Electricity Infrastructure Consenting in Scotland – Energy UK Response

Energy UK is the trade association for the energy industry with over 100 members - from established FTSE 100 companies through to new, growing suppliers, generators and service providers across energy, transport, heat and technology. Our members deliver nearly 80% of the UK's power generation and over 95% of the energy supply for 28 million UK homes as well as businesses.

The sector invests £13bn annually and delivers nearly £30bn in gross value - on top of the nearly £100bn in economic activity through its supply chain and interaction with other sectors. The energy industry is key to delivering growth and plans to invest £100bn over the course of this decade in new energy sources. The energy sector supports 700,000 jobs in every corner of the country.

Energy UK plays a key role in ensuring we attract and retain a diverse workforce. In addition to our Young Energy Professionals Forum, which has over 2,000 members representing over 350 organisations, we are a founding member of TIDE, an industry-wide taskforce to tackle Inclusion and Diversity across energy.

Executive Summary

Energy UK is generally supportive of the measures proposed, including the new pre-application measures. However, too much emphasis is likely put on the role of pre-application measures to enhance the system, and there are areas which require further detail and information. We have concerns over the proposals to variate consents based on environmental and technological factors, as these are not sufficiently well defined at present. We very much support reform of the Electricity Act 1989 for a more efficient implementation of the planning system in Scotland for generation infrastructure, and look forward to engaging on future reforms to the planning system in Scotland.

If you would like to discuss this response in further detail with Energy UK and its members, we would welcome further engagement.

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Pre application requirements

Q1 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?

Energy UK agrees in principal for introducing more pre-application requirements, but we have concerns over the premise for these pre-application requirements, and that one of the main problems with the Electricity Act 1989 are the absence of mandatory pre-application requirements or poor-quality submissions. The consultation paper needs to provide further evidence, especially as some of the main data provided is from 2007, and there have been changes to both consenting and Environmental Impact Assessment (EIA) practises since then. These include the town and country planning pre-application requirements in 2009, updated EIA regulations in 2017, and various updated pre-application requirements in the years in-between. A lack of focus in tackling the main determining issues, resourcing, and resolving matters at each stage of the application. While we support better pre-application information, it is not clear from the argument presented in the consultation paper that the modern landscape for pre-application information has been taken into account.

More generally for both pre-application requirements and reforms to the system overall, critical areas to ensure success in this are likely to be standardisation, simplification, and specificity. Standardisation of requirements means they are widely applicable and interchangeable, meaning less complexity for developers and planning authorities to process them. Simplification of what is required is also helpful in this regard, allowing obvious cause and effect for developers on why the material (both pre-application and others) is required. Specificity also needs to be factored in without compromising standardisation and simplification, for example firm information on whom developers need to consult in different stages of the planning process, and how this may simplify the process, or it may risk creating more administrative barriers.

Regarding the consultation for example, it would be useful to have more information on what bodies the developer is expected to notify the Scottish Government it is consulting with in the pre-application stage, and a variety of examples could for be given for specific projects. However, steering developers too strongly may veer away from standardisation and simplification, and developers should have a good understanding of the relevant stakeholders to consult on a project. Pre-application requirements are only a reduction in time taken for applications if they are kept straightforward and widely applicable. If the requirements for pre-applications expand significantly, this risks undercutting their benefit, and while this does not appear to be likely based on the proposals in the consultation, it is a key risk to monitor and guard against in these proposals going forward.

On the duty to notify the Scottish government, please refer to our point above, and our point on statutory consultees in Question 1 in the *Application Input from Statutory Consultees* section of our response. On duty to publicise, we agree with the principle, but much more specific guidance on what is required under a public notice, and what '*information reasonably required for local communities and statutory consultees*' constitutes for us to fully support. On duty to consult, we also agree with the principles, but there is sufficient leeway in the wording for these requirements to be implemented quite differently (especially regarding the proposed two community events raised). Wide, broad-ranging information in this instance could lead to a flurry of additional, unnecessary information as developers seek to cover their bases, and would take up resources from planning bodies. Adequate resourcing of planning authorities is a key point for our membership, and should be a centrepiece of underpinning all of the above. Regarding the Pre-application consultation report, these should align with existing pre-application reports under the under the town and country planning regime, and should not have to duplicated where these are already used in pre-applications.

This delicate interplay between standardisation, simplification, and specificity applies well beyond pre-applications, and can be found through the rest of this consultation and planning and development process.

