



Department for  
Energy Security  
& Net Zero

# Electricity Infrastructure Consenting in Scotland

Proposals for reforming the consenting  
processes in Scotland under the Electricity  
Act 1989

Closing date: 29 November 2024

October 2024

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# Foreword by Michael Shanks MP

## Minister for Energy, UK Government

Reforming the planning system is an imperative of the UK Government. It is essential that we have a planning system which can deliver the critical infrastructure that communities need. This includes the renewable electricity infrastructure required to accelerate towards clean power by 2030, which will boost the economy, create new jobs, secure our energy future, and remove barriers to cheaper, cleaner power. To achieve this, the entire UK needs an efficient planning system that is clear to understand, considers all its stakeholders, and includes local voices. Our focus in this consultation is on Scotland, where processing consent for an application can take up to four years. Both the UK and Scottish governments agree this is too long and that the electricity planning regime requires modernisation to meet the needs of today's society.

The current system is inefficient and unpredictable, providing no certainty on how long consent will take. For those desperate to bring new energy generating assets onto the grid, it presents a barrier to attracting investment and delivering yet more clean energy to homes and businesses.

The reforms seek to consult communities at an early stage. This is not about making quick decisions, but instead making considered decisions as efficiently as possible. The energy transition is one that will be achieved by cooperation, not coercion, which is why I believe that local communities should be consulted on applications early, influencing them from the outset.

We are asking everyone to play their part, through building a system that requires applicants, communities, local authorities, advisory bodies and the Scottish Government to have the right conversations early.

These reforms are also not about pushing through inappropriate developments. Our goal is to process applications in a more efficient manner, ensuring they are accepted or declined based on a more streamlined and effective system.

### **Collaboration is key**

We have worked closely with the Scottish Government to develop these reform proposals, and this has been an exemplar of what can be achieved when two governments work together on an issue of shared interest.

Scotland's renewable electricity industry currently supports more than 42,000 jobs and has an economic output of over £10bn. We know there is far more potential to unlock with this diverse and immensely skilled workforce. By removing the unnecessary delays in the planning system, we can accelerate towards our 2030 ambition and deliver cheaper, cleaner and more secure energy to thousands of communities and businesses.

We look forward to hearing your views on these proposals and we hope that, with your input, we can deliver a reformed process that benefits everyone.

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# Foreword by Gillian Martin MSP

## Cabinet Secretary for Net Zero and Energy, Scottish Government

Planning and consenting systems across our land and sea are crucial enablers of Scotland's net zero transition. These systems provide clarity and confidence to support development and investment, while balancing the needs of communities, nature, and other users of our environment. It is therefore essential that our systems are robust, timely, and proportionate to be truly effective.

The energy consenting landscape in Scotland is a complex interplay of reserved and devolved responsibilities. Applicants, communities, local authorities, advisory bodies, and government all play vital roles in reaching optimal decisions.

However, as applications have grown more complex and increased in volume, processing times have extended significantly. Coupled with the projected further increase in application numbers, it is imperative that we take decisive action to address these challenges.

We welcome this consultation as an opportunity to seek reforms that can both make an immediate impact, and future-proof our consenting systems, ensuring they remain fit for a modern Scotland. We appreciate our counterparts in the UK Government for their engagement and collaborative approach throughout this process.

It is important to acknowledge that there is no single, quick fix to this multifaceted issue. This consultation outlines potential reforms spanning from the pre-application stage to statutory appeals. These proposals require action, cooperation, and at times, compromise from all stakeholders. Our aim is to strike the right balance and work towards a system that serves everyone effectively.

We are committed to partnering with those at the forefront of the net zero transition. We eagerly anticipate hearing the views of applicants, communities, local authorities, and advisory bodies on the proposals outlined herein. Your input is crucial in shaping a planning and consenting system that can meet Scotland's evolving needs and environmental commitments.

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# Introduction

The UK and Scottish governments are committed to accelerating to net zero across the economy. This will not only restore the UK's position as a global leader on climate action, but by boosting homegrown, renewable energy it will reduce our exposure to volatile fossil fuel markets, protect bill payers, and strengthen our energy independence. Scotland, with its wealth of renewable resources, will play a critical role in decarbonising the power system, and accordingly the transition to clean power is expected to bring long-term benefits to Scotland in terms of jobs and growth.

The Scottish Government determines applications to construct or install electricity infrastructure – both generating stations over 50MW (or over 1MW for offshore generating stations between 0 and 12 nautical miles from shore) and network projects - under the Electricity Act 1989. This is in alignment with the Scottish Government having responsibility for land use and the planning system in Scotland. While Scottish Ministers are responsible for taking decisions under the Electricity Act 1989, the UK Parliament has responsibility for the legislative framework, as the powers to legislate for “generation, transmission, distribution and supply of electricity” were reserved in the Scotland Act 1998.

In England and Wales, ‘nationally significant’ energy infrastructure is consented under the Planning Act 2008, which was brought in to streamline the consenting process and make it fairer and more efficient for local communities and applicants. The Electricity Act 1989, as used in Scotland, has not been modernised in the same way. It can take up to 4 years to consent large-scale onshore electricity infrastructure projects. This is slow in comparison to consents under the Planning Act 2008 in England and Wales, and for generating stations permitted under the Town and Country Planning (Scotland) Act 1997. Delays are caused by inefficient and outdated features of the Electricity Act 1989. This ultimately results in lengthy timescales for determination of applications to install essential electricity infrastructure. This is costly to consumers, as ‘constraint payments’ to electricity generators, paid when there are insufficient networks to transport the power produced, were £2bn<sup>1</sup> in 2022 and could rise to £8bn per year (£80 per household per year) across Great Britain in the late 2020s if delays to consenting and building network infrastructure persist<sup>2</sup>.

The UK and Scottish governments believe that Scotland's growing renewable electricity sector requires a robust, timely and proportionate consenting process which meaningfully involves communities and relevant planning authorities in decision-making. This is vital if we are to achieve clean power by 2030 and reach net zero across the whole economy by 2050. The UK and Scottish governments agree that modernising and removing inefficiencies within the Electricity Act 1989 is the most pragmatic route to speeding up infrastructure deployment, whilst ensuring applications of an acceptable standard. This would break down a major barrier to an efficient consenting process and provide greater certainty of process and timescales for all parties. It is also agreed that requirements for applicants to seek views from the public, communities and consultees at pre-application stage should be introduced, to build a fairer consenting system and help applicants develop better quality applications for consent.

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<sup>1</sup> National Grid, 2022. [‘Monthly Balancing Services Summary \(MBSS\).’](#)

<sup>2</sup> Department for Energy Security and Net Zero, 2023. [Community benefits for electricity transmission network infrastructure: Government response.](#)

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We have identified reforms to modernise the Electricity Act 1989 and remove inefficiencies, whilst giving communities and statutory consultees meaningful opportunities to influence applications for consents. These reforms do not make applications for electricity infrastructure consent more or less likely to be granted. These decisions will continue to be taken by Scottish Ministers on a case-by-case basis, in consideration of relevant policy frameworks and weighing the impacts, including cumulative impacts, and the benefits of each development.

