspectorate (on behalf of the Secretary of State). This consideration, took into account the detailed information provided in the Environmental Statement. The Screening Decision is attached⁸.
22. The Screening Decision referred to the Environmental Statement and noted that potential impacts identified are assessed as not extending beyond the county of Somerset and the Severn Estuary (see under the heading “Carrier”). It stated that any residual effects on human beings and sensitive ecological species/habitats would be minimised and/or controlled through the imposition of appropriate licensing and monitoring conditions by regulatory agencies. It concluded that on the basis that the licensing and monitoring conditions are effective, impacts would not be significant.
23. The Screening Decision went on to consider the following matters.
 - (1) **On the extent and magnitude of the impact.** The extent and magnitude of impact would be controlled through the design measures built into the development, the delivery of mitigation measures, effective control by the relevant regulatory bodies conditions and monitoring. For these reasons, no significant impacts on other EEA States were anticipated.
 - (2) **On the probability of radiological impact.** The probability of a radiological impact was considered to be low on the basis of the regulatory regimes in place. The UK Government’s submission to the EU Commission under the

⁸ It is also available at - [http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/2.%20Post-Submission/EIA/Regulation%2024/120522_EN010001_%20Hinkley Transboundary%20Screening.doc.pdf](http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/2.%20Post-Submission/EIA/Regulation%2024/120522_EN010001_%20Hinkley%20Transboundary%20Screening.doc.pdf)

Euratom Treaty showed that transboundary impacts from accidents during operation for decommissioning will be so low as to be exempt from regulatory control. (The European Commission's assessment of HPC under the provisions of the Euratom Treaty was that under normal operation and in the event of an accident, the implementation of the plan for the disposal of radioactive waste in whatever form from the two European Pressurised Reactor ("EPR") reactors at HPC is not liable to result in a radioactive contamination of the water, soil or airspace of another Member State that would be significant from the point of view of health.)

- (3) **On the duration and frequency of any impact.** The duration and frequency of any impacts would be mitigated by the design measures built into the development, the delivery of mitigation measures and controlled by the relevant regulatory conditions including monitoring.

24. The Screening Decision concluded that on the basis of the current information available from the developer, the proposed development is not likely to have a significant effect on the environment in another EEA member state. In reaching his decision on the application for development consent, the Secretary of State took account of the conclusions of the Screening Decision on possible transboundary effects.
25. It should also be noted that the UK Government had previously consulted the Irish and German Governments in respect of the energy National Policy Statements which included site specific details in respect of possible new nuclear power stations (further details of that consultation are at question (d) below).

(c) If the Government of the United Kingdom undertook an EIA for Hinkley Point C NPP project, how did it provide, in accordance with the provision of the Espoo Convention, an opportunity to the public in the areas likely to be affected, including the public outside the United Kingdom, to participate in the EIA procedure?

26. An EIA was undertaken – see at §11 above.
27. Under Chapter 2 of the Planning Act 2008, before making an application for development consent, a developer must carry out extensive consultation on the proposed application. Further details of pre-application procedures, can be found in the Planning Inspectorate's Advice Note 8.1⁹.
28. In this case, NNB carried out extensive consultation, as required by law. This involved providing information about the proposal to various statutory and non-statutory bodies and the public; considering those responses and taking matters raised into account when formulating the final version of the application for development consent.
29. Following submission of the application for development consent, NNB was required to publicise the fact that the application had been made so that persons could register with the IPC as interested parties (so that they could make representations during the examination process).
30. For the reasons stated in response to (b) above, no likely significant impacts on another EEA State were identified during the transboundary screening exercise, and for that reason it was not considered necessary to consult with the public outside of the United Kingdom. However, it remained open to the governments of, organisations in or members of the public of such states to take part in the examination process for the

⁹ <http://infrastructure.planningportal.gov.uk/wp-content/uploads/2012/04/Advice-note-8.1v4.pdf>

application for development consent for HPC. In fact, the Austrian Government made representations to the Secretary of State and also consulted its citizens on the HPC development. The Secretary of State took those representations into account before making his decision.

