



Department for
Business, Energy
& Industrial Strategy

THE ELECTRICITY (CONNECTION OFFER EXPENSES) REGULATIONS 2018

Consultation on Assessment & Design fees:
Government Response

February 2018

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The consultation can be found on the BEIS website:

<https://www.gov.uk/government/consultations/assessment-and-design-fees-consultation-on-draft-regulations>

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1. Introduction

Background

- 1.1. Electricity distribution networks play an important enabling role in meeting our energy and economic objectives, including by ensuring projects can connect in a timely and cost effective manner. Improving the connections process helps deliver on the Government's Clean Growth Strategy¹ and Industrial Strategy², by enabling homes, businesses and generators to connect to the network more efficiently. It also supports the Government's commitment to reducing the costs of energy
- 1.2. Distribution network operators (DNOs) are legally obliged to provide a connection offer on request³. In doing so, the DNOs incur Assessment & Design (A&D) costs (also referred to as connection offer expenses) which typically include the costs of undertaking surveys, site visits, drawing plans, accommodation and equipment amongst other things. DNOs are only permitted to recover the reasonably incurred costs of providing connection offers, from those applicants who accept a connection offer⁴. Customers who accept a connection offer are therefore also paying for the A&D costs incurred by DNOs in providing offers to other applicants which are not subsequently accepted.
- 1.3. Until 2008 most DNOs levied A&D fees for providing connection offers under Section 19 of the Electricity Act 1989⁵ regardless of whether an applicant subsequently accepted the offer. In 2008, following a challenge, Ofgem published an Open Letter clarifying that the practice was not consistent with Section 19 the Electricity Act 1989⁶. It reasoned that giving a connection offer was the first stage at which any terms/payments were open to acceptance or non-acceptance by an applicant. If the applicant did not accept those terms in the offer then there was no basis for the charge.

¹ <https://www.gov.uk/government/publications/clean-growth-strategy>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/664563/industrial-strategy-white-paper-web-ready-version.pdf

³ Section 16A(1) of the Electricity Act 1989

⁴ This power exists under Section 19 of the Electricity Act

⁵ Section 19 of the Electricity Act 1989 sets out the powers for DNOs to recover costs associated with providing a connection to their network.

⁶ https://www.ofgem.gov.uk/sites/default/files/docs/2008/08/a-and-d-fees-consultation_0.pdf

- 1.4. Powers were subsequently included in the Energy Act 2008 which amended Section 16A of the Electricity Act 1989. The amendment enabled the Secretary of State to make regulations allowing an electricity distributor⁷ to recover from applicants reasonable expenses incurred in providing connection offers (i.e. A&D costs). This would include expenses incurred in making connection offers that are not subsequently accepted. The Energy Act 2008 amendment also enables the regulations to specify any circumstances under which A&D fees may not be charged (exemptions) and how the fees are to be calculated.

Stakeholder views on allowing upfront Assessment & Design fees to be charged

- 1.5. Distribution network operators (DNOs) and a number of connection customers, have argued that not allowing DNOs to charge A&D fees to applicants who do not accept a connection offer has had a significant and growing detrimental effect on connection customers more generally. They argue that not being able to charge these applicants for connection offer expenses has contributed to a significant increase in connection applications, requiring DNO resources to process them. It has been noted that while this does not materially affect DNOs (as they recover their costs in any event), it is unfair that those applicants who accept a connection offer ultimately pay for the A&D costs of those who do not progress. It also encourages multiple, repeat and speculative connection requests. This increases costs and diverts significant DNO resources to providing offers that will never be accepted. Furthermore, providing connection offers to speculative applications 'ties up' network capacity until an applicant responds to the offer. This capacity could otherwise be allocated to subsequent applicants.
- 1.6. On 24 March 2016, Government published a Call for Evidence⁸ to gather stakeholder views on A&D fees. The Call for Evidence ran until 6 May 2016. In total, 26 responses were received from DNOs, an independent connection provider (ICP), customers (generation and storage), community energy organisations and trade associations. The majority of respondents favoured allowing DNOs to charge A&D fees when a DNO has incurred connection offer expenses, but before a connection offer is made irrespective of whether the applicant subsequently accepts the offer.

⁷ The Electricity Act 1989 and Electricity (Connection Offer Expenses) 2018 Statutory Instrument refer to "electricity distributor". This includes DNOs and independent DNOs. We refer only to DNOs throughout this document as their A&D activities are the focus of this measure. The primary legislation and Statutory Instrument do not apply to independent connection providers who are able to invoice for their fees outside the statutory scheme.

