

**Final Business and Regulatory
Impact Assessment**

**The Electricity (Applications
for Consent) Regulations
1990 and Electricity Works
(Environmental Impact
Assessment) (Scotland)
Regulations 2017**

December 2018



Scottish Government
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Final Business and Regulatory Impact Assessment

Title of Proposal

The Electricity (Applications for Consent) Regulations 1990 and Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

Purpose and intended effect

- **Background**

Scottish Ministers are responsible for determining applications for consent for onshore generating stations with installed capacity exceeding 50 MW and overhead power lines in Scotland under sections 36 and 37 of the Electricity Act 1989 respectively. The Electricity (Applications for Consent) Regulations 1990 and Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 apply to such applications, which are processed on behalf of Scottish Ministers by the Scottish Government's Energy Consents Unit. The Scottish Ministers are also responsible for determining applications for consent for generating stations with installed capacity exceeding 1 MW in Scottish Territorial waters and over 50 MW in the Scottish Renewable Energy Zone (REZ). Such applications are processed on behalf of Scottish Ministers by Marine Scotland Licensing Operations Team.

- **Objective**

Scottish, UK and EU policy mandates a transition to a more decarbonised energy system with increased use of low carbon energy sources. The deployment of new generation and associated grid infrastructure is central to this. At the same time, policies are in place at Scottish and EU level to safeguard the environment. A well-resourced energy consenting regime is vital to achieving both these aims.

In accordance with the Scottish Public Finance Manual, the Scottish Government adopts the principle that there should be full cost recovery for all public services, including those associated with discharging consenting functions including post consent work under the Electricity Act 1989. There has been a shortfall in cost recovery for a number of years, which is now impeding our ability to resource our consenting functions in the manner to which we aspire. We are reviewing the fees that we charge, and propose increases to maintain service delivery and to support future improvement.

- **Rationale for Government intervention**

The proposal contributes to the following objectives of the National Performance Framework:

- We value and enjoy our built and natural environment and protect it and enhance it for future generations
- Our public services are high quality, continually improving, efficient and responsive to local people's needs
- We realise our full economic potential with more and better employment opportunities for our people.

The proposal contributes to the Purpose Targets – Increase Scotland's

Economic Growth and Reduce Greenhouse Gas Emissions – and the following National Indicators:

- Improve people’s perceptions of the quality of public services
- Improve the responsiveness of public services
- Increase renewable electricity production

Consultation

- **Within Government**

The following Government directorates have reviewed the proposals as formulated: Marine Scotland; Planning, Architecture and Design; Planning and Environmental Appeals; Directorate For Energy And Climate Change; Scottish Government Legal Directorate and the Directorate For Budget and Sustainability. Their input has supported the formulation of the policy proposals by providing a cross-check on any potential conflicts with other policies that may have needed to be addressed; for example, the recent review of planning fees; and contributing to the review and consideration of consultation responses.

- **Public Consultation**

Public consultation launched on 19 February 2018. The Fee Consultation Paper was available on the Scottish Government website. Notifications were also sent to Heads of Planning Scotland, the Energy Networks Association, Renewables UK and Scottish Renewables via email or their websites to inform them the consultation was underway. A workshop was held on 25 April 2018 for the industry to the proposed fee consultation. Participants were encourage to make formal consultation responses following their contribution at the workshop.

During the consultation the Energy Consents Unit received requests for further detail on the cost of time analysis to inform this fee consultation. Supplementary Information was published on 4 May 2018. The fee consultation period was extended to 28 May 2018.

38 responses were received. The breakdown of response is as follows:

Group Type	Number	Percentage
Businesses and developers, including:	25	66%
<i>Electricity generation developers</i>	23	61%
<i>Electricity networks companies</i>	2	5%
Business/developer membership organisations	2	5%
Planning authorities/other public sector bodies	5	13%
Professional firms & consultants	1	3%
Political organisations	1	3%
Group respondents (total)	34	89%
Individuals	4	11%
Total	38	

- **Business**

At the workshop referred to above, the following businesses attended which allowed face to face discussions.

ABO Wind UK Ltd	JLL
ANSA Energy	Land Use Consultants
Arcus Consulting Services	Muirden Energy LLP
Banks Renewables	Natural Power
Community Windpower	RES Ltd
EDF Energy	Scottish Power
EnergieKontor UK Ltd	Scottish Renewables
ERG UK Holdings Ltd	SSE
Force 9 Energy	Wood plc
Invenergy /North British Windpower	Wright, Johnston & Mackenzie
Invicta Public Affairs	

Following the close of the consultation period, Energy Consents Unit officials met with SP Energy Networks (SPEN) and Scottish and Southern Energy Networks (SSEN) to discuss their responses to the Section 37 application fees in more detail and how they impact on their regulated business.

