

# Consultation on revision of fees payable for applications under Section 37 of the Electricity Act 1989

October 2012



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# Consultation on revision of fees payable for applications under Section 37 of the Electricity Act 1989

## Executive Summary

This consultation is on a proposed revision to the fees payable to DECC in respect of applications for development consent for electric lines above ground under Section 37 of the Electricity Act 1989. Currently, fees are levied at £50 for each application, the rate set in Regulations that came into force in 1990. This rate has never been reviewed.

The Government has a settled policy that fees levied for applications or licensing should be normally be on a “full cost recovery” basis. The annual cost to DECC of processing applications for development consent of electric lines above ground is approximately £110,000. DECC receives 285 applications annually. It is self-evident that the current fee does not meet the “full cost recovery” policy and is, in effect, a token payment.

We therefore propose to revise fees payable to DECC for applications for development consent to begin the process of introducing them nearer to the cost to DECC of processing applications. We are considering two options

- To increase the fee for each and every application to a level that would generate annual revenues to move fees towards recovering the cost of considering applications 'fixed fee'; or
- introduce fixed fees for applications for specific categories of electric lines above ground. "fixed fee by category of service".

Our preferred option would be for a fixed fee by category of service.

Based on the annual average of applications received by DECC, we estimate that the fixed fee by category of service option would incur additional costs to each Distribution Network Operator of between £8,000 and £10,000 annually and a further additional cost to the Transmission Network Operator of .£19,950 annually (without actual costs dependent on volumes).

## Questions

**Q1: Do you consider that the proposed fixed fee by category of service represents a reasonable approach to the revision of fees for applications for consent under s.37 of the Electricity Act 1989? (Section 6.4)**

**Q2: Do you consider that the number of applications for consent under s.37 of the Electricity Act 1989 may be reduced if fees are increased? (Section 6.5)**

## General information about this consultation

### How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Responses to this consultation should be sent to [ohlconsultation@decc.gsi.gov.uk](mailto:ohlconsultation@decc.gsi.gov.uk). The consultation closes on 28 November 2012.

Responses should be clearly marked: *Consultation on Revision to Fees payable under section 37 of the Electricity Act 1989*. Responses and any enquiries related to the consultation should be addressed to:

National Infrastructure Consents Team  
Department of Energy & Climate Change,  
3 Whitehall Place, London,  
SW1A 2AW  
Tel: 0300 068 5687

Email: [ohlconsultation@decc.gsi.gov.uk](mailto:ohlconsultation@decc.gsi.gov.uk)

Consultation reference: URN 12D/311

### Territorial extent

This consultation applies to the development consents in England and Wales.

### Additional copies

You may make copies of this document without seeking permission. An electronic version can be found at <http://www.decc.gov.uk/en/content/cms/consultations/>

Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us using the above details to request alternative versions.

### Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

The Department will summarise all responses and place this summary on its website. This summary will include a list of names of organisations that responded but not people's personal names, addresses or other contact details.

### **Quality assurance**

This consultation has been carried out in accordance with the Government's consultation principles, which can be found at <http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf> . If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator  
3 Whitehall Place London  
SW1A 2AW  
Email: [consultation.coordinator@decc.gsi.gov.uk](mailto:consultation.coordinator@decc.gsi.gov.uk)

### **What happens after the consultation**

Responses should be submitted by 28 November 2012. The Government will consider responses to the consultation and draft a Statutory Instrument that will be laid before Parliament.

# Consultation on revision of fees for applications under Section 37 of the Electricity Act 1989

## 1. Introduction

- 1.1 This consultation is on the proposal to increase fees payable for applications under Section 37 of the Electricity Act 1989 to the Department of Energy and Climate Change. Applications are for consent to install or keep installed electric lines above ground in England and Wales. The level of fees was set in 1990 at £50 by the Electricity (Applications for Consent) Regulations 1990 (Statutory Instrument 1990/455) regulation 11.
- 1.2 It is Government policy that charges levied for applications should be designed to recover the full costs of providing the service of processing an application<sup>1</sup>. The fee for s.37 consent applications has never been revised, although the cost to the Government of processing applications has risen significantly over the last 21 years.
- 1.3 Significant changes to the planning system, particularly those implemented under the Planning Act 2008 that apply to development consent for electric lines, have come into effect. Government believes that it is an appropriate moment to revise the fee set out in Regulation 11 of SI1990/455 for applications for electric lines consent under s.37 of the Electricity Act 1989.