⁸ <https://www.gov.uk/government/consultations/assessment-and-design-fees-call-for-evidence>

In responding, many stakeholders also called for smaller projects to be exempt from paying A&D fees under this method, DNOs to improve customer service and transparency in costs, a clear definition of what A&D fees cover and safeguards to prevent DNOs over-recovering costs.

Government view on allowing upfront Assessment & Design fees to be charged

- 1.7. Having considered the issue further, and in the light of responses to the Call for Evidence, we decided to implement secondary legislation (through a Statutory Instrument – SI) to allow DNOs to charge connection applicants A&D fees irrespective of whether they subsequently accept the connection offer. We believe that doing so is fairer, with more applicants paying towards the costs of preparing connection offers and that it will bring further benefits in improving the efficiency of the connections process and the service applicants receive. This will also support the Government’s commitment to reduce the costs of energy as those projects connecting will pay lower A&D fees. We also believe that the concerns raised by stakeholders responding to the Call for Evidence can be addressed through the drafting of the SI and implementation through the regulatory framework.
- 1.8. On 21 September 2017 Government published a draft SI, designed to allow DNOs to charge A&D fees to connection applicants (whether or not they subsequently accept the connection offer) for consultation⁹. We also sought views on our initial assessment of the economic impacts. The consultation ran until 2 November 2017. In total, 22 responses were received from DNOs, ICPs, customers (generation, demand and storage), trade associations and one individual.

Government Response document

- 1.9. We have decided to allow DNOs to charge connection applicants A&D fees irrespective of whether they accept the subsequent connection offer and are laying an SI before Parliament¹⁰. In the next chapter, we set out the key issues raised during consultation with stakeholders, our views and any changes made to the draft SI in response. We have also set out next steps. An Impact Assessment of DNOs charging connection applicants A&D fees irrespective of whether they accept the subsequent connection offer is published alongside this document.

⁹ <https://www.gov.uk/government/consultations/assessment-and-design-fees-consultation-on-draft-regulations>

¹⁰ The Electricity (Connection Offer Expenses) Regulations 2018 available at <http://www.legislation.gov.uk/>

2. Analysis of responses

Introduction

- 2.1. This chapter sets out the issues raised by respondents, our view in response and any changes made to the draft SI as a result. Given the nature of some of the specific legal drafting queries raised by respondents, not all points are covered in detail here. Instead, we have noted the key issues raised. However, we confirm that all the issues raised by respondents during consultation have been fully considered.

Defining connection offer activities in the Statutory Instrument

Question

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| 1. | Do you have any comments on our rationale for, and drafting of, the Statutory Instrument to ensure that connection offer activities are properly captured and that there is sufficient legal clarity that DNOs can only charge for reasonably incurred connection expenses? |
|----|---|

Summary of responses

- 2.2. Twenty respondents agreed with our approach to allow DNOs to charge connection applicants A&D fees irrespective of whether they accept the subsequent connection offer. Five respondents suggested additional connection offer activities be added to the SI to cover costs incurred in processing applications and to cover activities related to smart, flexible connections.
- 2.3. It was also suggested that the SI should be clear that it only applied to DNOs when charging A&D fees under the SI and would not apply to the current method that DNOs use to recover their A&D costs (ie only from those who accept connection offers). Some respondents emphasised the need for DNOs to be transparent on the activities that A&D fees covered. Other comments included suggestions for the level of A&D fees to be charged, that A&D fees should not include charges levied by the Transmission System Operator, and that “reasonable costs” should be more clearly defined in the SI.
- 2.4. Two respondents did not agree with our approach and rationale. They felt more provisions were required to ensure consistency in implementation between DNOs, that over-recovery safeguards were too weak and that there should also be obligations on DNOs to improve information on network capacity. These

respondents also suggested new processes for connecting to the network and/or recovering A&D fees.