Comments/feedback received from all respondents have been reviewed and taken into account in the options set out below. The consultation responses are summarised and comments provided in the report entitled “Fees Charged for Applications under the Electricity Act 1989 – Analysis of Consultation Responses”.

Options

Informed by the responses to the consultation, Ministers have considered the following options.

1. Do nothing – maintain fees at existing fee levels.
2. Increase the existing fees
 - Increase fees to the level proposed in the consultation;
 - Introduce new fees for variations in alignment with the fees for applications;
 - Introduce phasing of payments such that a proportion of application costs are paid at Environmental Impact Assessment screening or scoping stages.
3. Increase the existing fees
 - Increase fees to the level proposed following consideration of consultation responses, Revised fees;
 - Introduce new fees for variations in alignment with the fees for applications but at a reduced level;
 - Defer introducing phasing of payments until further evidence has been gathered by a future consultation / BRIA;
 - Introduce revised banding for fee structure for both Section 36 and Section 37 applications.
 - On the whole greater remuneration for Planning Authorities from the Scottish Government

Sectors and groups affected

Following consideration of the evidence gathered during the consultation process, the sectors and groups which could be affected have been identified as:

- Electricity generation developers, who may experience a reduction in the level of service from the Scottish Government (Option 1) or increased costs in making an application (Options 2 and 3).
- Electricity networks companies, who may experience a reduction in the level of service from the Scottish Government (Option 1) or increased costs in making an application (Options 2 and 3).
- Planning authorities, who may experience greater remuneration for the work they carry out on onshore applications as statutory consultees for the Scottish Government (only under Option 3).
- New electricity grid connection customers, who may experience greater uncertainty and longer timescales for obtaining grid connections from the electricity networks companies (Option 1) or pass-through of increased application costs by the electricity networks companies (under Options 2 and 3).
- Existing electricity consumers, who may experience compromised security of supply (Option 1) where applications to reinforce the network to maintain resilience of electricity infrastructure may lead to greater timeframe for determination and with reduced certainty for the applicant.

Benefits

Option (1)

This option has no benefits over the current situation for businesses, planning authorities, electricity grid connection customers, electricity consumers or the Scottish Government. Doing nothing would not assist the Scottish Government in its objective of striking an appropriate balance between the policy objectives of the Energy Strategy for the growth of low carbon energy and infrastructure in the current economic climate and the aims of public finance management given by the Scottish Public Finance Manual.

Option (2)

This option has the benefit that it would allow improvements to be implemented and allow for continuous improvement in the service businesses receive from the Scottish Government in the determination of their applications. It would contribute to the Scottish Government's vision of Scotland where "our public services are high quality, continually improving, efficient and responsive to local people's needs". It would reflect the standard approach in the Scottish Public Finance Manual that charging for public services should aim to achieve full cost recovery. It would establish a more formal approach and cost associated to the scoping stage of projects and receive more timely determinations than under Option 1. However, while Option 2 benefits the Scottish Government's budget, it is the option of least benefit to applicants/developers with consultation feedback from the industry strongly

highlighting that the increase in fee levels proposed in Option 2 would be excessive and disproportionate, would bring a risk that generation would be uneconomic to develop and would impact negatively on consumers bills and progress to energy and climate change targets. Further consideration of the negative economic and environmental impacts is provided in the “Costs” section of this BRIA.

Option (3)

This option has the benefit that it would allow improvements to be implemented in the service businesses receive from the Scottish Government in the determination of applications. It would contribute to the Scottish Government’s vision of Scotland where “our public services are high quality, continually improving, efficient and responsive to local people’s needs”. It would align more closely with the standard approach in the Scottish Public Finance Manual that charging for public services should aim to achieve full cost recovery. The recovery of costs would significantly reduce the cost to the public purse by reducing the high level of subsidy (in the region of 95% at present). We would be able to continue with the high level of support which is currently being significantly subsidised. Applicants would remain able to engage with Scottish Government Energy Consents Unit from an early stage of the project and we would deliver more timely determinations than under Option 1

Option 3 delivers the following unique benefits which Options 1 and 2 do not:

- on the whole planning authorities as statutory consultees would benefit from greater remuneration from the Scottish Government
- this option would be supportive of the delivery of the Scottish Energy Strategy and contribute towards Scottish Government’s renewable energy and climate change targets
- for onshore applications, there would be a scale of fees more consistent with local planning fees and a smoother transition around the 50 MW threshold between applications under the Town and Country Planning (Scotland) Act 1997 and under section 36 of the Electricity Act 1989.