## 2. Background

- 2.1 When the fee of £50 was set in 1990, it reflected a reasonable, but token, charge for processing applications under s.37. Since then, the value of the fee has declined significantly in real terms and it may now be regarded as “*de minimis*”. In contrast, the same regulations set fees for applications for consent under s.36 for electricity generating stations that went some way to reflecting the differential costs of applications according to the generating capacity applied for (although they are not, nor are intended to be, full-cost recovery).
- 2.2 The Scottish Government reviewed its fee structure for applications under s.36 and s.37 and revised them in 2006<sup>2</sup>. The scale of fees for electric lines now depends on length and whether the lines are “EIA Development” (see paragraph 5.4 below for further details). The scale ranges from £150 for lines under 15km to £50,000 for lines exceeding 100km. The Scottish regulations do not differentiate between lines of different nominal voltages.

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<sup>1</sup> “Managing Public Money” HMT October 2007 Chapter 6.3

<sup>2</sup> Scottish S.I.2006/81 The Electricity (Applications for Consent) Amendment (Scotland) Regulations 2006

- 2.3 In view of Government policy on full-cost recovery and increases in costs since the regulations were made in 1990 and also taking into account the revisions to Scottish Government fees for applications for consent under s.37, the Government considers that the fee for making a development consent application under s.37 in England and Wales should be revised to better reflect costs to DECC of examining and determining an application for development consent under s.37.

### 3. Evidence and Analysis

- 3.1 The Secretary of State for DECC is likely to receive 285 applications annually for consent to install or keep installed electric lines. The majority are for minor works on existing lines that have no material adverse impacts or controversial effects and are determined in about three months. A few applications are for projects that may be more significant or controversial, such as new lines or for works in protected areas such as National Parks or Sites of Special Scientific Interest. These require more scrutiny and may take up to a year to determine. Some determinations may take longer where the developer has difficult negotiations on “Wayleaves” (rights to access land owned by a third party to enable the work to be carried out).
- 3.2 If there is an objection to a particular project by the relevant Local Authority a Public Inquiry must be held. The Secretary of State may also hold a Public Inquiry on a discretionary basis where he considers it appropriate to do so having regard to objections received from others and other material considerations. A Public Inquiry can add over a year to the time taken to determine an application. However, the number of Public Inquiries is likely to be very small – between 2008 and 2010 there have been only two.
- 3.3 Consent applications are scrutinised by a small team of officials in DECC. The annual cost of processing these applications (calculated as time spent on the different types of applications, including overheads) is £154k. At the present fee level, the average annual number of applications generates annual revenues of £14,000. This is significantly below the full cost to Government of processing applications for development consent and is out of line with the “full-cost recovery” norm as set out in “Managing Public Money”.

### 4. Options

- 4.1 There are three options:
- Leave fees at £50 for each and every application (“do nothing”);
  - Increase the fee for each and every application to a level that would generate annual revenues to move fees towards recovering the cost to Government of considering applications (“fixed fee”);
  - Revise the fees structure to set fixed fees for specific categories of electric lines above ground.

- 4.2 The first option would not comply with Government policy on setting fees at a rate moving towards the full cost of processing applications and would continue to provide a subsidy to developers seeking consent under s.37.
- 4.3 The second option has the merit of simplicity. However, it would result in very significant under recovery of costs by Government, since much of the cost in processing S37 applications is associated with the more complex and time-consuming schemes
- 4.4 The third option would be the most equitable, provided the categories for applications are properly distinguished, transparent and justifiable.

