

## Regulation and policy hampering data centre development in the UK

### Informal Input to DIT, April 2021

#### The UK is a world leader in data infrastructure and must build on its strengths

- Data infrastructure, in the form of data centres, provides the core capacity for the UK's data economy and our trade in digital services, from financial services to medical research.
- UK has a world leading data centre sector of global importance, and probably the world's largest cluster of commercial third party providers.
- 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.
- The UK should build on its existing strength in data infrastructure and capitalise on its leadership position.
- A more intelligent regulatory approach is needed – joined up strategies, better targeting and a stronger focus on proportionality.

#### Absence of policy 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 is just publishing its second. 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 are 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 and there is no land use class currently assigned to data centres which may be classified at B8 or *Sui Generis*.
- 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.

- Planning for the Future proposed that the 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.

#### What is needed

- Ensure that data centres/ data infrastructure is accommodated in industrial and digital policy strategies.
- Ensure levies do what they say on the tin. Ringfence levy income for its stated purpose, ensure accountability and audit outcomes.
- 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.
- Ensure that local taxes, fees and levies (such as the Carbon Offset Fund under the London Plan) genuinely differentiate and reward good environmental practice and are not simply revenue raising instruments, that the allocation of funds is accountable and subjected to value for money audit.
- Review good practice in other international markets, especially those that compete with the UK for trade in digital services, and learn from them.

**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.

- **Fibre Tax** – the UK is one of only two nations in the world to tax the rollout of fibre. 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.
- **National Security and Investment Bill:** -This looks set to impede development cycles and capital flows and will inevitably result in precautionary but unnecessary notifications until Government provides better clarity on what they want to protect and prevent.
- **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. 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).
- **Local or regional cash grabs:** These are many and hugely inconsistent, adding 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.

























**Unduly burdensome regulation** where the compliance burden is disproportionate to policy outcomes, for instance through duplication, complexity, poor targeting or over-zealous implementation and enforcement. This is a long list for data centres and includes:

- **EU ETS (Now UK ETS)**, which until recently has placed data centres under the full weight of the scheme despite their negligible combustion activity. It took years of negotiation for an alternative approach (Ultra Low Emitters exemptions under Article 27A) to be agreed and there are still residual issues relating to verification and 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, but they still generate confusion and complexity.
- **IED (implemented through EPR)** which is targeted at power stations and large-scale combustion activities. The implementation is wholly disproportionate for data centres, enforcement has been more onerous and inflexible in the UK than elsewhere, and the regulator has missed opportunities to provide evidence of outcomes.
- **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 although the legislation provides no justification for this.
- **SECR:** duplicates existing reporting measures including CCA. Adds little value for energy intensive businesses who are adequately incentivised to address efficiency and already report energy. Misses the worst performing parts of the market through unjustified exemptions. Significantly underestimates business cost of implementation.

#### Consultation process shortcomings include:

- Consultation process failures: multiple overlapping requests leading to consultation fatigue, short timescales, unrealistic expectations and tendency to overclaim policy outcomes.
- Tendency to reinvent wheels instead of adapting existing approaches as UK seeks to develop domestic measures post Brexit. Occasionally, profound lack of respect for industry initiatives, achievements, standards, metrics and best practice.
- Inadequate technical expertise and lack of essential contextual knowledge among policy makers. Institutional amnesia a particular problem.
- Lack of evidence: Government proposals frequently unsupported by data and often partly or even wholly unevidenced.

An example that failed on all counts was the CCA TP5 target negotiations: unrealistic timelines, meaning that entrants had to commit to the scheme before knowing what their target would be, a single target figure proposed for all sectors informed by political ambition rather than business reality and proposals devoid of any supporting evidence. Well-evidenced counter-arguments were largely dismissed in discussions that revealed the decision makers were ignorant of the business and market realities within sectors for which they held policy responsibility, were clearly unfamiliar with the limited scope available to data centre operators (where only infrastructure efficiency improvements are counted towards the target despite the fact that targets are set for overall sector consumption) and were also unaware of the original purpose of the CCA scheme.

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

#### Links:

- [UK Data Centres Overview: the most important industry you've never heard of](#)
- 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 being launched this June. 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: [MCDP Briefing](#), [Cones of Pain](#) [IED Position](#)
- EU ETS: [ETS Position Statement](#)
- Heat Networks: [Heat Networks Briefing](#)