DEPARTMENT OF ENERGY & CLIMATE CHANGE

Consultation on amendment to the electric lines above ground threshold in the Planning Act 2008

October 2012

Contents

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Executive Summary

This consultation is on a proposal to amend the threshold in the Planning Act 2008 that defines an electric line above ground as a "nationally significant infrastructure project" (NSIP). The threshold set in the Act is currently for electric lines of 132 kilovolt (kV) nominal voltage or greater. All applications for development consent for new electric lines or work to existing electric lines at or above the threshold must be submitted to the Planning Inspectorate for examination and determined by the Secretary of State according to the statutory requirements of the Act and implementing Regulations.

Since the Act came into force on 1 March 2010, it has become apparent that the threshold requires applications for development consent for minor works to electric lines to be submitted to the Planning Inspectorate (PINS) under the full process of the Act, including pre-application consultation, examination and recommendation. These minor works, for example short lengths of new lines comprising just a few spans of line on wood poles or pylons, minor extensions to existing lines adjacent to substations and short diversions of existing lines, are unlikely to be nationally significant.

The Government believes that it is disproportionate for applications for such minor works to be prepared and determined in the same way as applications relating to major infrastructure projects.

There is an established development consents regime under section 37 of the Electricity Act 1989 that applied to all electric lines above ground prior to the coming into force of the Planning Act in March 2010 and that still applies to development consents for electric lines of less than 132kV nominal voltage. The Government considers it would be more proportionate for minor works to electric lines above ground of 132kV and above to be determined under s.37 of the Electricity Act.

This consultation sets out several options for amending the Planning Act 2008. These are:

(i) Do not amend the Act, leaving the threshold at 132kV nominal voltage (i.e. all works to lines of 132kV or greater would continue to be determined under the Act).

(ii) Amend the threshold in the Act to be greater than132kV nominal voltage (i.e. only works to lines greater than 132kV nominal voltage would be determined under the Act).

(iii) Add a further criterion to the threshold of 132kV nominal voltage so that the Act applies to lines of 132kV nominal voltage *and* more than 2 kilometres (km) in length, but excluding, regardless of length, applications for uprating the nominal voltage of electric lines where there is no change to the existing physical infrastructure.

(iv) Amend the threshold so that only lines of more than 132kV nominal voltage that are "EIA Development" requiring an environmental impact assessment (EIA) (as defined in the Environmental Assessment directive and implementing regulations) would require development consent under the Planning Act.

Sections 5 and 7 set out the options in detail and analyse the potential costs and benefits of each option.

The Government's preferred option would be (iii) above.

Responses to this consultation are requested by 28 November 2012. Details of how to respond can be found below.

General information about this consultation

How to respond

Your response will 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 PA2008@decc.gsi.gov.uk. The consultation closes on 28 November 2012.

Responses should be clearly marked: *Consultation on amendment to electric lines threshold in the Planning Act 2008.* 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: PA2008@decc.gsi.gov.uk

Consultation reference: URN 12D/310

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 or 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

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.

Questions

Q1: Do you consider that there are reasonable grounds to amend the threshold for electric lines in the Planning Act?

Q2: Do you agree that there are circumstances where applications for development consent of electric lines of a nominal voltage greater than 132kV should not be made under the Act?

Q3: Can you suggest any further options for amending the threshold for electric lines in the Planning Act 2008? If so, what advantages or disadvantages would they have?

Q4: Do you consider that a specified length of 2km is reasonable for Option (iii)? If not, what other length do you suggest and why?

Q5: Have you any more detailed evidence or data on the potential costs and benefits of amending the Planning Act? In particular, more detailed evidence on the costs arising from statutory requirements, e.g. for working with Local Authorities to scope consultation and preparation of a consultation report would be helpful.

Q6: Do you agree with the Government's assessment of the option that best meets the stated policy aims? If not, please explain how you consider another option would better meet those aims.

Q7: Do you have any views about when any changes to the Planning Act thresholds for electric lines should come into force?

Q8: Do you think projects which have started out under the Act but not been the subject of an application for development consent under the Act should be allowed to remain governed by it after the changes have taken effect, and, if so, on what basis?

