

**MEMORANDUM OF ADMINISTRATIVE ARRANGEMENTS BETWEEN
THE HEALTH AND SAFETY EXECUTIVE AND THE ENGINEERING
INSPECTORATE OF THE DEPARTMENT OF TRADE AND INDUSTRY**

1. This memorandum sets out the arrangements agreed between the Health and Safety Executive (HSE) and the Engineering Inspectorate of the Department of Trade and Industry (DTI) about enforcement of, and advice on, overlapping legislation covering electricity generation, transmission, distribution and supply.
2. The Engineering Inspectorate of the DTI enforces the Electricity Safety, Quality and Continuity Regulations 2002 in England and Wales, and advises the Scottish Executive on its enforcement in Scotland. HSE enforces the Health and Safety at Work Etc. Act 1974 (HSWA) and the relevant statutory provisions made under it, including the Electricity at Work Regulations 1989, except in those premises allocated to local authorities by Regulations made under section 18 of HSWA.
3. The purpose of these arrangements is to ensure that by close liaison, when both organisations are dealing with the same matter:-
 - (a) there is adequate enforcement cover;
 - (b) there is no unnecessary duplication of effort;
 - (c) all reasonable steps are taken to avoid giving conflicting advice.
4. The Electricity Safety, Quality and Continuity Regulations 2002 deal primarily with the design, construction, operation and maintenance of the electricity transmission, distribution and supply system (up to the customer's supply terminals), and with the quality and continuity of the supply. The Regulations also require the provision of physical safeguards for the protection of all persons other than those involved in work on the system from the dangers arising from the system, including possible risks to health arising from exposure to non-ionising electromagnetic radiation. DTI will take the lead where these objectives are concerned.
5. The HSWA (and subordinate legislation) enforced by HSE deal primarily with the protection of persons whilst at work. In particular they deal with the organisation, arrangements, procedures and working practices of employers as they might affect the health and safety both of their employees and of other persons who might be affected by their work activity. HSE or its agencies will take the lead in these areas unless these matters are partly or wholly covered by the Electricity Safety, Quality and Continuity Regulations 2002, as described in paragraph 4, in which case DTI will take the lead.
6. Each organisation accepts that in appropriate circumstances:-
 - (a) it has a duty to consult the other before it initiates action in the area where the other organisation has the lead;

- (b) if there is doubt about who should take the lead in a particular case, it is desirable that one organisation accepts a co-ordinating function until agreement is reached;
 - (c) if both organisations need to investigate the same incident, each should identify the matters which are most relevant to their respective legislation and then liaise with the other as to the consequent action;
 - (d) if only one organisation is to investigate an incident, it should inform the other of any matters of evident concern which come to its attention and which fall within the area where the other takes the lead and advise the other organisation of the expected timescale for completion of any investigation, and
 - (e) if in the course of routine inspection matters of evident concern which fall within the area where the other takes the lead should come to the attention of either organisation, it should inform the other of those matters.
7. The initial point of contact for the Engineering Inspectorate of the DTI is the office of the Chief Engineering Inspector, Energy Innovation and Business Unit, 1 Victoria Street, London SW1 H OET, Tel. 020 7215 5000. The initial contact point for HSE is the office of the leader of the Utilities Section at Pearson Building, 55 Upper Parliament Street, Nottingham, NG1 6AU; Tel: 01159 712800.
8. The Chief Engineering Inspector and the Utilities Section leader will liaise as and when necessary to attempt to resolve any problems that may arise in the implementation of these arrangements. They should agree notes of the understandings reached and they should arrange to keep these notes for future reference.
9. Each organisation undertakes to inform its inspectors of the existence of these arrangements, of any amendments to them that may from time to time be agreed, and of any understandings that may be reached as a result of the liaison described in paragraph 8. Each organisation undertakes to require its inspectors to act as far as possible in conformity with these arrangements and, in particular, each organisation undertakes to prepare and maintain guidance for its inspectors as to the factors they should consider when deciding whether or not a dual investigation as described in paragraph 6(c) is desirable.



