

## Energy UK Response: DEFRA Consultation on Best Available Techniques

16 April 2021

### About Energy UK

Energy UK is the trade association for the energy industry with over 100 members spanning every aspect of the energy sector – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership. We represent the diverse nature of the UK's energy industry with our members delivering almost all (90%) of both the UK's power generation and energy supply for over 27 million UK homes as well as businesses. The energy industry invests over £13.1bn annually, delivers around £85.6bn in economic activity through its supply chain and interaction with other sectors, and supports over 764,000 jobs in every corner of the country.

### Summary

We strongly welcome the fact that these proposals are based on a collaborative approach with industry and the processes outlined in the consultation generally seem reasonable. Any future UK approach to developing BAT needs to be strongly based on the well-established environmental principles which underpin the current environmental regulatory framework – in particular ensuring that the approach encompasses all the factors that make up the definition of BAT. This includes technical and economic viability and ensuring an integrated approach, so that outcomes are the best for the environment as a whole. This is particularly important in the context of the decarbonisation transition and the changing role for plant in our sector.

Policy stability and clarity is of key importance for our sector and while there may be benefits in having a flexible approach to the timing of future reviews there needs to be a clear understanding of the timescales over which any revised BAT standards will hold. Our sector has just undergone a BAT review with asset investments and decisions made based on the knowledge of an 8-year review cycle; we would not wish to see a revision of this for our sector.

We welcome the aim to ensure consistency across the UK and we would like to stress that this is particularly important for our sector – there is a single electricity market.

### Responses to Consultation Questions

The consultation is online – summarised below are proposed Energy UK answers for discussion.

**Q1. Do you agree or disagree with the proposed organisation and governance arrangements?**  
**Options: Strongly Agree/agree/neither agree nor disagree/ disagree/strongly disagree**

*No text entry possible – tick box only.*

**Proposed response:** Strongly Agree

**Rationale:** Proposals are firmly based on a Technical Working Group (TWG) concept with a collaborative approach between industry and regulators.

**Q2. Do you agree or disagree that the 'Best Available Techniques' within the UK process should consider first 'Best Available Techniques' for sectors that have already begun development within the EU 'Best Available Techniques' process?**

While this is not relevant for our sector this it seems to be a reasonable position given that generally the relevant sectors would have been expecting a BAT review.

### **Q3. Do you have any further comments on the organisation and governance proposals?**

#### **Consistency across UK**

We welcome the aim to ensure there is as much commonality as possible however, we are concerned that divergence in standards between the three Nations could result in additional regulatory burden in some areas which would result in an unlevel playing field which could in turn distort levels of investment across areas. There is a single UK electricity market and therefore for our sector it is particularly important that this is not distorted by different approaches across the UK.

#### **Timetable of reviews**

Paragraph 3 suggests flexibility in when a review is instigated. For our sector policy stability and clarity is of critical importance as this underpins business planning and investment strategies in the context of a sector that continues to undergo significant changes driven by decarbonisation. Therefore, review dates need to be clearly understood and set out in advance. If there is no fixed review period in future, then providing a statement on the minimum time period the BAT Conclusions will hold would be of critical importance and additionally consideration should be given to the concept of a defined notice period ahead of any future review. Our sector is implementing updated BAT Conclusions this year and investment and asset planning decisions have been made based on the knowledge of the 8-year review cycle set out in the IED. We would not support a further review of BAT ahead of this widely understood timeline that has underpinned recent sector decision making.

We would also like to take this opportunity seek clarity as to whether this consultation proposes shortening the review period from 8 years to 6 years or does the reference to a 6-year review simply mean a lessons learned exercise will be undertaken as opposed to a formal review. As mentioned above, we would like to reiterate our strong view that an 8-year minimum review period is appropriate in order to provide the necessary certainty to allow operational and investment decisions. We hold concerns that if the proposal is to shorten the review period, it could result in significant unintended consequences and request that industry is thoroughly consulted to gain a clear understanding of these consequences.

Linking to the above point, we are also of the view that it may be appropriate for the review period to be *extended* in certain circumstances. We believe that a more flexible timescale is more appropriate in the rapidly changing context of decarbonisation. In the energy sector, many of the processes to decarbonise the sector will take some time to develop (e.g. Hydrogen, CCUS etc.) and we would like to emphasise the need to be flexible in our approach to enable these technologies to come forward.

Additionally, an important influence when considering the timing of any BAT reviews may be the review timescales that are followed by other countries. For example, a UK review of BAT after the equivalent EU process would ensure that up to date information is available for use if appropriate in the UK process and would enable the UK to set its standards with the knowledge of how this aligns with EU standards. This would be of particular importance given the North Ireland Protocol.

#### **Representation of sector views throughout the process**

We welcome that the process includes industry representatives on the Technical Working Group (TWG). However, there is a need to ensure that industry views are accounted for in the processes that follow the recommendations made by the TWG.