Q2 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?

Energy UK agrees. Standardisation of both onshore and offshore regimes will help investors and developers of both within Scotland, so should be encouraged. Critical organisations to engage with in the pre-application process should include the Marine Licensing Authority, the Crown Estate Scotland, seabed and maritime management agencies, and seabed users and seabed user groups. The focus of consulting with communities for parts of offshore projects that are only on land is a fair one, and still means most of the new rules are consistent with offshore projects as well as onshore.

Q3 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?

We agree. However, we feel this should only apply to new projects and extensions, not S36C variation applications, as these will be more minor. With reference to our standardisation point in our answer to Question 1, keeping onshore applications as standardised as possible will assist in smoothing out planning applications across Scotland. Having fewer exceptions that are required makes the overall system more efficient.

Q4 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?

Further information is required. We would agree that some network projects may require a multistage consultation, however the emphasis should be on a single stage process for network projects, with a note of exception having to be produced to exempt projects from the rule. Categorisation of reasons for these exemptions (such as statutory groups needing more time to be consulted) could speed up approval of more complex multistage projects, with similar treatments for similar applications where applicable. Network projects in particular will have to be aligned with future strategic plans, in particular the Regional Energy Strategic Plans for energy infrastructure. Alignment with RESPs is unlikely in itself to result in a multistage process, but represents an additional challenge in maintaining a streamlined consideration of applications.

Q5 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?

We agree. We would note that, while this stage is using the Planning Act 2008 as a model, care must be taken to make sure the Acceptance Stage does not replicate or cross over too strongly with the Application Stage. We believe the verification and acceptable criteria should only focus on the procedural requirements, and not influence stakeholder views on the planning merits of overall projects.

Q6 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?

We provisionally agree, however we have some substantial caveats. Firstly, given the consultation's purpose is to reduce barriers in the planning system, a financial penalty for pre-application is introducing rather than removing such a barrier. While we support fees being introduced, giving an incentive for pre-applications to being entered into in good faith by developers, the risk is that it may also deter applications being made, and will by its nature add some additional initial costs. Some reassurances may be given to developers if average cost savings can be proven from a more direct, faster application process overall during later stages of the project. Pre-application fees may also not be necessary for all pre-application functions. Pre-application engagement will in itself ultimately incur additional costs. Revenue from these fees should be used to improve existing service delivery rather than addressing current capacity gaps. Should these fees be introduced, this needs to demonstrate

the added value beyond the existing baseline practise. Duties and functions of the planning system must be adequately funded despite these fees.

Q7 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?

We agree, although where we are less clear is on how it might impact individual projects. While the reasoning of better pre-application timelines enabling a smoother overall process is sound for projects in general, it is not clear if this may mask discrepancies within individual projects based on certain characteristics. For example, for types of infrastructure that have to overcome environmental or health assessments, these are more likely to already be doing pre-application work to smooth the process. Therefore, these proposals may speed up specific types of infrastructure – more information would be needed on Energy UK's part to properly assess this. It is possible that these changes will benefit some types of projects more than others.

Application procedures

Q1 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?

We agree in principle. However, as we have stated elsewhere, this is based on figures from 2007, and there has been evolution in both pre-application requirements and other planning practises since then in Scotland. Therefore, while we don't disagree directly with the proposal for increased information, it needs revisiting to see how much it will overlap with these changes. We believe it will be less necessary than proposed in the consultation document due to these changes, and the last outcome we want is unnecessary additional administration for both developers and planners if this is the case.

Q2 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?

We agree in principle that better application information needs to be sent in, however as with the questions above, we are concerned that the premise is out of date from the reality on the ground. Further evidence is needed on whether the information quality is not up to standard based on the changes that have been implemented since 2007. We would note that the proposed new information requirements are not finalised in the consultation document, and therefore we are unable to fully assess what future policy is intended to be in this space. The information requirements should be set up clearly in regulations to support consistency, with a validation pathway and route to avoid disputes over adequacy of applications. This is an important step to avoid delays on applications.

The requirement to show benefits and needs is currently too vague, and areas like a Cost Benefit Analysis or equivalent to show those benefits and needs would be too unwieldy. Streamlining of these requirements whilst giving the Scottish government the key components should be the key aim for this additional information. In addition, further data collection from Scottish planners on what the most critical areas of lacking information for applications would be useful in signposting what is likely a requirement for change, in addition to the above.