Costs

Option (1)

The result of implementing Option 1 would have no additional financial cost for businesses, however the burden of administrative costs would be borne by the Scottish Government; the processing of Electricity Act applications would require to be heavily subsidised with public funds if a significant reduction in service is to be avoided and the complement of specialised staff is to be retained.

We have already identified that the status quo is a significant departure from the aims of the Scottish Public Finance Manual that there should be full cost recovery for public services which cannot be sustained, as it is standing in the way of the Government’s vision where “our public services are high quality, continually improving, efficient and responsive to local people’s needs”. Maintaining a high level of subsidy would be counter to the objective of this consultation. Alternatively, addressing the failure to adequately recover costs could be achieved through a reduction in Scottish Government resources, which would hinder our ability to maintain current service levels. A reduction in our service levels would have non-

financial costs to business in the form of fewer opportunities to engage with Energy Consents officials and stakeholders and to resolve issues, and longer timescales to determine applications. Future enhancements which may add value would be precluded if they have a resource cost attached.

The policy costs include that:

- measures to reduce the running cost of the service would hinder the timely achievement of targets for low carbon energy and decarbonisation of the GB energy system (which is also an environmental cost)
- allowing a high level of 95% subsidy to continue would be a continued heavy burden on the public purse
- an unwanted incentive would be sustained regarding the sizing of onshore generation projects at the design stage, where planning fees charged by local authorities for determining applications up to 50 megawatts (MW) installed capacity under the Town and Country Planning Act (Scotland) 1997 would be considerably greater than fees charged by the Scottish Government for section 36 consent. This could drive developers towards sizing some proposals over the 50 MW threshold to save on application fees, which may not be optimally sized in terms of the balance between adverse environmental impacts and policy benefits. In turn this could increase the risk for developers that their section 36 application fails or is abortive.

Option (2)

The costs to businesses as a result of implementing Option 2 are financial, as detailed in the consultation paper. Under Option 2, these costs of the fees are made in staged payments over the scoping and application stages. The level of fees under Option 2 are significantly higher than existing fees under Option 1 or the fees proposed under Option 3. Beyond the financial cost for fees, additional policy and environmental costs for the Scottish Government and wider society have been identified. The level of the increased cost for renewable energy developers may impact on the viability of future renewable energy projects and narrow the scope of their economic activity. The policy and environmental cost of the above would be to hinder the timely achievement of targets for low carbon energy and decarbonisation of the GB energy system. In a limited number of cases the increase in new grid connection costs borne by small-scale connection customers may make some of the most marginal projects uneconomic. The impact of each of these policy and environmental costs would be greater than experienced under Option 3.

Option (3)

Similarly to Option 2, the costs to businesses as a result of implementing Option 3 are financial, as detailed in section 6 of the published Scottish Government response to the consultation paper. The level of fees under Option 3 are an increase in the existing fees, a scale of fees more consistent with local planning fees and a smoother transition around the 50 MW threshold between applications under the Town and Country Planning (Scotland) Act 1997 and under section 36 of the Electricity Act 1989. Under Option 3 new grid connection costs borne by small-scale connection customers are considered unlikely to make projects unviable.

An administrative cost of Option 3 has been identified for the Scottish Government as resources may still require to be subsidised with public funds to a limited extent if a small reduction in service is to be avoided and the complement of specialised staff is to be retained where the intake of application fees falls short of the resource costs.

Scottish Firms Impact Test

To understand the impact of the proposed fee increase on Scottish businesses, the consultation paper was prepared with a series of 8 questions. The consultation was undertaken from 19 February 2018 to 28 May 2018.

The Scottish Government hosted a workshop event for developers on 25 April 2018 to encourage participation in the consultation. Details of the attendees are listed in Appendix 1. The purpose of the event was to enable face to face discussion; to encourage businesses to respond to the written consultation, and in doing so to highlight their concerns and explain whether the proposals have any financial, regulatory or resource implications as requested by the consultation questions.

An analysis of all the comments received throughout the consultation has been carried out, which is published in a separate document entitled “Fees Charged for Applications under the Electricity Act 1989 – Analysis of Consultation Responses” (subsequently referred to as the “analysis report”). The analysis report should be read alongside this document. Following requests for more information, supplementary information was published and the date of the consultation extended by a further two weeks beyond the intended closure date. The written consultation then closed on 28 May 2018.

The companies that responded to the consultation and attended the workshop all have experience in the energy sector and would be affected by the proposed changes to the regulations for fee applications for Section 36, 36C and Section 37.