The reforms are largely aimed at modernising the consenting regime for onshore electricity infrastructure, in recognition of the recommendations made by the Electricity Networks Commissioner in his report to the previous government in August 2023<sup>3</sup>. Building on this, we believe that the review should extend beyond grid connections onshore, and also consider where reforms could benefit processes for applications for offshore generating stations. In this consultation, we have sought to specify where reform will impact consenting for relevant onshore and offshore projects. In cases consented under the Electricity Act 1989 where there are common challenges onshore and offshore, we have proposed a shared solution; in other cases, the reform proposals are focused onshore where we do not believe a common solution is required.

The proposals cover the entire journey of an application, beginning with pre-application requirements, and continuing through to the process for challenging consenting decisions made by Scottish Ministers. These are:

- Pre-application requirements – in contrast to all other legislative planning regimes in Great Britain, the Electricity Act 1989 stipulates no pre-application requirements, for example the requirement to consult in advance of an application being made. This allows applicants to submit applications for electricity infrastructure consent without consulting communities or statutory consultees, although some may choose to do so. Reform proposals include the introduction of requirements for pre-application consultation, notification and publication of planned applications. Also proposed is the ability for Scottish Ministers to recover the costs of any pre-application activities, and the introduction of an ‘Acceptance Stage’ when Scottish Ministers can decline to accept applications which have not fulfilled pre-application requirements.
- Applications – statutory consultees including relevant planning authorities, Scottish National Heritage (now known as NatureScot), the Scottish Environment Protection Agency and Historic Environment Scotland provide important input to enable effective scrutiny of applications. However, without timely delivery of each input, supported by the right skills and capacity, the application timeline can become lengthy. The proposals provide collaborative approaches to deliver a predictable application timeline facilitated by the right skills and capacity to provide greater certainty for all parties. Further measures to support the clarity and timeliness of the process include enabling updates of the information requirements for applications, and constraints on the timing of amendments for onshore applications.
- Public inquiries – under existing arrangements, where a relevant planning authority objects to an application within statutory timescales, and the objection is not withdrawn or given effect through modification or conditions, the Scottish Ministers must hold a public inquiry. This is a formal process, usually involving an examination by way of an oral hearing and/or inquiry sessions which takes an average of 18 months. The reform

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<sup>3</sup> Electricity Networks Commissioner, 2023. [Accelerating electricity transmission network deployment: Electricity Networks Commissioner’s recommendations](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118444/accelerating-electricity-transmission-network-deployment-electricity-networks-commissioner-s-recommendations-2023.pdf) - GOV.UK ([www.gov.uk](https://www.gov.uk))

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package, particularly pre-application consultation, aims to reduce the number of planning authority objections by bringing forward more complete and better formulated applications, shaped at an earlier stage by input from relevant planning authorities, local communities and other statutory consultees. Specific reform proposals focus on retaining the opportunity for relevant planning authorities to object, and handling objections through a tailored, reporter-led process.

- Variations – there is no prescribed process to vary consents for network projects granted under section 37 of the Electricity Act 1989. This causes uncertainty for generators awaiting connections, is a procedural risk for developers and Ministers, and has the potential to prevent significant network upgrades going ahead unless a new, full application is submitted. Reform proposals seek to implement a prescribed process for varying consents to network projects. There is a further proposal to give the Scottish Government powers to revoke, suspend or vary consents under specific circumstances.
- Necessary wayleaves – in contrast to the UK Government, the Scottish Government cannot charge fees for processing applications for necessary wayleaves (statutory rights that allow electricity licence holders to install and access their electricity lines and associated infrastructure on land owned by others). Changes are required to enable the Scottish Government to process an expected significantly increased volume of applications in coming years. Reform proposals seek to allow the Scottish Government to charge the network operator fees at the point of application submission.
- Statutory appeals and judicial proceedings – in Scotland, there is inconsistency as to whether consents granted to applications for electricity infrastructure can be challenged by a judicial review or a statutory right of appeal, depending on whether the consent is granted for an onshore or offshore project. The time limit for the challenge also varies and may either be 3 months or 6 weeks. Reform proposals look to align the timescales to 6 weeks and use a statutory right of appeal process for all onshore and offshore consenting in Scotland.

The UK and Scottish governments have worked together closely on the proposals in this consultation, which sets out current thinking and seeks to gather views and evidence on the reform proposals. The governments will continue to work together in acting on the consultation outcome and resulting next steps. Responses to the consultation will inform the steps that need to be taken next to address these challenges. The intention is for reforms to be implemented mainly through amendments to the Electricity Act 1989, when Parliamentary time allows.

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# General information

## Why we are consulting

The UK Government believes that Scotland's growing renewable electricity sector requires a robust, timely and proportionate consenting process which meaningfully involves communities and relevant planning authorities in decision-making. The Scottish Government grants consents to electricity infrastructure – both generating stations over 50MW (1 MW for generating stations 0-12 nautical miles from shore) and network projects - under the Electricity Act 1989. The UK and Scottish governments agree that modernising and removing inefficiencies within the Electricity Act 1989, is the best route to speeding up infrastructure deployment, which is vital to achieving clean power by 2030. It is also agreed that requirements for applicants to involve communities and statutory consultees through pre-application and application processes should be strengthened, to build a fairer consenting system and develop better quality applications for consent.

This consultation sets out a package of proposals for reform which span the consenting journey. The purpose of the consultation is to test these proposals with a wide group of stakeholders ranging from communities hosting infrastructure to applicants for consent. This will help us understand the impacts proposals will have across stakeholder groups and be used to shape the development of policy proposals.



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## Consultation details

**Issued:** 28 October 2024

**Respond by:** 29 November 2024

**Enquiries to:**

Scottish Electricity Consenting Team  
Department for Energy Security and Net Zero  
7th Floor  
3-8 Whitehall Place  
London  
SW1A 2AW

Email: [scottishelectricityconsenting@energysecurity.gov.uk](mailto:scottishelectricityconsenting@energysecurity.gov.uk)

**Consultation reference:** Electricity Infrastructure Consenting in Scotland

**Web link:** <https://energygovuk.citizenspace.com/energy-infrastructure-planning/electricity-infrastructure-consenting-in-scotland>

**Audiences:**

We are seeking views particularly from stakeholders in the Scottish electricity consenting process including members of the public local to electricity infrastructure development, statutory consultees in the consenting process, planning authorities and developers of network projects and electricity generating stations.

**Territorial extent:** Proposed changes are intended to apply to Scotland only.

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## How to respond

**Respond online at:** <https://energygovuk.citizenspace.com/energy-infrastructure-planning/electricity-infrastructure-consenting-in-scotland>

or

**Email to:** [scottishelectricityconsenting@energysecurity.gov.uk](mailto:scottishelectricityconsenting@energysecurity.gov.uk)

### **Write to:**

Scottish Electricity Consenting Team  
Department for Energy Security and Net Zero  
7th Floor  
3-8 Whitehall Place  
London  
SW1A 2AW

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

### Confidentiality and data protection:

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The 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](#). If you have any complaints about the way this consultation has been conducted, please email: [bru@energysecurity.gov.uk](mailto:bru@energysecurity.gov.uk).

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## Glossary

**Consent** – permission for the construction, extension or operation of a generating station or the installation and maintenance of overhead lines, pursuant to sections 36 and 37 of the Electricity Act 1989. The consent may include conditions. In Scotland consents are granted by Scottish Ministers.