Given the system will include both pre-application information and now further mandatory information, there is a small risk of overlap between both pre-application and application documents being submitted. Mitigation for this should include tweaks to pre-application information which has materially changed between the pre-application and application process.

Application input from statutory consultees

Q1 What are the reforms that would be most impactful in enabling your organisation to

provide timely input on section 36 and section 37 applications?

Of the four reforms proposed, enabling the Scottish government to set time limits are most likely to be the most impactful, as it can streamline this complex process, focusing delivery of information. We outline the relative advantages and disadvantages of these processes in Question 2 below, however it is likely necessary to go further than the proposed changes. For example, Historical Environment Scotland and Nature Scot may not need to be mandatory for every application (i.e., developments not in an area of historical significance, or developments in urban or suburban areas with low risk of nature disruption). Mapping these areas for Scotland and only bringing in these organisations where an application is in at-risk area may free up the resources of these organisations to tackle more urgent developments that are a higher risk to historical sites or sites significant for natural ecosystems.

We would also be open to examining whether different timescales could be used for different forms of generation infrastructure. As an example, when developments are compiling Environmental Impact Assessments, large scale nuclear power generation will take longer and go into greater depth to prepare its statement given the wide-ranging nature of hypothetical impacts of the technology, whereas onshore wind will typically have a shorter assessment, yet under this Act both are given 4 months to assess. It may become possible with further consultation to shorter timescales for some technologies, however this will have to be dependent on not increasingly complexity and burden on the planning system overall, aligning with our standardisation points earlier in this consultation response.

Q2 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?

Advantages could include greater information sharing from the creation of a forum. Specialist support for highly technical infrastructure is a welcome addition, and could be highly valuable. Time limits are likely to provide more oversight for developers and create a stimulus for faster delivery. Disadvantages include an additional layer of bureaucracy from the creation of a forum, taking more time away from processing the application. Overall, we are supportive of all of these suggestions, however we would suggest that the forum should not be mandatory, and convene on a case by case basis. These new proposals should be resources to be used as and when required, effectively on standby for more complex applications rather than another layer of requirements.

Q3 What specialist or additional support could the Scottish Government's Energy Consents Unit provide to facilitate the statutory consultees' ability to respond?

Individual applications are likely to have individual circumstances, however a general access to relevant data for each of the statutory consultees could facilitate swifter applications and share resources (environmental and community data being areas of interest).

Q4 Would new time limits help your organisation to prioritise its resources to provide the necessary input to the application process?

Time limits and clearer timescales for the application process would generally be helpful. This would give clearer oversight over the status of projects for developers, and keep up pressure to delivery applications in a timely fashion.

Amendments to applications

Q1 Do you agree with implementing a limit for amendments to applications? Why do you agree/not agree? How might it impact you/your organisation?

We agree, as these proposals could help solve current problems and bring forward further problem resolution in the pre-application and application statutory consultation phases. As highlighted, the

issue of later amendments to applications is restricting capacity within the planning system and should be limited further. High quality advice from statutory consultees and other key stakeholders will highly important to this stage.

We agree with the proposal to limit post-submission amendments, on the provision that these limitations do not discourage dialogue between applicants and those consulted during the determination phase. The ability to respond to those consulted during the phase also needs to be safeguarded, as there may be new matters of evidence that arise during this phase.

Q2 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?

We agree. Given these amendments could include a wide variety of potential changes, this is not an area where a blanket standard of rules is likely to be helpful. However, keeping track of similar decisions for similar types of amendments and having these to hand for Scottish Ministers and relevant authorities can help streamline similar cases, providing more information even if the full assessment is still done on a case-by-case basis. This can help Ministers see decisions that have been made before and the type of precedents for the types of project amendments, ensuring an easier process for comparing previous decisions. Any limits on amendments should be transparent and proportional, and applied as consistently as possible.

Public inquiries

Q1 What is you or your organisation's experience of public inquiries? What are the advantages? What are the disadvantages?

Public Local Inquiry (PLI) processes can often be highly useful in setting out and resolving complicated applications where parties cannot come to an agreement. Identifying and debating the relative merits of a case is essential in reaching balanced decisions on nationally important infrastructure projects. PLIs should remain an important instrument, but only part of the process.