We welcome the organisational structure as proposed but would like to suggest the option for an 'observer' status at the Standards Council for key stakeholders. This would allow an industry representative or the TWG representative to get better insights into the discussions held at a higher level.

#### **Cross-cutting BREFs and interactions with underlying legislation**

It is also important to establish how do we deal with cross-cutting BREFs in particular the Economics, Cross-media Effects BREF and ensuring certain BREF areas, such as Environmental management systems, are be consistent across all BREFs. Furthermore, there should be a clear set of principles established that cover areas such as those currently set out in the underly primary legislation (IED). IED contains a number of provisions covering broader aspects than the BREF, such as derogations from monitoring for plant with limited operational hours (<10,000 hours) and compliance arrangements to address measurement uncertainty. This would help to ensure a clear understanding of the roles of the BREFs vs the roles of the underlying legislation and minimise potential for confusion as to where these aspects are accounted for.

### **BREF Development**

We agree that the development of UK BAT should if appropriate consider information and developments in other regimes across the world. The approach needs to be evidence-based, looking at the current environmental performance across a sector and the options and economic and technical feasibility for further improvements. It is not clear how the detailed information from these other Countries will be captured to help establish the UK approach to BAT. There also needs to be a process to ensure that the data collected is representative of the plant in the UK including the range of operating conditions, role in market and the wider UK policy framework.

### **Q4 Do you agree or disagree with the concept of a two-stage public participation process? Options: Strongly Agree/agree/neither agree nor disagree/ disagree/strongly disagree**

*No text entry possible – tick box only.*

**Proposed response:** Agree

**Rationale:** We agree there needs to be two stages to ensure transparency; however, some concerns that if public participation leads to changes these need to be properly considered by the TWG as well as by industry, equipment manufacturers and others who are directly impacted by the changes, this will be able views to be given on the extent to which any changes are technically and economically feasible.

### **Q5 Do you have any views on the proposal to potentially remove the need for the call for evidence for sectors where data gathering has already occurred?**

While not relevant for our sector a call for evidence would have the benefit of ensuring that there has been adequate opportunity for industry and others to provide input, particularly in the context of the new UK process and governance regime. It would also ensure opportunity to capture any advances in technology if relevant.

We would also like to point out that issues may arise when you consider the need to have a large enough evidence base to derive BAT in the context of small numbers of specific plant types – particularly in the context of new small-scale technologies coming onto our energy system in the future.

### **Q6 Do you have any further comments on public participation proposals?**

We fully understand and support the logic of the two-stage participation process – allowing input to be made at the start of the process by all stakeholders with technical expertise as well as providing the opportunity for wider comments on the final proposal. We would welcome clarification as to what exactly public participation would involve in this instance. The development of BAT is a specific and highly technical process and we consider that the input at the start of process needs to be from those with relevant expertise. Furthermore, the process must ensure that the views of industry are sought and considered if:

- Any changes that arise between the TWG recommendation being made and the Standards Council forming its view;
- Any changes that arise as a result of the final public consultation.

Additionally, the TWG itself will need to ensure that it has fair and adequate representation from industry. It is not clear in the proposals how this will be achieved.

**Q7 Do you agree or disagree with the proposals for ensuring scrutiny of the ‘Best Available Techniques’ within the UK regime? Options: Strongly Agree/agree/neither agree nor disagree/disagree/strongly disagree**

*No text entry possible – tick box only.*

**Proposed response:** Agree

**Rationale:** As per answer to Question 8.

**Q8 Do you have any other comments on how to ensure effective scrutiny?**

We agree with the approach outlined. Although, we would like to reiterate, as set out in elsewhere within our consultation response, that there is a need for sufficient checks and balances to be in place to ensure that additional information arising from the scrutiny process is dealt with in the most appropriate manner.

The TWG itself has a key role to play in ensuring that robust evidence-based proposals are drawn up and the nature of the membership has an important role to play in ensuring robust proposals are developed. While the membership of the TWG should be restricted to those with knowledge of the technologies the other steps in the process should allow sufficient scrutiny and consideration of alignment with broader drivers.

**Q9 Do you have any feedback on policies for implementing ‘Best Available Techniques’ within the UK?**

**Implementation window**

We consider the 4-year window is the minimum feasible time-frame for implementing the conclusions. In circumstances where investments and physical modifications are needed then a four-year window for the process of determining the optimum technically and economically feasible improvements, approval for investments and performing the works is extremely tight. However, this is mitigated if the derogations process can also be used to address these issues on a site-specific basis.

**Derogations**

In our view the derogation process is a crucial part of the regulatory system and we welcome the proposal that this is retained. It would be extremely complex to devise BAT standards that take into account all possible circumstances relevant to BAT – technology type, age, role in market etc. Therefore, the derogation provision allows the flexibility for the BAT outcome of applying the principles used to derive the generic standards to be differ on a site-specific basis.

