

Fees Charged for Applications under the Electricity Act 1989

February 2018

FEES CHARGED FOR APPLICATIONS UNDER THE ELECTRICITY ACT 1989

Introduction

Scottish Ministers are responsible for determining applications for consent for onshore generating stations with installed capacity exceeding 50 MW and overhead power lines in Scotland under sections 36 and 37 of the Electricity Act 1989 respectively. The Electricity (Applications for Consent) Regulations 1990 and Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 apply to such applications, which are processed on behalf of Scottish Ministers by the Scottish Government's Energy Consents Unit. The Scottish Ministers are also responsible for determining applications for consent for generating stations with installed capacity exceeding 1 MW in Scottish Territorial waters and over 50 MW in the Scottish Renewable Energy Zone (REZ). Such applications are processed on behalf of Scottish Ministers by Marine Scotland Licensing Operations Team. We publish details of our applications online at <http://www.energyconsents.scot> and <http://www.gov.scot/Topics/marine/Licensing/marine/scoping>.

In the marine environment in addition to the requirement to obtain a section 36 consent a marine licence with a separate fee structure is required under the Marine Scotland Act 2010 and under the Marine and Coastal Access Act 2009. Details can be checked online at <http://www.gov.scot/Topics/marine/Licensing/marine/feestructure>.

Our ambition in discharging our administrative function is to deliver certainty around our application processes and timescales, to be inclusive and transparent in the work that we do and to deliver an efficient service to all of our stakeholders which focusses on high quality outcomes.

Our draft energy strategy and National Marine Plan signal the opportunities to shape our future energy system, and to help tackle the challenges of climate change, affordability of energy, and the efficiency of our energy use. The supply of safe, reliable energy underpins the continued growth of the Scottish economy and delivery of key services. Our energy industry provides high quality jobs and a vibrant climate for innovation.

We continue to receive a significant volume of applications for complex energy infrastructure proposals, and wish to reflect upon whether we are properly resourced to deliver the standard of service that our stakeholders wish to see, and to promote the development of the wide range of low carbon and onshore and offshore renewable energy technologies in Scotland as part of the increasingly diverse and dynamic energy mix that the Scottish Government wants to achieve.

In accordance with the Scottish Public Finance Manual, the Scottish Government adopts the principle that there should be full cost recovery for all public services, including those associated with discharging consenting functions under the Electricity Act 1989. We have clear evidence that there has been a shortfall in cost recovery for a number of years, which is now impeding our ability to resource our

consenting functions in the manner to which we aspire. We are reviewing the fees that we charge, to maintain service delivery and to support future improvement. This consultation sets out our proposals in detail and seeks your views on them.

Assessment of costs

To inform our review of fee levels, we have undertaken a staged assessment of our current costs.

We began by undertaking a cost of time analysis, by identifying each stage in our process, the time associated with each task and the staff level at which each task is undertaken. Time recording was undertaken across the full range of application types for which fees are charged, looking at applications for different technologies and of different levels of complexity to develop an understanding of typical or average costs to the Energy Consents Unit and Marine Scotland Licensing Operations Team of each stage in our process.

We have critically evaluated where our processes could be made more efficient and could meet the changing priorities due to the diversification of the marine sector. We have already sought to remove duplication from our processes; to ensure that tasks are being undertaken at the appropriate experience/ cost level; and have focussed our resource on those areas which add greatest value to the process and to outcomes.

We have identified further improvements that we would like to deliver. In particular, we would like to respond to demands to more proactively project manage application processes to deliver greater certainty around determination timescales. We intend to continue to support discussion with a range of consultees at pre-application stage to streamline the application process, and to avoid instances where additional information has to be sought from applicants. We intend to continue to proactively engage with communities, interested parties and stakeholders potentially impacted by proposed developments, to increase their confidence in our application processes. We have given in depth consideration and successfully piloted measures to deliver these aims, and have assessed the resource requirement for supporting these services for all applications going forward.