1. Introduction

1.1 Electric lines above ground must have development consent by the Secretary of State before construction begins. Applications for development consent of lines with a nominal voltage of less than 132kV are made under Section 37 of the Electricity Act 1989. Applications for development consent of lines with a nominal voltage of 132kV or greater are made under section 31 of the Planning Act 2008.

1.2 This consultation is on a proposal to amend the threshold at which electric lines above ground are defined as Nationally Significant Infrastructure Projects (NSIPs) in the Planning Act 2008 ("the Act"). It is proposed to amend the threshold to be electric lines with a nominal voltage of 132kV or greater and of more than a specified length, but excluding works to uprate the nominal voltage of existing lines where the physical infrastructure is not changed.

1.3 Since the coming into force of the Act on 1 March 2010 it has become apparent that a number of projects for new electric lines or for works to existing electric lines of 132kV nominal voltage or greater fall within the Act definition of an NSIP. For minor applications it is considered that application procedures under the Act may be disproportionate. Developers have suggested that this can cause delays and impose additional burdens that may affect decisions on timing of new infrastructure or investment decisions more generally. This indicates that the definition in the Act does not set the threshold for requiring development consent under the Act at a proportionate level. The Government believes that the definition should be amended to reduce the potential for projects that are not nationally significant to be subject to the Act.

1.4 The proposed amendment would mean that some applications for development consent that at present would be submitted under the Act would in future be submitted under Section 37 of the Electricity Act 1989 (s.37). The Electricity Act 1989 at present applies to electric lines that are not defined as NSIPs. It is not proposed that any projects that are not already exempted should be exempted from consents procedures altogether.

1.5 Electric lines are distinct from electric cables. The former are also known as "overhead lines" (OHLs) and are the power lines that are strung between wooden poles or metal pylons (both also called "supports"). Electric cables are also known as "underground cables" and are buried beneath the surface. Both lines and cables have the same function, i.e. to carry electricity from a generating station to an end-user, normally via the national transmission grid and associated distribution networks. For clarity, all references in this consultation on the thresholds are to "electric

lines above ground" as set out in s.37 of the Electricity Act 1989[1] and s.14(1)(b) of the Planning Act 2008, (that is OHLs). This definition includes the components of an electric line, not just the wire or cable itself.

2. Scope

2.1 This consultation is on whether applications for development consent for some electric line projects should be determined under the Act or under s.37. The proposed amendment is not intended to change in any way the policies that would be applied in determining applications for consent under the Act or under s.37. Nor are they intended to change any consideration of the merits of electric lines or underground cables for any individual project or consideration by decision-makers of the impacts of any specific application, for example on the environment or on visual amenity.

2.2 The Secretary of State's policies for development consent applications, on how developers should consider electric lines under the Act, are set out in the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Electricity Network Infrastructure (EN-5), designated by the Secretary of State on 19 July 2011. Amongst other things, these policies cover the assessment and mitigation of visual impacts and the consideration of a particular policy with regard to alternatives to electric lines above ground[2]. The Secretary of State applies and would expect to continue to apply all of them when determining applications under s.37.

3. Background

3.1 The electricity network in England and Wales comprises two components – the transmission network of electric lines carrying electricity at high voltages (normally 275kV or 400kV) from generating stations to regional or local substations and the distribution networks comprising electric lines of 132kV nominal voltage or less that carry electricity from substations to consumers. The distribution network may also carry electricity from small generating stations to substations for connection to supply local demand. At present, all applications for development

[1] EA89, s. 64(1):
"electric line" means any line which is used for carrying electricity for any purpose and includes, unless the context otherwise requires—
(a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;
(b) any apparatus connected to any such line for the purpose of carrying electricity; and
(c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

[2] EN-1 Section 3.7; EN-5 Section 2.8
http://www.decc.gov.uk/en/content/cms/meeting_energy/consents_planning/nps_en_infra/nps_en_infra.aspx

consent for electric lines of 132kV nominal voltage and above in England and Wales are determined under the Planning Act 2008.

