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FOR WHAT COMES NEXT

Reforming the Framework for Better Regulation

Consultation Response from the UK's Data Centre Sector

October 2021

Summary points

Points of principle

- We strongly welcome government recognition that many regulatory instruments are unfit for purpose.
- We also strongly welcome this positive initiative to address unproductive regulatory overhead.
- We welcome the intention to ensure that implementation reflects policy intent.
- We very much look forward to helping government improve our future regulatory environment.
- In particular we look forward to helping government identify and rectify existing instruments where the business burden is disproportionate to the policy outcome.

Key recommendations

- We urgently need a more intelligent regulatory approach: joined up strategies, better targeting and a stronger focus on proportionality.
- Intentions must be reflected in real action that delivers change, not just acronyms and box-ticking.
- Brexit was positioned as an opportunity to demolish pointless red tape, but since leaving the EU we have been deluged by a tsunami of new regulation. This must stop.
- *One-in-one-out* or even *one-in-x-out* does not go far enough. It does not allow the regulations that are causing the most damage to be targeted. Moreover it can be gamed.
- Government needs to take a qualitative approach: listen to industry, identify the most troublesome instruments (those that add pointless burdens, render us uncompetitive, discourage investment and growth and fail to deliver meaningful policy outcomes) and prioritise these.
- Government can and must learn from experience in terms of regulatory reform and build on success in terms of balancing competitiveness, growth and regulation.
- Government must also ensure clarity regarding scope and intent to provide long term certainty.
- Government must lead by example; there is too much "Do as I say not as I do".
- Government must keep a much closer eye on its regulators, to ensure the action they take is appropriate, informed, subject to due diligence and consistent. This is not always the case.
- Non legislative requirements that are spurious or disproportionately burdensome should also be scrutinised, including local authority levies and unilateral procurement "standards".
- Multiple systemic issues with the policy process also need to be addressed urgently. These include:
    - Lack of technical knowledge among those with policy responsibility
    - Inadequate, slow or absent responses from government departments and "helpdesks"
    - Overly prescriptive consultations
    - Moving goalposts – especially between legislation and enforcement
    - Institutional amnesia, often exacerbated by over-frequent staff rotation

There are also several areas where there are policy lacunae, most notably in digital infrastructure strategy and planning frameworks. We have provided further context and some examples below. Obviously we would be delighted to provide more detail on any of the issues identified and look forward to a productive dialogue on this critically important topic.

Please do not hesitate to get in touch with emma.fryer@techuk.org if you have any further questions.

What are data centres?

Data centres[i] are highly resilient facilities that underpin our modern economy by processing, storing and transacting digital data and, with communications networks, form our core digital infrastructure[ii]. Besides underpinning all online activity, data centres enable retailers and banks to process financial payments, supermarkets to resupply, delivery companies to manage logistics and public authorities to deliver services and messaging. Some sites are officially deemed CNI (critical national infrastructure) to reflect the nature of the activity being managed therein.

Data centres underpin an internet economy that contributes over 16% of domestic output, 10% of employment and 24% of total UK exports and is growing faster than any other in the G-20. Our sector provides the technical infrastructure for financial services, aerospace, transport, healthcare, retail and utilities. Each new data centre contributes between £397 M and £436 M GVA per year to the UK economy while that of each existing data centre is estimated to lie between £291 M and £320 M per annum.

Building on Success

Government should build on existing success in terms of delivering regulatory reform:

For example, EU ETS (Now UK ETS) until recently placed data centres under the full weight of the scheme despite their negligible combustion activity. UK Government successfully intervened to negotiate an Ultra Low Emitters exemption under Article 27A. Unfortunately, new entrants still have to register as full participants until they have amassed enough verified data to demonstrate that they are eligible for the exemption. Compliance with ETS is non trivial and a more sensible approach is needed for this group of participants.

We have also heard positive anecdotal feedback on the Barrier Busting Task Force within DCMS, which identified frontline problems and then worked with relevant stakeholders to solve them.

We should also build on our success as a world leader in data infrastructure:

The UK has a world leading data centre sector of global importance, and probably the world's largest cluster of commercial third party providers in Slough. The UK should build on its existing strength in data infrastructure and capitalise on its leadership position. In particular, SEGRO's work on the Slough Trading Estate is a compelling example of how to do this right. The lessons from this could and should be applied more widely in the UK.

Go further than one-in-one-out –target action where is it most needed

One-in-one-out **or even** ***one-in-x-out*** **does not go far enough.** We are concerned that this approach does not guarantee equivalence and that it will not do anything to ensure that regulations that are causing the most damage are prioritised and targeted. Moreover this process has been in place for some time and has not succeeded in reducing any regulatory burdens for our members.