We have considered the wider impact of the introduction of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017. In introducing these regulations, Ministers sought to minimise any additional regulatory burden and ensure protection of the environment, and there will be some additional process and resource requirements for Scottish Ministers in discharging their regulatory responsibilities.

We have given consideration to alternative models, including charging hourly rates to provide an accurate and application specific cost recovery model. However, we prefer to maintain a fixed fee to avoid uncertainty to applicants and the potential for increasing administrative costs which would be passed on to applicants. We have also given consideration to alternative thresholds for application costs, such as the total area included within red line boundary. However, it is our view that generation capacity or length of line provide a fairer indication of complexity and cost of

processing applications for energy infrastructure. We propose to continue to set fee levels by reference to the consented capacity of generating stations or length of overhead lines.

Having developed a detailed understanding of costs that we would seek to recover through our fees, we have balanced the desire for cost recovery against impacts on industry. We are sensitive to market pressures which currently affect developers in energy industries. We have considered the extent to which Scottish Ministers can continue to bear the shortfall in costs experienced to date, having regard to the standard approach to setting charges for public services as set out in the Scottish Public Finance Manual which is full cost recovery. We have undertaken a comparative assessment of our fees against other consenting authorities and jurisdictions to arrive at proposed fee increases which we consider to be reasonable in the context of current market conditions.

The assessment of application costs is not an exact science, but we have given careful consideration to the fee levels proposed in the consultation paper. On balance, we consider that the proposed fee increases are necessary and proportionate. We would welcome your feedback.

Proposed changes to fees and introduction of phased payments

The Scottish Government is proposing to increase the existing application fee tariffs to more accurately reflect the true costs of processing each application.

We are not the only consenting authority to seek to increase fees. There has been a recent review of fees for planning applications in Scotland and for national infrastructure projects in England and Wales. In Scotland, an application for an electricity generating station with installed capacity not exceeding 50MW made under the Town and Country Planning (Scotland) Act 1997 will now require a fee of £125,000 if the total site area is over 52.5 hectares, whether or not an Environmental Impact Assessment is necessary. The range of fees for an application for a national infrastructure project in England and Wales is likely to be between £255,000 (for the most straightforward cases) and £830,000. Although these different fee structures are not directly comparable, our proposal is in line with a broader trend to seek fees to accurately recover the costs.

To help spread the risk associated with potentially abortive or unsuccessful application costs, we propose to introduce phased payments which bring forward payment of a proportion of the application fee to EIA screening and EIA scoping stages. This will allow us to better support applicants who wish to seek pre-application advice before deciding whether to proceed to full application stage. Fees at pre-application stage will be treated as instalments towards the fee payable at the point of submission of the application.

The fee tariff table (Table 1) at Annex 1 to this document illustrates the proposed changes to the fees structure.

Phased payment for EIA screening

Screening is the process under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 by which Scottish Ministers determine whether an environmental impact assessment is required in relation to a proposed development.

The Scottish Government proposes the introduction of phased payments for section 36 and 37 applications where a screening request is sought, with a payment of £1000 accompanying the request for a screening opinion. This will act as an instalment towards the total application cost and only the outstanding balance would require to be paid when the application is submitted.

Screening is a voluntary process and will not be appropriate for all applications. However, screening is strongly encouraged in cases where there is uncertainty around whether EIA might be required. This provides certainty to applicants that the correct process is being followed from the outset, reducing potential delays and abortive cost. The phased payment will support Scottish Ministers in continuing to deliver timeous responses in accordance with regulatory requirements.

Phased payment for EIA scoping

Scoping is the process under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 by which Scottish Ministers determine those matters to be included within an environmental impact assessment.

The Scottish Government proposes the introduction of phased payments for section 36 and 37 applications where a scoping request is sought, with the relevant payment specified in column 4 of Table 1 of Annex 1 accompanying the request for a screening opinion. Our analysis shows a 1:4 ratio of administrative costs between pre-application and application work, which is reflected in the proposal at Table 1. The payment made at scoping stage will act as an instalment towards the total application cost and only the outstanding balance would require to be paid when the application is submitted.

