Appendix A

PLANNING ACT 2008: Consultation on Examination Procedures for Nationally Significant Infrastructure Projects
UKBCSE / Industry Detailed Commentary

1.0 Introduction

The UK Business Council for Sustainable Energy (UKBCSE) and the UK's major energy trade associations are pleased to provide this detailed commentary on the DCLG Consultation on the Planning Act 2008 Examination Procedures for Nationally Significant Infrastructure Projects. This response has been developed with the Association of Electricity Producers, the British Wind Energy Association, the Energy Networks Association, the Gas Forum and the Renewable Energy Association, with whom we have been working in support of the Government's planning reforms.

UKBCSE and the UK's major energy trade associations continue to support the principle of a streamlined planning regime, which provides greater certainty for developers and earlier and more meaningful engagement for communities. It is therefore within this context that this detailed commentary is provided.

For ease of reference the format of this commentary follows the headings within the Consultation.

2.0 Chapter 1: Purpose of the Consultation

No comment.

3.0 Chapter 2: Context of the Consultation

The UKBCSE and Industry have long campaigned for reforms to the planning system, as critical to the delivery of the very substantial amount of sustainable energy infrastructure necessary to address climate change and deliver continued security of the UK's energy supplies. We generally support the provisions of the Planning Act 2008 and appreciate the level of consultation and engagement that Government has undertaken with all stakeholders, and we hope that our comments on Examinations and Fees are therefore helpful.

4.0 Chapter 3: How We Are Implementing the Planning Act 2008

Paragraph 17 - We welcome the Government's recognition within paragraph 17 that the key message that they have taken from all the various consultations is the need by all for certainty and predictability. We believe that Government has delivered clarity on when the new regime will consider applications and we support the transitional arrangements as providing appropriate lead-in timescales.

Paragraph 23 - This paragraph makes reference to the intention to place savings provisions regarding existing permitted development rights in a Commencement

Order, which we support providing that this does not remove or limit in any way the existing permitted development rights enjoyed by the energy industry.

Paragraph 25 - Whilst we recognise that the timetable for National Policy Statements (NPSs) is of course subject to public consultation and Parliamentary scrutiny, and therefore subject to change, we welcome the Government's implementation programme as helpful to developers in providing indicative timescales to enable them to plan their compliance with the new requirements.

5.0 Chapter 4: The Consultation Documents Explained

5.1 Section 4.1 - Examination Procedures

Paragraph 35 - We welcome the clarity provided in Paragraph 35 outlining the key elements of the Examination Procedure. In particular, we welcome:

- The harmonisation and simplification of the rules governing examinations;
- The front loading of the process, requiring the Examining Authority to meet with Interested Parties to agree the issues needing greater examination and how the examination should be conducted;
- The requirement for the Examining Authority to set a timetable;
- The basis of examinations being written representations, and the detail of the procedures for written examinations, and on how it will normally be the Examining Authority questioning persons making oral representations at hearings;
- Clarity around how an Examining Authority will carry out an inspection of land;
- Confirmation that where the Examining Authority is not the decision-maker, and the decision reached differs from that recommended by the Examining Authority, or where a decision is quashed, there is right for parties to the examination to be given a further opportunity to make written examinations – although these provisions should not be used to frustrate or delay projects that have been legitimately approved.

We also support the provision of accompanying Guidance from the Secretary of State setting out key principles to help the Examining Authority in any procedural decisions it is required to make.

Paragraph 37 - We fully support the requirement for the Examining Authority to ensure that a thorough and in-depth examination is made into the details of a particular project, including the relative benefits and impacts. We also support the need for all Interested Parties to have a fair opportunity to make representations about a project under consideration, including the emphasis on parties combining to appoint a representative to present their views.

We particularly welcome the flexibility of the Examining Authority to appoint technical assessors, barristers, solicitors or advocates to provide technical or legal advice and assistance, but that these appointments must be notified to interested parties, and should generally be independent.

In addition, we would strongly advocate an appeals mechanism be included to enable, in extremis, the opportunity to challenge a particular appointment if they are

deemed unacceptable to a particular party, however there should be strict timescales for the raising and considering of an appeal, in order to ensure examination of projects is not unduly delayed.

5.2 Section 4.1 - Transcription Costs

Paragraph 39 – All concerned believes that it is vital to ensure thorough examination of a particular project takes place, along with full and accurate recording of procedures. However, industry would not generally support the use of transcribers to record oral evidence at hearings due to the prohibitive costs. The use of audio / visual recording is a much more cost-effective way of ensuring true records are kept, ensuring complete accuracy without the need for additional validation.

5.3 Section 4.1 - Regulations on Definition of 'Interested Parties'

Paragraphs 40 and 42 - Refer to the setting out of statutory consultees / parties for specific applications in Regulations. All concerned support this approach and in particular the inclusion of the Marine Management Organisation, subject to the successful passage of the Marine and Coastal Access Bill through Parliament. However, as previously raised in our response to the Planning Act 2008 Tranches 1 and 2 consultations, we believe that the proposed list is far too extensive and that many of those statutory bodies listed will neither be interested in, nor have the resources to respond to numerous individual applications.

Finally, we would question why Natural England and the Historic Building and Monuments Commission for England are listed as a Statutory Party in all cases, and not just those relating to England.

Paragraph 41 - The definition of 'Interested Party' includes all those that have made a 'relevant representation'. As raised previously, Industry, whilst absolutely supporting the principle of the right of all 'Interested Parties' to make representations, to have their points of view considered and to be kept informed of developments, is nevertheless concerned about the administrative burden associated with managing potentially thousands of identical or very similar representations orchestrated as part of a co-ordinated campaign. The industry would therefore urge the Government to encourage the use of electronic communication by all parties wherever possible, to enable efficient and timely responses and information flows, and to encourage Interested Parties to collaborate and appoint a representative to represent all those with similar views.

Paragraph 43 - The setting of a format and procedures covering how a 'relevant representation' may be made is helpful. Clearly laying out the requirements in advance will aid both those wishing to make representations and those receiving them, by ensuring the basic necessary information is included in a consistent way.

5.4 Section 4.1 - Examination Rules Where There May Be National Security Issues

Paragraphs 44 - 47 - We support the principle of establishing alternative procedures for defence or national security reasons, whereby evidence can only be disclosed to a person specified by the Secretary of State. We believe the proposed procedures provide appropriate safeguards for protecting information relating to defence or

national security, whilst ensuring that the interests of any person prevented from being present at closed evidence sessions are represented.

5.5 Section 4.2 - Guidance on Examination Procedures

Paragraphs 48 - 51 - We welcome the draft Guidance to supplement the various Examination and Interested Parties Regulations, and in particular support the establishment of key principles that allow the infrastructure Planning Commission (IPC) to run efficient yet thorough examinations which are proportionate to the complexity and controversy of individual schemes.

5.6 Section 4.3 - Matters to be Taken Account of in Decisions on Applications for Development Consent

Paragraph 55 - We welcome the intention to bring within the Planning Act 2008 regime all matters which decision-makers currently have to 'have regard to', and therefore the inclusion of the Regulations listed within Annex 5.

We note that the particular requirements arising from the EU and Habitats Directives are being dealt with through separate Regulations and have commented on those consultations separately.