Government View

- 2.5. We want to ensure that the list of activities in Regulation 2(2) reflects work undertaken by DNOs in processing connection applications and have revised Regulation 2(2)(d) so that it now clearly covers those activities. We have sought to future-proof the definitions as far as possible to allow for smart developments and other changes to process or technology. Regulation 2(2) looks to achieve this by covering relevant activities, but keeping references at a high level. We recognise that exploring smart solutions as part of a connection offer would be an activity covered by A&D fees and feel that this is covered by the references in Regulation 2(2) to assessing the impacts of, and designing, a connection.
- 2.6. We also note that the list of activities in Regulation 2(2)(c) relating to designing a connection is non-exhaustive. In response to the suggestion that DNOs should not be able to recover charges levied by the Transmission System Operator relating to a connection application, we are satisfied that if such costs are triggered by a connection application, they constitute costs reasonably incurred by the DNO.
- 2.7. In response to concerns that the SI should clarify that it does not apply where the DNO chooses not to charge applicants under this SI, we do not agree that this is unclear. Section 16A(4)(A) of the Electricity Act 1989 provides that the regulations *entitle* the DNO to charge. Regulation 2(2) then states that the DNO *may* require payment. There is no ambiguity and there is no legal requirement for DNOs to charge under the SI. The methodology for charging applicants will be a matter to be determined in the regulatory framework and DNO charging documents, overseen by Ofgem.
- 2.8. We have noted the views expressed on consistency, transparency and safeguards, as well as suggestions for including levels of A&D fees in the SI, for DNOs to provide greater information on network capacity, and new processes for connection applications/recovery of A&D costs. We maintain that these aspects are more appropriately dealt with through existing regulatory processes. There are governance arrangements in place that require Ofgem approval of each DNO's Connection Charging Methodology (CCM)¹¹ and Connection Charging Statement

¹¹ The CCM is approved by Ofgem and sets the approach that DNOs take to calculating connection charges. It also provides other information to explain the options available for obtaining a connection and the processes that need to be followed. See Condition 13 of the Electricity Distribution Licence: <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>

(CCS)¹². DNOs will therefore have to co-ordinate the introduction of new arrangements to agree and then propose a common approach to their CCS for Ofgem to approve. If applicants dispute a charge, they will also have a statutory right of appeal to Ofgem to challenge the charge¹³. More generally, provision of information on network capacity by DNOs and other aspects of customer service are covered by a number of incentives under the RIIO price control, in particular, the Incentive on Connections Engagement¹⁴. We have made Ofgem aware of respondent views on these issues.

- 2.9. We do not believe that it is necessary or appropriate to define “reasonable costs” in the SI. We have defined the kinds of expenses which can be charged in Regulation 2. We are satisfied that Ofgem is best placed to oversee the methods of calculation of the charges in the context of the existing regulatory framework which provides for oversight of charges.

What has changed

- 2.10. Government has revised Regulation 2(2)(d) to include processing the connection application as an activity where DNOs can recover costs.

Exemptions

Question

- | | |
|----|---|
| 2. | Do you agree with our approach to not make specific provision for exemptions in the Statutory Instrument? |
|----|---|

Summary of responses

- 2.11. While there was support for the use of exemptions from charging A&D fees to certain types of applicants who do not accept connection offers, 16 respondents agreed that any such exemptions did not need to be specified in the SI. Many highlighted the flexibility that this approach would offer to change exemption

¹² The CCS sets out DNO connection charges and provides other information to explain the options available for obtaining a connection and the processes that need to be followed. Ofgem approves the form of the CCS. See Condition 14 of the Electricity Distribution Licence <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>

¹³ Charges under section 16A can be appealed under section 23 of the Electricity Act 1989.

¹⁴ <https://www.ofgem.gov.uk/publications-and-updates/direction-issue-incentive-connections-engagement-guidance-document>

categories should the reasons for not charging A&D fees under the SI, or the categorisation of exempt connection applicants, change over time.

- 2.12. Six respondents felt that the SI should make specific provision for exemptions from charging A&D fees to certain types of applicants who do not accept connection offers. They argued that this would ensure consistency between DNOs. There were calls for small generators and businesses and also electric vehicle projects to be exempt from paying A&D fees when not accepting connection offers.

Government View

- 2.13. The SI does not require DNOs to charge A&D fees to applicants who do not accept connection offers. However, any decision not to charge particular applicants in this way would need to be rationalised within the regulatory framework. We note that the electricity distribution licence does not permit undue discrimination between applicants. If an applicant feels they have been treated unfairly they may refer a dispute to Ofgem for determination under Section 23 of the Electricity Act 1989¹⁵.
- 2.14. We maintain that attempting to specify exemptions for certain categories of connection applicants from being charged A&D fees when not accepting a connection offer, is not required. The reasons for exemptions or the categorisation of exempt connection customers, for example, may change over time. The arrangements in the existing regulatory framework provide a more efficient means to manage any such changes. During the Call for Evidence and consultation process, we have also not been made aware of a particular group of applicants that, by virtue of their legal rights or needs, should be exempted by law.
- 2.15. We note the concerns raised as to consistency of approach by different DNOs. We maintain that this is more appropriately dealt with through existing regulatory processes. DNOs will have to co-ordinate the introduction of new arrangements to agree and then propose a common approach to their CCS for Ofgem to approve.