Government must identify and prioritise regulations and policies that are doing the most harm – either by damaging competitiveness or because they are unduly burdensome

Government should take a more qualitative approach, listen more closely to industry concerns and identify the most troublesome instruments (those that add pointless burdens, render us uncompetitive, discourage investment and growth and fail to deliver meaningful policy outcomes).

Government should then target action at those priority instruments - where the compliance burden is most disproportionate to policy outcomes, irrespective of whether this is the result of duplication, complexity, incorrect scope or over-zealous implementation and enforcement.

Specific policies that are damaging UK competitiveness by hampering investor confidence, impeding capital flows, slowing or preventing development of new capacity or reducing attractiveness of existing capacity for customers include:

- **Fibre Tax** – the UK is one of only two nations in the world to tax the rollout of fibre. It is completely illogical to tax digital infrastructure rollout which is something that all modern economies want to encourage. This is a significant factor affecting customer choice for data centre locations, particularly punitive for smaller operators and also places regional operators at a disadvantage compared to those in existing clusters, slowing take-up of capacity in these areas and undermining the levelling up agenda. The current temporary moratorium should be permanent.

- **Energy Prices, specifically non-commodity costs**: While renewables policy has delivered reduced carbon intensity of grid supply, this has come at a very high cost in the form of tariffs, levies, charges and fees. Energy price is a significant factor in operator and customer decisions and high energy costs place the UK at a competitive disadvantage. We are also hopelessly exposed to commodity price hikes. Operators do not qualify for compensation measures other than the Climate Change Agreement (CCA) and even this scheme has politicised targets, making them unattainable for participants (see below).

Regulation that is unduly burdensome compared to policy outcomes [iii] includes:

- **IED (implemented through EPR)** which is targeted at power stations and large-scale combustion activities. The implementation is disproportionate for data centres, enforcement has been onerous and costly and the regulator has failed to provide an adequate timetable for industry to meet requirements, among other shortcomings.

- **EU ETS (Now UK ETS)**, (see above) where we still need to resolve the burden on new entrants.

- **Heat Networks Metering and Billing Regulations:** clearly developed by policy makers unaware of data centres, as were the initial **Red Diesel** taxation proposals. These have both largely been resolved, in the former case through positive and productive interactions with a helpful BEIS team, but they still generate confusion and complexity.

- **MCPD** is correctly targeted but implemented in a more complex and cumbersome way than elsewhere in the EU in order to correct a previous policy failure. Enforcement out of line with the legal provisions is an issue here – for instance early permit applications have been refused by the EA although the legislation provides no justification for this.

- **SECR:** this duplicates existing reporting measures including CCA. It adds little value for energy intensive businesses who are adequately incentivised to address efficiency and already report energy. It also misses the worst performing parts of the market – the public sector - through unjustified exemptions. The impact assessment significantly underestimated business cost of implementation – by several orders of magnitude. As a result we are distrustful of consultant-led regulatory impact assessments.

Deliver on Brexit commitments

Leaving the EU is generating more legislation, not less: Since Brexit we have faced a tsunami of new regulation, accompanied by multiple and seemingly endless consultations, often with extremely short response times. Some, such as the proposals for changes to taxation of red diesel, were poorly publicised which amounted to the same thing. Industry does not exist solely to respond to government requests for input and consultation fatigue erodes meaningful feedback, resulting in policy that is poorly informed.

Policy makers also seem unaware that most businesses operate in more than one jurisdiction, so we now have to keep pace with a rapidly fragmenting regulatory environment as the UK develops new rules for itself.

Improve clarity of scope and intent

Government must also ensure clarity regarding scope and intent to provide long term certainty for businesses. Recent legislation such as the National Security and Investment Act had very wide scope but little clarity regarding government's real intentions and how light touch the regime might be. This initially led to significant concern among our operators in terms of the impact on investment flows and investor confidence within the sector. In the event, the quality of the consultation dialogue, led by DCMS, addressed many of the sector-specific concerns raised and alleviated much of this anxiety.

Much wasted effort can be avoided by thorough pre-consultation. In the past we have found pre-consultation a very productive route; we recall a DECC market analysis of Uninterrupted Power Supplies where we worked productively with Government and consultants to provide market intelligence at first hand.

Lead by example

Government needs to walk the walk, not just issue edicts to business

Government is increasingly insisting on greater and greater levels of transparency regarding digital services – which we support. However, government has placed reporting obligations on businesses, through SECR, including those who already report, but has exempted the public sector. This means that the efficiency of on-premise government computing is often unscrutinised and while STAR do strongly encourage reporting, this is not systematic. Why is government not complying with the same requirements it has placed on industry, especially if policy makers consider that these instruments have value in identifying and reporting waste?

Ensure Regulators are not undermining competitiveness and growth

Regulators have an important function, especially in terms of protecting public wellbeing and natural resources. However their approach needs to be appropriate, informed, subject to due diligence and consistent. This is currently not always the case.