5.7 Section 4.3 - Matters Which Cannot Be Included In Development Consent Orders Without Agreement

We welcome the intention to enable the IPC, with agreement from the relevant consenting body, to also grant operational consents. This will allow flexibility and the option of a truly holistic consents process where beneficial for developers to do so, whilst protecting the statutory responsibilities and duties of other consenting bodies, and minimising conflict / duplication.

As stated previously, we understand the Government's commitment to preserve the Devolution Settlement, and in that context we welcome the Government's discussions with the Welsh Assembly Government, and urge both parties to ensure the maximum possible alignment and consistency.

5.8 Section 4.4 - Matters Relating to Applications for Compulsory Acquisition of Land

Paragraphs 65 - 66 - We support the principle of full and fair discussions with all people with interests in land subject to compulsory acquisition, and as in industry generally seek to acquire land through discussion and negotiation reaching voluntary agreements wherever possible.

We also support the requirement for the IPC to hold a compulsory acquisition hearing to enable those with interests in the land to make representations to the IPC.

Paragraph 68 - We generally welcome the requirements placed on applicants to ensure that no-one is prejudiced where an applicant requests that a provision authorising the compulsory acquisition is included subsequent to the application being accepted by the IPC. In particular we welcome the inclusion of a deadline by which relevant representations must be made.

However, as previously discussed with DCLG colleagues, whilst industry fully accept the need for an applicant to make reasonable endeavours to identify and engage with all 'interested parties' this is not always possible when seeking to compulsorily acquire common land, with lists of commoners often out of date / inaccurate. During our previous discussions with DCLG it was confirmed that provided that an applicant could prove that he / she had made reasonable endeavours to identify all 'Interested Parties', should a further party subsequently make representations they would not be able to hold up or frustrate progress of an examination or development.

The fourth bullet point of paragraph 68 appears to go against this safeguard and could result in significant delays to a project, whereby parties wishing to frustrate or stop a project might not respond within the deadline and therefore not be included in any subsequent hearing, only to raise their objections at a later date and thereby require the IPC to hold a further hearing. Industry would urge Government to re-word this section so that provided the applicant has undertaken due diligence to reasonably identify all 'interested parties' and has complied with the publicity requirements, then further representations would not be accepted, or a further hearing held except in extremis / exceptional circumstances. Without such safeguards, the existing delays of the current system will continue.

5.9 Section 4.4 - Regulations on the Duration of Powers

Paragraph 72 - We welcome the proposal to extend the time limit for commencing development after granting of consent from three to five years, and believe this is an appropriate timescale giving the size, scope and complexity of many nationally significant energy infrastructure projects.

Paragraph 73 - We note that Section 154 subsections (3) and (4) empowers Ministers to set time limits for the taking of certain steps in relation to provisions, contained in an Order granting development consent authorising the compulsory acquisition of land. We also note that Section 154(3) gives the Secretary of State power to define what those steps are and that it is proposed that they are undertaken within the same five year time period.

Whilst we understand the principles behind these proposals, we would suggest that timescales and steps will vary with each individual project, and therefore such issues should be discussed and agreed between the IPC and the applicant, having due regard to the representations of 'Interested Parties'.

5.10 Section 4.4 - Guidance on Compulsory Acquisition

Paragraphs 76 - 79 - We support the principle established by the Planning Act 2008 that questions of compulsory acquisition of land, or of rights over land, are considered alongside other questions raised by an application for development consent, resulting in a single decision covering all related aspects of the development proposal.

As above, the industry generally uses compulsory acquisition as a last resort having exhausted all routes to seek voluntary agreement through constructive discussions and negotiations. We therefore welcome the proposal to produce Guidance on

Compulsory Acquisition, and the specific comments in answer to Question 16 are provided in that context.

5.11 Section 4.5 - Application Fees

Paragraph 81 - Outlines the policy intentions of the proposed charging scheme, the principles of which we support. We welcome Government's intention that the estimates will be subject to ongoing scrutiny and that a review is planned as soon as sufficient cost data has been accumulated. We suggest that such a review should take place as part of the promised IPC review to take place after two years of IPC operation, as committed to by the Government during the passage of the Planning Act 2008 through Parliament.

5.12 Section 4.5 - Policy Context

Paragraph 84 - States "we expect that in most cases a decision will be made within a year of the application being accepted for consideration". We are concerned that this appears to extend the timescales contained within the Act of six months for consideration and three months for a decision on a consent application, and we would welcome confirmation from Government that these timescales are not being extended, except where an NPS does not exist and the Secretary of State has a further three months to make his / her decision.

Paragraph 85 - Makes reference to the Planning Act impact assessment which estimated benefits of the new regime as potentially up to £300 million per year, including £20 million in administrative savings to scheme promoters. Whilst reiterating our support for the new regime, we believe that taken together the provisions of the new regime will not result in significant administrative savings, however they will deliver greater certainty for developers. We would therefore welcome clarification as to how these estimates have been calculated.

5.13 Section 4.5 - When and How Fees are Charged

Paragraph 86 - We support the objective of a simple cost-reflective charging structure, which recovers costs on a phased basis. However, as discussed at the recent UKBCSE / Industry meeting with DCLG / DECC, the standard application fee of £36,000 is not applicable for smaller less complex NSIPs such as several spans of 132kV overhead line. Such projects, whilst nationally significant as part of an integrated grid network, and essential in either connecting new generation or reinforcing the network to provide greater security of supply or capacity, are unlikely to require significant resource, and we would therefore suggest that Single Commissioner Cases are calculated on an individual basis with the £36,000 set as a maximum, rather than the norm.

Additionally, as currently defined "actual relevant day" in Article 8(3) of the draft Planning (Fees) Regulations refers to any day on which an application is examined, with no minimum number of hours, or provision for part days. Therefore, if the Examining Authority considered an application for just one hour the applicant would be charged fees for the whole day, and we believe that this should be amended to allow more cost-reflective charges.

Paragraphs 87 - 89 - We support the principle of differential fees paid at the start and end of examinations to cover cases heard by a single Commissioner, and 3-Commissioner or 4-or more Commissioner Panel, however we are unclear how the costs for decisions are incorporated into the examination day-rates, and on what basis the calculations are made. What proportion of the proposed daily fee is taken up by the decision-making element, given that the examination stage is up to 6 months and the decision-making stage up to 3 months. Surely the two stages of the process run consecutively and so a lower daily rate multiplied by the total number of days required for both examination and decision stages for relevant staff resources, associated overheads and support functions would be more transparent? Additionally, simply calculating the total number of days from the start to end of the examination process assumes that work on a case takes place every working day and we would question whether this is likely to be the case.

Paragraph 88 - Confirms the number of Commissioners appointed will be influenced by the complexity and / or level of interest in a case. We support this approach as proportionate, but again sight of the basis on which the calculation has been made will reassure developers.

5.14 Section 4.5 - Fee Estimates

Whilst we understand the concept of resource modelling for each activity within the process and testing it with officials working on existing consent regimes for major infrastructure projects, we would welcome further clarity on the proportion of costs apportioned to examination and decision-making processes.

See also our response to 5.13.

5.15 Section 4.5 - Impact Assessment

As before, we welcome the commitment by Government to scrutinise these processes before the final Regulations are made, so that further refinements may occur to achieve a more accurate cost model.

Paragraph 96 - Explains the process when there is no NPS in force, but we assume that significant additional costs will only occur for energy developers during the latter part of 2010 if the Parliamentary scrutiny process of NPSs delays them coming into force. Thereafter, an energy NPS will exist and only additional work associated with any new unknowns / developments affecting and resulting in refinements of an NPS will be necessary.

