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## UCL Laws, UCL Grand Challenges and UCL Public Policy

Policy briefing: Public participation and climate change infrastructure

### Summary

**Wind power and carbon capture and storage (CCS) are expected to form an essential part of the future energy mix in the UK.**

This briefing summarises the main points from the UCL Public Participation and Climate Change Infrastructure research (to be published in the *Journal of Environmental Law* in 2013). The research explores the space for public participation during the consenting process for nationally significant wind energy or CCS infrastructure projects.

Technological change and infrastructure development on the scale anticipated raises complex questions around the distribution of costs and benefits, as well as divergent assumptions about risks and potential conflicts between deeply held values. **It is difficult to promote this sort of change without some degree of public engagement.**

Legal obligations to provide opportunities for public involvement in the consenting of wind and CCS projects can be found in national, EU and international law. However, an examination of strategic planning policy suggests that in practice, very little will be up for discussion by the time individual projects are authorised. This is consistent with a certain mistrust of the public in high level policy discourse on climate change infrastructure.

Paying lip service to participation creates a risk that participation becomes frustrating for both communities and policy makers. We argue that **policy-makers must engage more fully with the role of the public in consulting on major projects, and clarify what is open to public influence.**

## THE LEGAL OBLIGATIONS FOR PUBLIC PARTICIPATION

Provision for public participation has tended to increase over time, with domestic law reinforced by the EU and international legal context. Legal opportunities for public participation can be found in both the UK Planning Act 2008 and in EU legislation, at both the strategic planning level, and at the level of authorising a particular project. The legal requirements are not especially demanding or ambitious, but at the minimum, consultation is required, and account is to be taken of the responses.

### The policy context

The Department for Energy and Climate Change (DECC) and the Committee on Climate Change (CCC) are two of the key institutions developing and influencing national climate change policy in the UK. In their policy work, both institutions emphasise the role of economic instruments as a means of incentivising the development and diffusion of climate change technologies, with limited consideration of broader governance issues. The fact that decisions on particular projects sit in a climate change policy context which is almost overwhelmingly concerned with economic signals suggests some of the difficulties that may be encountered in trying to fit other perspectives that into a decision making process. In particular, **the complexity and significance of public participation is neglected**. Sometimes, planning, and the role for people found in planning, are even quite explicitly represented as a barrier to progress.

There is certainly a tension between the perceived urgency of climate change action and a commitment to public participation. It may be that the disinclination to engage with questions of public participation is part of a backlash amongst policy-makers against the strong (rhetorical) role for public participation in technological and environmental matters over recent years. However, **legal obligations to allow for public participation in decision making mean that any simple rejection of public participation is problematic**. The role of the public cannot easily be ignored or sidestepped by policy-makers, and should be addressed in a more constructive way. The bigger governance questions need to be more thoroughly embedded in national policy work on climate change technologies, with a more integrated approach to governance.

Larger wind farms and CCS projects are what are now known as 'nationally significant infrastructure projects' (NSIPs), and require authorisation from the Secretary of State under the Planning Act 2008. Participation takes place both during the drafting of the National Policy Statement (NPS), which sets the policy context for individual project applications; and before and during the process for authorisation of individual projects.

An application for permission for a nationally significant infrastructure project will in principle be decided in accordance with the NPS. Objections relating to the merits of a policy can be disregarded by decision makers. And decisions that are not in accordance with the NPS are possible only if necessary to avoid breaching legal obligations (for example found in human rights, EU or international law) or if the Secretary of State 'is satisfied that the adverse impact of the proposed development would outweigh its benefits'. In law, this provides real flexibility, so that the decision remains open to be shaped by those consulted. But **the philosophy of the Planning Act is to emphasise strategic policy making over discretion on individual projects, to avoid a situation where policy questions are reconsidered in each individual application**.

## DIFFERING RATIONALES FOR AND TYPES OF PUBLIC PARTICIPATION AROUND TECHNOLOGICAL CHANGE

There are different rationales for public participation around technological change. The involvement of publics may be seen as a way to achieve greater acceptance of technological change, part and parcel of promoting behavioural change, without which technological change is rarely efficient or effective. Or public participation may be seen as contributing to the substantive quality of a decision. Or alternatively, public participation may be part of good process and democratic legitimacy; citizens have a right to be involved in decisions that shape their world.