3.2 There is no general definition of what constitutes an electric line NSIP outside the definition in the Act. The Act covers a wide range of infrastructure types, including transport, water and waste water projects as well as energy infrastructure projects. The Planning Reform White Paper published in 2007 indicated that an NSIP would be a "key project needed to support our communities, economy and society". However this general statement does not constitute sufficiently precise criteria against which to assess types and scale of infrastructure. An alternative conceptual model would be that a project is nationally significant if it makes a significant contribution to satisfying a need for infrastructure of a type for which there is a national, and not merely a local need. A further potential consideration is the extent of the environmental and other effects that a project might have. In the same way that, at a certain point, the magnitude of a development's potential benefits may be such that it merits consideration at a national, rather than just a local level, so when the potential adverse impacts of a major projects reach a certain scale they might be considered at a national level.

3.3 An NSIP is, ultimately, more easily recognised in practice than described in theory. In particular, theoretical descriptions do not achieve the level of precision required in legislation. Because the intention of the Act is that it should be clear from the outset whether or not a project falls within the scope of the Act, the approach taken in it is to set hard quantitative thresholds, on the assumption, (based on practical experience) that these will result in the Act applying to the kind of projects which are nationally significant. But the thresholds can be seen as working more as proxies for identifying NSIPs than as conceptual definitions of them. The question therefore is whether the existing threshold is a good proxy for national significance for electric lines, and, if not, what other quantitative criteria might provide a more precise proxy?

3.4 Broadly speaking, electric line projects in England and Wales are likely to be nationally significant if they affect high voltage lines contributing to the national grid or to connect generating stations to the grid. Projects that are not necessarily nationally significant fall into three categories: new lines of 132kV and greater that are short in length (i.e. only a few spans long); minor works to existing lines of 132kV nominal voltage or greater; and uprating existing lines to higher voltages than 132kV where no physical changes are made to existing infrastructure. These projects are normally uncontroversial, unlikely to have any potentially significant adverse effects and are therefore unlikely to be nationally significant projects in themselves.

3.5 Section 14(1)(b) of the Act defines "the installation of an electric line above ground" as an NSIP. This is modified by Section 16 (as amended) which states, *inter alia*, that s.14 does not apply to electric lines if the nominal voltage is expected to be less than 132kV.

3.6 Applications for development consent under the Act are submitted to the Planning Inspectorate National Infrastructure Directorate (PINS). Prior to the Act coming into force on 1 March 2010, all electric lines development consent applications were submitted to the Secretary of State for Energy and Climate Change under s.37. There are statutory exemptions from the requirements of both s.37 and the Act (the Exemption Regulations)[3] for minor works such as maintenance or minimal re-routing.

3.7 The application procedures under s.37 and the Act set different levels of consultation before an application is submitted. Part 5 Chapter 1 of the Act sets out a detailed pre-application procedure that may take a year or more to complete. It includes agreement of a consultation plan with relevant local authorities, consultation according to the plan with Statutory Consultees and interested parties, followed by a report to the Secretary of State showing how the consultation has been taken into account in the application. This procedure ensures that rigorous consultation on NSIPs is carried out.

3.8 The application and examination process under the Act regime is intended to ensure rigorous scrutiny of major infrastructure projects after an application has been accepted. There is a statutory timetable that can take up to 16 months from formal submission of an application before determination by the Secretary of State. The examination process includes provision for public hearings (the equivalent of a Public Inquiry) for every application.

3.9 The application procedure under s.37 requires applicants to notify local authorities, inform interested parties and publish a notice of an application. The Secretary of State may direct that additional information is provided. However although an appropriate level of consultation with those who will be affected by a project is always good practice, applicants are not required by law to undertake a particular form of consultation before application is made, nor to demonstrate how they have taken account of such consultation, nor to prepare a separate report on the consultation. Further, because the “additional information” is at the direction of the Secretary of State, not prescribed in primary legislation, the Secretary of State can require information that is proportionate to the application.