What has changed

- 2.16. The provision remains unchanged. Government has not included a provision in the SI to exempt specific categories of connection applicants from A&D fees when not accepting a connection offer.

¹⁵ Further information on the Ofgem determination process can be found at:
<https://www.ofgem.gov.uk/ofgem-publications/38164/determinationsguidanceaug2012-pdf>

Use of standard fees and over-recovery of costs by DNOs

Question

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| 3. | Do you agree with our approach to not make specific provision for standard fees in the Statutory Instrument? Do you agree that the existing legal and regulatory provisions safeguard against over-recovery by DNOs of A&D costs? Do you have any concerns and, if so, how could they be met in the drafting of Regulation 2? |
|----|---|

Summary of responses

- 2.17. Fourteen respondents agreed that the SI did not need to make provision for standard fees. Some DNOs highlighted the phrase “in relation to the application” in Regulation 2(2) of the draft SI. They felt that this might preclude the charging of standard fees.
- 2.18. Three respondents felt that the SI should stipulate the level of charges. They argued that this would ensure consistency of approach and reduce the likelihood of appeals.
- 2.19. Eight respondents were satisfied that the drafting of the SI, particularly, that expenses must have been reasonably incurred, would prevent over-recovery. Many pointed to the existing regulatory framework which ensured that DNOs do not over-recover connection offer expenses. Two respondents disagreed and felt that the SI should include further provisions to prevent over-recovery. There were particular concerns that DNOs might over-recover costs relating to connection applications by independent connection providers (ICPs) or independent distribution network operators (IDNOs) seeking the same point of connection for the same project as part of the competitive process.

Government View

- 2.20. We have considered further whether or not to specify the manner in which charges are to be calculated in the SI as provided for in section 16A(4C) of the Electricity Act 1989. We have considered what the charges need to cover and balanced this against the need to ensure that there is flexibility to reflect advancements in process and technology.
- 2.21. We do not think it is appropriate to provide for standardisation of charges in the SI. Charges must meet the test of “reasonably incurred” and any assessments on the appropriateness of a degree of standardisation would need to carefully take account of the processes and cost position at the time of charging. It is our view that, if

necessary, a methodology for calculating charges is best addressed by industry and Ofgem. The regulatory framework for distribution network charges is already advanced and it would be both consistent and transparent for the charges and charging methodology for connection offers to also be set out in the CCS and CCM. Both the CCM and CCS are published, ensuring transparency for applicants. Further, Ofgem approves the CCM and the form of the CCS and hears appeals in the event of a dispute over charges.

2.22. We are satisfied that the existing licence requirements in relation to a DNO's CCS will ensure transparency. The SI is clear that the costs must be reasonably incurred and applicants will have a right of appeal against any disputes. We are satisfied that this provides sufficient safeguard against over-recovery of costs incurred by DNOs in providing connection offers.

2.23. We note the concerns raised on A&D charges for ICP or IDNOs seeking the same point of connection for the same project. We would expect consideration to be given to this as part of the DNO stakeholder engagement process. The safeguards against over-recovery of costs referred to in the preceding paragraph and the role of Ofgem in ensuring that DNOs do not behave anti-competitively provide further mitigations of this risk.

What has changed

2.24. Government has not made changes to the SI in this area. The SI does not provide for method of calculation.

Timing of payment for connection offer expenses

Question

4.	Do you agree with our assessment of the timing of charging A&D fees? What are your views on changing SLC 12 ¹⁶ of the electricity distribution licence to allow DNOs to require payment of A&D fees as a precondition for providing a connection offer?
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¹⁶ Standard Licence Condition (SLC) 12 of the electricity distribution licence requires Electricity Distributors to make a connection offer within 65 working days of receiving a request. SLCs are available at <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Distribution%20Consolidated%20Standard%20Licence%20Conditions%20-%20Current%20Version.pdf>

