



# Ministry of Defence



Government  
Legal Department

Ministry of Defence  
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Department for Energy Security and Net Zero  
3-8 Whitehall Place,  
London,  
SW1A 2EG

Attention: David Wagstaff, Head of Energy Infrastructure Planning.

Herbert Smith Freehills  
Exchange House  
Primrose Street  
London  
EC2A 2EG

Attention: Martyn Jarvis, Senior Associate.

5<sup>th</sup> August 2024

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Dear Sirs

**AQUIND Application for Development Consent Order in respect of electricity interconnector**

We write further to Herbert Smith Freehill's (HSF) letter of 23<sup>rd</sup> July 2024, to respond to the points on which confirmation is sought from the Ministry of Defence (MOD) and to provide the MOD's views on the procedural points raised to assist the Secretary of State (SoS). Paragraph numbers refer to the numbering in HSF's letter.

1. Paragraph 2.1.1: We can confirm that this is MOD's understanding of SoS's proposed process.
2. Paragraph 2.1.2: Save to the extent that it refers to the bringing of a legal challenge against any decision made by or on behalf of the SoS, the MOD confirms it understands the role of the appointed representative to include making representations as to whether the identified legal tests are met as per paragraph 5 of the Schedule to the relevant Procedure Rules.
3. In respect of any legal challenge, the SoS's procedure (rightly as it deals with the decision-making process currently on foot) does not address that, nor does the MOD consider the bringing of any such challenge to fall within the role of an appointed representative as provided for under the aforementioned Procedure Rules. If the appointed representative were to consider that AQUIND should appeal any relevant decision by the SoS, then

(following the procedure used in all cases involving closed material) they would, in broad terms, have to seek permission to communicate that view to AQUIND in order to take instructions on bringing that appeal. MOD considers this is a process with which any suitably qualified appointed representative would be familiar, and it is obviously open to HSF and their client to seek advice on this point once the representative is instructed. For the avoidance of doubt, MOD does not consider SoS's proposed procedure needs to be modified to deal with any potential legal challenge to his decision.

4. Paragraph 2.2: We agree that it would be prudent for the SoS to make the enquiries suggested by HSF. It should be noted that MOD takes issue with the characterisation of its position by HSF at paragraph 2.2.1. The representations made by MOD will concern sensitive and confidential matters of defence and national security.
5. Paragraph 3.1: The MOD is working to the deadline of 23<sup>rd</sup> August 2023 for submitting its representations and we do not, as matters stand, anticipate seeking any extension of time. However, MOD's concerns relate to matters of defence and national security. There has also been a change of government. In light of the above, and being mindful of SoS's request (at paragraph 2(a) of his letter) that MOD set out "*the nature of its concerns and how they relate to the application for development consent...to the fullest extent it can*" and the need to minimise the likelihood of future rounds of representations as provided for in the SoS's proposed process at paragraph 2(d) becoming necessary, the possibility cannot be ruled out that matters will arise that mean MOD will need to ask for an extension of time. MOD will notify the SoS and HSF as soon as the need for any such extension becomes apparent.
6. Paragraph 3.2: We confirm we will provide copies of all open documents to HSF at the same time as they are provided to the SoS.
7. In relation to paragraph 3.3, in circumstances where the SoS has accepted that MOD should have the opportunity to make representations as part of the reconsideration process, the repetition of this point is neither helpful nor constructive. Any submissions as to the merits of MOD's concerns will be made as part of the representations process by the appointed representative in due course. All we would say at this stage is that we do not accept that a weighting exercise of the kind described by HSF is appropriate when the SoS is considering matters of defence and national security.

Yours sincerely

**Ministry of Defence Legal Advisers  
Government Legal Department**