3.10 If a relevant Local Authority objects, within the relevant time limits, to a proposal for an overhead line of 132kV or above made under s.37 the Secretary of State must call a Public Inquiry before an appointed Inspector and consider the Inspector’s recommendations before determining the application. If there is no objection from the relevant Local Authority but the Secretary of State considers it appropriate to do so (for example because of the strength of objections maintained by third

[3] SI 2009/640 The Overhead Lines (Exemption) (England and Wales) Regulations 2009
SI 2010 /29 The Overhead Lines (Exempt Installations) (Consequential Provisions) Order 2010
SI 2010/277 The Overhead Lines (Exempt Installations) Order 2010

parties or any other relevant matters), he may call a discretionary Public Inquiry. The Public Inquiry process provides an opportunity for interested parties to present the case for and against a proposal in detail in a public forum and to interrogate and challenge each other's views and evidence on a proposal. The scrutiny to which proposals are submitted at a Public Inquiry is very similar to the attention which they would receive if examined under the Act and the decision is made by the Secretary of State both on applications under s.37 and on applications under the Act.

3.11 Section 35 of the Planning Act provides powers for the Secretary of State to refer applications in England under s.37 to PINS for examination under the Planning Act if he considers them to be nationally significant. However applications in Wales for electric lines of 132kV nominal voltage or less that are considered to be of national significance by the Secretary of State - or to have the potential for significant effects - could only be considered at a Public Inquiry under s.37, not transferred to PINS for examination under the Act.

3.12 The Government considers that these relatively minor cases, are not nationally significant, but have the potential to take up resources that should more properly be used to determine consents applications for nationally significant infrastructure projects for which the system was intended.

Q1: Do you consider that there are reasonable grounds to amend the threshold for electric lines in the Planning Act?

4. Evidence

Application data

4.1 Data from network operators in England and Wales shows that there were 65 applications for s.37 consent for electric lines of 132kV and above submitted in the two years before the Act came into force. Of these, 44 applications were for 132kV lines. There was 1 application for a 275kV line and 20 applications were for 400kV lines. Additionally, data on applications for 275kV and 400kV applications for the years 1991 to 2002, covering about 100 National Grid cases, were analysed. Potential applications notified to PINS up to January 2012 were also considered.[4]

4.2 A number of factors were considered to see whether they could be useful indicators that a project for a 132kV nominal voltage line was nationally significant. First, the time taken to determine consent was considered to test an initial assumption that the more complex or controversial a project might be, the longer it would take to be determined. Of the 44 cases examined, 41% were determined within 3 months, rising to 64% within 6

[4] A detailed analysis of the data is set out in the Impact Assessment accompanying this consultation.

months, and 75% within a year. The longest periods for determination of consents generally occurred through waiting for the developer to finalise agreements with relevant land owners for voluntary or necessary wayleaves/easements for rights over land.

4.3 The type of support – wooden poles or pylons – also proved that it was not a suitable indicator of national significance for 132kV lines: the data showed that there were 31 applications for work to existing lines on pylons where there was no reason to consider that the projects could be nationally significant.

4.4 Similarly, there were no readily apparent criteria for determining whether a project for work on an existing line of a greater nominal voltage than 132kV should be considered under the Act. Of the 21 applications for work to lines of 275kV and 400kV nominal voltage, only 6 were for new lines and these were less than 2km. None of the lines were on wooden poles and only one was longer than 15km.

Q2: Do you agree that there are circumstances where applications for development consent of electric lines of a nominal voltage greater than 132kV should not be made under the Act?

Discussion

4.5 Dependent on the nominal voltage of a line and whether the works proposed are covered by the Exemption Regulations described in paragraph 3.6 above, very similar projects might be considered under the Act, under s.37 or not require consent at all.

4.6 Where projects are not subject to development consent under the Exemption Regulations, the Local Planning Authority must be notified. The Local Authority may determine whether a project is considered to have a significant adverse effect on the environment, as determined by the local authority and if it determines that there is likely to be such an effect, it can invoke the full consent process.

4.7 It was also considered whether a Public Inquiry on applications submitted under s.37 prior to the Act coming into force could show whether a line had national significance. Over the last 5 years only 2 applications for lines of 132kV nominal voltage have had to go to Public Inquiry. This might be an indicator that both these applications would have been more appropriate for consenting under the Act (had it been in force), but 2 examples out of 44 are insufficient to draw firm conclusions.