Scoping is not a mandatory process, but is strongly encouraged in all cases where environmental impact assessment is required. By engaging in meaningful scoping discussion, applicants can develop an early understanding of Scottish Ministers' and consultees' views on a proposed development. Scoping is essential to ensure that applications are both proportionate and comprehensive at the point of submission, thereby avoiding the requirement for the submission of supplementary environmental information and associated consultation processes. Scoping is one of the key tools available to both Scottish Ministers and the developer in streamlining the application process.

The phased payment will support Scottish Ministers in continuing to deliver timeous responses in accordance with regulatory requirements, and in delivering enhanced services including attending/chairing meetings with stakeholders and appropriate interested parties, site visits and community engagement.

By investing in scoping up front, applicants can save time and abortive costs at application stage.

Fees for applications where an EIA is not required

We have reviewed the fees required for applications where an EIA is not required, and the resources necessary to support their determination.

The fee tariffs in force for overhead line applications have changed very little since before the introduction of the Overhead Lines (Exemption) (Scotland) Regulations 2013. These regulations have already taken many of the low impact, straightforward overhead line proposals out of the scope of fees entirely, leaving only those which require more examination of information and more of our resources. We consider a fee increase for non-EIA section 37 applications is fair, to recognise the changing nature of applications and shift in resource costs post exemption regulations.

Previous fee scales did not distinguish between section 36 applications where EIA is required and those where it is not. Some projects may fall into the latter category. We consider that new fee tariffs should be introduced which recognise the reduced resources required for processing section 36 application which are not EIA development. We propose setting a minimum application fee for proposals with installed capacity exceeding 50 MW but not exceeding 100 MW equivalent to the planning fee which a development up to 50 MW would require, with proportionate increases as consented capacity increases.

Where section 36 consent is not required for marine projects, a marine licence with a separate fee structure is required under the Marine Scotland Act 2010 and under the Marine and Coastal Access Act 2009. We propose the same regime but for offshore projects the threshold installed capacity exceeding 1 MW in Scottish Territorial waters and over 50 MW in the Scottish Renewable Energy Zone (REZ).

Introduction of fees for variations to consents

Certain electricity generating stations cannot be constructed, extended or operated without a section 36 consent, however, section 36 does not provide for consents to be varied after they are granted. The insertion of a new section 36C into the Electricity Act 1989 introduced a procedure for applications to vary section 36 consents and for planning permission to be deemed in connection with such applications. Following this, regulations came into force on 1 December 2013 which provide for variation applications to take place.

The determination of applications to vary section 36 consents is a function for which Ministers do not currently charge any fee. This process closely mirrors the section 36 application process in that it is likely to require the production of an environmental report and assessment of the likely significant effects of the proposed development. Given the nature of applications that we have received under the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013, we now consider it necessary to introduce a fee for these applications.

We consider that the fee payable with a request for variation should be based on what the final installed capacity of the development would be as varied. We consider this should apply whether the consent for which a variation is sought is for a stand-alone generating station or an extension to a generating station.

Impact Assessments

Partial Business and Regulatory Impact Assessment

A Partial Business and Regulatory Impact Assessment is included at Annex 2. The responses to this consultation will be used to inform an updated Business and Regulatory Impact Assessment which would be prepared in support of any legislative amendments to change fees.

Equalities Impact Assessment

After considering the requirement for Equalities Impact Assessment it was concluded that there would be no disadvantage created between equalities groups and no assessment was necessary.

Footnote – Local Planning Authorities

Planning authorities within whose borders proposed developments are located are statutory consultees in our application process. For onshore applications the cost to planning authorities of undertaking their statutory function in the consultation process is included in the local authority settlement. At present, in a voluntary arrangement entirely separate from the charging of fees under the Electricity (Applications for Consent) Regulations 1990, we allocate a sum equivalent to two thirds of the application fees received by Ministers for EIA developments to the relevant planning authorities to provide additional assistance in the discharge of their functions.