Limiting proceedings to agreed points of objection and adhering to those points to reduce significant inefficiencies in this process, as well as improving the administrative process. This is because PLIs are often started by specific points of objection that are then broadened out to a much wider variety of objections, derailing the original goals of the PLA. This has made PLIs disproportionate, and therefore need to focus on specific issues and objections.

Q2 Do you agree with the proposed 'examination' process suggested? Why do you agree/not agree? How might it impact you/your organisation?

We do not agree, as while we support the suggestions, we do not think the suggestions on public inquiries go far enough to reduce blocks to the planning system. Better pre-application processes and further information at the application stage are definitely positive steps to reduce the amount of likely public inquiries, but 18 months of delay for 30% of projects is such a large blocker in the planning system, further action needs to be taken. Direct reform of the public inquiries system is required, either through providing further capacity to speed up the public inquiries system (bringing timelines closer to 6 months) or restricting the criteria for what can be within the scope of such inquiries, which is likely to require going beyond the Electricity Act 1989. Regarding the Act itself, this should amended to limit the examinations to only the consideration of unresolved objections or issues highlighted by the appointed reports. This aligns with the approach in Regulation 17 of The Town and Country Planning (Development Planning) (Scotland) Regulations 2023.

Variations of network projects

Q1 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?

We strongly agree with the proposals. Mirroring the procedure for generation under Section 36 is a sensible approach, consistent with other areas of reform proposed in this consultation. Given the high levels of network infrastructure needing construction for Clean Power by 2030 across the UK, this is an urgent and much needed change.

Variation of consents without an application

Q1 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?

We disagree. While we would agree in theory, as it currently stands the scope of environmental or technological changes as stipulated in the consultation document are far too broad and subjective. For example, would the discovery of a rare species in the project development area count as an environmental change, or would coastal erosion, or land degradation? Would these in turn be applied more universally to different types of generation infrastructure? Newly discovered groundwater contamination for example would be a material environmental change during the application process for a thermal plant, but would be unlikely to affect an onshore wind farm, yet if the same decision on variation of consents was applied to both this would affect the projects disproportionately. Equally, on technological changes, this could be as broad as applications being affected because new innovations are made to certain technologies overall, and this affects individual applications along the process. While these are not likely examples, these are outlined above to illustrate that environment and technological changes are not made clear in the consultation document, and more specific examples are required. We support the principle variation of consents without an application, but without clearer definitions, there is a risk of possible future implementation not meeting the spirit of the consultation document here, and it therefore requires greater definition. As it stands, this is a very subjective measure, and we cannot support in its current form. We are fully supportive of variations being made due to errors in the application.

Q2 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?

Not currently no. The above reasonings already open the door to a number of possibilities. There are no obvious factors to introduce here.

Fees for necessary wayleaves

Q1 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?

Yes.

Q2 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? How might it impact you or your organisation?

Yes. We also understand the comparison between English and Welsh wayleave applications, however, Scotland does have some unique factors compared to the other two countries. The level of network infrastructure is likely to be proportionally higher than England and Wales, based on projected network build out. Given lower population density than the UK as whole, access to that network infrastructure, and the more rural nature of it many cases, will come with additional difficulties. Therefore we support the introduction of fees, recognising the rapid and urgent increase in

Wayleave applications. Bringing the costs in line with England (while based on full cost recovery) would be a sensible first approach, but given Scotland's unique circumstances, it may become necessary to revisit this in future.

Statutory appeals and judicial proceedings

Q1 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?

Agree. Statutory appeal is not only a more efficient process, but it also gives objections to developments greater credibility given the shorter deadlines and stricter criteria. This helps ensure that objections to planning applications are more meaningful and taken with greater gravity, rather than a more procedural approach. Equally for developers, this new system will enable faster and more efficient routes to development and appeals, and also allows projects greater clarity on their future pathway.

On the comparisons to England and Wales, while the focus is not on Scotland, the Planning and Infrastructure Bill and other legislative changes from Westminster should consider the impact on the Scottish planning system. For example, if there are changes to statutory appeals south of the border which put the Scottish planning regime at a disadvantage, it may become a requirement to revisit the above and other sections of this consultation again. We would encourage coordination of planning reform policies generally across the nations of the UK and particularly Great Britain, given the combined efforts required to reach Clean Power and Net Zero should not be disadvantaged by a set of policies in any one of the four nations.

Q2 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?