Additionally, we welcome a) the requirement for Ministers to make any decisions within three months, b) their ability to grant all necessary consents (in the event of there being no relevant NPS in force) and c) that applicants will not be charged fees for any additional costs associated with Ministers determining a case.

5.16 Section 4.5 - Cap on Fees

We broadly support the principle of fees being charged on a cost-reflective basis, however as mentioned above, we do think that the fees included within the Summary of Proposed Fees table should be viewed as the maximum developers might be

required to pay, particularly in respect of smaller less complex projects subject to the Single Commissioner process.

All concerned therefore believe that there should be a cap on fees to ensure that costs do not spiral out of control and result in a project becoming economically unviable. This could be determined after the preliminary meeting when the timetable is set and the Examining Authority have greater clarity on the complexity of, and interest in the project.

5.17 Section 4.6 - Miscellaneous Matters

Paragraph 105 - We welcome Government's intention to make savings provisions in future commencement orders to preserve existing permitted development rights and therefore retain the right to carry out works without development consent being required under the Planning Act.

6.0 Annex 1: Draft Infrastructure Planning (Examination Procedures) Rules 2010

6.1 Relevant Representation

Rules 3 (1), (2) and (3) - Whilst all concerned are committed to the highest standards of community engagement / consultation, we welcome the requirement for relevant representations to be submitted within the specified deadlines, and confirmation that relevant representations received after the deadlines may be disregarded. This ensures that whilst interested parties have adequate time to make their representations, developments are not generally subject to perpetual delays by untimely representations late on in the process.

Rule 4 - It is helpful that if the IPC requires additional copies or additional information to be provided by Interested Parties it can specify the timescales within which it needs it. We also support the requirement for the IPC to make those representations, comments or information available in line with Rule 21. This will ensure the IPC has sufficient information in time to determine the relevance of representations, and that the developer and other Interested Parties are aware of them.

6.2 Initial Assessment of Issues

Rule 5 - We note that S88(1) of the Act states that there should be initial assessment of the 'principal issues arising' whereas Rule 5 now refers to 'initial assessment of issues'. This change of wording is significant and the difference in approach could lead to confusion. Whilst the new wording will minimise the risk of an individual / party claiming that their issues (of principal importance to them) were not considered, the Government needs to ensure that the assessment process is both efficient and timely within the overall Examination process and timescales.

We are therefore keen to understand what issues will be included in the initial assessment e.g. issues relevant to the project such as need, design, location as well as development order consents issues covering planning e.g. Ancient Monuments, Habitats Regulations, Listed Buildings etc.

To achieve a front-ended process which minimises areas of conflict, we believe that Rule 5 could helpfully be amended to include a general assessment of known issues as follows:

> "The Examining Authority shall determine:
> (1) those issues raised to date, and which of these should be part of their initial assessment;
> (2) which issues of the development scheme are required to form part of the development order consent."

6.3 Notice of Preliminary and other Meetings

Rule 6 - There is no reference to there being a timescale within which invitees to the preliminary meeting are asked to respond by and the number of choices for meeting.

We suggest that it would be helpful to insert a new subsection (4) requiring response from invitees within a set number of days after notification, to enable the Examining Authority to plan the programme for the meeting.

6.3 Preliminary Meeting

Rule 7 - We support the proposal that the IPC shall preside at the Preliminary Meeting and will determine the procedure, matters and amount of time to be allocated to each matter and for making any oral representations. This ensures that all key matters are considered whilst making efficient use of available time.

6.4 Timetable

Rules 8 (1) and (2) - UKBCSE / Industry has consistently supported pre-agreed timescales for all key elements of the consent process, and welcomes the specific provisions included within Paragraph 8 (1) which ensures that all parties involved or interested in a particular development are fully aware from the beginning of the deadlines by which each activity must be completed.

However, it does seem that Rule 8(1)(b) states how the Examining Authority will set out a timetable for what it expects with sections (c) and (d) then going onto to say that this will include the period that applicants and interested parties have for responding. It does not however refer to what timescale will be made for applicants and interested parties to respond to the questions posed by the Examining Authority (unless this is what's meant by 'others' but it might be clearer to say the 'Examining Authority' and other interested parties).

Also, to enable the Examining Authority to comply with the statutory Examination timescales contained within the Act, there needs to be some way of ensuring effective management of the questioning process i.e. ensuring that numerous iterations between parties does not occur, and that questions are framed in such a way to ensure all issues are dealt with as effectively as possible. We would therefore suggest that Government insert into Rule 8(d) 'the Examining Authority,' before 'Interested Party or others';

We also suggest inserting a new subsection as follows:

> "(dd) The Examining Authority shall inform the applicant, interested parties and others of any subsequent periods within which information resulting from information in (c) and (d) above is required to be provided".

Rule 8 (3) - Whilst we recognise that there may be circumstances where it is necessary for the IPC to vary the timetable, we believe that, in order to deliver the developer certainty so necessary for investment, it is vital that Government clarifies that this will only be undertaken in extremis.

6.5 Written Representations

Rule 10 - As above, the exchange of information may lead to 'rebuttal' information from either applicant or Interested Parties going 'back and forth', with questions between all parties continually flowing. It is vital for the Examining Authority to have the ability to bring exchanges of information to an effective conclusion. We therefore suggest that, as above, a new subsection (5a?) is inserted as follows:

> "The Examining Authority shall inform the applicant, Interested Parties and others of any subsequent periods within which information resulting from information in (4) and (5) above is required to be provided."

Rule 10(3) - We note that within Paragraph 10(3) that the IPC may permit a written representation to be made by any person who is not an Interested Party. We would welcome an understanding of circumstances when the IPC might find it useful to have views of a person who is not an interested party, given the IPC's ability to appoint specialist advisers, barristers, solicitors etc. We are concerned that this provision could open the door to the IPC being bombarded by large numbers of representations who have no direct interest in a development but who are responding to nationally orchestrated campaigns. We would suggest that if this provision is to remain, then the IPC should be required to explain on what grounds it deems it appropriate to accept such a written representation.

Rule 10(4) and 10(5) - We support the requirement for written representations to identify those parts of an application or specified matters with which they agree and each part with which they do not agree, and the reasons for such disagreement. This will be helpful in aiding all parties' understanding, and will enable applicants to hold meaningful discussion to seek to resolve and mitigate any outstanding concerns.

We also support the opportunity for Interested Parties to comment on any written representations, and assume that this also applies to the applicant.

Rule 10(8) – All concerned are committed to the highest standards of community engagement / consultation, and we welcome the requirement for relevant written representations, responses to written questions or further information to be submitted within specified deadlines, and confirmation that information received after the deadlines may be disregarded. This ensures that whilst Interested Parties have adequate time to make their representations, developments are not generally subject to perpetual delays by untimely representations late on in the process.

6.6 Notification of Hearings

Rule 13 - We generally support the proposed arrangements for notification of hearings, however within Paragraph 13(1) it sets a deadline of a minimum of 21 days for a hearing to take place after it has been notified to all interested parties, and Paragraph 13(6) places a requirement on the applicant (unless the IPC otherwise directs) to place public notices in the vicinity of the development and the local newspaper no later than 21 days before the date fixed for the commencement of a hearing. Obviously, particularly in placing advertisements in newspapers, this may not be possible given copy deadlines, unless the applicant is given advance notice of the date of the hearing in order to enable him / her to comply.

