

**Further Written Submission by Dr. R. John Pritchard to Deadline 9  
re. National Policies on Noise and on Other Matters including Funding and Disclosure**

1. I have gone through guidelines issued by the World Health Organisation's European regional office which is the basis on which No Night Flights and others in the anti-Aviation group of objectors pin their hopes. They describe it as the "Stockholm Convention."<sup>1</sup> It is not, in fact a Convention, and it is not on all fours with obligations accepted by states party to the *Stockholm Convention on Persistent Organic Pollutants* (2001) which **is** an international environmental treaty recognised by the United Nations.

2. The 2018 Guidelines are **not** law and have **no** binding force. *Environmental Noise Guidelines for the European Region* (2018) is a document produced for a World Health Organisation regional office and provides guidelines nothing more. There is even a note at the bottom of the colophon page which ends with these words: " The views expressed by authors, editors, or expert groups do not necessarily represent the decisions or the stated policy of the World Health Organization."

3. The opening pages of the Executive Summary of the 2018 Guidelines say in its first three full paragraphs:

"Environmental noise is an important public health issue, featuring among the top environmental risks to health. It has negative impacts on human health and well-being and is a growing concern among both the general public and policy-makers in Europe.

"At the Fifth Ministerial Conference on Environment and Health in Parma, Italy, in 2010, WHO was requested by the Member States in the European Region to produce noise guidelines that included not only transportation noise sources but also personal electronic devices, toys and wind turbines, which had not yet been considered in existing guidelines. Furthermore, European Union Directive 2002/49/EC relating to the assessment and management of environmental noise (END) and related technical guidance from the European Environment Agency both elaborated on the issue of environmental noise and the importance of up-to-date noise guidelines.

"The WHO Regional Office for Europe has therefore developed environmental noise guidelines for the European Region, **proposing** an updated set of public health **recommendations** on exposure to environmental noise."

4. What this means, in effect, is that a conference of ministers held in Parma thought it would be a good idea to provide guidance to the EU and accordingly the WHO regional office decided to produce this report to inform people about what the authors of this report think about the relevant issues. That's it. Nothing more. It hasn't gone out to public consultation, industry hasn't at this point accepted it as cost effective or appropriate or needed, and neither have governments, so far as I can see. It displaces nothing that exists in agreed national or international policies. No-one who wrote it appears to have considered or consulted on the cost implications of it.

5. Well, it **is** a piece of work that was commissioned by a World Health Organisation regional body. But it is a position paper. It is NOT the result of a process in which individual countries sent people with plenipotentiary powers to negotiate anything. It is simply a study that was published by an advisory body. It carries no more weight than that. It has not been ratified by any legislature, so far as I can see, and it is in conflict with a number of British Government national policy statements. It

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1 The document in question is this one: [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-004307-Ms%20Hubetina%20Frecken%20-%20Re\\_%20Manston%20Airport%20\(TR020002\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-004307-Ms%20Hubetina%20Frecken%20-%20Re_%20Manston%20Airport%20(TR020002).pdf)

also conflicts with the standard 63dB(Laeq) contours that are accepted across this country and abroad. It is based on a great deal of evidence that is admitted in the study to be of very low quality or entirely untested. It acknowledges that bias enters into it, and into the subjective nature of much of its evidence base. The basis on which it determines that its recommendations in whole or in part should be taken as "strong" or "moderate" is not compelling and is more semantic than real.

6. Commercial realities and practices are such that if the ExA decided to recommend that the DCO should not be granted on the basis of this piece of work, then that would not be a position it could sustain, and that is because it is not consistent with relevant National Policy Framework or National Policy Statements that pertain to Aviation and Airports. It would, if embraced, lead to challenges that potentially could put every airport investor and every airport operator out of business. Any decision to accept this as a show-stopper for the Manston Airport DCO would likely result in a successful challenge by RiverOak through judicial review.

7. In twenty years' time, maybe engines and airframes will advance to the point that this should be an document that can be a point for aspirations. But at present it would not just shut down airports, if adopted and mandated at all airports in the UK. It would also do the same with every busy railway in the country. It would place the United Kingdom at a disadvantage in comparison with other countries when it comes to trade in goods and sharply constrain the movement of British subjects and foreign visitors into and out of the United Kingdom.

8. If we go to an all-electric automotive car industry, and apply the same to motorcycles and lorries, then the highways recommendations set out in the 2018 Guidelines will be attainable. But those are not attainable now in many locations, particularly where there is heavy traffic.