31. We would also point out that there remain opportunities for organisations and individuals to comment on the potential effects of the HPC development in respect of the site specific design issues. As stated above (para. 5), construction cannot begin until the operator gains a formal consent from the ONR. That consent will not be given unless the ONR is satisfied (a) with the adequacy of the relevant site-specific changes to the generically approved reactor design, and (b) with the associated safety and security reports. The ONR must also be satisfied with the operator's organisational capability and technical readiness to begin construction. This process is expected to continue for a number of months. Anyone wishing to participate can subscribe to the ONR's free email service, which will keep them up to date on key ONR developments including anything regarding Hinkley Point C (the website address is www.hse.gov.uk/nuclear/ for those wishing to subscribe).

(d) Did the Government of the United Kingdom notify any country about the planned construction of an NPP at Hinkley Point C? And if it did, can the Government of the United Kingdom provide copies of those notifications? Did the Government of the United Kingdom receive any response to its notifications? And if it did, can the Government of the United Kingdom provide copies of those answers?

32. The Government maintains a regular bilateral dialogue with the Government of the Irish Republic on nuclear matters. As part of this the Government had a series of contacts with the Irish Government about our emerging conclusion that there would be no transboundary impact. The UK Government held regular and on-going discussions with the Irish Government, to discuss the potential effects of the UK's new nuclear programme. These discussions have taken place between officials and at Ministerial level.
33. On 9 November 2009 the Government published a public consultation on draft energy infrastructure National Policy Statements (NPS), including an NPS on nuclear energy (the Nuclear NPS). NPS documents are relevant to deciding applications for development consent. The purpose of an NPS is to set out the government's policy on specified major infrastructure projects. The Nuclear NPS included a draft Appraisal of Sustainability, and also a list of potential sites for new nuclear power stations, including Hinkley Point. The draft Appraisal was conducted at a strategic level for each site identified as potentially suitable, including Hinkley (as well as for the National Policy Statement as a whole). It noted that EU Member States were being consulted on possible transboundary effects.
34. On 13 November 2009, the Government sent copies of the energy infrastructure National Policy Statement consultation to all other EU and EEA Member States, including Germany, Austria and Ireland. Member States were provided with a copy of the draft Appraisal of Sustainability (which incorporated a Strategic Environmental Assessment).
35. On 22 February 2010 the Irish Minister replied to the consultation to say that the Irish Government was reserving its position on transboundary effects. On 27 July 2010, the Minister for Energy wrote to the Irish Minister setting out the UK Government's position that there were not likely to be any trans-boundary effects, that there was a possibility of such effects from an unintended release of radiation from for example an accident but

that the robustness of the regulatory regime meant that there was a very low probability of this.