Rule 8 - Industry continues to welcome the inclusion of the safeguard that if an applicant has taken reasonable steps for the protection of a notice, and if need be, its replacement, the applicant will be treated as having complied with the notice requirements, if the notice is subsequently removed, obscured or defaced by a third party prior to the commencement of the hearing.

6.7 Procedure at Hearings

Rules 14 (1) and (2) - We support the proposal that the IPC / Examining Authority shall preside at any Hearing and will determine the procedure, matters to be considered and any matters which the Examining Authority requires further explanations. This ensures that all key matters are considered whilst making efficient use of available time.

Rule 14(3) - We respectfully suggest that the first "or" within this sentence is deleted.

Rule 14(4) - Whilst we recognise that it is critical to the process that interested parties are able to present their views, it is important the IPC is able to manage effectively contributions that are not deemed relevant. For instance, the Government's package of integrated reforms provides for the development of National Policy Statements, which set out the framework within which consenting decisions for NSIPs will be made. Therefore a re-opening of the debate around the Government's energy policy will not be appropriate, provided that the IPC has satisfied itself that the proposed development meets the requirements of / aligns with the relevant NPS(s).

Provided that a proposed NSIP meets with relevant Government policy, guidance, regulation, and in particular NPSs, the IPC must have the power to prohibit extensive and time-consuming debate on those issues that currently come up time and time again at inquiries under the current regime e.g. the science around electric and magnetic fields, where the Government's policy should be clearly spelt out within the Networks NPS and, providing a proposed development complies, this should not be further debated. Whilst Paragraph 14(6) provides some protection, we recommend that a clause is inserted to specifically spell out that re-opening of issues of Government policy will not be allowed, provided that the development in question complies.

6.8 Hearings

Rule 15 - We support the principle of an IPC Panel being able to hold two or more concurrent hearings, however it is important that IPC Commissioners, the applicant and Interested Parties are kept full informed of discussions in all of the hearings, to ensure that any interacting issues are dealt with holistically and unnecessary duplication is avoided.

6.9 Site Inspections

Rule 16(1) - Whilst we note the proposal that an Examining Authority may make an unaccompanied inspection of a site without giving notice of its intention, we would urge that out of courtesy to the landowner, tenant or other party present on the land, prior warning of a visit is given. This will avoid or minimise unnecessary confrontation, distress or conflict.

Rule 16(4) - Whilst, as above, we would always advocate prior notice to, and the presence of an Interested Party at any inspection, we welcome the statement that "the Examining authority shall not be bound to defer an inspection ……..where an interested party is neither present nor represented at the time appointed," as this will avoid undue delays.

6.10 Further Information

Rule 17 – All concerned are committed to the highest standards of community engagement / consultation, and welcome the ability of the IPC to seek further information from Interested Parties, to aid its understanding.

However, it is vital that delays in providing this information do not unduly delay the hearing process, and therefore we support the inclusion of the ability of the IPC to set deadlines by when information must be received, and confirmation that information received after the deadlines may be disregarded. This ensures that whilst interested parties have adequate time to provide additional information, developments are not generally subject to perpetual delays by untimely responses or lack of information from interested parties.

6.11 Additional Copies

Rule 18 - We suggest that every effort is made by Government to encourage use of electronic communications wherever possible, in order to minimise the environmental impact and administrative burden of providing numerous paper-based copies.

6.12 Procedure after Completion of Examination

Rule 19 – All concerned generally welcomes the provisions of this clause, as a helpful safeguard for all in the event of the decision-maker not accepting the IPC's recommendations. However, we are concerned that there is no mention of specific timescales for this process, albeit if the Secretary of State is the decision-maker they are bound to a limit of 3 months within which to make their decision.

6.13 Availability and Inspection of Representations and Documents and Form and Service of Notices

Rules 21 and 22 - We welcome the emphasis on electronic communications but recognise the need to provide hard copies for inspection / send hard copies to Interested Parties where necessary, and understand the safeguards built in to enable recipients to choose the method by which the receive information.

7.0 Draft Infrastructure Planning (Interested Parties) Regulations 2010

7.1 Relevant Representation

Rule 4 - We welcome the standardisation of information required to register as an "interested party" and support the inclusion of the items within Rule 4(3) as being the basic information necessary for the IPC.

7.2 Schedule - Table of Statutory Parties to the Examination of an Application

As previously raised with DCLG in respect of pre-application consultation, we believe that the list of Statutory Parties for individual consent applications is too wide. Many of the proposed Statutory Parties should be altered to include them only on a "where relevant" basis, as they will neither be interested in, nor have the resources to respond to, the numerous individual NSIP examinations.

We suggest the following:

National Bodies (where relevant) - The Health and Safety Executive, The Equality and Human Rights Commission, the Local Government Association (who will always need to refer to the relevant Local Planning Authority who are already included as statutory parties), the Commission for Sustainable Development, the Gas and Electricity Markets Authority, The Historic Buildings and Monuments Commission for England (only where developments could potentially impact on historic buildings or monuments).

Regional / Local Bodies (where relevant) - The relevant Fire and Rescue Authority, The Relevant Policy Authority (who for instance might be very interested in a largescale project's construction programme and any increase in traffic or transport of Abnormal Indivisible Loads, but would be unlikely to be interested in a wind energy development unless it had major traffic / road access implications, the Relevant Regional Development Agency.

Additionally, we respectfully question why Natural England and the Historic Buildings and monuments Commission for England are listed as Statutory Parties in all cases, and not just those relating to England.

8.0 <u>Annex 3: Draft Infrastructure Planning (National Security and Appointed Representatives) Rules 2010</u>

8.1 Publicity

Rule 4 - In the context of sustainable energy infrastructure projects it is unlikely that publicity of a request for a direction for the Secretary of State to examine an application for development consent would be a risk to national security, however there could be cases in other NSIP categories where drawing attention to the project may be detrimental to national security or defence.

8.2 Notice of Discussion in Respect of Request for a Direction

Rule 5 - Makes reference to the need to notify and send a copy of the decision to “any precluded person”. We would welcome further clarification as to the type of people / bodies Government believe might be a “precluded person” with respect to energy NSIPs?

Rule 5(1) - We welcome the helpful inclusion of the safeguard that “nothing in this paragraph requires or permits the Secretary of State to give reasons for the decision, where the giving of reasons would result in the public disclosure of closed evidence”.

Rule 5(2) - It would also be helpful if Rule 5(2) included a similar safeguard around the need to send a copy of the Direction to specified person including “any precluded persons”, or alternatively, for Government to make it clear that a direction will not include any matters that might compromise defence or national security.

8.3 Functions of an Appointed Representative

Rule 6 - Helpfully sets out the functions of an “appointed representative”, however there does not appear to be any safeguards as to the suitability of an “appointed person” with regards to protecting defence and maintaining national security.

8.4 Pre-Hearing Meetings

Rule 7 - The provisions contained within Rule 7 seem sensible and importantly include the ability of the Secretary of State to disregard any written representations received after the deadline for representations, which will avoid undue delay in examinations due to late submissions.

8.5 Hearing Procedure

Rule 9 - The Secretary of State Hearing Procedure for cases of defence or national security includes similar helpful safeguards to those in the general Hearing Procedures, including the amount of time allowed for making oral representations, and the matters and amount of time in respect of oral questioning by another person. We therefore welcome these safeguards.