Agree. As with the public inquiries section earlier, challenges to the application should be greatly streamlined on current timeframes. Not only does this bring Scotland in line with the norms in England and Wales, but as with the points above, any objections in the 6-week deadline have greater legitimacy given the closer engagement with the process needed in the new timescale. 6 weeks is ample timing.

Transitional arrangements

Q1 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?

We disagree. Limited transitional arrangements are needed to avoid delaying the submission of consenting applications in 2025, and following the enactment of any requirements for new Preliminary Information Report pre-application consultation stages. A minimum of six months grace period should be introduced upon enacting the legislation changes, allowing projects already completing Environmental Impact Assessment (EIA) scoping to proceed, without having to go backwards and refer to new changes. Without doing so, this could risk an additional 4-6 months delay to existing projects.

The package of reforms

Q1 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?

Agree, although other wider reforms are likely needed alongside this. Therefore, this consultation works as a reform package pertaining to the Electricity Act 1989, but other areas of abutting policy creating blockages in the planning system in Scotland and across the wider UK is likely to need wider reform to create maximum benefit.

An area that the consultation overlooks is the basis and timing for ministerial determinations for applications at the end of the process. While the Act allows decisions to reflect individual circumstances for each application, the Act gives no guidance on timings or basis of decisions to ensure standardisation, simplification, and specificity, making ministerial decisions inherently unpredictable for developers. This is inconsistent with other parts of legislation, and adds further uncertainty during inquiry phases (such as Public Local Inquiries) when opaqueness on ministerial decisions impacts investor confidence further. The absence for this ministerial guidance in the Act means it is not 'plan-led' like other frameworks, such as Section 25 of the Town and Country Planning (Scotland) Act 1997. This requires determinations on applications to be made "in accordance with applicable legislation and policies, unless relevant and important considerations indicate otherwise". This creates a norm for decisions to be made in accordance with consistency, and removes from of the subjectivity from ministerial decisions. As with the suggestions for ministerial direction made in our response to Question 2 of the *Amendments to Applications* section, keeping the expectation that decisions will be kept consistent as the standard can remove much of the uncertainty and subjectivity in application.

More broadly, further reforms should focus on greater efficiency and certainty in how and when applications will be conducted and decided. While we support the consultation in its efforts on quality of process and submissions of the application, further scrutiny of the input of that process by statutory bodies will need to be examined in wider reforms.

Additionally, a temporary use for construction or occupation rights for wind turbine movements would be a useful component to this policy reform to include. Currently in Scotland, a full compulsory order is needed for transferring these components, which is greatly disproportionate for wind turbine construction. This is inconsistent with the approach in England, where there is an ability to occupy land for the purpose of construction whilst not actually acquiring said land. A similar mechanism should be introduced in Scotland as part of the above targeted reforms.

Q2 What steps could we take to ensure the project planning process (including the preapplication stage) can be completed as fast as possible?

Please refer to our previous answers in this consultation response. Some of our earlier points around standardisation, simplification, and specificity have implications for multiple sections of this response.

Evidence and analysis

Q1 Do you agree with the rationale for intervention? Are there any points we have missed?

Yes, the overall rationale and approach to intervention is fair, at this point in time, with an exception to the proposed changes to unilateral consent variation expressed in Variation of consents without an application chapter of the consultation (*please refer to our answer to that question for further details*). Wider planning reforms across the UK are to be expected in the coming years, and as such, this area of policy should be viewed as in flux, and subject to change in future. Changes in England and Wales are also likely to have impacts in Scotland, and as such the view should be that while intervention of this type is appropriate for this stage, further intervention is likely required if there are significant changes to planning policy in either Scotland or across the rest of the UK.

Q3 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.

Yes, the impacts presented identify objectively verifiable areas to the maximum extent possible. However, as we have emphasised in the consultation response above, more subjective and unpredictable impacts may prove to be the harder ones to navigate. We support the impacts presented, but would caution that these should not be viewed as the only definitive impacts.

b) Can you provide further data and evidence to:

i) Support a detailed assessment of each of the impacts?

Not currently. Any further member input in these areas however we are happy to transfer after the consultation deadline and in future discussion.

ii) Establish whether this policy is likely to reduce delays to transmission network build, renewables or storage projects, and if so how long by?

Not currently. Any further member input in these areas however we are happy to transfer after the consultation deadline and in future discussion.

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

Not currently. Any further member input in these areas however we are happy to transfer after the consultation deadline and in future discussion.