The proposed fee increases outlined in this paper reflect costs to Scottish Ministers and assume planning authorities will not receive any additional money following the implementation of the revised fees. Ministers intend to maintain the existing voluntary payments at current absolute values and they will cease to be the equivalent of two-thirds of the increased application fees Ministers plan to introduce.

Examples

Example 1. Thermal power station scoped at 160 MW, subsequent application for 160 MW generating station as envisioned at scoping stage.

- A developer is working on a proposal for a gas fired power station with generating capacity of 160MW
- A scoping request is submitted to Scottish Ministers. The fee tariff table indicates that **a fee of £58,500 is required** – as the indicative capacity of the proposal is exceeding 100 MW but not exceeding 200 MW.
- The scoping fee is paid, Ministers complete their processes and provide a scoping opinion. Following consideration of this by the developer, an application is submitted for the 160 MW development. The fee tariff table indicates £234,000, however the developer has already paid £58,500 to receive the scoping opinion. Therefore **there is a balance of £175,500 which must be paid when the application is submitted.**

Example 2. Onshore or offshore wind farm scoped at 175 MW, subsequent application for 95 MW.

- A developer is working on a proposal for wind farm A, and is considering around 50 turbines consistent with the size of models currently on the market with capacity in the region of 3.5 MW – therefore a site with around 175 MW capacity.
- A scoping request is submitted to Scottish Ministers. The fee tariff table indicates that **a fee of £58,500 is required** – as the indicative capacity of the proposal is exceeding 100 MW but not exceeding 200 MW.
- The scoping fee is paid, Ministers complete their processes and provide a scoping opinion.
- Following consideration by the developer of the scoping opinion, further dialogue with stakeholders takes place. The developer makes subsequent design iterations, then submits an application deleting a number of turbines to leave a smaller 27 turbine development. The reduction in size brings the proposal into a different tariff, for developments exceeding 50 MW but not exceeding 100 MW. The fee tariff table indicates £190,000, however the developer has already paid £58,500 to receive the scoping opinion. **A balance of £131,500 must accompany the application.**

Example 3. Overhead line, 132 kV on wooden poles, 28 km.

- A developer is working on a proposal for an overhead line, and following public consultation has decided on a preferred route. The developer has elected to ask Scottish Ministers to screen whether EIA is required.
- A screening request is submitted to Scottish Ministers. The fee tariff table indicates that **a fee of £1,000 is required.**
- Ministers note the potential impacts of the line and sensitivity of receptors and conclude the proposal would constitute an EIA development.
- A scoping request is submitted to Scottish Ministers. The fee tariff table indicates that **a fee of £43,750 is required** – as the line would be greater than 15 km, but less than 50 km in length.
- The scoping fee is paid, Ministers complete their processes and provide a scoping opinion.
- The developer submits an application for the overhead line. The fee tariff table indicates the total application fee is £175,000, and Ministers accept that the application has been screened with payment of £1,000 and there is a valid scoping opinion for the application for which £43,750 was paid, therefore there is a balance of **£130,250 due which must accompany the application.**

Example 4. Overhead line, 33 kV on wooden poles, 8 km.

- A developer is working on a proposal for an overhead line, of 8 km length on wood poles with line voltage of 33 kV. The developer has elected to ask Scottish Ministers to screen whether EIA is required.
- A screening request is submitted to Scottish Ministers. The fee tariff table indicates that **a fee of £1,000 is required.**
- Ministers note the potential impacts of the line and sensitivity of receptors and conclude the proposal would not constitute an EIA development.
- The developer submits an application for the overhead line. The fee tariff table indicates the application fee is £2,100, therefore there is a balance of **£1,100 to be paid which must accompany the application.**

Example 5. Variation of section 36 consent for an extension to an electricity generating station.

- A developer holds consent for a 100 MW electricity generating station.
- The developer also holds consent for an extension which would add a further 150 MW to the total installed capacity of the site.
- The developer wishes to make minor changes to the design of the extension which require variation of the section 36 consent. There would be no change to the total installed capacity of the site as a result of the variation.
- The fee tariff table indicates the application fee for variation of a consent for an extension exceeding 100 MW but not exceeding 200 MW is **£234,000.**

We believe the proposed fee increases are fully justified and recognise the changes to Ministers' administrative functions and working practices, and are a better reflection of the costs of providing and continuing to improve our service.

