

UK Government Consultation
Electricity Infrastructure Consenting in Scotland
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Heads of Planning Scotland response

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Consultation Document

Pre-application requirements

1.	<p>Do you agree with the proposal for pre-application requirements for onshore applications? Why do you agree/not agree? How might it impact you and/or your organisation?</p>
	<p>HoPS largely agrees. The consultation document amalgamates two distinct processes (pre-application advice and pre-application consultation (PAC)) into the bracket of pre-application requirements. It would be helpful to make a distinction between the two in order to ensure that the roles and responsibility of each participant are defined and understood.</p> <p>The requirement for mandatory pre-application with the community would bring the requirements of the Electricity Act into line with the existing provisions of the Town and Country Planning (Scotland) Act in respect of national and major development. Having said that these current requirements are limited in scope.</p> <p>It is vitally important for communities to have a say on proposals and this needs to be as early in the process as possible. It needs to be meaningful, with communities appropriately engaged and supported in order to fully participate effectively.</p> <p>Clear guidance on how such consultation should be approached so that both developers and communities know what to expect will be required. This might mean stating the number of pre-application consultation events required, the type of events (in person, online, etc) and the measures required to publicise such events (newspaper adverts, timing of publicity measures) as well as the type of information to be presented. It is however acknowledged that there may however need to be some in-built flexibility to enable communities to decide themselves on how they wish to engage in the process rather than design a 'one size fits all' approach.</p> <p>The proposal suggests that engagement strategies will be pre-agreed. The consultation does not propose that this agreement will be with the affected communities but the Energy Consent Unit, and potentially the Local Planning Authority. No Authority has indicated that it would be content to take some responsibility for agreeing the strategy on behalf of communities.</p>

	<p>Not involving the community directly would likely lead to a mistrust of the consultation process.</p> <p>Proposals for formal pre-application advice with the Local Planning Authority are welcomed and would be in line with the approach that many of our Local Planning Authorities already have in place. There is however a concern if the proposed pre-application approach impacted on these pre-existing processes not only on the Council's capacity to engage with a separate process but if this was to reduce the current level of fee income achieved at pre-application stage. Utilising existing pre-application arrangements should be the default. For those that do not have such established processes, the resource implications of engaging with an ECU process will need to be considered.</p>
2.	<p>Do you agree with the proposal for pre-application requirements for offshore generating stations? Why do you agree/not agree? How might it impact you and/or your organisation?</p>
	<p>It is agreed that proposals where offshore generation will affect land onshore should be required to carry out pre-application consultation. This would give greater consistency between the various consenting regimes.</p> <p>As set out previously most Local Planning Authorities that responded to the consultation have indicated that it should have a limited role in that process. As Local Planning Authorities do not receive any fee or part of a fee for any work associated with offshore consenting and marine licensing, they are currently not resourced to deal with this workstream.</p>
3.	<p>Do you agree that pre-application requirements should apply to all onshore applications for electricity generating stations, and for network projects that require an EIA? Why do you agree/not agree? How might it impact you and/or your organisation?</p>
	<p>As a principle, yes. The requirements should apply to all onshore applications for generation and transmission under the Electricity Act. However, it is recognised that for some network operations it will depend on their scale and nature i.e. restringing existing lines where there is limited impact. This may also require further consideration.</p> <p>There is a question regarding whether EIA and pre-application should be considered together in this way. There is potential to underplay the potential environmental impacts at Screening so as to remove or lessen the pre-application requirements.</p> <p>Scale, extent and potential impact of the development should be the factors considered, not specifically if they are EIA or not. This is particularly relevant to BESS. It is for this reason that some Local Planning Authorities consider that if it requires consent through the Electricity Act then it should have pre-application consultation with the communities in which they are proposed.</p>