**Consultation bodies** – advisory bodies on EIA developments as defined under the Electricity Works (EIA) (Scotland) Regulations 2017. These are the planning authority, Scottish Natural Heritage (now known as NatureScot), the Scottish Environment Protection Agency (SEPA) and Historic Environment Scotland. They must be consulted on an application for consent for an EIA development under the Electricity Act 1989.

**Community council** – a council established by a local authority under Part 4 of the Local Government (Scotland) Act 1973. It is a voluntary organisation, run by local residents to act on behalf of the area.

**Environmental Impact Assessment (EIA)** – a tool used to assess the significant effects of a project or development proposal on the environment. EIAs make sure that project decision makers think about the likely effects on the environment at the earliest possible time and aim to avoid, reduce or offset those effects.

**Necessary wayleaves** – wayleaves are agreements that permit access to private land for the placement or upkeep of utilities. When parties cannot agree to a voluntary wayleave through negotiation or a landowner wants to revoke an existing wayleave, network operators may use a statutory procedure under paragraph 6 of Schedule 4 of the Electricity Act 1989 to obtain a ‘Necessary Wayleave’. This is granted in Scotland by Scottish Ministers, giving the electricity licence holder legal authority to install and maintain lines and equipment on private land.

**Relevant planning authorities** – planning authorities who cover the location that a consent is located in, usually a local authority, but can also be a district planning authority. For large-scale network projects there may be several relevant planning authorities.

**Section 36** – the provision of the Electricity Act 1989 which requires consent to be granted for the construction, extension and operation of generating stations.

**Section 36C** – the provision of the Electricity Act 1989 which provides that Section 36 consent relating to a generating station in Scotland may be varied by Scottish Ministers upon application.

**Section 37** – the provision of the Electricity Act 1989 which requires consent to be granted for the installation and the keeping installed of overhead lines.

**Statutory consultees** – these bodies will be notified in relation to an application for consent and will have an opportunity to make representations on the application to Scottish Ministers. These bodies are relevant planning authority,<sup>4</sup> and, if the application is for an EIA development, the consultation bodies (see definition above). NatureScot must also be notified if all or part of the land to which the application relates is a site of special scientific interest,<sup>5</sup>

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<sup>4</sup> Paragraph 2(1) of Schedule 8 to the Electricity Act 1989.

<sup>5</sup> Regulation 6 of the Electricity (Applications for Consent) Regulations 1990 (reference to the Nature Conservancy Council to be read as Scottish Natural Heritage/NatureScot).

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and advice from SEPA must be obtained if a 'controlled activity' will be carried on in respect of a generating station.<sup>6</sup>

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<sup>6</sup> Section 36(5A) of the Electricity Act 1989; controlled activity has the meaning given in the Water Environment (Controlled Activities) (Scotland) Regulations 2005, and advice in this context is on matters relating to the protection of the water environment.

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# The proposals

## Pre-application requirements

### Background

There are no pre-application requirements to be met for applications for consent for onshore or offshore electricity infrastructure under the Electricity Act 1989.

This means that the Electricity Act 1989 is the only legislative planning regime in Great Britain without pre-application requirements for large-scale projects. Consents under other planning regimes require applicants to fulfil certain pre-application requirements, most critically consultation. Pre-application requirements for applications for nationally significant infrastructure projects in England and Wales under the Planning Act 2008, and in particular consultation, are designed to lead to “applications which are better developed and better understood by the public, and in which the important issues have been articulated and considered as far as possible in advance of submission...this in turn will allow for shorter and more efficient examinations.”<sup>7</sup>

Currently the Scottish Government asks applicants to voluntarily engage in pre-application consultation. For onshore projects this is set out in guidance produced by the Scottish Government’s Energy Consents Unit<sup>8</sup>. For offshore projects, applicants are encouraged to carry out pre-application discussions with key stakeholders. The Scottish Government does not have powers to make these requests mandatory, and 43% of applications for consent for onshore projects requiring EIAs have been submitted since 2007 with incomplete, insufficient, or poor-quality information, and frequently without any pre-application consultation. The lack of pre-application engagement with relevant planning authorities and communities local to electricity infrastructure, may be linked to their high levels of dissatisfaction with applications for consent, as evidenced by the fact that since 2007 relevant planning authorities have objected to 30% of all major applications requiring EIA post-submission.

The Scottish Government must accept and process all applications, including those with incomplete information, which can result in a protracted process of gathering all the information needed from applicants. This contrasts with applications submitted under the Planning Act 2008, which may be declined if they are submitted without adequate information or pre-application consultation.

### Case for change

Introduction of pre-application requirements has the capacity to transform the consenting system under the Electricity Act 1989. While the increased responsibilities for applicants will require pre-application steps that not all applicants are currently taking, it is expected that the applications submitted will be more thorough and of a higher quality, meaning their journey through the consenting process as a whole will be quicker.

The introduction of a structured pre-application process has the potential to significantly reduce the number of objections raised by relevant planning authorities, by ensuring sufficient

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<sup>7</sup> Ministry of Housing Communities and Local Government, 2015. [‘Planning Act 2008: Guidance on the pre-application process’](#)

<sup>8</sup> Energy Consents Unit, 2022. [‘Good Practice Guidance for Applications under Section 36 and 37 of the Electricity Act 1989’](#)

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information is made available to the public, local communities, relevant planning authorities and statutory consultees at an early stage, when feedback can be properly considered by developers and influence final proposals before an application is made.

The absence of pre-application requirements impacts the functionality, fairness and efficiency of the consenting process, which has a particular effect on:

- Communities and the public – the current absence of notification or consultation provisions in the Electricity Act 1989 means the public and local communities might remain unaware of proposed projects until an application is submitted, missing the advantages of early engagement. Though communities and the public are consulted during the application process, this is managed by the Scottish Government through written submissions, without a chance for direct conversation with the applicants. This may be less effective since making changes to applications at this juncture can be complicated and time-consuming for applicants.
- The Scottish Government – without pre-application consultations, applications can have omissions that dialogue with the public, local communities, relevant planning authorities and other statutory consultees could have identified beforehand. Consequently, many applications are submitted lacking adequate information or with insufficient environmental information or proposed mitigation. These applications cannot be rejected by the Scottish Government, limiting their capacity to conduct an efficient consenting procedure, as they invest substantial time and effort in soliciting additional details from applicants and handling changes made after the initial application is submitted or after consent is granted.
- Applicants – whilst many applicants follow the Scottish Government’s pre-application guidance and advice, the lack of legal compulsion to do so means there is a variable approach from applicant to applicant, and this undermines public confidence and does not provide standardisation. Applicants in the competitive renewables sector can be less willing to commit sufficient time and resource to pre-application processes. The resulting shortcoming in applications results in inefficient processing which impacts their delivery certainty.
- Relevant planning authorities – relevant planning authorities can play an important role in the development of applications for onshore developments, through representing local communities and providing tailored local guidance. Absence of pre-application notification and consultation can leave relevant planning authorities either unaware of applications until they are submitted, or with insufficient information to meaningfully comment at an early stage on the likely effect of proposals. They are unable to offer the valuable early advice which can shape project development in ways that are mutually beneficial to the project and location.

Pre-application consultation would mean applicants must share information with the public and engage with local communities, relevant planning authorities, other statutory consultees and the Scottish Government before starting the application process, facilitating productive discussions with these groups. Providing notification and preliminary information would give all parties sufficient time to consider the proposed projects before entering the consultation period. Early involvement of the local communities and statutory consultees - particularly relevant planning authorities - in the development of a project, regarding matters from site appropriateness to specific project design and mitigation, helps ensure that their input is meaningful and considered before proposals are finalised and submitted, since changes become more difficult afterward.