9. I cannot see the Third World adopting this, nor any G20 countries. But then this report does not pretend to apply anywhere save in European countries. And even in Europe I cannot think that it will be accepted and enforced across the European Union or Europe as a whole. Because it has no universal application, conformity with it would place European countries at a great disadvantage in comparison with other countries and their air carriers around the world. That would in itself be contrary to the express will of the United Kingdom Parliament which is to be competitive and welcoming to international commerce on the best possible terms across the world, without prejudice.

10. Scarcely any metropolitan airport could function if those noise levels were applied: no heavy aircraft could fly, no fast jets could fly, no MRO activities could take place. No existing national policy statement in support of aviation or airports could survive under such a constrained regime at the present time. And if subject to these restrictions, no major airport could operate as designed, or if enhanced, either.

11. Paragraphs 180 – 183 of the Ministry of Housing Community and Local Government's *National Planning Policy Framework – CP 48*, published in February 2019 during the course of the present Examination of the Manston Airport DCO Project, states:

“180. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life 60;

b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and

c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

181. Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.

182. Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (See Explanatory Note to the Noise Policy Statement for England (Department for Environment, Food & Rural Affairs, 2010) should be required to provide suitable mitigation before the development has been completed.<sup>2</sup>**[Vide the date and context of that Explanatory Note.]**

183. The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, *rather than the control of processes or emissions (where these are subject to separate pollution control regimes)* **[my emphasis]**. Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.”

12. The only extant planning consent for the use of Manston Airport is as an airport. That has been true since 1916. Nothing in what No Night Flights and their supporters misleadingly call the “Stockholm Convention” may displace that existing permitted use. Manston Airport is a disused airport but it **is** an airport, and it is the policy of Her Majesty’s Government to make **full** use of existing runways in the South East of England.

13. In relevant part, the Airports National Policy Statement published in June 2018, as approved by Parliament, states in para. 1.39, “On 21 July 2017, the Government issued a call for evidence on a new Aviation Strategy. Having analysed the responses, the Government has confirmed that it is supportive of airports beyond Heathrow making best use of their existing runways. However, we

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<sup>2</sup> National Planning Policy Framework, February 2019, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/810507/NPPF\\_Feb\\_2019\\_print\\_revised.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810507/NPPF_Feb_2019_print_revised.pdf)

recognise that the development of airports can have positive and negative impacts, including on noise levels. We consider that any proposals should be judged on their individual merits by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts.”<sup>3</sup>

14. Further, in para. 1.42, as approved, the Airports NPS states: “As indicated in paragraph 1.39 above, airports wishing to make more intensive use of existing runways will still need to submit an application for planning permission or development consent to the relevant authority, which should be judged on the application’s individual merits. However, in light of the findings of the Airports Commission on the need for more intensive use of existing infrastructure as described at paragraph 1.6 above, the Government accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the need which is met by the provision of a Northwest Runway at Heathrow. As indicated in paragraph 1.39 above, the Government’s policy on this issue will continue to be considered in the context of developing a new Aviation Strategy.”<sup>4</sup>

15. And in para. 2.7, the final text of the Airports NPS affirms: “Air freight is also important to the UK economy. Although only a small proportion of UK trade by weight is carried by air, it is particularly important for supporting export-led growth in sectors where goods are of high value or time critical. Heathrow Airport is the UK’s biggest freight port by value. Over £178 billion of air freight was sent between UK and non-European Union countries in 2016, representing over 45% of the UK’s extra-European Union trade by value. This is especially important in the advanced manufacturing sector, where air freight is a key element of the time-critical supply chain. By 2030, advanced manufacturing industries such as pharmaceuticals or chemicals, whose components and products are predominantly moved by air, are expected to be among the top five UK export markets by their share of value. In the future, UK manufacturing competitiveness and a successful and diverse UK economy will drive the need for quicker air freight.”<sup>5</sup>

16. In para. 3.53, the Airports National Policy Statement recognises that airport expansion schemes do impact upon quality of life and indeed that the Heathrow scheme actively promoted by Her Majesty’s Government has much higher impacts of that kind than any of the other schemes examined.<sup>6</sup> That has not blocked the Government’s policy to support that scheme.