Scrutinise non-legislative requirements and set ground rules

Non legislative requirements that are spurious or disproportionately burdensome should also be scrutinised, including local authority levies and unilateral procurement "standards".

Restore logic to planning strategy: *Planning for the Future* proposed that the CIL (community infrastructure levy) could be 100% allocated to affordable housing. Housing is not infrastructure, despite political semantics that might suggest so, and there are issues of logic in requiring infrastructure investors to pay an infrastructure levy that is not used for infrastructure.

Scrutinise and restrict local and regional cash grabs. These are sprouting like mushrooms, are inconsistent and add cost and pointless complexity. For instance, the London Plan's Carbon Offset Fund looks set to add £10-£20M to each data centre development, does not reward good practice and offers inadequate accountability regarding the destination of those funds.

Ensure that local taxes, fees and levies do what they say on the tin. Environmental levies should genuinely differentiate and reward good practice. Allocation of funds must be ringfenced for its stated purpose, accountable and subjected to value for money audit.

Procurement requirements must be anchored to existing standards and approaches, not unilateral.

Systemic and Process Issues

Multiple systemic issues with the policy process need to be addressed urgently. These include:

- Lack of technical and contextual knowledge among those with policy responsibility. Some of this is attributable to the mania for rotating staff between jobs. Government needs subject matter experts to cover complex technical policy portfolios. Failing to do this signals contempt for

business. Policy instruments that have suffered particularly badly from lack of expertise are Climate Change Agreements, Red Diesel taxation changes, Heat Networks Metering and Billing and IED.

- Inadequate, slow or absent responses from government departments and "helpdesks": This has become a significant problem. There is no longer a named individual responsible for a policy activity- we are now obliged to contact a team or helpdesk, who may or may not respond. This allows poor practice to hide behind anonymity and again signals casual contempt for the businesses and individual whose taxes fund these institutions. Two recent examples are:

    - Urgent request sent to BEIS regarding test and release on 22nd July. On 11th August an unsigned reply from "BEIS correspondence" informed us that our enquiry had been transferred to the Department for Health and Social Care. No further response has been received.
    - We raised a process issue concern with Control Pollution at DEFRA on 5th March. An interim answer was received on 11th March to say they were discussing it with the EA and would be in touch. No further answer was received despite a reminder being sent. This contrasts sadly with the extensive and detailed consultation process that DEFRA undertook on MCPD, led by a committed and knowledgeable team.

- Overly prescriptive consultations: By this we mean that consultations are often far too limited in scope and may include leading questions or presuppose answers.

- Moving goalposts – especially between legislation and enforcement – a good example of this is the current change to taxation of red diesel where the legislation and stakeholder meetings made it clear that those using red diesel could continue to buy it but must not stockpile. In the draft guidance this has changed, imposing a retrospective requirement that could place operators in breach if this is confirmed. This kind of silliness is surprisingly common.

- Institutional amnesia, often exacerbated by over-frequent staff rotation. The Climate Change Agreement, a long running and relatively successful policy instrument, is a good example of institutional amnesia, with the latest consultations demonstrating that BEIS had forgotten the original intention of the scheme.

  In fact the handling of the CCA by BEIS illustrates an impressive range of process failings. The premature closure of the scheme, the inadequate window for new applicants after extension, and then the CCA TP5 target negotiations were all cases in point. BEIS officials failed to listen to business, set hopelessly unrealistic timelines (meaning that entrants had to commit to the scheme before knowing what their targets would be), set a single target figure for all sectors informed by political ambition rather than business reality and devoid of any supporting evidence. Well-evidenced counter-arguments were casually dismissed in discussions that revealed the decision makers were ignorant of the business and market realities within sectors for which they held policy responsibility. It was obvious that they were also unaware that the target they proposed was effectively doubled for data centre operators because the CCA only recognises infrastructure efficiency improvements, not IT process efficiency improvements, thus halving the scope for savings. By closing early and limiting access BEIS have also squandered the one of the most valuable benefits of the CCA at sector level – granular, measured energy data which until this point the UK was the only country in the world to record.

Address policy lacunae: absent frameworks and strategies

We rarely ask for more policy intervention but while data centres are acknowledged as essential digital infrastructure by DCMS (described collectively as data infrastructure) they are largely overlooked in relevant government strategies.

Strategic policy lacunae

- Lack of data centre specific strategies; the UK has no data centre strategy, which compares poorly to competing markets. For example Norway has recently published its second national data centre strategy. Within the UK Scotland has published a data centre strategy but there is no equivalent for England or the UK as a whole.
- Lack of joined up industrial, digital and infrastructure strategies: Data centres were not mentioned in the Digital Strategy or the last Industrial Strategy although they represent the point where these two strategies intersect.
- The National Infrastructure Commission was established without any digital remit at all and although comms were later bolted on, data infrastructure continues to be ignored.
- Going the extra mile post Brexit: the UK needs to do more to address barriers to inward investment in a coordinated and strategic way – from planning delays and spurious conditions to long term power provisioning.