4.8 The number of applications for development consent of electric lines for which a Public Inquiry was held was, therefore, a very small percentage of the total number of applications prior to the Act coming into force. Based on historical data, the Government estimates that in future there may be only 1 or 2 applications that, if submitted under s.37, could be referred to Public Inquiry each year, from an average total of around 270 applications. However the increasing number of development consent

applications for wind farms and other new renewables generation in England and Wales could indicate more demand for connection to the grid through electric lines of 132kV in the future.

Fees

4.9 The current fee payable to DECC for an application under s.37 is £50[5]. The fees levied under the Act are set by regulation. They have several fixed charges and a variable component according to the number of Inspectors examining an application and the time taken to determine the application. This means that the total fees for a project submitted under the Act could exceed £100,000; if the time taken to examine it was up to 60 working days, and could be nearly £300,000.

5. Options for amending the Planning Act threshold

5.1 As described above applications for consent of electric lines above ground, whether under the Act or s.37, essentially fall into two categories: first, the applications for new lines; secondly work to maintain, divert or uprate existing lines.

5.2 We have identified four options to amend the electric line threshold in the Planning Act. These are:

(i) Do not amend the Act, leaving the threshold at 132kV nominal voltage.

5.3 This option would mean that a large number of minor projects that are unlikely to be considered nationally significant would require consent under a regime designed for NSIPs. There would continue to be some adverse consequences. The current threshold is regarded by developers as disproportionate for minor works on existing lines, or for very short new electric lines. This could tend to discourage or delay investment in works on existing lines to reinforce electricity networks as many developers might consider it too expensive and slow to carry out maintenance or reinforcement work in a timescale that is desirable for energy security or meet generators' expectations. There is also a potential to cause delays for other projects that depend on work on electric lines for completion – such as a road-widening scheme that requires diversion of a line.

(ii) Amend the threshold to be electric lines above ground with a nominal voltage of greater than 132kV.

5.4 This would mean that all applications for consent on projects of work to 132kV electric lines would be submitted under s.37, the regime under

[5] The fee for development consent applications under s.37 has remained at the same level since its inception in 1990. DECC is now reviewing the appropriate level of fees and a separate consultation is taking place in conjunction with this consultation: http://www.decc.gov.uk/en/content/cms/consultations/12d_311/12d_311.aspx

which all other distribution lines are considered. However, it would not exclude minor works to electric lines of a nominal voltage greater than 132kV, which could cause some delays in developers bringing forward projects for routine maintenance and minor extensions to existing lines. Applications for consent to uprate existing lines from e.g. 275kV to 400kV nominal voltage, where there were no changes in the route or supports would also continue to be made under the Act; which could result in a disproportionate process and delays.

(iii) amend the threshold to be electric lines above ground of 132kV nominal voltage and more than 2km in length; excluding uprating of electric lines above ground where there is no change to the existing physical infrastructure (i.e. supports and route of line)

5.5 This would mean that the minor works to existing lines and projects for very short lengths of new line would be submitted under s.37 regardless of voltage. Projects to uprate existing lines without changing the supports and without any diversions or extensions would also be submitted under s.37 regardless of length. Application for development consent of electric lines of 132kV nominal voltage or greater that were more than 2km would be submitted under the Act.

(iv) change the definition to be electric lines above ground that are "EIA Development" i.e. 220kV and 15km or determined to be EIA development by the Secretary of State

5.6 Projects that might have significant effects are subject to the EU Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, (generally described as the "EIA [Environmental Impact Assessment] Directive")[6]. Such projects are described as "EIA Development". The criteria for electric lines to be EIA development are a nominal voltage of 220kV or greater and a length of 15km or more. The Secretary of State may also determine, as a result of a more qualitative assessment, that an individual project that has potential significant effects but does not meet these criteria should be EIA development.