8.6 Procedure after a Hearing (where an examiner has been appointed)

Rule 11 - We support the requirement for an Examiner to make a report in writing to the Secretary of State and specified parties / persons setting out his / her findings and conclusions in respect of closed evidence and recommendations.

8.7 Site Inspections

Rule 14 - Please see our response to item 6.7.

8.8 Procedure after Completion of Examination and Procedure Following Quashing of Decision

Rules 15 and 17 - We support the proposals within Rules 15 and 17 which require the Secretary of State to notify the parties and also affords parties an opportunity of making written representations on new evidence / matters of fact to the Secretary of State in the event that he / she disagrees with the recommendations of an Examiner.

We also welcome confirmation within Rule 15 that the Secretary of State may disregard any representations received after the completion of the Examination.

8.9 Reason for Decision to Grant or Refuse Development Consent and Closed Evidence Not to be Disclosed

Rules 16 and 18 - We welcome the confirmation within Rule 16 that the Secretary of State must not disclose the closed evidence but may refer to the report of an Examiner, nor must closed evidence be disclosed to a person other than the Secretary of State, the parties or a person of any description specified in the direction (Rule 18).

9.0 Annex 4: Guidance for the Examination of Applications for Development Consent for Nationally Significant Infrastructure Projects

Introduction

9.1 Purpose

Paragraphs 3 and 4 - We welcome the provision of Guidance on examination of NSIP applications as a helpful aid to clarity and to promote best practice, ensure consistent application of examination procedures and to promote fairness, equal treatment and proportionality.

9.2 Legal Status

Paragraphs 6 and 7 - We note the ability of the Examining Authority to depart from the Guidance providing they have reasons to do so and are able to provide full reasons. However, because as identified, this could give rise to Judicial Review, and because developers require certainty, we would welcome confirmation that Government expect any departure from both the proposed Examination Procedures and the Guidance to be made only in extremis, and after full discussion with affected parties.

However we welcome confirmation that the Guidance will not override planning law or any other law.

The Examination Process

9.3 General

Paragraphs 8 - 10 - The inclusion of a timescale of 28 days for the IPC to notify an applicant of acceptance of an application is welcome, and very helpful in providing certainty for developers.

9.4 The Examining Authority, Panel and Single Commissioner Processes and Appointing the Examining Authority

Paragraphs 11 - 17 - We welcome the establishment of the two separate processes depending on the differing scale and scope of NSIPs as a proportionate and appropriate way of dealing with them, provided that both the timescales and the costs are smaller for Single Commissioner cases than for Panel Cases.

The safeguard of the IPC Council making decisions associated with Single Commissioner cases is helpful in ensuring 'an appropriate range of specialist expertise is brought to bear on the final decision' and we welcome it.

9.5 The Complexity of the Case and the Level of Public Interest in the Outcome

Paragraphs 18 - 24 - We welcome recognition that smaller scale and less complex projects such as electricity transmission and distribution network NSIPs, which whilst critical to meeting the Government's energy policy goals and therefore nationally significant, may often be best suited to the Single Commissioner process with its associated efficiencies in timescales and costs.

Who Can Take Part in Examining the Application

9.6 Interested Parties and Relevant Representations

Paragraphs 27 - 32 - Whilst all concerned fully supports comprehensive and meaningful early engagement with communities affected by energy developers, the definition of "relevant representation" is so wide that it could result in the need to be engaged with many thousands of individuals who have no direct interest in a project but, in response to a nationally orchestrated campaign, may make representations to the Examining Authority. This could lead to dilution of focus on the key concerns of the affected community which should be avoided at all costs.

Paragraph 30 - However, we do support the requirements included within Paragraph 30 including in particular:

- Confirmation that a relevant representation must be received by the deadline specified in the Notice given by the applicant that the application has been accepted by the IPC.

- Confirmation that a representation is not relevant to the extent that it contains material about compensation for compulsory acquisition of land or an interest in or right over land, or material about the merits of policy set out in a national policy statement, or material that is vexatious or frivolous.

However, whilst we support the inclusion of a template form for representations in order to encourage a consistent approach, we suggest that this should not be mandatory, as, depending on the size and complexity of the proposed project it may be overly bureaucratic.

We would prefer the form to be available as best practice, and for the Examining Authority to encourage its use rather than insist upon it. This will ensure that individuals who are not used to completing forms are still able to make their points and input into the process.

We assume that the form will be available on the Examining Authority's website or available from the Examining Authority if an individual does not have access to the internet, and we would be grateful if this could be confirmed.

Paragraph 31 - We also support the requirement for a "relevant representation" to include an outline of the principle submissions which a person intends to make in respect of the application, which will be helpful to both the IPC and developers in identifying the issues that are likely to feature most prominently during the Examination process, which in turn will help the IPC in structuring and planning the programme for the Examination.

Paragraph 32 - However, whilst we recognise that on rare occasions it may be helpful for the IPC to be able to exercise its discretion by allowing participation within the Examination process of person(s) who has / have not submitted a "relevant representation", this is not a requirement in the secondary legislation. Therefore, we strongly believe it should not be generally accepted practice in order to encourage early identification of outstanding issues and the opportunity to resolve them by applicants. We therefore suggest that this is not included within the Guidance, as it conflicts with the many other references to the need to adhere to the timetable.

9.7 Vexatious and Frivolous Representations

Paragraphs 33 and 34 - We welcome the inclusion of the ability of the IPC to exclude vexatious and frivolous representations, but acknowledge that such a decision should not be taken lightly, and where there is an element of doubt, testing of whether a representation has merit or not could be explored at a hearing, rather than risk a Judicial Review.

9.8 Affected Persons

Paragraph 35 - 38 - All concerned agree with the Government's commitment to ensure the rights of those whose land is being compulsory acquired are properly protected. Industry uses compulsory acquisition powers only as a last resort, preferring wherever possible to reach agreement by constructive dialogue and negotiation, however where their use is necessary for the delivery of an NSIP we fully support the proposals to ensure full and proper examination.

9.9 Other Persons

Paragraph 39 - 41 - We believe in ensuring affected communities have the opportunity to input into any NSIP Examination process, and we support the right of the IPC to call expert witnesses to give evidence and to consider requests from applicants and other Interested Parties to call expert witnesses in support of representations, provided that it is satisfied of the validity of such expertise.

How the Application is Examined

Paragraph 44 - Notwithstanding our comments on Paragraphs 39 - 41, we welcome confirmation that the IPC may only take into account any representation or evidence or information received from any other person before the Examination opens or, by exception, during the Examination provided that it is made available for public inspection in accordance with Rule 21 of the Procedure Rules. Every effort should be made to incentivise all parties to input their representations, information or evidence as early as possible.

9.10 Initial Assessment of the Application

Paragraphs 45 and 46 - All concerned support the inclusion of an initial assessment of an application by the IPC within a defined period of 21 days. Any extension of that timescale should be by exception and should be fully justified.

However, within Paragraph 45, there is reference to an initial assessment of the ‘main issues’, which is a further different term from the Act, which uses the words “principal issues arising” and Annex 1, which uses the words “initial assessment of issues”. Clarity and consistency is necessary between the Act, secondary legislation and proposed Guidance.