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This is intended to produce better formulated applications which are more likely to find local community and relevant planning authority support and attract fewer objections post-submission. To ensure pre-application requirements are met, the Scottish Government would also need the ability to reject applications which have not met requirements. In addition, notifying the Scottish Government in advance of making an application would facilitate better workforce planning. Conducting consultations means that later adjustments to applications will be less likely, resulting in a quicker, more efficient consenting process.

The Scottish Government anticipates that the introduction of pre-application requirements would necessitate the provision of new services they would need to supply, in order to assist prospective applicants to meet requirements. These would include but are not limited to offering introductory meetings with applicants, convening of meetings between applicants and public bodies with an interest in the application, and validation of pre-application information. To offer these services the Scottish Government needs to be able to recover costs through the charging of fees.

### **Proposed changes**

The introduction of pre-application requirements for applications for consent, and for applications to vary certain existing consents. This would be achieved through implementing a clear set of statutory requirements for applicants, through amendments to the Electricity Act 1989.

The pre-application requirements are based on those in the Planning Act 2008 (sections 42-49) and the Town and Country Planning (Scotland) Act 1997 (sections 34-35C). Pre-application requirements would apply to all onshore applications for electricity generating stations and for network projects that require an EIA. Some pre-application requirements would apply to offshore applications – these are specified in the below proposals.

The intended outcomes are:

- To enable key information about a project to be shared with the public, relevant planning authority, local communities, other statutory consultees and the Scottish Government to give them an opportunity to have meaningful and influential dialogue with applicants at an early stage of project development as part of the pre-application consultation process.
- To speed the consenting process by improving the quality of applications for consent for electricity infrastructure and where possible resolving issues before submission.
- To enable the Scottish Government to verify if applicants have met the requirements and to reject applications which have failed to do so.
- To enable the Scottish Government to recover the cost of carrying out any pre-application activity.

The proposals for pre-application requirements are as follows:

### **A duty to notify the Scottish Government**

- The applicant must notify the Scottish Government, and where appropriate the Marine Licensing Authority, of the intention to undertake the duties set out below and provide a

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list of proposed bodies to be consulted. This must include relevant statutory consultees and any public body which the developer considers is likely to be interested in the application. This would apply to onshore and offshore applications for consent.

### **A duty to publicise**

The applicant must publish:

A public notice – containing a brief description of the proposed development for which an application for consent or variation is proposed to be made and its location, details of how and within what time period preliminary information may be inspected or obtained, an explanation of how and by what date any person can comment on the information, and a statement clarifying that these comments are not representations to the Scottish Government and that there will be an opportunity to make these once the application is submitted. This would apply to onshore and offshore applications for consent under the Electricity Act 1989.

The applicant must send to the Scottish Government and make available to the public, in accordance with the notice:

A Preliminary Information Report – a description of the project, containing all information reasonably required for local communities and statutory consultees to develop an informed view of the likely effects of the development. The information required will be a concise description of the proposed project, a description of the land or place to which it relates and a location and outline site plan, and brief details of any environmental considerations made up until the point of publication/consultation. The Scottish Government may prescribe in more detail the preliminary information required. This would apply to onshore and offshore applications for consent under the Electricity Act 1989.

### **A duty to consult:**

- The applicant should undertake a consultation which includes relevant planning authorities (for onshore applications) within or adjoining the land where the application is located, the marine licensing authority (for offshore projects), community councils as agreed in any Statement of Community Consultation, and the list of proposed bodies agreed with the Scottish Government following notification. This would apply to onshore and offshore applications for consent under the Electricity Act 1989.
- A Statement of Community Consultation - to be sent to the Scottish Government and any relevant planning authority, together with the Preliminary Information Report, prior to the proposed public and community council consultation. The statement should set out how the public and community councils will be notified of and consulted on preliminary information, how they will be able to submit views to the prospective applicant on the information, and how these comments will be considered in formulating the final application. This must provide details of at least two public consultation events as well as a website, and an email and postal address for public comments to be lodged. The Statement of Community Consultation and the Preliminary Information Report must then be made available for public view. This would apply to onshore consents under the Electricity Act 1989 only and sections of offshore consents under the Electricity Act 1989 that are on land.



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The relevant planning authority will have the opportunity to make comments to the Scottish Government on the Statement of Community Consultation and the Preliminary Information Report and Scottish Ministers will within 21 days notify the prospective applicant of any changes required.

- Community consultation - the applicant should hold two engagement events for members of the public where they can examine preliminary information, engage with the applicants and make comments on the proposals. It should be clear to the public at these events how their views may be provided, how they will be considered by the applicant, and how they will be reflected in any final application submitted to the Scottish Government. This would apply to onshore consents under the Electricity Act 1989 only and sections of offshore consents under the Electricity Act 1989 that are on land.
- Additional requirements for network projects – due to the way in which complex overhead line applications are planned, some of which cover many kilometres, we would welcome views on whether a single consultation stage is appropriate or whether some flexibility is needed in certain circumstances that may necessitate a multistage consultation process with the public, local communities and statutory consultees. This is to ensure that key issues are picked up during the pre-application process, while at the same time not imposing a disproportionate burden on developers.
- A Pre-application Consultation Report - the applicant must submit this with the eventual application under the Electricity Act. This report would set out how pre-application consultation has been undertaken in accordance with the above requirements, how views have been gathered and considered at each stage, and the prospective applicant's consideration of the views raised during the pre-application consultation process, demonstrating regard to relevant responses.

### **Acceptance stage**

Directly after an application is submitted to the Scottish Government, the 'Acceptance Stage' would begin. This would precede the 'Application Stage' and is based on the 'Acceptance of Applications' detailed in section 55 of the Planning Act 2008. During this stage:

- The Scottish Government would analyse the Pre-Application Consultation Report and decide if the pre-application consultation meets statutory requirements. If it does not meet requirements, the Scottish Government can reject the application.
- The relevant planning authority would be able to raise an objection to the Scottish Government if it considers the pre-application consultation has been insufficient for consultees to fully consider or make representations on the application.

### **Pre-application fees**

To facilitate the support of applicants in fulfilling pre-application requirements, the Scottish Government proposes to charge fees to applicants. Supporting applicants might include functions such as offering introductory meetings to applicants, convening meetings between applicants and public bodies which have an interest in the development, and validation of pre-application information. Fees would be based on the principle of full cost recovery, in

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accordance with UK Government and Scottish Government policy for pre application functions.<sup>9</sup>

### Consultation questions

1. Do you agree with the proposal for pre-application requirements for onshore applications? Why do you agree/not agree? How might it impact you and/or your organisation?
2. Do you agree with the proposal for pre-application requirements for offshore generating stations? Why do you agree/not agree? How might it impact you and/or your organisation?
3. Do you agree that pre-application requirements should apply to all onshore applications for electricity generating stations, and for network projects that require an EIA? Why do you agree/not agree? How might it impact you and/or your organisation?
4. Do you agree that a multistage consultation process may be appropriate for some network projects? Why do you agree/not agree? How might it impact you and/or your organisation?
5. Do you agree with the proposal for an 'Acceptance Stage' for applications? How long do you think an acceptance stage should be (in weeks)? Why do you agree/not agree? How might it impact you and/or your organisation?
6. Do you agree that the Scottish Government should be able to charge fees for pre-application functions? Why do you agree/not agree? How might it impact you and/or your organisation?
7. Do you agree that our proposals for pre-application requirements will increase the speed of the end-to-end project planning process overall? Why do you agree/not agree?