## 5. Cost Analysis

- 5.1 The cost analysis is based on the average number of applications likely to be received annually and the time spent processing each application. For the purposes of the analysis, the number of applications received annually is taken as 285, being the number of applications received in the financial year prior to the Planning Act 2008 coming into force.
- 5.2 It is proposed to make amendments to the Planning Act thresholds for electric lines. (The proposal is the subject of a separate consultation published simultaneously.<sup>3</sup>) This would mean that some applications that are now made under the Planning Act 2008 would instead be made under s.37. The estimated number of 285 development consent applications likely to be made under s.37 therefore includes some applications that would be transferred from the Planning Act regime to s.37.
- 5.3 There are 9 Distribution Network Operators (DNO) and 1 Transmission Network Operator (TNO) in England and Wales. It is possible that some developers of offshore wind farms that connect to the national grid through a land connection may also be affected. However for these cases there is no reasonable quantification and the numbers are likely to be very small. It is estimated that there will be 276 applications annually for development consent to install distribution lines (i.e. 132kV and below) and 9 applications for consent of works to keep installed 275kV and 400kV lines under s.37 of the Electricity Act 1989.
- 5.4 There are several applications for consent that may fall within the requirements of the EU Directive on the assessment of the effects of certain public and private projects on the environment (EU 2011/92). The directive is commonly called the “Environmental Impact Assessment” (EIA) Directive because for development that meets specified criteria, an assessment of potential significant effects on the environment is required. Proposed infrastructure projects that meet the criteria are generally described as “EIA development” and applications for consent must be accompanied by an Environmental Statement (ES). Electric lines of 220kV nominal capacity and more than 15km in length are specified in the directive as EIA development.

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<sup>3</sup> The consultation on amendment to the Planning Act 2008 threshold for electric lines is at: [http://www.decc.gov.uk/en/content/cms/consultations/12d\\_309/12d\\_309.aspx](http://www.decc.gov.uk/en/content/cms/consultations/12d_309/12d_309.aspx)

Projects for electric lines of less than 15 km or less than 220kV may require the Secretary of State to determine whether they are EIA development, according to any potential significant impacts.

- 5.5 Determination whether a proposed application for consent is an EIA development and subsequent determination of consent requires a detailed scrutiny of the ES, including advice from environmental advisers. It is therefore proposed to have a include a fee for an application to the Secretary of State for EIA determination and a fee for an application that is EIA development to cover the cost of additional scrutiny. We expect 1 application annually to the Secretary of State to say whether a proposed project was EIA development (generally called “screening”) and up to 5 EIA development applications. (These applications would, of course, be amongst the total expected applications, not in addition to them.) The table below shows the annual costs to DECC based on 2011 staff salaries and time spent on each type of application including overheads.

**Table 1: S.37 applications**

	132kV & below – all	275kV/400k V changes (<2km)	275kV/400k V new lines (<2km)	EIA Screening	EIA Development
No. of applications	276	8	1	1	5
Total Cost (£000s, rounded)	78.2	33.8	31.8	0.4	9.7
Cost per application (£000s, rounded)	0.3	4.2	31.8	0.4	1.9

### Option 1 – no change

- 5.6 Option 1 would not impose any additional costs on operators installing or keeping installed electric lines that require development consent under s.37. However it would not move the application fee towards the Government norm of full-cost recovery (as described in paragraph 1.2 above).

### Option 2 – Increase the fee by a fixed amount

- 5.7 Option 2 would be calculated on the basis of the simplest type of application in order to avoid any cross-subsidy between applications. This indicates that the fee should be £200 for each application (see table 2 first row), i.e. an uplift of £150 on the current fee of £50. While this would be simple to administer, it would result in very significant under recovery of costs by Government, as can be seen from the actual costs of the different types of application in table 2..