9.11 Preliminary Meeting

Paragraphs 47 - 49 - We welcome the holding of a preliminary meeting, normally within a period of six weeks from the deadline for receipt of relevant representations. However, whilst recognising the importance of the inclusion of all interested parties in the case of large and complex energy NSIPs, particularly linear network developments, the numbers of interested parties could be very large. Government might therefore wish to change the wording to allow community representatives / advocates to represent a number of interested parties, in order to allow preliminary meetings to be more manageable, meaningful and effective.

We absolutely concur with the objective of reaching as much consensus between participants both during the pre-application consultation and pre-examination stages.

Paragraph 48 - Specifically, Paragraph 48 introduces the opportunity to ‘discuss any other matter the Examining Authority wishes”, which is what the Act S88 states, but Paragraph 48 does not elaborate more than the Act as to what any other matters might include. We therefore suggest that it would be helpful to clarify within Paragraph 48 what ‘any other matter’ might be e.g. an issue arising from a written representation, which may be required to be considered by all parties, in conjunction with the Examining Authority, to decide whether it is such a matter to be examined.

9.12 Procedure for Preliminary and Other Meetings

Paragraph 50 - We welcome the proposal for the IPC to notify all invitees of the matters it wishes to discuss at the Preliminary Meeting and provide on an indicative basis a clear statement of what it considers to be the key issues, and what matters do not need to be considered or will not require much attention. This will help all parties prepare for the meeting, focus on the key issues and enable them to provide relevant information and achieve consensus on as many issues as possible.

Paragraph 51 - Whilst we note the principle of all participants being able to submit other written statements to the Examining Authority at any time, Government should ensure that participants submit the majority of information as early as possible and sufficiently in advance of the Preliminary Meeting (and other meetings) to enable due consideration by the IPC and other participants. Government should also make clear that late submission of information should not be used to undermine or frustrate examination of proposed NSIPs.

Paragraph 52 - We very much welcome the emphasis on reaching consensus, including through pre-inquiry hearings.

9.13 Timetable

Paragraphs 54 - 60 - In addition to the pre-agreed statutory timescales defined within the Act, we welcome the requirement for the IPC to set out and agree a timetable for when each stage of the Examination will be completed.

Paragraph 56 - As above (see comments to Annex 1 - Rule 10), no reference is made to what happens when comments from an Interested Party or the Examining Authority lead to follow up questions then requiring a response from another interested party including the applicant, and what timetable should be imposed to prevent the 'merry go round'.

We therefore suggest that this paragraph is amended to include the requirement for the Examining Authority to set out within the timetable, the timescales for responses to information submitted in response to questions from the Examining Authority / other interested parties to enable adherence with the statutory timescales laid out within the Act.

Paragraph 57 - All concerned recognise the need for the IPC to keep the timetable under review and amend where necessary, it is imperative that this does not result in the statutory timescales being exceeded.

Paragraphs 58 - 59 - We support the inclusion of timescales for receiving the Local Impact Report, which should normally be six weeks. Every effort should be made to limit the timescale to six weeks, with longer period only considered in extremis, where an NSIP is particularly complex or large in scope e.g. a linear network project covering a number of local planning authority areas who will need to collaborate in the preparation of their reports.

Paragraph 59 - Makes reference to Interested Parties being given not less than 21 days to comment on the Local Impact Report, with which we agree. However, we also feel that to provide certainty for all parties, the IPC should also set a date by

which comments should be received i.e. confirmation that the time period for comments on the Local Impact Report is [x] days.

9.14 Statement of Common Ground

Paragraph 61 - We agree that a Statement of Common Ground jointly prepared by the applicant and the main objectors setting out agreed factual information about the application, would be helpful in achieving a more efficient examination process. Additionally, it is suggested that the Statement might also include areas where agreement has not been possible and that agreement should also be sought about the requirements that any Order granted should contain.

However, such an approach will be new to both developers and objectors and will potentially prove challenging, particularly initially, and in respect of agreeing the requirements of an Order, where objectors may be unwilling to discuss such matters even in principle in case it is viewed they are accepting of the proposed development. Nevertheless we support the principle, and would welcome clarification from Government on the definition of “main objectors” – is it intended to cover all interested parties with objections, including statutory parties? Also, we would welcome clarification on how a Statement of Common Ground might be developed where there are numerous differing views / objections?

9.15 Appointment of Assessor

Paragraphs 67 - 73 - All concerned support the ability of the IPC to appoint an Assessor and the proposals for introducing him / her. However, in the unlikely situation that an assessor is unacceptable to an interested party, we would appreciate confirmation of what arrangements there are to appeal such an appointment. We also believe an Assessor should be independent from all parties.

9.16 Appointment of Barrister, Solicitor or Advocate

Paragraphs 74 - 75 - All concerned have been great advocates of the employment of legal advice to support the IPC in its examinations, particularly in framing questions to interested parties during oral questioning, and we continue to support this approach.

Written Representations

9.17 Procedure for Written Representations

Paragraphs 76 - 82 - We are in general agreement with the proposed procedure for written representations, and in particular support the expectation that Interested Parties should normally be expected to include within their written statements, the data, methodology and assumptions used to support their submissions. We urge Government to be stronger in insisting this requirement is met by Interested Parties to avoid unnecessary delays in the Examination process, and to not accept such delays as allowable, except in exceptional circumstances.

Hearings

9.18 Notification of Hearings

Paragraphs 83 - 87 - We agree with the principle of hearings being held as early as possible and only changed in exceptional reasons. We also accept the proposed requirements for notification of hearings.

9.19 Issue Specific Hearings

Paragraphs 88 - 90 - We support the principle of Specific Issue Hearings, and the ability to hold them concurrently, but as stated previously, it is important that strong recording and communication of proceedings is undertaken to ensure that all Interested Parties, and indeed IPC Commissioners are aware of all developments. Additionally, we would ask what the process will be if issues arise at an Issue Specific Hearing that an Interested Party is not present and subsequently wishes to make a point about.

9.20 Compulsory Acquisition Hearings

Paragraphs 91 - 93 - All concerned welcome the proposals for holding a Compulsory Acquisition Hearing to hear oral representations from all affected persons who have requested a hearing, as well as the option to hold a single hearing or separate hearing where a number of requests for authorisation of compulsory acquisition have been received.

9.21 Open- Floor Hearing

Paragraphs 94 - 95 - Whilst all concerned do not object to an Open-Floor Hearing in principle, it is felt that the requirement that the IPC must hold an Open-Floor Hearing if it receives one or more requests to hold one, appears to compromise the IPC's right to determine how an examination might best be heard. We would welcome Government's views on this point and suggest "must" is replaced by "may".

9.22 Procedure at Hearings

Paragraphs 96 - 107 - We are in general agreement with the proposals for the procedure at hearings. In particular we welcome the statements within Paragraphs 98 and 99 which allow the IPC to refuse to hear evidence which is in their view:

- Irrelevant, vexatious and frivolous
- Repetitive
- Relates to the merits of national policy
- Relates to compensation for compulsory acquisition of land or of an interest in or over land.

Additionally, it is helpful for the IPC to be able to require any person behaving in a disruptive manner to leave the hearing, or to remain only if they comply with specified conditions, although every effort should be made to enable such a person to stay by encouraging them to appropriately modify their behaviour.

Encouragement of those with similar arguments to either work together and / or appoint a spokesperson is also a very helpful proposal and should be more strongly encouraged.