Summary of Responses

- 2.25. There was general support from respondents for allowing DNOs flexibility in when to charge A&D fees to applicants irrespective of whether they accept connection offers, although some warned that charging the A&D fee to applicants after providing a connection offer would likely lead to extensive non-payment by those who did not accept the offer. Two respondents felt that DNOs should be able to charge A&D fees before incurring costs. There were also suggestions that: regular applicants be allowed to pay monthly from an account with the DNO; for A&D fees to only be charged under the SI to applicants submitting excessive numbers of applications; and for all applicants to pay an A&D fee but those who accept a connection offer to receive refunds.
- 2.26. Three respondents did not agree with the flexibility provided by the SI regarding the timing of charging A&D fees, arguing that the SI should specify when the fees could be charged for reasons of simplicity and consistency.
- 2.27. Fifteen respondents supported changes to Standard Licence Condition 12 (SLC 12) to allow DNOs to require payment of connection offer expenses (as allowed under section 16A(5) Electricity Act 1989) before issuing a connection offer. Many argued that without this change an applicant might seek to delay paying the connection offer expenses and rely on the requirement on the DNO in SLC 12 (as currently drafted) to provide the offer within 65 working days. DNOs stated that they would therefore require changes to SLC 12 before they use the SI to charge A&D fees. There were some suggestions on how SLC 12 might be redrafted.

Government View

- 2.28. We maintain that DNOs should have flexibility on the timing of requiring payment within the parameters set by section 16A of the Electricity Act 1989 and the SI. This would include the flexibility to charge instalments, provided that A&D costs have already been incurred. Other voluntary arrangements requested by applicants such as monthly payments or applicants paying in advance to help secure a quicker connection offer would also be compatible with the SI.
- 2.29. We have further considered representations that DNOs should be able to require the payment of A&D fees upon receipt of a connection application. Section 16A(4B)(b) of the Electricity Act 1989 states that “connection offer expenses” means expenses which “have been reasonably incurred by the electricity distributor”. We have mirrored that wording in the SI. It is our continued view that “have been reasonably incurred” reduces flexibility for payment to be required ahead of costs being incurred. However, any question on the interpretation of this

wording is dependent on the construction of section 16A(4B)(b), which is the power under which this SI is made.

- 2.30. Ofgem intends to consult on changes to SLC 12 to allow DNOs to require payment of A&D fees before issuing a connection offer.

What has changed

- 2.31. Government has not made changes to the SI on timing of payments.

Notification of connection offer expenses and withdrawn applications

Question

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| 5. | Do you agree that Regulation 2 provides helpful clarity on notifying customers of the A&D fee? Are there any further aspects relating to DNOs providing information that you would like to see included in this regulation? Do you have any views on whether the Statutory Instrument should include provisions on the timing of DNO payment notifications? Do you agree that the Statutory Instrument does not need to specifically cover expenses incurred when connection applications are withdrawn? |
|----|--|

Summary of responses

- 2.32. All respondents who provided comments on notifications agreed that applicants should be made aware that they may be liable to pay A&D fees even if not accepting the subsequent connection offer, and also receive notification requiring payment of A&D fees.
- 2.33. Some respondents suggested that detail on how the A&D fees have been calculated should be included in the notice requiring payment. One respondent felt that an estimate of A&D fees should be included in the notice to applicants that they may be liable to pay A&D fees. Another respondent argued that a notice issued upon receipt of a connection application should also require payment of A&D fees.
- 2.34. Some DNOs felt that while there should be a requirement for applicants to be informed that they may be liable to pay A&D fees even if they do not accept the connection offer and be provided with information on the fees when requiring payment, that it should be left to DNOs to decide how best to do this. All DNOs sought clarification that the notification requirement would only apply where they charged A&D fees under the SI.

- 2.35. Some DNOs sought clarification on what was meant by “sufficient information” in draft Regulation 2(5)(b), raising concerns that this would unnecessarily duplicate information available in the CCS. Some DNOs were also concerned that draft SI provisions on notifying an applicant that they may be liable to pay A&D fees could be interpreted as the applicant having to confirm receipt of a notice for a DNO to proceed. It could also result in applicants claiming not to have received the notification to avoid paying A&D fees.
- 2.36. All DNOs requested the removal of the provision in the draft SI requiring a notice to be issued informing applicants that they might be charged an A&D fee as a pre-requisite for requiring payment.
- 2.37. All DNOs felt that the SI needed to be clearer that they could recover connection offer expenses where a connection application was withdrawn, and proposed drafting to achieve this. One other respondent felt that there was no need for a specific provision in the SI on withdrawn connection applications.