Seeking your views

Scottish Ministers would welcome your comments and suggestions about the future of the current statutory arrangements for fees payable under sections 36, 36C and 37 of the Electricity Act 1989. Your views will help inform our decision.

The following questions are required to be answered, and you must also complete a respondent information form as directed below.

Questions

With reference to the above and Annex 1 which follows, please answer the following questions, stating your reasons.

- 1. Do you agree or disagree the application fees should be revised to maintain and improve our service levels?**
- 2. Do you agree or disagree that we should continue to have a fixed fee structure as proposed?**
- 3. Do you agree or disagree with the proposal that application fees should be phased in the manner proposed, to spread the risk associated with potentially abortive or unsuccessful application costs?**
- 4. Do you agree or disagree the existing arrangement should continue where the same fee is required for overhead lines exceeding 15km in length whether or not there is EIA development? If you disagree please provide a proposed alternative and expand on this in your answer to question 6.**
- 5. Do you agree or disagree with the introduction of a fee for processing applications for variations of consent, whether for EIA or non-EIA development? If you disagree please provide a proposed alternative and expand on this in your answer to question 6.**
- 6. On balance, do you agree or disagree with the fee levels proposed? If you disagree, please specify which fee in Annex 1 you think should be reconsidered and provide a proposed alternative.**
- 7. Do the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)? If so please explain these.**
- 8. Do you have any other comments?**

Responding to this Consultation

We are inviting responses to this consultation by Monday 14th May.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.gov.scot/energy-and-climate-change-directorate/power-lines-and-electricity-generating-stations>. You can save and return to your responses while the

consultation is still open. Please ensure that consultation responses are submitted before the closing date of Monday 14th May.

If you are unable to respond online, please complete the Respondent Information Form (see “Handling your Response” below) and send it along with your responses to the questions to:

Energy Consents Fees Consultation, Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU.

Handling your response

If you respond using Citizen Space (<http://consult.gov.scot>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them by email to eConsentsAdmin@gov.scot or by post to:

Energy Consents Fees Consultation, Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU.

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

ANNEX 1

Table 1. Proposed fee tariffs.

1. Subject matter of application	2. Current application fee	3. Proposed payment due at screening	4. Proposed payment due at scoping¹	5. Proposed total section 36 or 37 application fee²	6. Proposed total section 36C variation fee³
Screening opinion in relation to an anticipated application for consent under section 36, 36C or 37 for a development (including any of the following)	N/A	£1,000	N/A	N/A	N/A
Overhead line with a total distance not exceeding 15 km which is not EIA development	£180		N/A	£2,100	N/A
Overhead line with a total distance not exceeding 15 km which is EIA development	£2,400		£6,000	£25,500	N/A
Overhead line with a total distance—					
(a) exceeding 15 km but not exceeding 50 km	£18,000		£43,750	£175,000	N/A
(b) exceeding 50 km but not exceeding 100 km	£30,000		£80,500	£322,000	N/A
(c) exceeding 100 km	£60,000		£146,250	£585,000	N/A
Construction or construction and operation of a generating station, which is not EIA development, of capacity—					
(a) not exceeding 10 MW	£6,000		N/A	£7,600	£7,600
(b) exceeding 10 MW but not exceeding 50 MW	£18,000		N/A	£37,800	£37,800
(c) exceeding 50 MW but not exceeding 100 MW	£18,000		N/A	£125,000	£125,000
(d) exceeding 100 MW but not exceeding 200 MW	£24,000		N/A	£167,500	£167,500
(e) exceeding 200 MW but not exceeding 500 MW	£36,000		N/A	£250,000	£250,000
(f) exceeding 500 MW	£60,000		N/A	£417,000	£417,000
Construction or construction and operation of a generating station, which is EIA development, of capacity—					

¹ The EIA scoping payment is calculated to be the equivalent to 25% of the fee for an application or request for variation of consent for the proposed development.