Paragraph 100 - States that it is the Examining Authority (or the legal assistance appointed to it) that will probe, test and assess the evidence through direct questioning, whereas **Paragraphs 102 and 104** states that in certain circumstances the Examining Authority may allow a participant or his / her representative to cross-examine a person making oral representations. We are surprised that this provision has been included given the Government's vigorous defence of the principle of oral representation and questioning by the IPC as opposed to cross-examination, and we respectfully request an explanation as to this apparent change of approach. We believe that an alternative solution may be already contained within **Paragraph 101** where it states that it is expected the IPC will formulate its questioning through discussion with interested parties who should be able to suggest specific questions for them to ask. Additionally the use of those with specialist advice / expert witnesses **(Paragraphs 106 and 107)** could also enhance questioning.

However, should Paragraphs 102 and 104 remain, we welcome the safeguards included within **Paragraph 105**, enabling the IPC to control the amount of time for questioning, the matters to be covered, and the ability of the IPC to intervene where necessary.

9.23 Site Inspections

Paragraphs 108 - 110 - please see comments in Section 6.7.

9.24 Procedure after the Completion of Examination

Paragraphs 111 - 112 - See comments in Section 6.10.

9.25 Procedure Following Quashing of Decision

Paragraph 114 - We support the proposed procedures following quashing of a decision.

9.26 Service of Notices and Inspection of Documents

Paragraphs 115 - 116 - We welcome the encouragement of the use of electronic communications, with the publication of documents / notices through a single website where possible, whilst including provisions for non-electronic communication and hard copies available for inspection.

9.24 Allowing Further Time

Paragraph 117 - As stated, we would expect this power to be used only in truly exceptional circumstances and therefore very sparingly, if developer confidence is not to be undermined.

Administration, Exercise and Delegation of Functions

Paragraphs 118 - 119 - We strongly support the appointment of an IPC Secretariat as proposed, to support Commissioners, and appointments should include personnel with a range of experience and expertise, including in the various NSIP sectors and the effective administration of planning regimes, as well as the ability to build relationships and work constructively and effectively with a wide range of people.

10.0 The Infrastructure Planning (Decisions) Regulations 2010

We have no material comments on the proposed Infrastructure Planning (Decisions) Regulations 2010, other than those already provided to Government in response to the recent FEPA and CPA consultations.

11.0 The Infrastructure Planning (Compulsory Acquisition) Regulations 2010

We generally accept the proposed Infrastructure Planning (Compulsory Acquisition) Regulations 2010, subject to comments made previously within sections 5.8, 5.9 and 9.19, 9.20 and 9.21.

Rule 6 - In particular we support the inclusion of a deadline by which the IPC must decide whether or not to accept a proposed provision in respect of compulsory acquisition of land within 28 days from receipt of the proposed provision.

12.0 Schedule 1

12.1 Form A - Notice Under Section 127(7) of the Planning Act 2008

No comment.

12.2 Form B - Notice of Secretary of State's Certificate Under Section 131(10) or 132(10) of the Planning Act 2008

No comment.

12.2 Form C - Notice of Compulsory Acquisition Under Section 134(7) of the Planning Act 2008

No comment.

12.3 Schedule 2 - Table of Persons to be Notified of the Proposed Provision

Please see response to Section 7.2.

13.0 Annex 7: Draft Guidance Related to Procedures for Compulsory Acquisition

All concerned generally accept the proposed Guidance Related to Procedures for Compulsory Acquisition, subject to comments made previously within sections 5.8, 5.9 and 9.19, 9.20 and 9.21.

Justification for Seeking an Order Authorising Compulsory Acquisition

13.1 General Considerations

Paragraph 20 - Association members always seek to reach agreement by constructive dialogue and negotiations, as well as considering modifications to a scheme. However, it is worth noting that in the case of energy networks, their regulatory framework requires them to connect anyone that wishes to connect, wherever and whenever they wish to do so. They are also required to maintain an efficient, economic network, and so the need to balance the three pillars of sustainable development – social, economic and environment is paramount when considering the best solution.

Paragraph 24 - Subject to the comments on Paragraph 20, given the regulatory framework under which many energy NSIP developers operate, it would be helpful if Government made reference to the fact that 'all reasonable alternatives to compulsory acquisition' should be considered within the context of that regulatory framework and the need of developers to balance the social, economic and environmental consequences when assessing the suitability of each location / route in order to ensure each project meets sustainable development objectives and regulatory requirements.

13.2 The Section 122(2) Condition

Paragraph 28 - Again, the regulatory framework within which energy NSIPs are developed needs to be considered when deciding whether there is compelling evidence that the public benefit from the compulsory acquisition of the proposed land outweigh the private loss suffered by those whose land is to be acquired.

13.3 Resource Implications of the Proposed Scheme

Paragraph 33 - States that an application for a consent Order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. All concerned would value clarification as to the detail required, and would urge Government to ensure that only the appropriate level of detail is made public in order to avoid commercially sensitive information being made available which could influence ongoing voluntary negotiations elsewhere

13.4 Other Matters

Paragraph 35 - States that promoters will need to be able to demonstrate that 'any potential risks and impediments to the implementation of the scheme have been property managed'. Again, whilst energy NSIP developers will always seek to

manage all risks and impediments to projects fairly and effectively, it may not always be possible to achieve this goal without support from the IPC in terms of consenting compulsory acquisition of land.

Preparing the Application

13.5 Preparatory Work

Paragraphs 38 - 41 - As above, members always seek to acquire any necessary land by constructive dialogue and negotiation. We therefore support the emphasis on this approach included within this section, on the basis of compulsory acquisition being used only when absolutely necessary.

13.6 Use of Alternative Dispute Resolution Techniques and Other Means of Involving Those Affected

Paragraphs 42 - 44 - We welcome the option of mediation as an alternative to the main system. We also support the various other options contained within Paragraphs 43 and 44.

13.7 IPC Involvement at the Preparation Stage

Paragraph 45 - We very much welcome the ability of developers to seek advice from the IPC prior to submitting an application and accept the limitations of that advice as being appropriate.

13.8 Statement of Reasons

Paragraphs 46 - 48 - Regarding the need to justify that there is a compelling case in the public interest, please see our comments within Section 13.2.

The Examination Process

13.8 Examination Procedures for Authorising Compulsory Acquisition

Paragraphs 49 - 50 - Confirms the examination procedures for an Order authorising compulsory acquisition of land will be the same as all other applications to the IPC – which we agree is a helpful streamlined approach.

Implementation

13.9 Single Stage Process

Paragraphs 51 - 52 - We support the provisions outlined within these paragraphs, including in particular the single stage process and the deadline for any legal challenge to be within 6 weeks of the date of publication of the Order or Statement of Reasons.

Annex 1 - Special Kinds of Land

13.10 Protection Against Compulsory Acquisition

Paragraph 1 - We welcome the clarity given over special kinds of land that benefits from additional protection against compulsory acquisition. In particular, we support the inclusion of "statutory undertakers", as many of our members are also statutory undertakers and we support the inclusion of **Paragraphs 4 – 8** (Protection for Statutory undertakers' Land, Section 127 and Section 128).