### Option 3 –Setfees based on application type

- 5.8 Option 3 would set application fees at fixed levels for different categories of service. The fees would be a step towards implementing a full-cost recovery scheme. It would, however, continue to provide an element of Government subsidy, because the levels of fixed fees would be below the actual cost of providing the service. This approach would avoid cross-subsidy between applications within each category, and there would be no “cross-subsidy” between categories.
- 5.9 Because applications for determination by the Secretary of State of whether an application should be “EIA Development” and examination of applications that are EIA development require additional specialist resources, it is further proposed that there should be additional categories for determination of whether a proposal would require an Environmental Impact Assessment ;and for examination of an Environmental Statement.
- 5.10 Table 2 below sets out the suggested categories and fees, calculated on the expected annual number of applications, estimated from previous applications, and the time spent by DECC staff assessing each type of consents application.

**Table 2: Option 3: Proposed categories and fees**

	Actual Cost	Proposed Application Fee
• 132kV	£283.44	£200.00
275kV&400kV changes	£4,224.89	£4,000.00
275kV&400kV new	£31,783.41	£20,000.00
EIA Determination	£423.88	£400.00
Additional fee for EIA Development	£1,948.72	£1,000.00

- 5.11 Costs of examining applications are the same for every application of the same category. The figures in the table are the exact cost that DECC will incur.
- 5.12 Electric lines above ground of 132kV nominal voltage or less are most often distribution networks. High voltage lines of more than 132kV nominal voltage are transmission networks. The proposed revision to fees set out in table 2 above would increase costs to each distribution network operator for s.37 consent applications by between £8,000 and £10,000 annually. Additionally, costs to the transmission network operator would be increased by £19,950 annually.

## 6. Argument

- 6.1 The level of fees for applications under s.37 of the Electricity Act 1989 has remained unchanged since the Act came into force. While the original fee was set a level commensurate with the intention that services by Government should not be free, it was not intended to recover the cost to Government of providing the service. It therefore almost wholly subsidised the cost to applicants of applications under the Act.
- 6.2 As the resource costs of providing the service have increased, other providers (e.g. the Scottish Government and the Planning Inspectorate) have set fees at levels that better reflect the cost to Government of processing applications.
- 6.3 It is Government policy, set out in Section 6.3 of “Managing Public Money” to set application fees at the cost of provision of services, normally on a full cost basis. A fee of £50 for s.37 consent applications does not comply with this policy. Further, in the light of Government moves to reduce costs in the Public Services it is necessary for every part of Government to demonstrate that the costs of services are recovered unless there is an over-riding policy reason why costs should not be recovered.
- 6.4 Option 3 (fixed fee by category of service) has substantial merit on the following grounds:
- it provides for a simple invoicing regime, with fixed fees for different categories of application which are clearly defined;
  - it avoids cross-subsidy between different applications, by virtue of the different categories of applications and Government under recovering costs within each category.
- 6.5 Government believes that the best option for now would be option 3, to introduce a fixed fee by category of service according to the time taken by DECC staff to properly assess different types of application. This would be an interim step towards introducing full-cost recovery for applications under s.37.

***Q1: Do you consider that the proposed scale of fees represents a reasonable approach to the revision of fees for applications for consent under s.37 of the Electricity Act 1989?***

- 6.6 It is theoretically possible that the proposed increase in fees could lead to a reduction in the number of applications for electric lines above ground development consents. However, network have statutory obligations to provide connection to the Grid and to maintain the network. We believe, therefore, that applications are related to the demand from customers for new lines and from Ofgem for network stability; they are, we consider, relatively insensitive to individual application fees.

***Q2: Do you consider that the number of applications for consent under s.37 of the Electricity Act 1989 may be reduced if fees are increased?***

## **7. Preferred Option**

- 7.1 The Government considers that, having reviewed the merits of the options set out above, a fixed fee by category of service would best meet the aims set out above.

## **8. Implementation**

- 8.1 Implementation would be through a Statutory Instrument under sections 36(8) and 60(2) and (3) and by paragraphs 1(3), 2(3), 2(5) and 3(1) of Schedule 8 to the Electricity Act 1989 (i.e. secondary legislation) that would be laid in draft before Parliament for approval. The S.I. would substitute a table of fees for the first line of the table in Regulation 11 of The Electricity (Applications for Consent) Regulations 1990. A draft S.I. is attached for illustrative purposes.