Government View

- 2.38. It is important that applicants are aware that they may be liable to pay A&D fees under the SI and also receive sufficient information when required to make payment. We maintain that the SI should make provision for this. However we recognise that there was some confusion amongst respondents on the notification requirements in the draft SI. We have considered the comments made by respondents and revised the wording of the SI for clarity. We would also like to provide some clarification in the Government Response.
- 2.39. We would expect DNOs to inform relevant applicants upon application that they may be required to pay an A&D fee. The draft SI required a notice to be issued to achieve this, however we recognise that the use of the word “notice” caused some confusion with the notice under Regulation 2 requiring payment. The SI now states that DNOs are to inform applicants in writing. This could, for example, take the form of an automated reply to electronic connection applications, or DNOs providing information clearly on the face of connection application forms.
- 2.40. In response to concerns raised by DNOs that an applicant would have to respond to being informed that they may be liable to pay an A&D fee, the SI does not require this. The requirement is that the applicant is informed. To help ensure that applicants are informed at the earliest stage, and for fairness to those applicants, we have stipulated that DNOs cannot charge applicants for costs incurred before they inform them in writing that they may be liable to pay.

- 2.41. We would also like to reiterate that the SI only applies where a DNO decides to charge A&D fees under the SI. This means that the requirement to inform applicants in writing that they may be liable to pay the A&D fee and the notification of payment would only apply where DNOs decide to charge A&D fees under the SI.
- 2.42. On the notification of payment (Regulations 2(2) and 2(5)) we continue to believe that it is important that applicants receive relevant information about the A&D fee including the level of the charge, how it was calculated, payment details and the right of appeal. We recognise that the precise details of how and when payment should be made could be included in an invoice if DNOs decide to send this separately to the applicant. Likewise, the notice and invoice could be combined to ensure all information is in one place. We recognise that if DNOs choose to separate the invoice and notice, this could lead to a duplication of some information, however, that will be a matter for DNOs.
- 2.43. We have retained the elements of the payment notice from the draft SI but changed the requirement for DNOs to provide a specific date for when payment should be made by. We recognise that this detail could follow in an invoice issued by a DNO shortly afterwards. Instead we have used the word “when” with the intention that should a DNO choose to separate invoice and payment notice procedures, it could state in the payment notice that payment would be due within a specified number of days following the date of an invoice which would also include details of how to pay the charge. We feel that this amendment addresses the concerns of DNOs that the payment notice procedure should not unnecessarily interfere with internal invoicing processes.
- 2.44. We do not believe that the requirement for “sufficient information” in the payment notice on how the A&D fee has been calculated (Regulation 2(5)(b)), means that a DNO needs to go into the level of detail provided in the CCS. However the notice should provide the applicant with sufficient information and signpost the applicant clearly to where such further detailed information can be found.
- 2.45. We note the representations of some respondents that the notices could contain additional information, such as an estimate of fees and how they are calculated, however, we believe that this can be addressed by our approach here. Sufficient information to enable the applicant to understand how the amount has been determined includes how charges are calculated and ensures transparency. Much of the general information on how the charges are calculated that will assist with an estimate of fees, will also be included in the CCS, which is published. Our expectation is that DNOs will ensure that applicants are, at the least, provided with or signposted to the specific relevant detailed information as is published in the CCS in conjunction with the payment notice to satisfy this requirement. We believe

that our approach in this regard has balanced the need for transparency for applicants with not unnecessarily duplicating information.

- 2.46. We have considered views expressed by respondents as to whether the SI needs to refer to the recovery of costs by DNOs in the event that a connection application is withdrawn before an offer is made. We believe that such applications would be covered by the SI already as they relate to an “application” and would have been “reasonably incurred” costs. Should an applicant feel the charge is unreasonable they have the right to appeal against the A&D fee under Section 23 of the Electricity Act 1989.

What has changed

- 2.47. We have amended the requirement for DNOs to issue a notice informing the applicant that they may be liable to an A&D fee even if not accepting the connection offer (Regulations 2(3) and 2(4)) and require them instead to inform the applicant in writing. We have amended the requirement for a DNO to provide a date in the payment notice with a requirement to inform the applicant when payment must be made by.

Appeals

Question

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| 6. | Do you agree that customers should be notified of their right to appeal against the A&D fees charged in relation to their connection offer? Do you agree that it is right to include these provisions in the Statutory Instrument? |
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Summary of responses

- 2.48. All but one respondent who provided views on appeals supported their inclusion in the SI. Two respondents felt that the setting of fixed A&D fees in the SI would reduce or negate the need for appeals provisions in the SI. Another respondent commented that appeals provisions should not detract from the need for fair and transparent charging of A&D fees.
- 2.49. Some DNOs argued that as the right to appeal is already included in connection offers there does not need to be a separate provision for inclusion in the payment notice for A&D fees.

