UK - REPORT ON IMPLEMENTATION OF ARTICLE 9 OF EC DIRECTIVE 2004/8/EC (COGENERATION): EVALUATION OF ADMINISTRATIVE PROCEDURES

Article 9 requires an evaluation of the existing legislative and regulatory framework with regard to the authorisation procedures in the United Kingdom applicable to high efficiency cogeneration units. The Article specifies a number of aims behind such an evaluation and requires reporting on three specific matters.

There is no one authorisation regime for the whole of the United Kingdom but for much of the United Kingdom it is a mix of general planning regime and a specialised planning regime for the larger projects, Northern Ireland being the exception. Annex A briefly identifies the regimes. Given the responsibilities of the devolved administrations in their territories an overall review of the whole of the United Kingdom has not been attempted. Instead this report is a response by the Department of Trade and Industry on the influence central Government exerts on the authorisation of cogeneration proposals.

Co-ordination between the different administrative bodies as regards deadlines, reception and treatment of applications for authorisations

As indicated cogeneration projects receive planning authorisation under two different regimes, but not both, there is no necessity for co-ordination of planning authorisation. Each regime has its own procedures but with certain common themes – they are quasi-judicial procedures with the prospect of legal challenge to the decision, local Government is involved, the public have n opportunity to express their view on the proposal, environmental information is produced and can be demanded on proposals, there is the possibility of a public inquiry. In both regimes Government energy policy is a relevant factor in the determination that is made. That energy policy has most recently been espoused in the February 2003 Energy White Paper *"Our energy future – creating a low carbon economy"* (Cm 5761). The White Paper noted that combined heat and power (cogeneration) has significant potential to play a part in creating a low carbon economy and endorsed the existing emphasis on the benefits of CHP.

At the same time cogeneration projects are often to be fuelled by natural gas or oil, and as such, in addition to planning permission, are subject to energy policy control by central Government. Under section 14 of the Energy Act 1976 any proposal of 10 MW or more in Great Britain require the clearance of the Department of Trade and Industry. In exercising that control the Department of Trade and Industry has issued guidance for proposals that come to it for approval and consults the Department of the Environment, Food and Rural Affairs on each proposal. This guidance is aimed at ensuring that developers in bringing forward power station proposals show they have seriously explored opportunities to use combined heat and power technology. The guidance identified where market opportunities may be found and provided follow-up contacts. Following a consultation exercise the Department of Trade and Industry and the Department of the Environment, Food and Rural Affairs are looking to finalise a revision to that guidance.

For the larger projects developer will apply for section 14 clearance at the same time as they apply for section 36 consent. With the smaller projects developers may seek certainty on energy policy clearance before putting their planning application through the system and therefore section 14 clearance may precede planning permission.

Drawing up possible guidelines for the activities referred to in paragraph 1 (authorisation procedures) and the feasibility of a fast track planning procedure for cogeneration producers

It has not been thought necessary to draw up specific guidance on the authorisation of cogeneration proposals. Such proposals come forward in regimes which handle development proposals more generally, the Town and Country Planning Act regime which covers domestic, commercial and industrial development or the specialised section 36 regime just for power stations. Information is available within those regimes on their procedures.

As for a fast track planning procedure both the Town and Country Planning Act regime and the section 36 regime provide for EU wide requirements on environmental impact assessment (97/11/EC amending 85/337/EEC) and for a public inquiry to be called into a particular proposal. Both factors will inevitably add to the delivery time for cogeneration projects but it is not realistic to contemplate removing such requirements. To remove the requirement in regard to environmental information would contravene EU law, whilst removing the potential for a public inquiry would contravene perceptions of natural justice and possibly Human Rights legislation as well as taking away a fundamental and long standing pillar of the planning process in the UK. In some senses the section 36 process has features of a fast rack procedure in that it wraps up local Government and central Government consideration in one decision rather than a proposal first being considered by central Government.

The only streamlining in prospect is very limited and is in the area of tightening up on public inquiry procedures. Some steps have already been taken on this in the Town and Country Planning Act regime covering smaller cogeneration proposals with new rules being introduced for England for public inquiries in that regime in August 2000. With the medium to large cogeneration proposals handled under the section 36 regime the February 2003 Energy White Paper, *"our energy future – creating a low carbon economy"* (Cm 5761), committed the Government to introduce proposals to enable public inquiries under that regime in England and Wales to handle issues concurrently rather than rather than sequentially as at present through the use of additional inspectors. It was not anticipated that such an approach would be used for all inquiries since some inquiries could be adequately handled by a single inspector. The Energy Bill implements this commitment and received Royal Assent on 22 July 2004 Provision does exist within the Town and Country Planning Act regime for the Deputy Prime Minister to call-in a planning application for his own determination rather than leave it go through the process of seeking local planning authority consent. Such call-ins are rare and unlikely to happen with cogeneration proposals as developments which might fit the criteria for call-in – of more than local importance or gives rise to substantial regional or national controversy – are likely to be found in the section 36 regime.

The designation of authorities to act as mediators in disputes between authorities responsible for issuing authorisations and applicants for authorisations

For the smaller cogeneration projects handled in the general planning regime of the Town and Country Planning Act mediators as such are not a feature. If the proposal is refused planning permission the appropriate avenue is for the developer to appeal to Office of the Deputy Prime Minister in England, or the devolved administrations in their territories. The Office of the Deputy Prime Minister will appoint a planning inspector to look into the case and report. Base on that report the Office of the Deputy Prime Minister will then decide whether to agree with the local planning authority's refusal or to overrule that and grant planning permission.

For the larger cogeneration projects handled in the specialised section 36 regime there is no formal mediation. The proposal will, however, have gone through a comprehensive evaluation in which there is scope for further information, planning conditions to mitigate impacts, and modifications, to be probed and aired so that concerns can be addressed and only when that has been completed will a decision be made on the proposal.

Annex

Projects at or below 50 MW in Great Britain (England, Wales and Scotland) are granted development permission under the normal planning regime for development, the Town and Country Planning Act 1990. Under this regime local planning authorities are the competent authority and make the decision. In England that appeal would be handled by central Government, the Office of the Deputy Prime Minister. If the development is in Wales or Scotland the appeal would be handled by the devolved administrations.

Projects over 50 MW are granted development permission under the specialised regime of section 36 of the Electricity Act 1989 operated by central Government if the proposal is in England and Wales, the Department of Trade and Industry, and by the devolved administration if the proposal is in Scotland. The section 36 authorisation procedure is an integrated process in that it brings in the views of local Government, the local planning authority in the locality, into the process. With their knowledge of the local terrain, local planning policies and representing the local community it is obviously important that their views are seriously taken into account. Thus if a local planning authority objects a public inquiry has to be held into the proposal. Otherwise calling a public inquiry into a proposal is at the discretion of Ministers in the Department of Trade and Industry, or in Scotland Ministers in the devolved administration. Proposals are simultaneously presented to the competent authority, the Department of Trade and Industry of Scottish Executive, and put to the local planning authority for a view. At the same time the public will be consulted on the proposal and statutory bodies such as English Nature asked for their views.

In Northern Ireland the administration of planning is handled differently with all planning decisions being handled by the Planning Service, an executive agency of the Department of the Environment (Northern Ireland).