36. As to other EEA States, the position is as follows. The Austrian Government replied on 19 February 2010. With reference to the Nuclear NPS, it said that the documents provided sufficient information for a planning decision to be made but that transboundary effects could not be ruled out and asked to be kept informed.
37. Consultation on revised draft energy NPS commenced on 18 October 2010. The revised NPS included a revised draft Nuclear NPS with a revised Appraisal of Sustainability. The revised Appraisal of Sustainability concluded that the construction and operation of new nuclear power stations in line with the nuclear NPS was not likely to result in significant transboundary effects.
38. On 28 October 2010, the UK Government sent a copy of the revised NPS consultation to all other Member States, including Germany, Austria and Ireland, inviting responses.
39. The Austrian Government replied on 24 January 2011. They said that transboundary effects were remote but could not be excluded and should be followed up at later stages of construction.
40. The Irish Government responded to this consultation by letter sent on 24 January 2011. The letter noted the conclusion that there was a low probability of unintended release of radioactive emissions due to the robustness of the regulatory regime, and that this conclusion was dependant on the outcome of certain regulatory processes and environmental impact assessments that will take place at future junctures in the implementation of the programme. The Irish Minister concluded that questions raised by the Irish authorities were better dealt with at the site specific stage. The Irish Government did not ask for formal trans-boundary consultations to be opened at this stage (i.e. at the Strategic Environmental Assessment level), but made clear that it is their view that their concerns are best pursued as part of the on-going dialogue between the two Governments on nuclear issues and through the process of trans-boundary consultation at project level.
41. The UK Government shared that view and in September 2011, informed the Irish Government that NNB was of the view that there will be no significant trans-boundary effects and that a trans-boundary consultation is not needed. The Irish Government were informed that the IPC were to consider this point when they received the application for development consent at Hinkley Point C. The Irish Government were advised to register an interest in the Hinkley Point development with the IPC. The Irish Government were subsequently also informed of the IPC's screening opinion that no trans-boundary consultation was required. We understand that the Irish Government did not play any part in the examination process. Further, at no point did the Irish Government request a trans-boundary consultation arising out of the proposals in the NPS, or the specific proposals for Hinkley Point C.
42. As previously noted (para. 30), the UK Government received representations from the Government of Austria and from members of the public in Austria following a consultation carried out by the Austrian Government. The Secretary of State for Energy and Climate and Change took those representations into account in making his final decision on the application (see section 6.6.2 of the Secretary of State's decision letter¹⁰).

¹⁰ http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/130319_EN010001_SoS%20HPC%20Decision%20Letter.pdf

43. The representations are attached (in our English translation for those which were received in German)¹¹.

44. No representations were received from the German Government. We received one representation from a member of the German Parliament, Ms Sylvia Kotting-Uhl, who raised the question of transboundary consultation. DECC responded that her representation would be taken into account by the Secretary of State in making his final decision. It was subsequently taken into account along with all other relevant material when the Secretary of State made that decision.

(e) Does the Government of the United Kingdom consider that the proposed NPP at Hinkley Point C is likely to cause significant adverse transboundary environmental impact? If yes, which countries does it consider as potentially affected countries? Did it assess the risk of significant adverse transboundary environmental impacts, including safety issues, such as the possibility of a radiological accident at Hinkley Point C?

45. The Government of the United Kingdom does not consider that the proposed NPP at Hinkley Point C is likely to cause significant adverse transboundary environmental impact.

46. Details of the assessment, which included consideration of the risks of accident during operation or decommissioning, that led to that conclusion are set out in the answer to question (b) above.

(f) Can the Government of the United Kingdom provide a description of the legal, administrative or other measures it has taken to implement the provisions of the Espoo Convention in relation to the project at issue at Hinkley Point C?

47. Please see our answer to questions (b) and (d) which set out the specific measures the Government of the United Kingdom took to implement the provisions of the Espoo Convention in relation to the project at issue at Hinkley Point C.

48. In general, regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2263/2009) covers developments with significant transboundary effects¹². In addition, please see also, Advice Note 12 issued by the Planning Inspectorate ("Development with significant transboundary impacts consultation"). This contains further guidance on this issue¹³.

Discussion with the Committee

49. I hope this letter provides the clarification that you were seeking in respect of the processes undertaken in respect of consideration of possible transboundary impacts of HPC. However, we would be happy to provide any further clarification that you require. Should the Committee wish to consider the matter further we would like the opportunity to address the Committee and in advance of such a meeting, to have sight of copies of the representations that have been made to the Committee.

¹¹ The representations can also be found at - http://infrastructure.planningportal.gov.uk/wp-content/uploads/projects/EN010001/3.%20Post%20Decision%20Information/Decision/130319_EN010001%20Correspondence%20sent%20to%20SoS%20by%20Austrian%20Government.pdf

¹² <http://www.legislation.gov.uk/uksi/2009/2263/regulation/24/made>

¹³ <http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/04/Advice-note-12v2.pdf>

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Giles Scott'. The signature is fluid and cursive, with the first name 'Giles' and the last name 'Scott' clearly distinguishable.

Giles Scott
Head, National Infrastructure Consents