This flexibility also ensures there is a backstop route for allowing emissions limits to be set at a higher level in circumstances where it can be demonstrated that this is in the best interest of the environment as a whole due to the trade-offs between pollutants. This flexibility may have particular relevance in the context of net zero; for example, it potentially provides a route to ensure that trade-offs between pollutants can be managed in the optimum way – for example if a higher emission of a pollutant allows a more important reduction in greenhouse gas emissions.

However, it would also be beneficial if this aspect was implicitly part of the determination of ranges of appropriate limits. The consultation document references environmental drivers such as the Clean Air Strategy as well as decarbonisation drivers and in some cases there are decisions to be made on the priority issue and there is a lack of clarity on how these should be considered.

As noted previously we also have concerns about divergence in standards between the three Nations that could result in additional requirements being applied in different parts of the UK. There is a single UK electricity market and therefore for our sector it is particularly important that this is not distorted by different approaches across the UK.

**Q10 Do you have any views on the proposals in England and Wales to modify the guidance for setting emission limit values?**

The major advantage of the current guidance is that it provides clarity to Operators and the Public on the emissions standards that would be applied to installations well ahead of the permitting process and it provides a level playing field to Operators. While we support the concept that emission limits need to take into account achievable emissions, there also needs to be clarity that the full range can be used to accommodate the application of BAT to the specific circumstances, with Operators able to propose and justify limits anywhere within the BREF range. For our sector there also needs to be recognition that the changing role of power stations has an impact on achievable emission levels – for example the impact of intermittent operation. There also needs to be consideration of trade-offs between pollutants, so one pollutant is not considered in isolation from other drivers such as decarbonisation. Finally, the competitiveness of UK industry also needs to be taken into account when setting industrial emissions standards.

We welcomed the opportunity to attend a stakeholder workshop to discuss this consultation with Defra and the Environment Agency in advance of this consultation closing. We noted that a representative from the Environment agency clarified that the intent of changing the ‘top of the range’ instruction was not necessarily an across-the-board intention to set tougher limits, but if BREF range reflects a number of techniques then the limits set should reflect the relevant technique. We would welcome further information with regards to the intent of the flexibility and how it will be applied. We note that if AEL range limits are set is left to the permitting stage, this then reduces the available time for operators to prepare.

**Q11 Do you agree or disagree with the proposals for evaluation within the new regime? Options: Strongly Agree/agree/neither agree nor disagree/ disagree/strongly disagree**

*No text entry possible – tick box only.*

**Proposed response:** Strongly Agree

**Rationale:** We agree that the proposals provide a mechanism for understanding any issues so that improvements can be made in future.

**Q12 Do you have any other comments on the evaluation proposals?**

We consider a review process to be very important, we would welcome clarification as to what is meant by an ‘Evaluation’ (i.e. a formal review or a lessons learned exercise). If any issues are identified through the evaluation process these should feed into the next BAT review.

We would also note however, that the Defra EPR Survey did have a very short initial timeframe for response. We welcome the fact that the survey was extended until 5 April and would like to suggest that going forward Defra ensure there is sufficient time to respond to future evaluation surveys.

**Q13 Do you have thoughts on additional elements that could be explored in the longer term around areas of 'Best Available Techniques' policy?**

As noted previously, alignment with broader decarbonisation drivers is an important issue to embed into the processes. This is needed to ensure that BAT for one particular aspect is not considered in isolation from the overall best interests of the environment and wider policy drivers.

As the energy sector transitions to low carbon generation, it will encompass an even wider range of technologies. We would like to request that Defra consider customising how BREF is approached as new technologies (e.g., hydrogen and CCUS) come onto the energy system and others (e.g. coal) exit. As such, there is a need for an agile process that is able to support these emerging technologies and not risk stifling innovation. We note that within the current BAT for CCS documents, the techniques are not interchangeable, which highlights how although there must be a consistent approach, BAT needs to be flexible to allow for constraint transition. It also needs to be easily applied and appropriate for other technologies.

Linked to the above points, we also urge Defra to consider the role BAT plays in the context of the changing role of plants to support the decarbonisation transition, including ensuring security of supply and the provision of Ancillary Services. We are strongly supportive of the UK Government's target to reach Net Zero by 2050. This will bring considerable changes to the role of power plants in supporting the transition, associated with this, Ancillary Services and flexibility will be key to balancing and stabilising the electricity grid as we bring more renewables onto the system. We suggest that Defra consider how the BAT processes for energy generation are linked to the role played by generation plant and ancillary services in the market and decarbonisation. BAT needs to take account of these roles and the broader enabling contribution alongside the environmental impacts.

The consultation includes the possibility of introducing Integrated Emissions Management Techniques, this is something that we would be interested in exploring further and maybe relevant as some of the hydrogen cluster projects develop.

**Q14 Do you have any other views or comments, which you have not already made, on the proposals in this consultation?**

No.

We would like to thank you in advance for considering our response and look forward to hearing further clarification of the next steps in due course. If you have any questions regarding our response in the meantime please do not hesitate to contact me on the details below.

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