Department of Energy & Climate Change

Government Response

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

March 2013

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1. Introduction

1.1 Since the Planning Act 2008 ("the Act") came into force on 1 March 2010, it became apparent that the threshold required applications for development consent for a number of works to electric lines above ground ("overhead lines") to be submitted to the Planning Inspectorate (PINS) under the full process of the Act. The Government believes that it is disproportionate for applications for such minor works to be scrutinised under the Planning Act regime, which is intended to apply to major infrastructure projects.

1.2 We therefore consulted between 18 October and 28 November 2012 on an amendment to the Planning Act 2008 on the definition of an electric line above ground (overhead line) as a "nationally significant infrastructure project" (NSIP). As part of the consultation, we held a Stakeholder Event on 12 November to describe the proposals and give participants more information on them in response to questions. The event was attended by 27 people, including representatives of developers and NGOs.

1.3 The proposed amendment would mean applications for consent for works to high voltage power lines of less than 2 kilometres in length and uprating of the nominal voltage of existing lines would be made under Section 37 of the Electricity Act 1989 instead of the Planning Act 2008.

1.4 Changes to the consenting process for overhead power lines in England and Wales will result in a fairer process for all parties, reduce burdens on developers and save money for the taxpayer.

2. Overview of Responses

2.1 We received a total of 19 responses to the Consultation. Most respondents approved the proposals in principle, although a number wished the length criterion to be 15km and some respondents argued for exclusion of work to any existing line from the Planning Act. It was also suggested that a distinction be made between lines on wooden poles and lines on other types of support. One respondent did not address the subject of the consultation directly, but proposed amending the Planning Act to require more rigorous scrutiny of applications in AONBs.

2.2 We considered these responses in detail. However the major arguments from respondents did not comment specifically on what constitutes a "nationally significant" project. Most of the respondents used criteria related to the potential impacts of a project to support their suggestions. We do not believe that whether a project has a significant impact is a reasonable indicator of its national significance. We have not, therefore, been convinced that there is sufficient evidence to substantively change the amendments to the definition of an NSIP as set out in the Consultation. We have, however, made some changes on the definition of uprating the nominal voltage of an existing line in the light of consultation responses.

3. Detailed responses to Consultation questions

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

3.1 The majority (18) of the respondents agreed that there were grounds for amending the threshold for electric lines in the Planning Act 2008. They considered that the Consultation analysis of the problems was correct and an amendment was necessary so that applications for development consent of minor works should be made under the Electricity Act 1989, which was considered to be more proportionate for minor works.

The Government's response:

3.2 The Government notes that all respondents supported amendment of the Planning Act 2008 in principle.

Question Two: 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?

3.3 The majority (12) of respondents agreed with this question, 5 disagreed and 2 had no opinion. Some respondents qualified the circumstances, indicating that applications for lines of more than 132kV nominal voltage should only be excluded from the Act where no physical works were required, i.e. uprating only, or if the lines were shorter than the proposed length threshold of 2km.

3.4 There was one suggestion that applications should be assessed on an application-by- application basis, i.e. a 400kV transmission line that caused no significant change to existing infrastructure should also be excluded from the Act.

The Government's response:

3.5 The majority of respondents agreed with the proposition and supported a definition of an NSIP that excluded minor works to, or new projects for, lines of more than 132kV nominal voltage in certain circumstances. Where an explanation was offered, these agreed with the arguments in the Consultation document. We considered whether a decision on which regime should be applicable to a project should be made for each application. However it would

be necessary for an applicant to make representations to the Secretary of State (under either regime) for an opinion. This could entail additional work for developers and introduce a further bureaucratic process, which the proposed amendment to the Planning Act 2008 is intended to avoid. We therefore do not consider this to be a reasonable option.

3.6 We agree with the analysis of a potential lacuna in the definition relating to uprating the nominal voltage of an existing line and have revised the proposed amendment to the Planning Act to take account of it. The amendment now provides that applications uprating existing lines that will involve minor works, such as a small increase in support height or variation of the line by a limited distance, will fall under s37 Electricity Act 1989, rather than the Planning Act. The definition of "minor works" in this context follows the definition in the current exemption regulations[1]. We did not accept the proposals for increasing the length of lines to 15km, nor of excluding any works to existing lines from the Planning Act. We consider that the provision of overhead lines of 2km in length and with a nominal voltage of 132kV or greater should be defined as nationally significant because of the scale of infrastructure and need for such infrastructure.

Question Three: 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?

3.7 There were 7 responses that proposed that there should be a distinction between lines on wooden poles and lines on other types of support. They suggested that the distance for lines of 132kV on wooden poles should be set at 15km. Three respondents also suggested that there should be a height criterion for lines on wooden poles, with suggested heights of between 14 metres and 20 metres. Two respondents suggested maximum lengths of 300m or 500m respectively.

3.8 It was pointed out by one respondent that the proposal relating to uprating the nominal voltage of existing lines created an anomalous situation whereby a minor project that did not uprate lines might be exempt from any application requirements under the exemption regulations[2] whereas a similar project that included an increase in nominal voltage would require an application under the Planning Act.