Through the engagement with business described above, the Scottish Government received comments all of which were taken into account in the development of the proposal, which has been revised taking these comments into account.

Competition Assessment

The Scottish Government has considered the following questions to establish whether a full competition assessment is required.

- Will the measure directly or indirectly limit the number or range of suppliers?
- Will the measure limit the ability of suppliers to compete?
- Will the measure limit suppliers’ incentives to compete vigorously?
- Will the measure limit the choices and information available to consumers?

The Scottish Government has concluded that the answer to each of these questions is no and therefore no further competition assessment is required.

Test run of business forms

No new forms will be introduced.

Legal Aid Impact Test

The proposal does not create a new procedure or right of appeal to a court or tribunal, any change in such a procedure or right of appeal, or any change of policy or practice which may lead people to consult a solicitor.

The proposal is not likely to result in additional people seeking legal assistance or being taken through the courts.

Enforcement, sanctions and monitoring

Payment of fees will be monitored by the Energy Consents Unit and Marine Scotland Licensing Operations Team. If an application is submitted without the required fees having been paid, it will not be a valid application and will not be capable of being determined.

Implementation and delivery plan

How will the proposal be implemented and in what timescale?

Amendments will be made to the Electricity (Applications for Consent) Regulations 1990. Following the decision to defer introducing phasing of payments until further evidence has been gathered by a future consultation / BRIA, there is no longer a requirement to amend the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017.

Implementation and delivery of the Electricity (Applications for Consent) Regulations 1990 will consist of:

- Completion of the legal drafting
- Legislation to be laid in Scottish Parliament (28 days)
- Implementation (May 2019)

- **Post-implementation review**
It is our intention that the implementation of our proposals will be monitored by the Energy Consents Unit and the fees will be reviewed again after 2 years. The Scottish Public Finance Manual suggests an annual review of costs, however on this occasion we intend to monitor the implementation of our proposals for 2 years as a step towards full cost recovery. This is more closely aligned to the project development cycle for such long term EIA projects. 2 years will allow a variety of applications to come forward over this time period and will allow detailed data to be gathered to inform future analysis.

Summary and recommendation

Option 3 is recommended, as it allows the Scottish Government to meet its aspiration to move towards full cost recovery for all public services. It achieves a balance between the objectives of the Scottish Government's Energy Strategy and the aims of public financial management given by the Scottish Public Finance Manual, in such a way that the economic growth of the sector is not hindered. We estimate the cost to the low carbon electricity generation business sector in Scotland

would be less than 0.05% of its annual turnover¹. Our fees will be closely aligned with the equivalent fees paid under local planning, for example, a 51MW wind farm will require a fee no greater than a 50MW wind farm would under the Town and Country Planning (Scotland) Act 1997.

• **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	<ul style="list-style-type: none"> No economic, environmental or social benefit 	<ul style="list-style-type: none"> The administrative cost for the Scottish Government would require to be heavily subsidised with public funds if a significant reduction in service is to be avoided and the complement of specialised staff is to be retained. The policy cost ranges from hindering the timely achievement of targets for low carbon energy and decarbonisation of the GB energy system (which is also an environmental cost) to requiring public funds to maintain a high level of subsidy. The final balance between these costs would depend on the relative levels of subsidy and resource reduction chosen by Ministers.
2	<ul style="list-style-type: none"> The Scottish Government would be able to sustain and improve upon current levels of service in determining applications for energy consents. The recovery of costs would reduce the burden on the public purse. 	<ul style="list-style-type: none"> The increased cost for renewable energy developers may impact upon the viability of future projects and narrow the scope of their economic activity. The policy and environmental cost of the above would be to hinder the timely achievement of targets for low carbon energy and decarbonisation of the GB energy system. In a limited number of cases the increase in new grid connection costs borne by small-scale connection customers may make some of the most marginal projects uneconomic.

¹ As estimated by the Office for National Statistics

3	<ul style="list-style-type: none"> • The Scottish Government would be able to sustain and improve upon current levels of service in determining applications for energy consents. • The recovery of costs would reduce the burden on the public purse. • On the whole planning authorities as statutory consultees would benefit from greater remuneration from the Scottish Government for onshore applications. 	<ul style="list-style-type: none"> • The administrative cost for the Scottish Government may still require to be subsidised with public funds to a limited extent if a small reduction in service is to be avoided and the complement of specialised staff is to be retained where the intake of application fees falls short of the resource costs. • The increased cost for renewable energy developers may exclude the most marginal projects from the pipeline they are working on and narrow the scope of their economic activity to a limited extent; however the effect would be markedly less than under Option 2.
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Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



Date: 20/12/18

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