Dr Timothy Walker
On behalf of the Health and Safety
Executive
Date: 24 June 2003



Dr Peter Fenwick
On behalf of the Engineering
Inspectorate of the DTI
Date: 2 July 2003

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Date 15 November 2004

Mr Mike Leppard
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Dear Mr Leppard

**Wind Turbine Generation – Health and Safety Executive and Engineering
Inspectorate Safety Responsibilities**

I am writing on behalf of the Engineering Inspectorate EI with regard to the proposed demarcation of our areas of responsibility for the safety of wind farms.

We have now considered this within the Engineering Inspectorate and in line with our discussions, we propose the guideline boundaries in the attached appendix that could form part of an addendum to the current HSE/EI Memorandum of Understanding.

I hope this clarifies the position.

Yours sincerely

Dr Peter Fenwick

Chief Engineering Inspector

Department of Trade and Industry

Energy Group

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Appendix - Wind Turbine Generation – Health and Safety Executive and Engineering Inspectorate Safety Responsibilities

This agreement relates solely to the demarcation of enforcement responsibility between the DTI and HSE. It makes no attempt to deal with those aspects of wind turbine generation that fall to other bodies with an enforcement/legal role. Examples of the latter include the relevant planning authorities, who will normally address initial integrity, environmental issues and public safety as part of the planning process.

Where turbines have been erected on domestic premises, DTI/Trading Standards Officers may have enforcement duties relating to product standards and design issues. Noise problems are for the Local Authority Environmental Health Department, except where the noise exceeds the current minimum action level specified in the relevant Health and safety at Work Act legislation, when it falls to HSE.

HSE Responsibility

Domestic/Commercial

HSE has responsibility for those health and safety issues relevant to any work activity. In a commercial situation, this would include installation, operation, maintenance and decommissioning. For domestic properties, (Individual units with ratings of less than 16A/phase three or single phase as part of an installation individually or in arrays) where the occupier/consumer owns the equipment, HSE's responsibility will normally be restricted to installation, maintenance and decommissioning when being undertaken as part of a commercial activity.

Onshore Unit/Farm Arrays/ Individual Units

- Health and Safety for people at work as for an existing generator

Offshore Unit/Farm Arrays/ Individual Units

- Health and Safety for people at work as for an existing generator

DTI Responsibility

Domestic/Commercial

- Individual units with ratings of less than 16A/phase three or single phase as part of a consumer installation individually or in arrays would be covered as regards queries on safe electrical connection and electrical operation to standards such as BS7671.

Onshore Unit/Farm Arrays/Individual Units

- Safety for public as regards EMF, mechanical dangers and other dangers such as blade failure and icing. Accidents involving the public from unpowered aerial sports or unauthorised access.

Offshore Unit/Farm Arrays/Individual Units

- Safety for public as regards EMF, mechanical dangers and other dangers from blade failure and icing. Accidents involving the public from waterborne and unpowered aerial sports.

In both cases for offshore, it is recognised there will be an exclusion zone for wind farms as in the case for oil/gas field production and drilling platforms, so the public exposure to danger should be very low.

Other issues

For energy developments less than 50MW, the Local Authorities will grant permissions for development to relevant country planning policies. For developments above 50MW, Section 36 consent under the Electricity Act 1989 as amended will be required from the relevant country First Minister/Secretary of State. This consent will usually be granted after a public inquiry. Deemed planning permission will be included in the consent. Consideration of the issues below will therefore be subject to scrutiny at the planning stage of the development and are not suitable for remedy post construction.

- Audible noise levels from new developments should be assessed at the planning stage under the recommendations of the relevant country planning policy publications and associated guidance and technical advice documents. Currently these are:

| Country | Relevant Document |
|----------------|--|
| England | Planning Policy Statement (PPS) 22 |
| Wales | Planning Policy Wales and Technical Advice Note 8 (TAN8) |
| Scotland | National Planning Policy Guideline 6 (NPPG6) |

- The extent to which audible noise levels exceeding BS4142: 1997 “Methods for rating Industrial Noise Affecting Mixed Residential and Industrial Areas” are considered as a potential public safety hazard will be managed by the Local Authority Environmental Health Officer in the normal manner.
- “Shadow Flicker” is an understood phenomenon that should again be considered at the planning stage by the Local Authority and can be predicted and removed by correct design by the developer. Again, the Local Authority Environmental Health Officer should deal with any subsequent problems.