5.7 Using the criteria of EIA Development could transfer all but a very few proposals for development consent back to s.37. However because there is a large number of projects that are less than 15km but are likely to have significant effects, each application that did not meet the quantitative EIA criteria would need to have its potential environmental effects assessed by the Secretary of State before an application could be made to determine the regime under which it should be submitted. If an application was made under s.37 and the Secretary of State determined

[6] Major projects that have potential significant effects are regulated under the EU Directive 2011/92/EU. The EIA Directive is implemented in England and Wales by secondary legislation. Where development is determined to be EIA development, it will require an environmental statement (ES), the contents of which are prescribed by the regulations.

that it was EIA development, it would need to be re-submitted under the Planning Act, once it had met all the relevant statutory requirements. Similarly, if an application was submitted under the Planning Act and was subsequently determined not to be EIA development, it would have to be rejected by PINS and a new application made under s.37.

Q3: Can you suggest any further options for amending the threshold for electric lines in the Planning Act 2008? If so, what advantages or disadvantages would they have?

6. Rationale for amending the Planning Act 2008

6.1 The Government considers that all applications for consents should be subject to appropriate scrutiny. The Planning Act 2008 and the related regulations are designed to deal with large, complex and often controversial projects. The Act therefore has a detailed pre-application, application and examination process. This ensures that Local Authorities, Statutory Consultees and Interested Parties are properly consulted during the preparation of an application by a developer and that the examination procedure is open and transparent so that decisions on nationally significant infrastructure projects are properly and publicly scrutinised.

6.2 If PINS is not satisfied that the full consultation process, as prescribed, has been complied with, an application may be rejected. On accepting an application, PINS must appoint an Inspector or Panel of Inspectors to examine the application. The Inspector or Panel must decide how to examine an application in the light of a meeting with registered "interested parties" on the examination process. Examination of an application may take up to nine months culminating in a report to the Secretary of State with a recommendation on the application. The Secretary of State has a period of three months in which to determine consent.

6.3 The process under the Act is proportionate to NSIPs. However it is not possible for any of the procedural requirements to be disapplied for minor works to electric lines. It is not, therefore, proportionate to all the cases of minor works that are currently subject to the Act under the current thresholds

6.4 In contrast, the s.37 procedures, which have been applied to a large number of smaller-scale applications as well as nationally significant ones, do not impose specific requirements for all cases because It is considered that for minor cases these would be unnecessary or inappropriate. Accordingly, the ability for the Secretary of State to exercise his discretion enables applications for minor works - for example a very short length of new line, or replacement of a line that requires only one new support - to be submitted with a proportionate level of information and public consultation.

6.5 Electric lines above ground have been required to obtain development consent before construction for many years. The first regulations were introduced at the end of the 19th Century and the Electricity Act 1989 regulations came into force in 1990. This means that existing electric lines have (almost invariably)[7] already been subject to scrutiny before they were first constructed. Government believes that considering minor works to existing lines under the Act is unlikely to give any significant benefits. The Government considers that the focus should be on the changes to infrastructure and that consideration should be proportionate to the scale of the project.

6.6 The proposed amendment at option (iii) would introduce criteria for the threshold for submission of applications for consent under the Act for electric lines that would be a better proxy for what constitutes an electric line NSIP. This would enable applications for consent for minor works to be made to the Secretary of State under s.37, rather than under the Act. The Government estimates that as a result of this amendment around 15 applications annually could be made under s.37 rather than the Act.

6.7 In assessing possible criteria, Government has considered the effect of length. Although, as discussed above, length alone is not a sufficient indicator of significance, it is more likely to indicate it when coupled with other criteria. The applications data between 2008 and 2011 for lines of 132kV nominal voltage or greater show that a high proportion – over 70% - were for electric lines that were less than 2km long Of these, 70% were for work on existing electric lines.

6.8 National Grid, which installs a number of 132kV electric lines as well as the transmission lines of 275kV and 400kV, voluntarily undertakes an environmental impact assessment for electric lines of more than 2km. This is based on an assumption that there is a potential for significant effects because a 2km line is likely to include 5 or more supports. The Government agrees with this assumption.