13.11 Special Parliamentary Procedure

Paragraphs 9 - 14 - However Paragraphs 9 to 14 provide for an additional protection requiring a Special Parliamentary Procedure to be undertaken for the compulsory acquisition of local authority land, National Trust land and Common Land, unless the Secretary of State gives a certificate under either Section 131(3) or 132(2) as appropriate. It is suggested that application to the relevant Secretary of State for a certificate is made by the promoter as soon as possible, and in any case in advance of the consent application being submitted to the IPC, however we are concerned that this may not always be possible as negotiations to reach a voluntary agreement often continue right up to, and currently even beyond, a consent application being submitted. Early application for a certificate may compromise those voluntary negotiations / discussions.

Additionally, there does not appear to be any pre-agreed timescales associated with the certification process, which could result in significant delays.

The inclusion of common land is notes which industry have discussed with DCLG colleagues and would reiterate the difficulties associated with compulsorily acquiring common land, due to the registers often being out of date, which makes tracking down persons with an interest in the land extremely difficult.

Industry therefore seeks clarification of the detail of the proposed Special Parliamentary Procedure and assurances that they will not unduly delay the Examination process or result in exceeding of the statutory timescales laid down in the Act.

13.12 Exchange Land

Paragraph 24 - All concerned welcome the confirmation that there may be some cases where a current used of proposed exchange land is temporary, and therefore it might be reasonable to give the land in exchange.

Annex 2 - Preparing the Statement of Reasons

13.13 Statement of Reasons Content

All concerned generally accept the suggested content for a Statement of Reasons for Compulsory Acquisition, however, given that energy NPSs (with the exception of the Nuclear NPS) are highly unlikely to include any references to land , the energy industry will be unable to comply with this requirement, particularly as the wording states that the Statement of Reasons "should" include this information. We therefore suggest that "wherever possible" is added after "should."

Annex 3 - Plan Which Must Accompany an Application Authorising Compulsory Acquisition

13.14 Compulsory Acquisition Plans

Paragraph 1 - All concerned support the inclusion of a Compulsory Acquisition Plan, and would welcome formal confirmation that composite plans can be submitted providing that they are clearly marked showing which plans they are actually covering e.g. Land Plan and Compulsory Acquisition Plan.

Paragraph 2 - 9 - All concerned accept the specific requirements as to the detail of how to prepare a Compulsory Acquisition Plan as laid out in these paragraphs.

14.0 Annex 8: Draft infrastructure Planning (Fees) Regulations

See comments provided in Sections 5.11, 5.13, 5.14, 5.15 and 5.16.

However, in addition industry is concerned that the definition of "actual relevant day" in Article 8(3) refers to any day on which the application is examined, with no minimum number of hours or provisions for parts of days. As currently drafted, if the Examining Authority considered an application for one hour, the applicant would be charged fees for a whole day. This clearly needs addressing in order to ensure best value for money for developers and appropriate efficiency drivers for the IPC.

15.0 Annex 9: Impact Assessment Related to Draft Regulations on Applications Fees and the Draft Examination Procedure Rules

See comments provided in Sections 5.11, 5.13, 5.14, 5.15 and 5.16 but in particular we would stress:

15.1 Summary: Intervention and Options

- We agree with the policy objectives listed.
- The costs associated with certain energy NSIPS being examined by a Single Commissioner are likely to be less than the suggested average fees, and so we would welcome written confirmation (in line with the commitments given in the recent UKBCSE / Industry meeting with DCLG / DECC) that smaller-scale less complex projects such as several spans of 132kV overhead line will be based on the actual number of Commissioner and other resources needed.

- We believe that the review of fees should coincide with the IPC review which Government committed to undertake two years after its implementation, during the passage of the Act through parliament.

15.2 Summary: Analysis and Evidence

Key observations:

- We believe that the number of NSIP applications from the energy industry alone will exceed the estimated 30 cases used in the Impact Assessment.
- The proposed average fees are significantly higher than currently, and so industry will want to be sure that the key benefits of greater certainty and shorter timescales are delivered to offset that additional cost.
- The Impact Assessment states that the Impact on Admin Burdens Baseline is nil. However we believe that there are considerably more administrative requirements contained within the new process, particularly associated with the new statutory pre-application consultation procedure. Whilst we support the new provisions, we believe the additional administrative "burden" or costs should be reflected within the Impact Assessment.
- Additionally however, there is no figure included to recognise the savings of consideration of multiple consents holistically and by one body, which will no doubt offset some of the additional administrative costs arising from the pre-application consultation process.

15.3 Evidence Base (for Summary Sheets)

- **Policy Context** - The Planning Act Impact Assessment estimated overall benefits of £300m a year, including "30m in admin savings to scheme promoters". It would be helpful to understand the basis on which these figures were developed in order to assess their validity.
- **Objectives of a Fee Regime and Examination Procedure Rules -** We support the listed objectives, and as previously, would welcome formal confirmation that Single Commissioner cases will specifically be charged on a cost-reflective basis.
- **Examination Rules -** We agree with the objectives of shorter and more efficient examinations, and would welcome confirmation that the IPC will be keeping records and providing analysis of this information as part of their Annual Report.
- **Summary of Proposals (Option 1) - Charging Fees at Different Stages -** We agree that this seems a sensible approach.
- **Table 1 - Summary of Proposed Fees -** as before – we believe that the fees for Single Commissioner Cases are likely to be higher in practice than the actual amount of resource required – particularly for simpler, small-scale projects such as a few spans of 132kV overhead line – and strongly suggest that the costs for Single Commissioner Cases are charged on an actual-costs basis, and closely monitored, and any proposed average fee could then be established / adjusted after review of several similar cases.
- **Comparison with Existing Regimes -** We believe the assumptions on the numbers and type of cases is underestimated, with the energy industry alone likely to submit in excess of 30 cases per year, with a mixture of Panel and Single Commissioner Cases.
- **When and How Fees Are Charged -** The suggested proposals for when fees are likely to be charged seems sensible and fair. In particular we welcome the

cost-reflective approach being applied to fees for examination and decision-making. However, the estimate of £29,000 for pre-application consultation seems rather high, particularly for smaller scale less complex NSIPs, as does the amount of resource estimated for these types of projects within Table 4.

- **Section 106 Agreements -** All concerned welcomes the continuing inclusion of 106 Agreements which we believe is helpful in enabling energy developers to contribute effectively to those communities directly affected by energy developments. Industry has long called for Section 106 to a) remain and b) be enhanced through greater transparency and this could be achieved through the proposal to include outline proposals within the consent application to the IPC.
- **Community Infrastructure Levy (CIL) –** Industry continue to oppose the imposition of CIL on energy infrastructure projects for a range of reasons which will be highlighted again in our detailed response to the CIL Consultation. However in particular we remain very concerned that CIL funds paid by developers may not benefit those directly affected by a development as the monies are allocated to one or more of the projects on a local authority community infrastructure list. This will have significant impact on how a project is viewed by the local community and is why we therefore prefer transparent S106 Agreements.
- **Table K -** As above, we believe the assumptions on the number of working days for simpler smaller scale NSIPs being considered by a Single Commissioner could be too high in certain cases.

16.0 Annex 10: Draft Infrastructure planning (Miscellaneous Prescribed Provisions) Regulations 2010

16.1 Duration of order Granting Development Consent

Rule 4 - We support the provision for Orders granting development consent, including those which authorise the compulsory acquisition of land, to lapse if development does not commence / notice to treat is not served within 5 years.

16.2 Schedule Part 1

No comment.

16.3 Schedule Part 2

No comment.