4.	Do you agree that a multistage consultation process may be appropriate for some network projects? Why do you agree/not agree? How might it impact you and/or your organisation?
	<p>Yes.</p> <p>Linear infrastructure projects by their nature are complex and will go through a number of design iterations to refine the preferred line route. It may be useful, both to operator, the community and consultees, to present this at various stages in the consideration of the scheme to ensure that all matters of concern/opportunities have been considered. A multi-stage consultation approach should in theory result in less conflict at application stage.</p> <p>Such a multi-stage process is likely to result in resourcing implications for Local Planning Authorities and other consultees. The resource impact of this approach should therefore be considered.</p> <p>A theme that has emerged is that consultation should begin at an earlier stage in planning the transmission network. This should start at the grid network planning stage and sit with the National Energy System Operator (NESO). There is little public or wider consultation at this early stage when key decisions are made on high level design options, i.e. how electricity gets from point A to B i.e. onshore or offshore cables. Communities are then consulted by the Transmission Operators when the design options are being refined, by which time there is little real opportunity to influence the route or means (on a macro scale).</p>
5.	Do you agree with the proposal for an 'Acceptance Stage' for applications? How long do you think an acceptance stage should be (in weeks)? Why do you agree/not agree? How might it impact you and/or your organisation?
	<p>Having an agreement over the consultation strategy is necessary in order to reduce dispute at a later stage. However, by and large, Local Planning Authorities are clear that they should not be being asked to sign off on the consultation strategy on behalf of the communities.</p> <p>Clear guidance on the expected protocols/principles need to be provided in the form of best practice guidance so that all parties are aware of their respective roles and expectations.</p> <p>It is difficult to suggest a timeframe for the Acceptance Stage when it is not yet clear the extent to which Local Planning Authorities would input into this stage. Some suggestion might be a period of 4 weeks.</p> <p>Any additional stage would have time and resource implications with associated costs to the Planning Authority.</p>

6.	Do you agree that the Scottish Government should be able to charge fees for preapplication functions? Why do you agree/not agree? How might it impact you and/or your organisation?
	<p>Yes. While the SG should be able to recover fees, it needs to be recognised that there is a cost to consultees and the public in participating in pre-application engagement.</p> <p>As explained above, there is a concern around the proposed approach to pre-application impacting on fees currently available to the Council through its existing pre-application advice service.</p> <p>This may have significant negative implications on Local Planning Authorities. If fees are not introduced, the cost of additional work by Local Planning Authorities would not be compensated. However, if standardised charging is introduced it may undermine discretionary charging which individual Planning Authorities have in place for pre-application engagement.</p>
7.	Do you agree that our proposals for pre-application requirements will increase the speed of the end-to-end project planning process overall? Why do you agree/not agree?
	<p>The proposal to introduce a requirement for Pre-Application Consultation is to be welcomed, providing that it has no negative impact upon the financing and resourcing of Planning Authorities and Consultees.</p> <p>Pre-application can improve the speed of decision making but only where that pre-application has been meaningfully undertaken and where the outcomes have been properly reflected on to improve the quality of the proposal and the application itself.</p>

Application procedures

1.	Do you agree with the proposal for increased information requirements in applications? Why do you agree/not agree? How might it impact you and/or your organisation?
	<p>The required information is set out as including:</p> <ul style="list-style-type: none"> • A detailed plan showing the location of all infrastructure • A statement setting out pre-application engagement with interested parties and how their input has been reflected in the application • A statement on the alternative approaches considered • A statement of benefits and needs • A statement of all components of the proposal requiring consent <p>These will be helpful to determine the full nature and scope of the proposal. It is unclear whether this is apart from or could be contained within the EIAR (where it is EIA development) with the former being more useful. It will not</p>

	however ensure that there is an improvement in quality of the application. It is therefore difficult to be sure how this will ensure greater efficiency as anticipated within the consultation document. A suggestion might be to have minimum 'validation' standards such as those set out in planning legislation to ensure a consistent approach across all consenting regimes.
2.	Do you agree with the proposal to set out detailed information requirements in regulations? Why do you agree/not agree? How might it impact you and/or your organisation?
	Yes. Setting out this information in Regulations will ensure a consistency of approach.

Application input from statutory consultees

1.	What are the reforms that would be most impactful in enabling your organisation to provide timely input on section 36 and section 37 applications?
	<p>The type and scale of proposals submitted under the Electricity Act would otherwise be classed as major or national developments under the Hierarchy of Development under the Planning Acts and therefore would have a statutory 4-month determination period. As most Local Planning Authorities will progress consultations as if they were planning applications, given that planning permission may be deemed to be granted, they also follow existing procedures and governance. They may also need to take into account the views expressed by the public and other consultees in coming to their own view.</p> <p>It is therefore necessary to set reasonable timescales. This should include an option to stagger consultation so that the Local Planning Authority has time to consider the comments received from consultees and the public and report to the relevant planning committee without the risk of losing the right to further procedure.</p> <p>Consultees also require additional resource.</p> <p>Much will be dictated by the available resource and the volume of schemes that are being consulted on.</p> <p>There is a clear need to improve the quality of EIA Reports and/or supporting assessments in submissions generally.</p>