Government View

- 2.50. The appeals procedure set out in Section 23 of the Electricity Act 1989 will apply to A&D fees charged to applicants irrespective of whether they accept the connection offer as it applies automatically to any disputes under Section 16A. We note that DNOs already notify applicants of the right of appeal when providing a connection offer¹⁷.
- 2.51. We have identified several circumstances in which there is a risk that applicants will not otherwise be aware of the right of appeal for connection offer expenses at the time of payment. This may arise if DNOs require payment of connection offer expenses ahead of issuing the connection offer. Further, if the applicant does not pay, perhaps on account of a disagreement in amount, they may never receive the connection offer with information on appeal. The applicant may also not be aware of the appeal right if they discontinue an application and no offer is subsequently issued.
- 2.52. To protect applicants, we therefore believe it is in the interests of fairness and good practice that DNOs should explicitly notify applicants in the payment notice of their right to appeal against the A&D fee charged for their connection offer. Regulation 2(5)(d) sets out the requirement for DNOs to notify applicants in the payment notice of their right to appeal the A&D fee.
- 2.53. We agree that the right of appeal should not detract from the need for A&D fees to be transparent and reflective of the reasonable costs incurred by DNOs in providing a connection offer. We believe that the SI and regulatory framework provide for this.

What has changed

- 2.54. Government has not made any changes to the SI in relation to this point and the reference to Section 23 of the Electricity Act 1989 has been retained in the SI.

¹⁷ This is required under Section 16(6) of the Electricity Act 1989

Review

Question

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| 7. | Do you agree with our approach to reviewing the implementation of A&D fees in the Statutory Instrument? |
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Summary of responses

- 2.55. Nine respondents agreed with our approach to reviewing implementation. One respondent felt that 2-3 years was more appropriate and another that the review should be annual. One respondent did not agree with the approach and argued that the SI should set fixed A&D fees and then review them annually.

Government View

- 2.56. Currently DNOs set out their A&D fees in their CCS (of which the form is approved by Ofgem) based on the CCM (which is approved by Ofgem). Any changes to the CCM and CCS can be undertaken through that process and DNOs are required to review their CCS and CCM at least once a year. In our view this provides an ongoing and appropriate means to ensure that A&D fees are charged in a way that meets the policy objectives and requirements of the SI.
- 2.57. The inclusion of a review clause in SIs is a statutory requirement¹⁸. We have, therefore, included provisions for reviewing the SI itself (Regulation 3). Given the regulatory protections in place (e.g. Ofgem approval of the CCM and the form of the CCS) we feel that five years is an appropriate timescale for a review of the SI to assess whether its objectives remain appropriate and are being achieved.

What has changed

- 2.58. Government has not made any changes to the SI in relation to review.

¹⁸ Sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015
http://www.legislation.gov.uk/ukpga/2015/26/pdfs/ukpga_20150026_en.pdf

Impact Assessment

Question

- | | |
|----|---|
| 8. | Do you agree with our initial assessment of economic impacts and the assumptions used? Do you have any other evidence which should be taken into account? |
|----|---|
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Summary of responses

- 2.59. Nine respondents agreed that the initial assessment was reasonable with some observing that the proportion of connection offers not accepted had increased since 2015/16. Two respondents argued that introducing free and quick initial connection offers would reduce connection applications.
- 2.60. One respondent understood the average connection offer expenses (£470) for low voltage demand customers assumed in the initial assessment, to be the average connection costs charged by DNOs for that category of customers and also to be a proposed connection cost to be charged to customers. They argued that as they had been charged connection costs of £400 by a DNO for two recent projects that the £470 figure used was not cost reflective.

Government View

- 2.61. In the September 2017 consultation document, we set out our initial assessment of the economic impacts of allowing DNOs to charge A&D fees irrespective of whether the applicant accepted the subsequent connection offer. This included the assumptions and evidence we had used. The Impact Assessment assumes different scenarios of unaccepted connection offers going forward. All scenarios are based on historic connection offer information in Ofgem's Connections Reporting Pack¹⁹ from 2010/11 to 2015/16 and are assumed to rise going forward, with an increasing proportion of unaccepted connection offers. This reflects the trend towards more decentralised generation, an increase in electricity storage, and more electricity demand including from electric vehicles and housing combined with a reduction in available network capacity.
- 2.62. We recognise that there are a number of actions that could be taken that could reduce the number of connection applications. This includes the suggestion that DNOs provide free early indications of whether a project's connection requirements

¹⁹ The Connections Reporting Pack shows connection and offer data collected by Ofgem since 2010/11 through the annual DNO reporting cycle.

could be met in a particular area and other early engagement between DNOs and potential customers. For the purposes of the Impact Assessment these outcomes, alongside the fee potentially deterring connection applications, are included in the scenarios ranging from no impact to a 40% reduction in connection offers as set out in the September 2017 consultation document.