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<sup>9</sup> Scottish Government, 2024. ['Scottish Public Finance Manual'](#)

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# Application procedures

## Application information requirements

### Background

To examine applications the Scottish Government requires the applicant to supply certain information about the project. Currently, the application must describe the land or place to which the application relates, through reference to a map.

For network projects, the application must also include:

- the length of the proposed line
- its nominal voltage
- whether necessary wayleaves have been agreed with the owners and occupiers of the land, proposed to be crossed by the line
- any supplementary information requested by the Scottish Government

The Scottish Government has guidance asking applicants to submit further information such as a detailed map showing the land where the proposed development would be built or the electric line(s) installed including detailed infrastructure, access routes etc and a planning statement. The Scottish Government has powers to ask for additional information for applications for consent for network projects, but not for generating stations. This means supplying this information for applications for generating stations is not mandatory, with the exception of additional information requested under EIA regulations.

The Scottish Government would like to set out more detailed application requirements when submitting an application and make their inclusion in submission of the application a condition of the application being accepted.

Requirements would vary depending on the nature, scale and location of a proposal.

### Case for change

According to the Scottish Government, nearly 43% of applications for onshore generating stations needing EIAs have been submitted since 2007 with substandard or inadequate information. This hampers the efficiency of the consenting process by consuming the Scottish Government's time and resources to gather additional details from applicants, resulting in delays for the processing of these applications and all other applications.

### Proposed changes

To expand the information that applicants must supply in consent applications. This would be established through amendments to the Electricity Act 1989 and would apply to all network and generation applications made to the Scottish Government, for onshore and offshore applications. The Scottish Government would not be obliged to process the application until the required information is supplied.

The information requirements would be prescribed in more detail in regulations and would vary depending on whether the development was onshore or offshore, whether it was EIA development or not, and whether it was a generating station or an overhead line.

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The information requirements may include the following. This list is for illustration and is not exhaustive. Applicants will not be required to submit information twice if it is required to meet existing requirements (such as EIA requirements):

- A detailed plan showing the location of all infrastructure
- A statement setting out pre-application engagement with interested parties and how their input has been reflected in the application
- A statement on the alternative approaches considered
- A statement of benefits and needs
- A statement of all components of the proposal requiring consent

The intended outcome is to ensure an efficient applications process by guaranteeing that the Scottish Government is provided with all necessary information to commence processing of applications.

### **Consultation questions**

1. Do you agree with the proposal for increased information requirements in applications? Why do you agree/not agree? How might it impact you and/or your organisation?
2. Do you agree with the proposal to set out detailed information requirements in regulations? Why do you agree/not agree? How might it impact you and/or your organisation?

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## Application input from statutory consultees

### Background

After an application for consent for electricity infrastructure is submitted to the Scottish Government, the Scottish Government will, in most cases, run a consultation which invites responses. This includes: (a) consulting the relevant planning authority (and, where relevant to the particular application, NatureScot and/or SEPA); and (b) consulting the consultation bodies set out in the Electricity Works (EIA) (Scotland) Regulations 2017 ('EIA regulations'), section 2, and any other public body which the Scottish Government considers is likely to be concerned by the proposed development.

The Scottish Government must consider all representations made under the above processes before determining an application. This input is important as it enables effective scrutiny of the application. It allows the relevant planning authority to consider and raise the planning implications of the application for its area and brings in specialist advice from expert bodies on matters such as the effective management of protected sites. The statutory consultees understandably wish to consider their input carefully. However, without timely delivery of each input, the timeline for applications can become lengthy. This is a particular challenge for onshore applications, and the proposal is to focus reform on onshore applications.

Under the requirements of the Electricity Act 1989 and the Electricity (Applications for Consent) Regulations 1990, the relevant planning authority must notify the Scottish Government of any objection by it to the application within 4 months (in the case of a section 36 application) or within 2 months (in the case of a section 37 application). The consultation bodies under the EIA regulations will be invited to send representations to the Scottish Ministers, following sharing of its EIA report by the developer. The consultation bodies are relevant planning authorities, NatureScot, SEPA and Historic Environment Scotland. The Scottish Government must have access to expertise to examine an EIA report, and expertise is in great part provided by the consultation bodies in their consideration of environmental information and subsequent responses. Lengthy response times significantly delay decision-making and create uncertainty.

### Case for change

The key components for a successful process are a predictable application timeline facilitated by the right skills and capacity. All parties benefit from clear expectations on the timeline for applications, which enable workflow planning for Scottish Government and the statutory consultees and give applicants scope to create realistic project plans for all phases of work, including activities after consenting decisions are made. The input from statutory consultees, along with the Scottish Government's preparation of a report to Scottish Ministers, are important components of the timeline.

As the volume and complexity of applications increases, it is understood that statutory consultees' capacity to respond to consultation requests from the Scottish Government in a timely way will rely on a level of skills and resources, which is not readily available. Additionally, internal planning authority consultation and schemes of delegation, which require decisions to be taken by planning committees on whether to object, require forward planning and alignment of planning officer and internal department resource, and with committee schedules.

Scottish Government's recent 'Investment in Planning' consultation sought views from stakeholders on proposals to ensure that the planning system is better equipped to deal with current and future challenges. The 'Verity House Agreement' and the 'New Deal for Business'

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have set out how the Scottish Government intends to work collaboratively with local authorities and others to deliver a just transition to net zero.

As a result, measures such as establishing Scotland's first Planning Hub have already been committed by Scottish Government to assist in addressing these issues. However, the Scottish Government is keen to understand what further support mechanisms and practical measures could be explored, within a collaborative framework between the Scottish Government and statutory consultees, to reduce the time needed for the statutory consultees to provide consultation responses.

The reform process launched by this consultation creates an opportunity to re-set the expectations on the bodies providing essential support to the application process, taking account of their views, suggestions and their specific circumstances.

### **Proposed changes**

Alongside the recent commitments made by the Scottish Government to provide greater support for statutory consultees, possible measures which could also be taken to provide greater clarity for application timelines include:

1. Establishing a forum including the Energy Consents Unit and the statutory consultees to consider the common reasons for and patterns of delay and work together on agreed solutions;
2. Developing a framework for delivering the application process for all statutory consultees, agreed on a collaborative basis with the Energy Consents Unit;
3. Providing additional specialist support to facilitate the statutory consultees' ability to respond to the Scottish Government's consultations, to manage highly technical matters relating specifically to electricity infrastructure;
4. Enabling Scottish Government to set time limits for each stage of the application process, including for the Scottish Government's determination, and the contribution needed from each of the bodies, with the scope for these time limits to be extended by Scottish Government for the most complex applications.

### **Consultation questions**

1. What are the reforms that would be most impactful in enabling your organisation to provide timely input on section 36 and section 37 applications?
2. What are the advantages and drawbacks of the options set out under Proposed Changes? How might your organisation benefit from the proposed forum and framework?
3. What specialist or additional support could the Scottish Government's Energy Consents Unit provide to facilitate the statutory consultees' ability to respond?
4. Would new time limits help your organisation to prioritise its resources to provide the necessary input to the application process?