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STATUTORY INSTRUMENTS

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**2013 No.**

**ELECTRICITY**

**INFRASTRUCTURE PLANNING**

**The Electricity (Applications for Consent) Amendment (England and Wales) Regulations 2013**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State, in exercise of the powers conferred by sections 36(8) and 60(3) of, and paragraph 1(3) of Schedule 8 to, the Electricity Act 1989<sup>(4)</sup> and section 188 of the Energy Act 2004<sup>(5)</sup>, makes the following Regulations.

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Electricity (Applications for Consent) Amendment (England and Wales) Regulations 2013 and come into force on 6 April 2013.

(2) These Regulations extend to England and Wales only.

**Amendment of the Electricity (Applications for Consent) Regulations 1990**

**2.**—(1) The Electricity (Applications for Consent) Regulations 1990<sup>(6)</sup> are amended as follows.

(2) In regulation 3(1) after “these Regulations—” insert—

““EIA development” has the same meaning as set out in regulation 2(1) of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000<sup>(7)</sup>;

“existing line” means an electric line which—

- (a) has been installed or is kept installed above ground in accordance with a consent granted under section 37(1)<sup>(8)</sup> or an order granting development consent under the Planning Act 2008<sup>(9)</sup>; or
- (b) has been installed above ground and is an electric line to which section 37(1) does not apply either by virtue of paragraph 5(4) or (5) of Schedule 17 or by virtue of the Overhead Lines (Exemption) (England and Wales) Regulations 2009<sup>(10)</sup>;

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<sup>(4)</sup> 1989 c.29. Section 60(3) has been amended by the Utilities Act 2000 (c.27).

<sup>(5)</sup> 2004 c.20, amended by the Energy Act 2008 c.32 and S.I. 2011/1043.

<sup>(6)</sup> S.I. 1990/455, disapplied in respect of offshore generating stations in England and Wales by S.I. 2006/2064 and amended in respect of Scotland by S.S.I. 2005/295.

<sup>(7)</sup> S.I. 2000/1927, amended by S.I. 2007/1977

<sup>(8)</sup> Electricity Act 1989 c.29, amended by the Planning Act 2008 c.29.

<sup>(9)</sup> 2008 c.29, to which there are amendments not relevant to these Regulations.

“screening opinion” has the same meaning as set out in regulation 2(1) of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000;”.

(3) In regulation 11(1) for “Overhead line ... £50” substitute—

**Table**

<i>“Overhead line</i>	
1. Overhead line with a nominal capacity not exceeding 132kV	£200.00
2. Overhead line with a nominal capacity exceeding 132kV which replaces an existing line	£4000.00
3. Overhead line with a nominal capacity exceeding 132kV which does not replace an existing line	£20000.00”

(4) After regulation 11(1) insert—

“(1A) Where the subject matter of an application for a consent under section 37 is EIA development, there shall be an additional fee of £1000.00.”

(5) After regulation 11 insert—

**“Fees payable on request for screening opinion**

**11A.** A fee of £400.00 shall be payable upon a request being made to the Secretary of State for a screening opinion in relation to an application for a consent under section 37.”.

Date

Minister of State  
Department of Energy and Climate Change

<sup>(10)</sup> S.I. 2009/640, amended by S.I. 2010/29.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations, which come into force on 6 April 2013, amend the Electricity (Applications for Consent) Regulations 1990 in so far as they make provision for applications for consent under section 37 of the Electricity Act 1989 (“the 1989 Act”) to install or keep installed an electric line above ground in England and Wales.

Regulation 2(3) increases the application fees payable for applications for consent under section 37 of the 1989 Act by replacing the existing fee of £50 for all overhead line applications with a scale of fees for different cases. Regulation 2(4) introduces an additional fee where an overhead line constitutes EIA development, as defined in the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (“the EIA regulations”).

Regulation 2(4) introduces a new fee payable for a screening opinion requested under paragraph 5 of the EIA regulations, by which the Secretary of State makes a determination as to whether an overhead line constitutes EIA development.

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**URN 12D/311**