Public participation takes place at different phases of the development of a technology, including in policy making at the strategic level as well as at the project level. It is also multi-faceted, involving access to information and post-decision review as well as a more specific public engagement in the decision-making process itself.

### Little space for public participation in project authorisation

Providing the 'public' with opportunities for participation (as the legislation does) tells us relatively little about what outsiders can actually contribute to a decision. Our research suggests that **there is likely to be little that participating publics can contribute to the final decision on specific wind energy and CCS projects**. The NPS has already dealt with the most likely concerns: noise, aesthetics, protected sites, alternative sites, and the effectiveness and safety of CCS, are all more or less out of bounds for local people. Any participant wanting to influence a decision will need to shape their contribution carefully, and the opportunities to alter significantly any proposal seem very limited.

### Public participation in the planning process for infrastructure projects

The opportunities for earlier public participation at the strategic level (on the NPS) are clearly crucial. But simply **providing opportunities for public participation at this level does not substitute for opportunities for participation at the project level**. At the very least, the participatory 'constituency' will change at the different levels of participation. The non-specialist public will rarely be engaged by large-scale debates, which are often abstract; the real life conflicts and distributive impacts become apparent closer to a real development.

### Acknowledging the complexity of engaging communities

Solutions to these dilemmas are not easy to identify. Urging 'more' public participation in respect of major infrastructure projects is not only politically unrealistic, but ignores the real dilemmas when major infrastructure that has been identified as necessary through potentially robust parliamentary processes.

Genuinely devolved decision making, where local people make final decisions about development in their own area is relatively rare, and not something we endorse across the board for nationally significant wind or CCS projects. Greater deliberative engagement is an

important possibility, but whilst deliberative forms of involvement are typically deep, and highly valued by those involved, they are also narrow in the sense that few are able to take part. In that respect, they would not on their own meet legislative requirements for public participation.

Consultation is the default option, with positive potential. But it often leads to frustration, and an associated reluctance to take part, precisely because of a suspicion (in this case not unreasonable) that the views expressed will have no influence.

Representative decision making is another alternative, and is the traditional solution (alongside more participatory mechanisms) in planning, where many decisions are made by locally elected councillors.

## Conclusions

- The legal obligations to provide participation around wind farms and CCS projects mean that public participation can neither be avoided nor ignored. However, **the legal and policy framework is very tightly drawn around strategic policy decisions already taken in the NPSs**, leaving decision makers on individual projects with relatively limited room for manoeuvre.
- There is a danger that we may find ourselves in the worst possible situation. Frustration on the part of publics with legally required participation processes results in less engagement by affected communities and increases the superficiality of those processes; policy makers are also frustrated and resort to tick box bureaucratic exercises rather than seeking genuine opportunities for the public to influence development. This risks becoming **a self-perpetuating vicious circle**.
- This sense that there is a hollowness in participatory exercises at the consenting stage for major projects is reinforced by the very low expectations for public participation in the high-level policy discourse on climate change.

## RECOMMENDATIONS

- **There are no easy policy solutions to the conundrum we have identified.** Abolishing the legislative obligations to provide opportunities for public participation is neither politically very likely, nor desirable. And whilst a little more flexibility at the authorisation stage would be possible, we might say the same thing about introducing a local veto over wind or CCS development.
- Between these extremes, **a more thorough engagement by key policy makers should make it far clearer what is open to consultation and what is not**; cynicism toward publics and cynicism within publics must not be allowed to become mutually reinforcing.
- Not only does it need to be clear to those invited to participate in decision making that only the 'how' is open to debate, and not the 'whether', it also needs to be clear why that is the case. The legitimacy of decisions in this 'how-not-whether' framework demands credibility in climate change efforts more generally, if the local area is not to be perceived as simply a symbolic sacrifice.
- **Addressing the uneven distribution of the costs and benefits associated with major infrastructure projects needs much more careful consideration.**