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## Amendments to applications

### Background

An amendment refers to a modification requested by the applicant during the processing of an application. Substantial changes that would alter the project significantly are not permitted, necessitating the submission of a new application. Allowed amendments require a consultation even if one has already been conducted for the original application. The Scottish Government must review any amendments requested at any stage of the consenting process.

### Case for change

All stakeholders agree on the importance of being able to amend applications. However, the Scottish Government wishes to restrict the point in the application timeline when amendments can be requested. This is because making amendments at late stages of application processing leads to significant duplication of the Scottish Government's work, which depletes resources and slows the entire consenting system. Limiting the time within which applicants can apply for amendments would therefore enable better resource use and speed the entire consenting system. This has been a particular issue for onshore applications.

### Proposed changes

To restrict the point in the application timeline when an applicant can request an amendment. The Scottish Government would set out a point in the application process at which no further substantive amendment to an application may be made. The point at which no further amendment may be made would be set on a case-by-case basis and communicated to the applicant following submission of the application.

This proposal would apply to all network and generation applications made to the Scottish Government for onshore projects and be achieved through amendments to the Electricity Act 1989. It would not apply to offshore projects.

The outcome sought is not to discourage amendments, but to ensure they are submitted in a timely manner, to avoid duplication and therefore depletion of the Scottish Government's resource.

### Consultation questions

1. Do you agree with implementing a limit for amendments to applications? Why do you agree/not agree? How might it impact you/your organisation?
2. Do you agree the limit should be determined by Scottish Ministers on a case-by-case basis? Why do you agree/not agree? How might it impact you/your organisation?

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## Public inquiries

### Background

Under the Electricity Act 1989, the relevant planning authority is consulted on applications for network projects or generating stations. The relevant planning authority must respond to this consultation within two months for network projects and four months for generating stations. If during this time period the relevant planning authority objects to the application and the application is not withdrawn, then Scottish Ministers must cause a public inquiry to be held<sup>10</sup>. Typically, a reporter from the Scottish Government's Planning and Environmental Appeals Division is appointed to hold the public inquiry and to report back to Ministers with recommendations on whether or not the application should be granted.

There are only limited provisions for the conduct of such public inquiries. Therefore, the Scottish Government adopted a code of good practice<sup>11</sup> for handling these public inquiries. The procedure to be followed at inquiry is a matter for the discretion of the reporter, the objective being to conduct proceedings in a fair, transparent and efficient manner. In each case the reporter considers whether the issues raised in objections, representations or comments from consultees can be dealt with on the basis of written submissions or a hearing, restricting the topics to be addressed at an inquiry session to those that require cross-examination or otherwise require to be dealt with by that form of procedure. This form of hybrid procedure will be adopted if the reporter considers that this would be the most efficient way of conducting the inquiry and where parties agree to this approach.

A public inquiry session is the most formal of the choice of procedures available. Each witness must give its evidence in advance in the form of a precognition. Each witness is cross-examined by the opposing party. Legal representation is not essential, but is common, especially for applicants and statutory consultees.

Public inquiries are very common, with 30% of all large-scale onshore applications requiring EIA since 2007 going to public inquiry. The full public inquiry process, from appointment of the reporter to the submission of the report to Scottish Ministers, currently takes an average of 18 months. This is a substantial addition to application timelines and creates significant uncertainty for applicants.

In England and Wales, the Planning Act 2008 creates several opportunities for relevant planning authorities to give their advice and views on applications for nationally significant infrastructure projects, and ensures they are integral to the examination procedure. A separate inquiry is not required if the relevant planning authority does not support the application, as the intention of the Planning Act 2008 is to resolve all planning issues within a single process. The Planning Act 2008 does however have an 'Acceptance Stage' when the relevant planning authority may advise the consenting authority on whether the pre-application requirements have been met.

### Case for change

The wider reform package, particularly pre-application procedures and the 'Acceptance Stage', are intended to bring forward better formulated applications which have been shaped by and

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<sup>10</sup> A public inquiry is not required where the Scottish Ministers propose to grant the application subject to modifications or conditions that will give effect to the relevant planning authority's objection.

<sup>11</sup> Scottish Government, Planning and Environmental Appeals Division. ['Code of Practice for Handling Inquiries under Section 62 and Schedule 8 to the Electricity Act 1989.'](#)



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will have a better chance of enjoying the support of relevant planning authorities and communities, meaning there should be less cause for the triggering of public inquiries.

However, the UK and Scottish governments consider it important that relevant planning authorities and communities continue to have statutory opportunities to challenge and influence applications made under section 36 and section 37 of the Electricity Act 1989, and that their views on those applications are engaged with and acted on constructively and efficiently.

The use of the term ‘public inquiry’ implies the adoption of the formal public inquiry sessions as described above. However, there are alternate methods of examination, such as written submissions or hearings guided by a reporter, which can be just as effective in informing the report to Ministers. Moreover, anecdotal evidence, for example feedback to the Planning & Environmental Appeals Division of the Scottish Government from some of its stakeholders, suggests that members of the public and community representatives can sometimes feel that a formal public inquiry session is intimidating, complex, time-consuming and (if, for example, they feel the need for legal representation) costly. These same potential drawbacks can also apply to applicants and statutory consultees, particularly the relevant planning authority.

The UK and Scottish governments still consider that inquiry sessions can be a useful tool. This is most likely to be the case where there is a dispute on complex or technical matters, where essential facts are in dispute, or where there is a conflict of professional opinion or evidence and, in these cases, where the reporter would find it helpful for the evidence to be tested by cross examination. However, their view is that the legislation should more explicitly allow the reporter to make an informed decision about the procedures to be adopted on a case-by-case basis.

## **Proposed changes**

The following proposal would apply to all onshore applications for consent but not offshore applications.

Relevant planning authorities will be encouraged to engage fully with the pre-application consultation outlined in the Pre-application requirements chapter, and to advise against acceptance during the ‘Acceptance Stage’ if they consider that applicants have not fulfilled their requirements around consultation. The intended outcome is to surface any matters for discussion before applications are accepted.

It is proposed that the Electricity Act 1989 be amended so that, where the relevant planning authority submits an objection to an application within the prescribed period, which is not withdrawn, the Scottish Ministers must appoint a person to make an examination into that application and to report to them on the result of that examination. The legislation would provide that the procedures to be adopted for that examination would be at the discretion of the appointed person. That person may decide that the evidence available to them at the time of appointment is sufficient, and that no further procedures are required. If that person determines that further procedures are required, they may specify a site inspection, further written submissions, hearing sessions, public inquiry sessions, or a combination of these. This proposed process is based on the procedures followed under the Town and Country Planning (Scotland) Act 1997 and which is provided for in the Town and Country Planning (Appeals) (Scotland) Regulations 2013.

Although the choice of procedures would remain a matter for the reporter to determine, the views of the applicant, the relevant planning authority and other interested parties may assist the reporter in deciding what procedures would be appropriate. Therefore, it is proposed that

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the legislation would provide for interested parties to express a view on what further procedures, if any, they consider to be necessary. The reporter would take these into account but would not be bound by them. The reporter would have the option of holding a pre-examination meeting to discuss the procedures which may be adopted to inform the reporter's final decision in respect of these. This decision will be communicated to the interested parties. The reporter will also communicate a target timescale for any procedure(s) selected up to the final report. Following the reporter's examination, whether or not this involves any further procedure, they would then submit their report of that examination to the Scottish Ministers.