² Where there is a valid scoping opinion in relation to the application being submitted, the payment due will be the total indicated in column 5 minus the total of the payments already made with the screening and scoping of the proposed development.

³ Where there is a valid scoping opinion in relation to the request for variation of consent being submitted, the payment due will be the total indicated in column 6 for the installed capacity of the development as a result of the intended variation minus the total of the payments already made with the screening and scoping of the proposed development.

1. Subject matter of application	2. Current application fee	3. Proposed payment due at screening	4. Proposed payment due at scoping¹	5. Proposed total section 36 or 37 application fee²	6. Proposed total section 36C variation fee³
(a) not exceeding 10 MW	£6,000		£2,700	£10,800	£10,800
(b) exceeding 10 MW but not exceeding 50 MW	£18,000		£13,500	£54,000	£54,000
(c) exceeding 50 MW but not exceeding 100 MW	£18,000		£47,500	£190,000	£190,000
(d) exceeding 100 MW but not exceeding 200 MW	£24,000		£58,500	£234,000	£234,000
(e) exceeding 200 MW but not exceeding 500 MW	£36,000		£87,500	£350,000	£350,000
(f) exceeding 500 MW	£60,000		£135,000	£540,000	£540,000
Extension or extension and operation of a generating station, which is not EIA development, resulting in increase in capacity—					
(a) not exceeding 10 MW	£6,000		N/A	£7,600	£7,600
(b) exceeding 10 MW but not exceeding 50 MW	£18,000		N/A	£37,800	£37,800
(c) exceeding 50 MW but not exceeding 100 MW	£18,000		N/A	£125,000	£125,000
(d) exceeding 100 MW but not exceeding 200 MW	£24,000		N/A	£167,500	£167,500
(e) exceeding 200 MW but not exceeding 500 MW	£36,000		N/A	£250,000	£250,000
(f) exceeding 500 MW	£60,000		N/A	£417,000	£417,000
Extension or extension and operation of a generating station, which is EIA development, resulting in increase in capacity—					
(a) not exceeding 10 MW	£6,000		£2,025	£8,100	£8,100
(b) exceeding 10 MW but not exceeding 50 MW	£18,000		£10,125	£40,500	£40,500
(b) exceeding 50 MW but not exceeding 100 MW	£18,000		£47,500	£190,000	£190,000
(c) exceeding 100 MW but not exceeding 200 MW	£24,000		£58,500	£234,000	£234,000
(d) exceeding 200 MW but not exceeding 500 MW	£36,000		£87,500	£350,000	£350,000
(e) exceeding 500 MW	£60,000		£135,000	£540,000	£540,000
Extension of a nuclear generating station by retrofitting of emission control equipment	£6,000		£31,250	£125,000	£125,000
Any other extension of a generating station	£1,200		£6,250	£25,000	£25,000
Operation only or change to manner of operation of a generating station	£1,200		£6,250	£25,000	£25,000

ANNEX 2

Partial Business and Regulatory Impact Assessment

Title of Proposal

The Electricity (Applications for Consent) Regulations 1990 and Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

Purpose and intended effect

- **Background**

Scottish Ministers are responsible for determining applications for consent for onshore generating stations with installed capacity exceeding 50 MW and overhead power lines in Scotland under sections 36 and 37 of the Electricity Act 1989 respectively. The Electricity (Applications for Consent) Regulations 1990 and Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 apply to such applications, which are processed on behalf of Scottish Ministers by the Scottish Government's Energy Consents Unit. The Scottish Ministers are also responsible for determining applications for consent for generating stations with installed capacity exceeding 1 MW in Scottish Territorial waters and over 50 MW in the Scottish Renewable Energy Zone (REZ). Such applications are processed on behalf of Scottish Ministers by Marine Scotland Licensing Operations Team.

- **Objective**

Scottish, UK and EU policy mandates a transition to a more decarbonised energy system with increased use of low carbon energy sources. The deployment of new generation and associated grid infrastructure is central to this. At the same time, policies are in place at Scottish and EU level to safeguard the environment. A well-resourced energy consenting regime is vital to achieving both these aims.