6.9 The historical data on applications indicates that projects for work on existing lines are likely to be more than minor maintenance or other minor works such as a short extension, diversion or replacement supports. This does not imply, however, that electric lines of *less* than 2km will not have any significant impacts – the Secretary of State may determine that any project is "EIA development". Similarly, a specified length of 2km does not necessarily indicate that a project is or is not nationally significant.

6.10 On the data available, and taking into consideration NG's practice, the Government believes that it would be appropriate to set a specified length of 2km as an additional criterion in s.16 of the Act which has to be satisfied, alongside nominal voltage of 132kV or above, for a project to be considered nationally significant.

[7] There are some rare instances where electric lines were originally built under emergency powers.

6.11 The Government believes that alternative thresholds based on distances, for example 5km (which would include almost all applications) or 15 km as used in the EIA directive would mean that projects that were NSIPs would not be submitted under the Act. To ensure that major infrastructure projects are fully considered in an open and transparent way, it is important that applications for consent of NSIPs are considered under the Act. The Government further believes that the potential for longer electric lines of 132kV or greater nominal voltage to have significant effects is such that it is proportionate for all such projects to be submitted under the Act.

Q4: Do you consider that a specified length of 2km is reasonable for Option (iii)? If not, what other length do you suggest and why?

7. Costs and Benefits

7.1 Amending the Act would give developers some direct and indirect benefits. The benefits would be largely non-monetary. First, there would be a potential reduction in the burden of compliance with a process that was disproportionate to the significance of a project. This could result in timescales being reduced for the preparation of applications under s.37 that would otherwise have been made under the PA regime. There could also be some benefits for developers because applications for minor works to electric lines under s37 may be determined within a few months, whereas for applications under the Act the statutory timetables (which help to ensure that NSIPs are not delayed) may militate against speedy determination for minor projects.

7.2 The reduction would also deliver some administrative burdens reductions. Mapping statutory requirements in the Planning Act 2008 regime against statutory requirements in the s.37 Electricity Act 1989 regime, it is estimated that – using data extrapolated from the 2005 Administrative Burdens exercise – an indicative reduction would be around £12,000 in total over 10 years. However, as described in paragraph 7.4 below, it is not possible to estimate the potential costs for pre-application work required under the Act.

7.3 There would also be cost-savings because there are differences between the fees payable to PINS and the fees payable to DECC in respect of applications for development consent for electric lines. As stated above, fees payable for applications under s.37 are currently £50 (although the fee scale is being revised). Fees payable for applications under the Act are variable, depending on a number of conditions[8]. It is estimated that for the average of 15 applications annually expected to be submitted under s/37 instead of the Act if the Act is amended according

[8] http://infrastructure.planningportal.gov.uk/application-process/application-fees/

to option (iii), revised s.37 fees[9] could be £30k, compared with PINS fees of up to £850k.

7.4 Developers have indicated that the cost of pre-application and application process under the Act could be equivalent to the construction costs for a minor project. However it has not been possible to obtain accurate breakdowns of comparable costs under the s.37 regime, or apportion costs solely to compliance with the Act requirements. The Government considers that a significant proportion of the costs associated with preparation of an application are likely to be incurred at some time during the application process, particularly where a more complex or contentious application goes to a Public Inquiry. However the proposed amendment could provide some benefit because for minor works to electric lines, the consultation requirements of the 37 process are likely to be less costly than the requirements under the Act.

7.5 Because the developers' perception that the Act regime is disproportionate for smaller projects is potentially influencing investment decisions, there is a wider strategic benefit to making an amendment to the Act for the electric line threshold. Developers would be assured that Government is taking into consideration representations and concerns that regulations may be disproportionate in some circumstances and is willing to take action to rectify perceived issues. Such action would play into the broader Government agenda to reduce burdens from regulations under the "Red Tape Challenge" and, by addressing the perception that the development consent regime is disproportionate for minor works, boost confidence that the Government is seeking the optimal regime, thereby encouraging further timely investment in electricity distribution and transmission networks.

Q5: Have you any more detailed evidence or data on the potential costs and benefits of amending the Planning Act? In particular, more detailed evidence on the costs arising from statutory requirements, e.g. for working with Local Authorities to scope consultation and preparation of a consultation report would be helpful.