17. In para. 4.31, the Airports National Policy Statement sets out that “A good design should meet the principal objectives of the scheme by eliminating or substantially mitigating the adverse impacts of the development, for example by improving operational conditions. It should also mitigate any existing adverse impacts wherever possible, for example in relation to safety or the environment. A good design will also be one that sustains the improvements to operational efficiency for as many years as is practicable, taking into account capital cost, economics and environmental impacts.”<sup>7</sup> These principles, clearly, must be deemed to apply to all other airport development proposals including the Manston Airport DCO Application now being examined: these sentences recited cannot reasonably be construed in any other way.

18. As the 2018 Guidelines commissioned by the WHO European Office have not been subject to international diplomatic negotiation by plenipotentiaries and is unratified and if applied strictly is in

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3 Airports National Policy Statement: New Runway Capacity and Infrastructure at Airports in the South East of England Change Log, June 2018, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/713391/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-change-log.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/713391/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-change-log.pdf)

4 Ibid.

5 Ibid.

6 Ibid.

7 Ibid.

self-evident conflict with National Policy Statements and the National Planning Policy Framework, custom and practice, it is not the law of the land and is **inadmissible** so far as this Examination is concerned.

19. Likewise, in relation to business plans, the Airports National Policy Statement avers, at para 4.40 (**added to the text originally laid before Parliament**):

**“Detailed scrutiny of any business plan put forward by the licence holder will fall under the CAA's regulatory process under the Civil Aviation Act 2012, and the detailed matters considered under that process are not expected to be scrutinised in the same way during the examination and determination of an application for development consent. The CAA is a statutory consultee for all proposed applications relating to airports or which are likely to affect an airport or its current or future operation. The applicant is expected to provide the CAA with the information it needs to enable it to assist the Examining Authority in considering whether any impediments to the applicant's development proposals, insofar as they relate to the CAA's economic regulatory and other functions, are capable of being properly managed.”**<sup>8</sup> My emphases.

20. I presume that the Applicant has shared or will undertake to share all relevant information as to funding with the CAA in accordance with the provisions in the Airports National Policy Statement whether or not they directly apply to this Application. I also presume that the Applicant will inform the Examining Authority that it intends to make full disclosure to the CAA of all sources of funding that underpin the Manston Airport DCO Project and expects to do so in a manner that will protect the confidentiality of investors who qualify for Business Investment Relief on major infrastructure development projects.

21. I should hope that the Applicant will invite the Examining Authority to inquire of the CAA (if it has not done so already) whether the CAA has had or expects to have, in full or redacted form, sight of evidence that will satisfy the CAA that there are no likely impediments to the Applicant's development proposals in relation to the sufficiency and sources of funding.

22. Such an approach to the CAA, surely, will suffice to balance the Government's policies regarding confidentiality to be expected in relation to sources of funding (that in this instance benefit from Business Investment Relief provisions in major infrastructure development proposals) with the need for openness that underpins due process under the Planning Act 2008 regime (although the degree of transparency in public disclosure requested by this Examining Authority seems to me to exceed what is actually required under the Act as amended, having regard for the terms set out in the Airports National Policy Statement at para 4.40).

23. It is not, I submit, for the Examining Authority to unilaterally determine for itself how to balance two conflicting national policies, but it may put that question to the relevant decision-maker. The proper decision-maker under the 2008 Act as amended remains in this matter the Secretary of State for Transport who will have regard for guidance and information which s/he may request and receive from the CAA to the extent that the Applicant may rightly claim it can be deemed and received in full (“commercially in confidence”) or published in redacted form.

24. It is my contention that the Applicant has demonstrated the **Need** for this project, and concessions on **Noise** agreed by the Applicant during Examination of their Application have shown due **regard** to all relevant issues where noise is concerned. The **mitigation** offered or agreed by the Applicant is **generous** in terms of quantum for mitigation payments and triggering metrics (contour

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8 Ibid.

levels) when compared to those that prevail at similar airports elsewhere in the United Kingdom and abroad.

25. So far as questions concerning funding sources are concerned, the evidence submitted by the Applicant with respect to Compulsory Acquisition and Compensation of parties with an interest in Land ('mitigation payments') should be sufficient to meet and exceed the requirements of the Planning Act 2008 as amended and thereby should satisfy the Examining Authority. Should any further comfort be required by the relevant Secretary of State with regard to funding of the infrastructure development and Operations of Manston Airport, that may reasonably be satisfied by imposing an DCO obligation upon the Applicant to convey to the CAA, in confidence, any additional commercially sensitive information required by the Secretary of State of Transport as Decision-Maker.

Dr. R. John Pritchard