In accordance with the Scottish Public Finance Manual, the Scottish Government adopts the principle that there should be full cost recovery for all public services, including those associated with discharging consenting functions including post consent work under the Electricity Act 1989. There has been a shortfall in cost recovery for a number of years, which is now impeding our ability to resource our consenting functions in the manner to which we aspire. We are reviewing the fees that we charge, and propose increases to maintain service delivery and to support future improvement.

- **Rationale for Government intervention**

The proposal contributes to the following objectives of the National Performance Framework:

- We value and enjoy our built and natural environment and protect it and enhance it for future generations
- Our public services are high quality, continually improving, efficient and responsive to local people's needs
- We realise our full economic potential with more and better employment opportunities for our people.

The proposal contributes to the Purpose Targets – Increase Scotland's Economic Growth and Reduce Greenhouse Gas Emissions – and the following National Indicators:

- Improve people's perceptions of the quality of public services
- Improve the responsiveness of public services
- Increase renewable electricity production

Consultation

- **Within Government**

The following Government directorates have reviewed the proposals as formulated: Marine Scotland; Planning, Architecture and Design; Planning and Environmental Appeals; Directorate For Energy And Climate Change; Scottish Government Legal Directorate. Their input has supported the formulation of the policy proposals by providing a cross-check on any potential conflicts with other policies that may have needed to be addressed; for example, the recent review of planning fees; and more generally in helping to refine the scope of proposals being consulted on.

- **Public Consultation**

There has been limited informal consultation with developers and planning authorities to flag the intent to review fees. It is our intention to use the current full public consultation to produce a final BRIA from this partial BRIA.

- **Business**

The Scottish Government is proposing to contact trade associations (Scottish Renewables) and key businesses engaged in applications for consent which are likely to be impacted on by the proposals. This would be in addition to the published, written consultation and would take the form of a meeting where the Scottish Government would present details of its intentions and invite discussion and feedback on the proposals. Any feedback would be summarised and recorded.

Options

1. Do nothing.
2. Increase the existing fees as proposed and introduce new fees for variations in alignment with the fees for applications.
3. Increase the existing fees as proposed and introduce new fees for variations in alignment with the fees for applications. Introduce phasing of payments such that a proportion of application costs are paid at EIA screening or scoping stages.

Sectors and groups affected

The groups that we anticipate to be affected by the proposed changes are limited to those which would pay application fees for their development proposals to be determined by Scottish Ministers under sections 36, 36C or 37 of the Electricity Act 1989. These are the developers of electricity generating stations proposals and developers of overhead line proposals.

Benefits

Option (1)

The first option would be to continue with the current model which is based on the Electricity (Applications for Consent) Regulations 1990. Therefore there would be no impact on business to consider regarding fees to be paid, and neither would there be any benefits to business in terms of the service delivered.

Option (2)

The proposed changes would contribute to the Scottish Government's vision of Scotland where "we value and enjoy our built and natural environment and protect it and enhance it for future generations"; "our public services are high quality, continually improving, efficient and responsive to local people's needs" and "we realise our full economic potential with more and better employment opportunities for our people". The benefits to businesses would be:

- The delivery of service from the Scottish Government would continue, or improve, on current levels
- For onshore applications, a scale of fees more consistent with local planning fees and a smoother transition around the 50 MW threshold between applications under the Town and Country Planning (Scotland) Act 1997 and under section 36 of the Electricity Act 1989.

Option (3)

The proposed changes would contribute to the Scottish Government's vision of Scotland where "we value and enjoy our built and natural environment and protect it and enhance it for future generations"; "our public services are high quality, continually improving, efficient and responsive to local people's needs" and "we realise our full economic potential with more and better employment opportunities for our people". The benefits to businesses would be:

- The delivery of service from the Scottish Government would continue, or improve, on current levels
- For onshore applications, a scale of fees more consistent with local planning fees and a smoother transition around the 50 MW threshold between applications under the Town and Country Planning (Scotland) Act 1997 and under section 36 of the Electricity Act 1989.
- The application fee would not be required to be paid in a single lump sum, but paid in instalments in proportion to the level of risk for the business.