The Government's response:

3.9 The reasons put forward for proposing a longer length criterion, a height criterion, or distinctions between wooden or steel supports for overhead lines set out that these projects were less likely to have significant adverse impacts. They were therefore less likely to be controversial and did not need scrutiny

[1] The Overhead Lines (Exemption) (England and Wales) Regulations 2009 (2009/640) and The Overhead Lines (Exempt Installations) Order 2010 (2010/277)
[2] *ibid*

under the Planning Act. We discussed this point in section 6 of the consultation document, specifically in paragraphs 6.9 – 6.11. As this makes clear, although potential significant impacts are more likely to arise from longer lines, not all longer lines would have potential significant impacts. Conversely not all shorter lines would not have potential significant impacts. Further, whether a project has, or does not have, significant impacts is not a sufficient indicator of national significance.

3.10 We recognise that although it may be fairly clear that minor works or short lengths of lines are highly unlikely to be nationally significant and long high voltage lines are more likely to be nationally significant, there will always be some projects falling just one side or other of the threshold criteria that might be treated as nationally significant. Therefore where the line is drawn may always be debated. However the evidence presented by the respondents, while undoubtedly accurate on the relative potential for proposed lines to give rise to significant impacts, does not, we believe, provide strong evidence for setting different thresholds for NSIPs to those proposed in the consultation document.

3.11 We agree with the analysis on a potential lacuna for uprating existing lines to a higher voltage and have revised the proposed amendment to the Planning Act to take account of it and provide that such applications for minor works involving uprating will fall under Section 37 of the Electricity Act 1989, rather than the Planning Act.

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

3.12 The respondents who commented on length of lines under Question 3 repeated their views in reply to this question and to question 6. One respondent suggested that length was not the best threshold indicator; instead the type of infrastructure and the land use sensitivity should be the deciding factor. Several respondents supported the use of 15km as the criterion because it would be compatible with the Environmental Impact Assessment (EIA) Directive3

The Government's response:

3.13 As discussed in paragraph 3.10 above, we do not agree that issues such as visual impact should be the criteria for assessing whether or not a project is of national significance.

Question Five: 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

[3] DIRECTIVE 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

with Local Authorities to scope consultation and preparation of a consultation report would be helpful.

3.14 There were 6 replies to this question on costs of overhead line planning applications, plus one that referred to excessive costs relating to an application for a Combined Cycle Gas Turbine generating station (which has no direct relation to costs for overhead lines). Three responses gave somewhat varying estimates (that were not adequately detailed); a single respondent commented that resource requirements and costs for local authorities would be considerable, but did not quantify them.

The Government's response:

3.15 The responses that gave some quantifiable data on costs did not contradict the information given in the Consultation document. However, neither did they do more than confirm the data we had previously been given by developers. We agree that the costs of considering minor works to overhead lines under the Planning Act 2008 are disproportionate and the proposed amendment will remedy this.

Question Six: 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.

3.16 A number of respondents did not express an opinion on this question. Of those that did comment, 6 agreed with the general proposition and 8 did not agree. As noted above, the respondents who did not agree re-iterated the responses to questions 3 and 4 on the criteria used to define an NSIP. One suggestion was to use a hybrid of options ii and iii, using both a height and length criteria comparable to the EIA Directive.

The Government's response:

3.17 We have carefully considered all the representations received but we do not believe that there is sufficient evidence to support a revision of the preferred option. We remain of the opinion that option iii best suits the aims of the stated policy.

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

3.18 All the respondents who commented on the consultation agreed that the amendment should come into effect as quickly as possible.

The Government's response:

3.19 The Government is working towards the implementation date of 6 April 2013 as set out in the consultation.

Question Eight: 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?

3.20 The majority of responses (12) on this question agreed that applications under the Planning Act 2008 should be allowed to continue through that regime. However, within those responses, there were several views on whether changes should only apply to projects for which formal applications had not been made, or whether projects could be transferred to the section 37 regime after an application had been made under the Planning Act.

3.21 Several respondents suggested that applicants should be allowed to choose the regime under which an application could be made. One respondent suggested that any application which had been notified to Planning Inspectorate but was still at the Pre-Application stage should be transferred over to the Section 37 regime.

The Government's response:

3.22 We do not believe that there should be general provision for applicants to choose the regime under which they would submit applications. The Planning Act 2008 permits the Secretary of State to direct that an application for a project in England under section 37 of the Electricity Act 1989 should be considered under the Planning Act 2008 as an NSIP. We do not consider it reasonable to introduce further complexity and potential delay by providing for consideration of whether projects just over the threshold should or should not be considered as NSIPs.

3.23 To ensure a smooth transition, however, for any application received before the Order comes into effect it will be open for applicants who have made an application under the Planning Act 2008 regime to continue through the Planning Act regime.

3.24 Under Section 35 of the Planning Act 2008, it is open to the Secretary of State to direct that an application for consent in England should be treated as an application for development consent. We therefore consider that it is not necessary to make additional provisions in this amendment.

4. Consultation Respondents

Denbighshire County Council

Electricity Northwest

Energy Networks Association

ESB International

Graham Phillips

Hamer Associates

John Muir Trust and the Campaign for National Parks (joint response)

NFU

National Grid

National Infrastructure Planning Association

Northern Powergrid

Pennant Walters Holdings Ltd.

Property Compensation Consultants Ltd

RWE Npower Renewables

SP Energy Networks

Southern Electric Power Distribution plc (SSE)

UK Power Networks

Wayleaves.com Ltd

Western Power Distribution

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