

HOPS Response to Proposed Changes to Fees Charged for Applications Under the Electricity Act 1989 (23rd June 2022)

Information Note

Heads of Planning Scotland (HOPS) is the representative organisation for senior planning officers from Scotland's local authorities, national park authorities and strategic development planning authorities.

The purpose of HOPS is to:

- Promote the profile of public sector land use planning
- Support and promote excellence in planning leadership
- Ensure the delivery of a culture of continuous improvement in planning authorities
- Provide advocacy and coordination to ensure that planning authorities are properly resourced to deliver quality outcomes.

HOPS would like to thank all planning authorities for their contribution to this consultation response.

1. Do you agree or disagree with the proposed application fees as set out at Table A?

Unsure.

Heads of Planning Scotland (HoPS) notes that within the consultation the rationale given for fees to be increased is “to ensure full cost recovery of the service to deliver an efficient consenting process”.

An uplift of 20% is consistent with the recent increase in fees for planning applications submitted under the Town and Country Planning (Scotland) Acts and is welcomed. The new banding is recognition of the increasing scale of development, particularly in respect of offshore wind projects. It is considered reasonable to introduce those new bands.

For the planning authorities (PAs), who are key consultees in the delivery of an efficient service, it remains disappointing that the proposals do not reflect our vital input or recognise the true costs of processing these consultation requests. There are several aspects in relation to this.

Nowhere within the Act, the Regulations or within the consultation paper is it set out that PAs will receive a fee. Only in the Monitoring Report appended to the consultation paper is it recognised that fees are paid out to PAs. This current arrangement is voluntary. The proposals still do not set out what the fee payable to a PA is, or on what basis this is calculated. Indeed, there is no certainty that the current voluntary arrangement is expected to continue. This should be clarified and set out for all types and scales of applications submitted under the Act.

Notwithstanding this, while different authorities may take different approaches to providing their response, there is significant resource employed in doing so. This is particularly the case for the many authorities that process consultation requests in the same way as they do planning applications. While a typical planning application of just under 50MW is likely to bring a fee of £125K to a Council, a consultation on a similar S36 Electricity Act scheme, under the new scale, would likely only now provide £42K, assuming that the 50% voluntary contribution is likely to remain in place. This is considerably less than the cost of processing and HoPS consider that the fees should be increased to reflect the cost of processing for PAs.

Furthermore, when the risk of Public Inquiries is taken into account, which for onshore wind are likely only to increase in frequency if we are to realise the ambition, the current and proposed fee to a PA presents an even greater challenge. As only a PA can trigger an Inquiry, there is an automatic disadvantage in that the typical cost of Inquiry will exceed the voluntary fee, both at present and in the future.

While HoPS recognise that it is outwith the scope of this specific consultation, HoPS would call on Ministers to look to amend the Act and Regulations to raise the threshold of when an application requires the consent of Ministers. It does not take many modern wind turbines to reach 50MW. Increasing this to 100MW or more would be more realistic of the scale of onshore wind applications that are now being received. This would perhaps go some way to

properly resourcing planning authorities as well as addressing the democratic deficit that was highlighted in the Public Petition (PE1864) to Parliament: "Increase the ability of communities to influence planning decisions for onshore windfarms". As highlighted within that petition, planning legislation is the basis of decision-making south of the border. It would seem only to provide a level playing field across all of the UK to take a similar approach.

It is considered that this would greatly assist Ministers in meeting the ambition while ensuring that the criticisms of democratic deficit are addressed.

HoPS consider that it is not sustainable to continue not to charge for non-EIA transmission projects on the same basis as EIA development given the complex environmental matters that can arise in relation to such projects. These can also consume significant PA effort, including reference to a planning committee for a response to a 132kv or above transmission project.

2. Do you agree or disagree with the new bandings for developments with a capacity greater than 500MW as set out at Table A?

Agree.

This would capture the increasing scale of offshore wind energy developments. Having said that, Local Planning Authorities currently receive no fee for consultations on offshore projects.

The engagement with, and involvement of, LPAs before submission, during the application process and post decision is extensive and HoPS consider that more needs to be done to recognise this. That many offshore developments are likely to include onshore works that will benefit from permission deemed to be granted presents significant concern. This is currently the only fee revenue that an authority will recover in what are complex and time-consuming development proposals. If Scotland is to meet its ambition, we all need to work effectively together and only a properly resourced service can work efficiently to that end.

HoPS would be willing to engage with Marine Scotland and the Energy Consent and Deployment Unit on how such an arrangement for fees for this type of development might work. A suggestion for how this could work would be for a proportion of the fee to be split equally between consultee authorities with, in the case of a scheme that proposes onshore development that would be deemed to be granted, an additional fee given to that host authority.

3. Do the proposed application fees set out in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)?

Yes.

The financial implications of responding to S.36 and S.37 applications are considerable in terms of assessment and the need to utilise existing staff resources and to instruct consultants

The proposed revised fees will not cover the costs of the PA involvement in these consultations, especially where a PLI is triggered, either as a result of an officer recommendation or via a planning committee going against an officer recommendation where PLI costs are generally much higher.

4. Do you have any other comments?

The suggested uplift in the threshold is definitely relevant and it is important to note the artificial limitations that energy storage facilities are placing on themselves to avoid energy consent. These facilities are regularly scoped at 49.9MW presumably to avoid the energy consent process and cost. This means that these sites are likely to not be making the best use of land and reduces the potential contribution of these sites to addressing the climate crisis. Raising the energy consent fee is only going to cement that behaviour unless the threshold is also raised. This would ensure that only those applications of strategic significance would be required to be reviewed by Scottish Ministers.

A significant amount of staff resources is required as both the preliminary enquiry stage (gateway meetings, screening, scoping) and post consent (satisfaction of condition, monitoring). Another option may be for there to be a series of staged fees to cover these additional staff resources.

Currently there is no arrangement for local authorities to receive a share of the fee paid for an offshore development. Again, the effort expended by local authorities on pre-application discussion, scoping, gate-checking, responding to the consultation and then being consulted on the satisfaction of conditions in addition to the duties to monitor is not reflected in the consultation and it is HoPS position that it should be; perhaps along the lines suggested above.