



For Decision

Title: Proposals for Reforming the Electricity Infrastructure Consenting Processes in Scotland under the Electricity Act 1989

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Purpose

1. This paper presents the Cairngorms National Park Authority's proposed response to a consultation on proposals for reforming the electricity infrastructure consenting processes in Scotland under the Electricity Act 1989.

Recommendation

2. The Committee is asked to:
 - a) Approve the National Park Authority's response to the consultation, as set out in Appendix 1.

Background

3. 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.
4. 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.
5. 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, and it can take up to 4 years to consent large-scale onshore electricity infrastructure projects. This is slow in comparison to consents issued under the Planning Act 2008 in England and Wales.

6. The UK and Scottish governments agree that modernising the Electricity Act 1989 is the most pragmatic route to speeding up infrastructure deployment whilst ensuring applications of an acceptable standard, breaking down a major barrier to an efficient consenting process and providing greater certainty of process and timescales for all parties. The UK and Scottish Governments also agree 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 to help applicants develop better quality applications for consent.
7. A series of proposed reforms have therefore been identified to modernise the Electricity Act 1989 and remove inefficiencies whilst giving communities and statutory consultees meaningful opportunities to influence applications for consents. 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. The proposed reforms do not make applications for electricity infrastructure consent more or less likely to be granted. Decisions on all such applications will continue to be taken by Scottish Ministers on a case-by-case basis with regard to relevant policy frameworks and weighing the impacts (including cumulative impacts) and benefits of each development.

Summary of reforms and proposed consultation response

8. The following sections of this report provide an overview of the proposed reforms to the Electricity Act 1998. They include proposals relating to: pre-application requirements; application procedures; public inquiries; variations; fees for necessary wayleaves; statutory appeals and judicial proceedings; and transitional arrangements. The consultation asks a series of questions under each area of the proposed reforms. The consultation questions, and the National Park Authority's proposed response to them, is set out in Appendix 1. Members are asked to note the proposed reforms and to agree the Park Authority's proposed response to the consultation questions.



Pre-application requirements

9. 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.

Application procedures

10. Under the Electricity Act 1989, 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 proposed reforms aim to 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

11. Under existing arrangements, where a relevant planning authority objects to an application within statutory timescales, and the objection is not withdrawn or addressed 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 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 examination process.



This could include a public inquiry in some cases, but may involve alternative approaches such as site inspection, further written submissions, hearing sessions, public inquiry sessions, or a combination of these.

Variations

12. 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.

Fees for necessary wayleaves

13. 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 for necessary wayleaves 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

14. 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.

Transitional arrangements

15. It is proposed that 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.

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