2.	<p>What are the advantages and drawbacks of the options set out under Proposed Changes? How might your organisation benefit from the proposed forum and framework?</p>
	<p>A forum for discussion on reasons for delay may be useful however it is most likely that information is currently available. Would a forum deliver any real benefit?</p> <p>It is considered fundamental for there to be a clear process, or framework, for how the application process will work for consultees. This needs to consider the different stages at which consultees will be engaged and a response is required.</p> <p>The provision of specialist support could prove beneficial for some authorities, though the quality of that support would ultimately impact in its effectiveness as would the potential requirement for many Local Planning Authorities to draw on that. Some of that support might be technical in nature but it could also require an element of interpretation and/or judgement which may be difficult to achieve in a centralised resource.</p> <p>Capacity building within authorities may be a better solution or shared resource within geographically linked areas as an alternative.</p> <p>The proposals have a limited opportunity to improve the Council's ability to speed up responses other by reducing the quality of assessment which the Local Authority could undertake, which may shift delays from the consenting period to the post consent period (for example through legal challenges). The reduced period may also result in a higher rate of objection, particularly where information may be scant or missing.</p> <p>A fundamental issue that must be resolved is capacity and resourcing within Local Authorities and Consultees.</p>
3.	<p>What specialist or additional support could the Scottish Government's Energy Consents Unit provide to facilitate the statutory consultees' ability to respond?</p>
	<p>Some of the larger authorities, where the majority of new development is likely to be directed to, have specialist advisors that assist with responses so there may be limited scope for additional specialist support. It must be recognised that this is not universal and some authorities may require support. However, this could perhaps be through a shared services approach.</p> <p>Where there are gaps are with emerging technologies and their associated impacts.</p>

4.	Would new time limits help your organisation to prioritise its resources to provide the necessary input to the application process?
	<p>The response from Local Planning Authorities to this question was overwhelmingly no. In an ideal world, where all information is present and correct and there is no need for revision/amendment, then agreed timescales may be capable of being met.</p> <p>It was however highlighted that this may not be within 4 months (definitely not 2 months) as it will depend on the volume and complexity of applications and the available resource at that time. It also needs to consider the governance around decision making.</p> <p>Some of that may be able to be accommodated by staggering consultation, providing the public and other consultees with a deadline before that of the Local Planning Authority in order that it can take into account the matters raised and have time to report to Committee. Some flexibility on timescales will be required. Otherwise, it is likely to lead to more objections.</p>

Amendments to applications

1.	Do you agree with implementing a limit for amendments to applications? Why do you agree/not agree? How might it impact you/your organisation?
	Yes. The current ability of an applicant to amend a scheme through the process results in delay; not only prolonging the consideration of that scheme but can also impacts on all other cases under consideration as resource needs to be constantly moved. Having a defined point at which amendments can no longer be accepted should reduce this. However, minor amendments / clarification should be accommodated to provide applicants the opportunity to respond to consultee comments. Substantial new information should not be permitted.
2.	Do you agree the limit should be determined by Scottish Ministers on a case-by-case basis? Why do you agree/not agree? How might it impact you/your organisation?
	There is a range of views on this, some considering that there does need to be flexibility and others taking an opposite perspective. Whatever the outcome, this must be agreed with all stakeholders as it is likely that amendments will most likely require re-consultation and engagement.

Public inquiries

1.	What is you or your organisation's experience of public inquiries? What are the advantages? What are the disadvantages?
	Most respondents had significant experience of public inquiries. The advantages are that the relevant matters can be tested properly with the

	Reporter able to take a more informed position than would be the case with written representations or hearing session, which although can be useful are not as rigorous. The disadvantages are cost, time and that their adversarial nature which can often be a barrier to participation by third parties.
2.	Do you agree with the proposed 'examination' process suggested? Why do you agree/not agree? How might it impact you/your organisation?
	<p>It is recognised that the proposals for examination may be similar to that already available under the Planning Acts and not too distant from the usual hybrid approach currently adopted by Reporters in s36 and s37 consent PLI's.</p> <p>There is however a potential for this to lead to a negotiation at appeal stage with the Local Planning Authority being in a weakened position. The threat of PLI is a useful tool for Planning Authorities to ensure that their views are given an appropriate level of weight in the consideration of a proposal. This is particularly helpful when negotiating changes to a scheme during the consultation.</p>

Variations of network projects

1.	Do you agree with the proposal to prescribe a clear statutory process under which variations to network projects may be granted? Why do you agree/not agree? How might it impact you/your organisation?
	Yes. Any proposed Regulations should however ensure that there is re-consultation and the similar opportunity provided to comment further. Clear guidance is required on what constitutes a variation, and when it would be a new proposal.

Variations of consent without application

1.	Do you agree with the proposal to give the Scottish Government the ability to vary, suspend or revoke consents, without an application having been made in the circumstances set out above? Why do you agree/not agree? How might it impact you or your organisation?
	While a variation to modify errors may not have a significant implication and arguably would be non-material, changes relating to environmental circumstances or technology may have a material impact. While in principle this seems a sensible approach, there needs to be clear guidance on what would or would not qualify as a material change that would require Ministers to require a S36 variation of consent. Suspending or revoking consents would not have the same implications and would be supported.