Where the relevant planning authority does object, the intention is to examine applications in an efficient, proportionate and constructive manner, with the approach tailored to the case being considered. The intention is that applications will continue to be subject to an appropriate level of scrutiny, but without unnecessarily adversarial or protracted processes.

### **Consultation questions**

1. What is you or your organisation's experience of public inquiries? What are the advantages? What are the disadvantages?
2. Do you agree with the proposed 'examination' process suggested? Why do you agree/not agree? How might it impact you/your organisation?

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# Variations

## Variations of network projects

### Background

A variation is a change to a consent that may be requested by the consent holder after consent is granted. It must not fundamentally change the terms of the original consent, as this requires a completely new application. Variations are a common occurrence in consenting for large-scale infrastructure, as they are long-term projects during which conditions and technology often change.

Under the Electricity Act 1989, the Scottish Government is authorised to approve changes to generation projects but lacks a clear prescribed process to do so for network projects. This reflects the era in which the legislation was written, when large-scale network projects necessitating variations were much less common. Due to the lack of a prescribed process and the uncertainty this causes, the Scottish Government prefers not to process variations for network projects.

### Case for change

In 2023, the duration for consenting network projects in Scotland was an average of 28 months for projects where an EIA was required. Since the Scottish Government does not process variations to existing consents, applicants needing changes face a choice between starting a new application process, which substantially lengthens their project timeframe, or continuing with less-than-ideal designs that affect their delivery capability.

Such restrictions hinder the Scottish Government's capacity to maintain an effective consenting system, as resources must be diverted to re-processing applications instead of being efficiently managed through variation approvals.

### Proposed changes

To give the Scottish Government a clear statutory process under which variations to network projects may be granted. This would be achieved by mirroring existing variation provisions for generating station consents (in s36C of the Electricity Act 1989) and giving the Scottish Government the power to prescribe a process for varying network projects in regulations.

The intended outcome is to increase the efficiency of consenting for both applicants and the Scottish Government.

### Consultation questions

1. Do you agree with the proposal to prescribe a clear statutory process under which variations to network projects may be granted? Why do you agree/not agree? How might it impact you/your organisation?

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## Variation of consents without an application

### Background

Given the extended duration of infrastructure projects, sometimes conditions evolve which might include environmental factors or new scientific insights. Additionally, over time certain consent conditions may become obsolete or an unnecessary barrier to development. There are also situations where errors have been made in the consents that may require correction. In these circumstances it is useful for the Scottish Government to be able to alter consents, without the need for applicants to submit variation requests.

The Scottish Government currently has this power for consents granted outside the Electricity Act 1989 framework, under section 30 of the Marine (Scotland) Act 2010, section 72 of the Marine and Coastal Access Act 2009 and section 68 of the Town and Country Planning (Scotland) Act 1997.

### Case for change

As consents are in place for the operational life of a generating station or network project, variations may be required to ensure they do not become outdated and the infrastructure can adapt to future changes. This may include adaptation to environmental changes or to changes in knowledge or technology.

Currently, due to the inability to modify, suspend or revoke consents when errors in consents are found, an applicant must apply for a section 36 consent variation and go through the full variation process, including payment of a fee. Examples include minor editorial errors by the regulator, or minor project description errors or omissions by an applicant. Where the error does not relate to a material matter, the Scottish Government wishes to expedite a correction without the need for full process and payment of a full fee.

While the Scottish Government may currently vary a section 37 consent after it is granted, this is not possible within the time period set out in the consent, and therefore within that period variations – for example to correct errors – cannot be made. It is therefore proposed that the changes set out below should apply to both section 36 and section 37 consents.

Enabling the Scottish Government to modify, suspend or revoke consents would ensure delivery of electricity infrastructure that is sustainable over the long-term

This would be similar to the circumstances under which variations are made in other regimes as mentioned above, for example to the conditions in section 30 of the Marine (Scotland) Act 2010 and section 72 of the Marine and Coastal Access Act 2009.

### Proposed changes

To give the Scottish Government the ability to modify, suspend or revoke consents for network projects or generating stations both onshore and offshore under the Electricity Act 1989 without an application, where:

- There has been a change in environmental circumstances or relevant technological changes
- It is necessary to correct errors in consents

The consent holder would have the opportunity to make representations on the proposed variation, suspension or revocation and the Scottish Government would take any

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representations from the consent holder into account before making a final decision. The proposed changes would be achieved through amendments to the Electricity Act 1989.

### **Consultation questions**

1. Do you agree with the proposal to give the Scottish Government the ability to vary, suspend or revoke consents, without an application having been made in the circumstances set out above? Why do you agree/not agree? How might it impact you or your organisation?
2. Do you believe there should be any other reasons the Scottish Government should be able to vary, suspend or revoke consents? What reasons are these?

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## Fees for necessary wayleaves

### Background

Operators of electricity networks do not typically own the land network infrastructure is built on. They therefore often need to enter private land to set up, service, or upgrade network infrastructure. This necessitates an appropriate arrangement with the landowner, including appropriate compensation. Wayleaves are agreements that permit access to private land for the placement or upkeep of utilities. Generally, these permissions are pursued through voluntary negotiations between network operators and the landowners or their representatives.

When parties cannot agree through negotiation or a landowner wants to revoke an existing wayleave, network operators may use a statutory procedure under paragraph 6 of Schedule 4 of the Electricity Act 1989 to obtain a 'Necessary Wayleave'. This grants the electricity license holders legal authority to install and maintain lines and equipment on private land, with rights including access for upkeep and equipment management. In Scotland, the Scottish Government can approve these applications, often spanning a 40-year term. Compensation for the landowner is agreed separately. The Scottish Government's Energy Consents Unit and the Planning and Environmental Appeals Division are responsible for processing applications for necessary wayleaves.

### Case for change

With Scotland's network infrastructure poised for expansion to achieve net zero targets and to connect existing generation projects to the national grid, the next few years will likely see a surge in necessary wayleave applications to the Scottish Government.

The Scottish Government does not currently charge a fee for processing necessary wayleaves applications or have the power to do so. This is atypical - in England and Wales an application fee of £236.50, plus a day rate of £1000 in England and £742 in Wales for travel and subsistence costs for the inspector's work on the application, are charged for necessary wayleave applications.<sup>12</sup> The Scottish Government also charges fees to process applications for electricity infrastructure consents.<sup>13</sup>

The number of necessary wayleaves applications is expected to significantly increase in the next few years. In recent years the Scottish Government has received around 40 applications for necessary wayleaves each year. However, Transmission Operators advise that over 1000 such applications could be made in 2025 alone. This kind of rise in application numbers is likely to result in increasing financial and staffing pressures, which will create additional burdens on already constrained services. If staffing cannot be increased to deal with this influx, timescales for processing applications will increase, delaying the building of network projects. Charging fees would be used to directly resource the processing of this service. This would bring it into line with standard UK Government and Scottish Government policy, that where public sector organisations charge for services, the charges normally pass on the full cost of providing those services.<sup>14</sup>

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<sup>12</sup> The Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Charges) (England and Wales) Regulations 2013. The Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Charges) (England and Wales) (Amendment) Regulations 2017.