Planning policy lacunae

- The National Planning Policy Framework fails to mention data infrastructure within digital infrastructure.
- There is no mention of data centres in planning policy guidance. This means planners do not know how to deal with data centre applications and understanding of this element of digital infrastructure is patchy at best among planning professionals, resulting in spurious conditions and unnecessary delays. Comments like "I thought all data centres were in Iceland" are unfortunately very common.

What is needed

- Ensure that data centres/ data infrastructure is accommodated in industrial and digital policy strategies.
- Explicitly include data centres under digital infrastructure in the next Planning Policy Framework and develop associated guidance to ensure planners understand the characteristics, especially locational, of this type of development.
- Review good practice in other international markets, especially those that compete with the UK for trade in digital services, and learn from them.

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Useful Links

- UK Data Centres Overview: the most important industry you've never heard of
- Securing our Digital Future: Data Centre Construction: challenges and opportunities:
- Planning: techUK Response to Planning for the Future and techUK FAQ for Planners
- Inward investment comparisons: Silver Linings (pages 22-24) and Silver linings update (page 10):
- Government data centre strategy: what good looks like: https://www.regjeringen.no/contentassets/6f1eda83c8f941418a5482b138466ea3/strategi-nfd-nett.pdf Second Norwegian data centre strategy launched June 2021. Mixture of incentives and requirements. Scottish plan: https://www.gov.scot/publications/green-datacentres-and-digital-connectivity-vision-and-action-plan-for-scotland/
- Compliance obligation shortlist: Compliance Healthcheck
- MCPD and IED: IED Position Statement, MCDP Briefing, Cones of Pain
- EU ETS: ETS Position Statement
- Heat Networks: Heat Networks Briefing

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[i] **What is a data centre?**

A data centre is a building (or self-contained unit) used to house computing equipment such as servers along with associated components such as telecommunications, network and storage systems. A data centre is equipped with a guaranteed power supply and high bandwidth connectivity. Resilience is critical so redundancy (duplication) of networks, power and other infrastructure is common to ensure continuity. Building management controls such as air conditioning maintain the environmental conditions for the equipment within a specified envelope of temperature and humidity, and security systems ensure that the facility and its data remain secure.

We estimate that there are around 500 data centres in the UK, depending on definitions. 200 or so of these are colocation (commercial) facilities, operated by specialist data centre service providers. These include our very largest facilities. The rest are known as enterprise, which loosely means "in house" although they may be remote from other business operations. These underpin corporate IT functions for all sorts of organisations like universities, banks and supermarkets. Sizes vary but on average these facilities are smaller. Many organisations use a mixture of outsourced and in-house provision to minimise costs and risk.

[ii] **What is digital infrastructure?**

Our core digital infrastructure is not a single system but multiple systems and networks that interoperate. The three main constituents are fixed line telecommunications (made up of the high capacity and highly resilient core network plus the access network that runs from the exchanges to tens of millions of individual customer premises), mobile telecommunications (that interact with the core network but provide customer coverage through a cellular network) and data centres (that manage, transmit, process and store data for government, businesses, individuals and academia).

[iii] See our comparative review of energy related policy instruments, extracted from Data Centre Energy Routemap, 2019 Section 10

Table 1: Regulatory Requirements

Regulation / Requirement	Shortcomings	Scope	Burden	Outcome
EED - Energy Efficiency Directive Art 8 / ESOS: Requires large organisations to audit energy.	Expensive and adds little value. UK has gold plated implementation.			
ETS - EU Emissions Trading Scheme: Cap and trade scheme to reduce scope 1 carbon.	Scope incorrect. Costly and burdensome. Delivers no policy outcome in data centres.			
Gasoil Storage Tank Regulations: 110% secondary containment required.	Mostly harmless. Sector compliant, no issues except confusion over terminology.			
Heat Network (Metering and Billing) Regs: Requires accurate attribution of heat/ cooling.	Scope incorrectly set. Delivers no policy outcome in a data centre context.			
IED – Industrial Emissions Directive (EPR): Controls pollutants from large installations.	Scope incorrect. Very costly and burdensome, negligible policy outcomes.			
MCPD & SGC: Impose max levels of NOx, SOx, PM for generators	Prevents DSR /load balancing. More onerously implemented in UK.			
MEES - Minimum Energy Efficiency Standard: No leasing with EPC certificate below E.	Scope unclear. Sites already performing above required minimum standard.			
SCER: Streamlined Carbon and Energy Reporting: Businesses to report energy.	Scope unclear. Exempts worst performing areas and duplicates requirements.