8. Preferred Option

8.1 The Government considers that option (iii) would best meet the policy aim to ensure that the threshold for electric lines in the Act more accurately reflects NSIPs. The Government believes that this option will help applications for development consent for electric lines to be made under proportionate regimes that reflect whether the proposed project is nationally significant.

Q6: Do you agree with the Government's assessment of the option that best meets the stated policy aims? If not, please explain how you consider another option would better meet those aims.

[9] Estimated in the Impact Assessment table 12(a) and Consultation on the revision of fees.

9. Implementation

9.1 Implementation of a change to the threshold for electric lines in the Planning Act 2008 would be through a Statutory Instrument under s.14(3) of the Act (i.e. secondary legislation) that would be laid in draft before Parliament for approval by both Houses before it was made (i.e. affirmative procedure). This would make the necessary changes to the criteria for an electric line project to be considered nationally significant under section 16 of the Act.

9.2 The intention is that the amendment to the Act should come into effect on the Common Commencement Date in April 2013. It would apply to all projects under the threshold that had not, prior to that date, been the subject of an application for development consent under the Planning Act 2008. Any projects that had been the subject of such an application before that date would therefore remain subject to the Act.

9.3 The Government would welcome consultees' views as to whether projects which have progressed to a certain earlier stage under the Act should be allowed to be the subjects of applications (and to be examined and determined) under it. For example, would it be appropriate to allow projects which have been notified to the Planning Inspectorate (or, prior to 1 April 2012, the Infrastructure Planning Commission) under section 42 of the Act to remain subject to the Act, notwithstanding that their eventual application under the Planning Act is made after 6th April 2013?

Q7: Do you have any views about when any changes to the Planning Act thresholds for electric lines should come into force?

Q8: Do you think projects which have started out under the Act but not been the subject of an application for development consent under the Act should be allowed to remain governed by it after the changes have taken effect, and, if so, on what basis?

10. Table of Legislation

Reference Number	Title	Description
	The Electricity Act 1989	Primary legislation that *inter alia* requires that developers have consent for energy infrastructure development, determined by the Secretary of State.
	The Planning Act 2008	Primary legislation that *inter alia* transfers examination and determination of consents for certain types of energy infrastructure from the Secretary of State to the Infrastructure Planning Commission
	The Localism Act 2011	Primary legislation that *inter alia* transfers determination (but *not* examination) of applications for energy infrastructure consent from the IPC to the Secretary of State. The Planning Inspectorate (PINS) is responsible for submitting a recommendation to the Secretary of State on determination of an application.
Statutory Instrument 1990 No. 455	The Electricity (Applications for Consent) Regulations 1990	Secondary legislation that regulates publication of applications, timescales for objections and fees to be paid for consent applications under Sections 36 and 37 of the Electricity Act 1989
Statutory Instrument 2000 No. 1927	The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000	Secondary legislation that implements the EU directive on environmental impact assessment *inter alia* for electric lines.
Statutory Instrument 2009 No. 2263	Infrastructure Planning (Environmental Impact Assessment) Regulations 2009	Secondary legislation that implements the EU directive on environmental impact assessment in respect of applications for consent to the IPC and (on coming into force of the Localism Bill) PINS.
Statutory Instrument 2009 No. 640	The Overhead Lines (Exemption) (England and Wales) Regulations 2009	Secondary legislation that exempts certain specified electric lines from the provisions of the Electricity Act 1989, Section 37.
Statutory Instrument 2010 No.106	The Infrastructure Planning (Fees) Regulations 2010	Secondary legislation that sets fees payable for applications for development consent under the Planning Act 2008
Statutory	The Overhead Lines	Secondary legislation that includes

Instrument 2010 No.29	(Exempt Installations) (Consequential Provisions) Order 2010	Development Consent Orders under the Planning Act in the provisions of S.I.2009/640
Statutory Instrument 2010 No. 277	The Overhead Lines (Exempt Installations) Order 2010	Secondary legislation that extends the provisions of S.I.2009/640 to PINS

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