	What the process envisaged is not clear but would likely require consultation with the Planning Authority. This too would need to be resourced.
2.	Do you believe there should be any other reasons the Scottish Government should be able to vary, suspend or revoke consents? What reasons are these?
	No.

Fees for necessary wayleaves

1.	Do you agree with the principle of introducing a fee for the Scottish Government to process necessary wayleaves applications? Why do you agree/not agree? How might it impact you or your organisation?
	No comment.
2.	Do you agree that the fee amount should be based on the principle of full cost recovery, in accordance with Managing Public Money and the Scottish Public Finance Manual? Why do you agree/not agree?15 How might it impact you or your organisation?
	No comment.

Statutory appeals and judicial proceedings

1.	Do you agree that a statutory appeal rather than a judicial review process should be used for challenging the onshore electricity consenting decisions of Scottish Ministers? Why do you agree/not agree? How might it impact you or your organisation?
	Yes. This would bring the appeal process in line with Planning Acts.
2.	Do you agree there should be a time limit of 6 weeks for initiating a challenge to a consenting decision of Scottish Ministers for onshore electricity infrastructure? Why do you agree/not agree? How might it impact you or your organisation?
	Yes.

Transitional arrangements

1.	Do you agree with the above proposal for transitional arrangements? Why do you agree/not agree? What impact would this have on you/your organisation?
	From a practical perspective, it seems appropriate for the provisions to apply to those schemes already in the system at the point that the legislation comes into effect.

The package of reforms

1.	<p>Having read the consultation, do you agree with the reforms as a package? Why do you agree/not agree? What impact would they have on you/your organisation?</p>
	<p>While broadly the changes will improve much of the process and provide greater opportunity for public involvement, the proposed removal of the Schedule 8 provision whereby a timeous objection shall cause a public inquiry to be held is not universally agreed upon. It could have a detrimental impact on Local Planning Authorities being able to influence the outcome of a project and represent their, and their communities, views.</p> <p>It is unlikely that the package of reforms will deliver the efficiency improvements sought. While it is not within the scope of the consultation, and is a matter for Scottish Ministers to decide, HoPS is of the view that amending the MW thresholds to bring the majority of generating stations within the scope of the Town and Country Planning system, would achieve much of the change proposed under this consultation. It would also lead to quicker decisions and retain greater local democratic accountability.</p> <p>On reviewing data provided by the Energy Consent Unit, it is estimated that this approach would result in a halving of the time to process an application to decision when compared with the existing consenting process. It would also have the benefit of providing the full planning fee to the Planning Authority in which to increase resource and provide opportunities for skills development.</p>
2.	<p>What steps could we take to ensure the project planning process (including the preapplication stage) can be completed as fast as possible?</p>
	<p>Engage with the existing systems that are in place within the Council and set achievable key milestones that fit with the calendar of pre-application meetings and committee target dates.</p> <p>Arrangements should be made to formalise the current voluntary fee arrangement and other aspects of resource to ensure that there is capacity to respond to consultations promptly.</p>

Options Assessment

Evidence and analysis

1.	<p>Do you agree with the rationale for intervention? Are there any points we have missed?</p>
	<p>The reasons for intervention are clear however, the objectives set out in this consultation could be achieved by amending the MW thresholds to bring more applications into the current Town and Country Planning process</p>

	<p>rather than to tweak the existing system that contains elements of double handling. This approach would result in quicker decisions being made overall.</p> <p>It is not clear from the consultation whether this option was considered and if so why it may have been dismissed.</p>
2.	<p>Familiarisation:</p> <p>a) How long do you think it would take your business to familiarise with the changes to the legislation and how much of an impact on your pre development costs do you expect this to have (either a saving or an increased cost)?</p> <p>b) How many people in your business need to review the legislation?</p>
	No comment.
3.	<p>Impact:</p> <p>a) Do you agree with the impacts that have been identified?</p> <p>i) If not, please explain why with supporting evidence.</p> <p>ii) If you think there are other impacts that have not been identified, please set out the additional impacts with supporting evidence.</p> <p>b) Can you provide further data and evidence to:</p> <p>i) Support a detailed assessment of each of the impacts?</p> <p>ii) Establish whether this policy is likely to reduce delays to transmission network build, renewables or storage projects, and if so how long by?</p> <p>iii) Establish whether there are any groups you expect would be uniquely impacted by these proposals, such as small and micro businesses or people with protected characteristics? If yes, which groups do you expect would be uniquely impacted?</p> <p>Please provide supporting evidence.</p>
	No comment.