

Proposed Changes to Fees Charged for Applications under the Electricity Act 1989 –

Final Business and Regulatory Impact Assessment

October 2022

Title of Proposal

Increase to the fee tariffs under the Electricity (Applications for Consent and Variation of Consent) (Fees) (Scotland) Regulations 2019 (“the Fees Regulations 2019”)

Purpose and intended effect

Background

The Fees Regulations 2019 came into force on 30 June 2019. A review of the fee levels and structure at that time was required due to a significant shortfall in cost recovery for a number of years, and to address the imbalance between income from application fees under the Electricity Act and the costs of running the service provided by Scottish Ministers.

Taking into account the comments received during the consultation period in 2018 the fee tariffs introduced in 2019 were lower than the proposals consulted upon, and did not achieve full cost recovery. The circumstances at that time led to widespread disagreement with the level of increases proposed from the onshore wind industry.

We are now looking to increase the fee tariffs to support full cost recovery in line with the Scottish Public Finance Manual and introduce a new fee structure for generating stations with a capacity greater than 500 megawatts (MW). This will aid the delivery of a well-resourced energy consenting regime for onshore and offshore developments, which is vital to deliver policy objectives around a transition to a more decarbonised energy system.

Objectives and rationale for Government Intervention

- to achieve cost recovery for processing applications received under the Electricity Act 1989
- to support a well-resourced energy consenting regime, vital to Scotland’s transition to a more decarbonised energy system and our net zero targets as mandated by Scottish and UK policy

The proposed increase to fee tariffs contributes to the following National Performance Framework – Purpose, Values and National Outcomes:

- to focus on creating a more successful country with opportunities for all of Scotland to flourish through increased wellbeing, and sustainable and inclusive economic growth
- we are a society which treats all our people with kindness, dignity and compassion, respects the rule of law, and acts in an open and transparent way

- we have a globally competitive, entrepreneurial, inclusive and sustainable economy
- we value, enjoy, protect and enhance our environment
- we have thriving and innovative businesses with quality jobs and fair work for everyone

The increase in fee tariffs and changes to the fee structure would also contribute to the four priorities of the Scotland's Economic Strategy: Investment, innovation, internationalisation and inclusive growth.

Consultation

Within Government

The following Government directorates have been engaged in the development of proposals as formulated: Marine Scotland; Planning and Architecture Division, Scottish Government Legal Directorate and Directorate For Energy And Climate Change.

Public Consultation

Public consultation ran from 30 March 2022 to 23 June 2022.

Business

Contact was made between the Scottish Government and the following businesses:

BayWa r.e. UK Ltd
Community Windpower
EDF
ERG UK
Floating Energy Alliance 1 Ltd
Red Rock Power Limited
Renewable Energy Systems Limited
ScottishPower Renewables
SSE Renewables
Statkraft UK
SP Energy Networks
SSEN Transmission

During the consultation, feedback was provided by the following:

Group Type	Number	Percentage
Businesses and developers, including:		
Electricity generation developers	10	40%
Electricity networks companies	2	8%
Developer membership organisations	1	5%
Planning authorities/other public sector bodies	8	32%
Other membership bodies	1	5%
Group respondents (total)	22	88%
Individuals	3	12%
Total	25	100%

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 “Proposed Changes to Fees Charged for Applications under the Electricity Act 1989 – Analysis of Consultation Responses”

Options

Do nothing

Doing nothing would result in a continued deficit and gap in resources between the income received from Electricity Act applications and the cost of processing and making decisions. The do nothing option would not be in line with the principle that there should be full cost recovery for all public services as set out in the Scottish Public Finance Manual.

Proposed Approach

Our proposed approach includes an increase to the fee categories of approximately 20% as well as proposing new bandings for larger scale applications which include developments that exceed capacities of 500MW, 750MW and 1GW. These additional bandings are to reflect the growing scale of offshore renewable electricity generating stations. The proposal also includes a change to the fee and bandings for variation applications to reflect the increased resource needed for such applications requiring EIA.

Sectors and groups affected

The sectors most likely to be affected by the proposals are:

- electricity generation developers and electricity network companies, who will experience increased costs in making an application under the Electricity Act
- planning authorities, who may experience greater remuneration for the work they carry out on onshore applications as statutory consultees for the Scottish Government

- new electricity grid connection customers, who may experience a pass-through of increased application costs by the electricity networks companies

Benefits

The proposed increase to fee tariffs and new fee structure is intended to support a well-resourced, efficient and effective consenting process critical to unlocking the potential delivery of renewable energy developments and economic benefits, whilst helping to achieve our net zero targets.

Costs

The proposed increase to fee tariffs involve an increase in fees payable for all applications under the Electricity Act and new bandings for larger scale applications.

The costs to applicants as a result of implementing a fee increase, and new bands for larger scale applications, are financial. The level of the increased cost for renewable energy developers may impact on the viability of future and existing (relating to variation applications) 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 energy system.

Scottish Firms Impact Test

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.

Will it have an impact on the competitiveness of Scottish companies within the UK, or elsewhere in Europe or the rest of the world?

- all companies will be affected in exactly the same way regardless of whether they are Scottish or not

How many businesses and what sectors is it likely to impact on?

- electricity generation developers, electricity networks companies

What is the likely cost or benefit to business?

- the exact costs per application are simply those stated as the revised fees in the consultation document.
- the benefit to business is that the Scottish Government is adequately resourced to deal with applications under the Electricity Act 1989 submitted by businesses

Is this measure likely to impact on international trade and investment?

- Scotland's renewable energy resources attract significant inward investment through the development of electricity generating stations. The increase in fees is modest by comparison with previous increases and the number of applications remains on a long term growth trend despite these increases. The benefits of having adequate resources to determine applications for development in a reasonable timeframe will outweigh the modest cost increase, which is negligible in comparison with the total cost to design, build, operate and decommission the developments.

Competition Assessment

We do not consider that the proposed increase to fee tariffs or the proposed new bandings for larger scale applications would impact more significantly on some firms than others, nor restrict new entrants to the market as a set percentage increase across all categories is not expected to impact significantly more on some firms than others.

Consumer Assessment

The proposals are not intended to impact one set of consumers over another.

Test Run of Business Forms

No new forms are proposed at this stage.

Digital Impact Test

Currently Electricity Act applications are submitted electronically via the ECU portal, whilst offshore applications are submitted directly to the Marine Scotland-Licensing Operations Team. While we support continuous improvement of our systems, there are no changes proposed as a direct consequence of the revised fees.

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. It is also not considered 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 ECU 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

Amendments will be made to the Fees Regulations 2019 and implementation and delivery of amendments will consist of:

- Completion of the legal drafting
- Legislation to be laid in Scottish Parliament (40 days)
- Implementation (Q4 2022)

Post-implementation review

It is our intention that the implementation of our proposals will be monitored by the ECU and the fees will be reviewed again after 3 years. This timescale is considered appropriate as it is closely aligned with the project development cycle for such long term EIA projects and will allow a variety of applications to come forward allowing detailed data to be gathered to inform future analysis.

Summary and recommendation

It is recommended that the increase to the fee tariff is implemented to help ensure that the fees from Electricity Act applications meet full cost recovery for public services. It is also recommended as an efficient and effective consenting system is critical to unlocking the potential to deliver renewable energy development and economic benefits, whilst helping to achieve our net zero targets.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: 

Date: 28/9/22

Michael Matheson
Cabinet Secretary for Net Zero, Energy and Transport

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