Costs

Option (1)

We have already identified that the status quo is a significant departure from the principle of the Scottish Public Finance Manual that there should be full cost recovery for all public services which cannot be sustained, as it is standing in the way of the Government's vision where "our public services are high quality, continually improving, efficient and responsive to local people's needs". The costs to businesses of maintaining the fees at their current level would be a much reduced service level, for example applications may take considerably longer to determine and our capacity may be reduced for holding meetings with key stakeholders to explore important issues and gain clarity on how these may be addressed. Not only would our service level to businesses be degraded, but other future enhancements which may add value would be precluded if they have a resource cost attached.

Furthermore, an unwanted incentive would be sustained regarding the sizing of onshore generation projects at the design stage, where planning fees charged by local authorities for determining applications up to 50 megawatts (MW) installed capacity under the Town and Country Planning Act (Scotland) 1997 are considerably greater than fees charged by the Scottish Government for section 36 consent. This

could drive developers towards sizing some proposals over the 50 MW threshold to save on application fees, which may not be optimally sized in terms of the balance between adverse environmental impacts and policy benefits. In turn this could increase the risk for developers that their section 36 application fails or is abortive.

Option (2)

The costs to businesses as a result of implementing option 2 are financial, as detailed in the consultation paper. Beyond the financial cost no other costs have been identified.

Option (3)

Similarly to option 3, the costs to businesses as a result of implementing option 3 are financial, as detailed in the consultation paper. Beyond the financial cost no other costs have been identified. However, under option 3, these costs are spread over the project development cycle and are not due in a single lump sum at application stage.

Scottish Firms Impact Test

A Scottish Firms Impact Test will be carried out following wider consultation and consideration of the response to the published consultation.

Competition Impact Screening

The Scottish Government has considered the following questions:

Will the measure directly or indirectly limit the number or range of suppliers?

Will the measure limit the ability of suppliers to compete?

Will the measure limit suppliers' incentives to compete vigorously?

Will the measure limit the choices and information available to consumers?

We consider the answer to each question is no and on that basis no in-depth competition assessment is required.

Test run of business forms

No new forms will be introduced.

Legal Aid Impact Test

The proposal does not create a new procedure or right of appeal to a court or tribunal, any change in such a procedure or right of appeal, or any change of policy or practice which may lead people to consult a solicitor.

The proposal is not likely to result in additional people seeking legal assistance or being taken through the courts.

Enforcement, sanctions and monitoring

Payment of fees will be monitored by the Energy Consents Unit and Marine Scotland Licensing Operations Team. If an application is submitted without the required fees having been paid, it will not be a valid application and will not be capable of being determined.

Implementation and delivery plan

It is intended that implementation of any changes to fees will take place in the second half of 2018.

Post-implementation review

It is our intention that the fees will be reviewed again within 5 years.

Summary and recommendation

Option 3 is recommended, as it allows the Scottish Government to meet its aspirations to have full cost recovery for all public services.

• Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No benefit	Degrading of service received by business from Scottish Government to business in determination time and loss of advantages of front-loading application process.
2	Service received by business from Scottish Government maintained and can be improved	Financial cost to business depends on number and details of applications submitted but clearly set out in table of new fees that will apply in consultation paper
3	Service received by business from Scottish Government maintained and can be improved Costs are spread over project development lifetime and not all payable in one go	Financial cost to business depends on number and details of applications submitted but clearly set out in table of new fees that will apply in consultation paper

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact will be assessed with the support of businesses in Scotland.

Signed:

A handwritten signature in blue ink, appearing to read "Paul Wheelhouse".

Date: 17/01/2018

**Paul Wheelhouse MSP
Minister for Business, Innovation and Energy**



FEES CHARGED FOR APPLICATIONS UNDER THE ELECTRICITY ACT 1989

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No



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