- 2.63. We would like to clarify that the initial Impact Assessment assumed that the average resource cost for DNOs to *produce connection offers* ranged between £470 for low voltage demand connections up to £6,900 for extra high voltage generation connections. This was based on the DNOs' CCS. It did not refer to the cost of the connection itself charged to customers. It was also not a proposed fee for future connections.

What has changed

- 2.64. Due to the time that has elapsed since our initial analysis and to ensure that we are not overestimating benefits and running costs, we have now assumed in the Impact Assessment that A&D fees will only be charged as of 2019 (compared to 2018 in the initial assessment). We are similarly now also discounting all costs in the Impact Assessment to 2018 (rather than 2017). The final Impact Assessment is published alongside this document.

Other comments

Question

- | | |
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| 9. | Are there any other comments you wish to make that may have a bearing on our considerations? |
|----|--|

Summary of responses

- 2.65. Respondents provided a variety of further comments. Two respondents emphasised the need for better provision of network capacity information by DNOs. Another felt that the introduction of A&D fees for applicants irrespective of whether they accepted a connection offer, would require better engagement by DNOs with prospective customers pre-application.
- 2.66. Two respondents proposed changes to the connections process including charging a nominal A&D fee to all applicants and recovering the residual through Distribution Use of System charges. One respondent urged DNOs to have processes in place for a potential increase in connection applications before they charge A&D fees

under the SI, should they decide to do so. The need for consistency between DNOs was also reiterated by one respondent.

- 2.67. Another respondent sought reassurance that EU legislation on common rules for the internal market in electricity, EU network codes for connection, and any cross border EU trade impacts had been considered in deciding to allow DNOs to charge A&D fees irrespective of whether applicants accept connection offers.

Government View

- 2.68. Engagement between DNOs and their customers in revising connection charging arrangements and improving customer service is covered by a number of regulatory provisions, including the Incentive on Connections Engagement. Ofgem expects DNOs to engage with stakeholders in developing their approaches to charging A&D fees.
- 2.69. The method of charging A&D fees, consistency and the connection process itself are more appropriately dealt with through existing regulatory processes. It will also be for DNOs to manage any increase in connection applications before they make changes to charging A&D fees, should they decide to do so.
- 2.70. We have considered relevant EU legislation, EU network codes and cross EU border trade impacts in relation to allowing DNOs to charge A&D fees to applicants irrespective of whether they accept a connection offer and believe it is compatible.

What has changed

- 2.71. None of the points raised in response to this question require changes to the SI.

3. Next Steps

- 3.1 The Government is laying the SI, which incorporates the changes covered in this document, before Parliament. The SI will commence on 6 April 2018 and apply where DNOs decide to charge A&D fees under the SI. The final Impact Assessment is published alongside this document.
- 3.2 Should DNOs decide to change how they charge A&D fees they will be expected to engage with stakeholders in a timely manner. Consequent CCS changes will require approval by Ofgem, in line with the established process for modifications.
- 3.3 Ofgem intends to consult, in due course, on changes to SLC 12 to allow DNOs to require payment of A&D fees as a precondition for providing a connection offer.

Contact details

Paul Hawker
Electricity Systems
Department for Business, Energy and Industrial Strategy
3rd Floor,
1 Victoria Street,
London, SW1H 0ET

Tel: 0300 068 5824

Email: paul.hawker@beis.gov.uk

Annex A: List of Consultation Respondents

BUUK Infrastructure Ltd
Centrica
Ecotricity
Eider Reserve Power Ltd
Electricity Storage Network
Energy Networks Association
Energy UK
Electricity North West Limited
Innogy Renewables UK Ltd
Northern Power Grid
PN Daly Ltd
Renewable Energy Systems Limited
RenewableUK
Scottish Power Energy Networks
SSE Networks
Storelectric Ltd
UK Power Networks
UK Power Reserve
Utility Customer Service Management Ltd
Volvo
Western Power Distribution

In addition, one confidential response was received from an individual