<sup>13</sup> The Electricity (Applications for Consent and Variation of Consent) (Fees) (Scotland) Regulations 2019.

<sup>14</sup> UK Government, 2023. ['Managing Public Money'](#). Scottish Government, 2024. ['Scottish Public Finance Manual'](#)

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## Proposed changes

To introduce a fee for necessary wayleave applications in Scotland. The proposed fee would be paid by the network operator at the point of application submission. The fee would be based on the average cost to process a necessary wayleaves application, including administration and reporters' (equivalent to an inspector in England and Wales) costs.

The intention behind this change would be to recoup the full cost of processing applications to better resource the system and maintain a fast and high-quality service.

## Consultation questions

1. Do you agree with the principle of introducing a fee for the Scottish Government to process necessary wayleaves applications? Why do you agree/not agree? How might it impact you or your organisation?
2. Do you agree that the fee amount should be based on the principle of full cost recovery, in accordance with Managing Public Money and the Scottish Public Finance Manual? Why do you agree/not agree?<sup>15</sup> How might it impact you or your organisation?

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<sup>15</sup> As above

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# Statutory appeals and judicial proceedings

## Background

Scottish Ministers' decisions on consenting applications for electricity infrastructure, can be challenged by an 'aggrieved person'. The process by which consenting decisions under the Electricity Act 1989 in Scotland are challenged is not uniform; it may involve either a judicial review or a statutory appeal.

Consenting decisions for offshore electricity infrastructure in "relevant waters"<sup>16</sup> can be challenged through a statutory appeal. This must be initiated within 6 weeks of the consent being granted. It is made by application to the Inner House of the Court of Session and can be made on the grounds set out in section 36D of the Electricity Act 1989.

Consenting decisions for onshore electricity infrastructure in Scotland can be challenged via judicial review. This must be initiated within 3 months of consent being granted under the general judicial review procedure set out in section 27A of the Court of Session Act 1988. It is made by application to the Outer House of the Court of Session, and outcomes can be appealed in the Inner House of the Court of Session.

Section 36 and 37 consents in England and Wales may be challenged via judicial review however this rarely occurs as large-scale electricity infrastructure is consented to under the Planning Act 2008. Under the Planning Act 2008 decisions may be challenged by judicial review, which must be initiated within 6 weeks.

## Case for change

Creating a unified system would make it simpler for individuals to launch challenges which could help to reduce overall timescales. Where a challenge is brought, any work on the electricity infrastructure tends to be paused until the outcome of the challenge is known which creates development and investment delays. With criteria for bringing a challenge set out in legislation this makes the grounds for challenge clear. A shorter period for bringing a challenge would reduce the time of uncertainty that a challenge will be brought, and the consequences for a project being paused or commenced at risk.

Available data shows that, where challenges were brought against section 36 consents for onshore wind in Scotland using the Judicial Review process, the majority were lodged after 90 days. The current 3-month time limit for initiating a challenge delays the development of infrastructure. A 6-week timescale and statutory appeal is allowed for challenging planning appeal decisions in the Inner House of the Court of Session in Scotland under Section 239 of the Town and Country Planning (Scotland) Act 1997. There have been 30 such challenges since 2020 and all have been lodged within 6 weeks.

A 6-week period for challenging consenting decisions under the Electricity Act 1989 in Scotland would allow for sufficient time to initiate a challenge and would not disproportionately delay infrastructure development. Additionally, by taking challenges directly to the Inner House of the Court of Session, decisions on outcomes would be final except for those appealed through the UK Supreme Court.

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<sup>16</sup> Section 36D(6) Electricity Act 1989, defined as waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and waters in the area designated by the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005 as the area in which the Scottish Ministers are to have functions.



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## **Proposed changes**

To create a unified and more efficient system for challenging consents made under the Electricity Act 1989 in Scotland. This would be achieved by making the statutory right of appeal the legal mechanism for challenges to be brought in Scotland for onshore consenting. This would simplify the process by aligning onshore consents with offshore consents under the Electricity Act 1989. This could be achieved through legislation by extending section 36D of the Electricity Act 1989 to apply to all onshore consenting decisions in Scotland made under sections 36, 36C and 37. This would require consequential amendments to the Town and Country Planning (Scotland) Act 1997 so that deemed planning permission under sections 57(2) and (2ZA) Town and Country Planning (Scotland) Act 1997, would be subject to the same appeal process.

## **Consultation questions**

1. Do you agree that a statutory appeal rather than a judicial review process should be used for challenging the onshore electricity consenting decisions of Scottish Ministers? Why do you agree/not agree? How might it impact you or your organisation?
2. Do you agree there should be a time limit of 6 weeks for initiating a challenge to a consenting decision of Scottish Ministers for onshore electricity infrastructure? Why do you agree/not agree? How might it impact you or your organisation?

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## Transitional arrangements

Once any changes to the Electricity Act 1989 are implemented through legislation, applications for electricity consent will need to be consented under the new system.

### **Proposed changes**

All applications submitted to the Scottish Government after the new provisions come into force and applications already being processed by the Scottish Government will be consented to under the new system. This would apply from the stage in the consenting process that the application has already reached and would not be retrospective. For example, applications which have been submitted before the new system comes into effect would not be required to fulfil pre-application requirements but would be subject to limits on requesting amendments.

### **Consultation questions**

1. Do you agree with the above proposal for transitional arrangements? Why do you agree/not agree? What impact would this have on you/your organisation?

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## The package of reforms

### Consultation questions

1. Having read the consultation, do you agree with the reforms as a package? Why do you agree/not agree? What impact would they have on you/your organisation?
2. What steps could we take to ensure the project planning process (including the pre-application stage) can be completed as fast as possible?

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## Evidence and analysis

An options assessment has been developed and published alongside the consultation. The options assessment outlines the rationale for intervention and identifies the monetised and non-monetised impacts. For more detail and the assumptions used in the analysis, please refer to the options assessment. The following questions seek to gather additional evidence to inform future analysis and should be considered in reference to the options assessment.

### Consultation questions

- 1) Do you agree with the rationale for intervention? Are there any points we have missed?
- 2) Familiarisation:
  - a) How long do you think it would take your business to familiarise with the changes to the legislation and how much of an impact on your pre-development costs do you expect this to have (either a saving or an increased cost)?
  - b) How many people in your business need to review the legislation?
- 3) Impact:
  - a) Do you agree with the impacts that have been identified?
    - i) If not, please explain why with supporting evidence.
    - ii) If you think there are other impacts that have not been identified, please set out the additional impacts with supporting evidence.
  - b) Can you provide further data and evidence to:
    - i) Support a detailed assessment of each of the impacts?
    - ii) Establish whether this policy is likely to reduce delays to transmission network build, renewables or storage projects, and if so how long by?
    - iii) Establish whether there are any groups you expect would be uniquely impacted by these proposals, such as small and micro businesses or people with protected characteristics? If yes, which groups do you expect would be uniquely impacted? Please provide supporting evidence.

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This consultation is available from: <https://www.gov.uk/government/consultations/electricity-infrastructure-consenting-in-scotland>

If you need a version of this document in a more accessible format, please email [alt.formats@energysecurity.gov.uk](mailto:alt.formats@energysecurity.gov.uk). Please tell us what format you need. It will help us if you say what assistive technology you use.