

Department of Energy and Net Zero
Electricity Infrastructure Consenting in Scotland
CONSULTATION RESPONSE

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?

Response: We agree in principle that there should be a pre-application phase for onshore wind farm applications but only if the following requirements are fulfilled:

- (i) EIA regulations should apply to both onshore and offshore windfarm applications. (EIA regulations already automatically apply to major grid network expansion)
- (ii) It is proposed that the pre-application process must be a “meaningful” consultation with the public. “Meaningful” must be defined in any amendment to legislation. Currently, it is meaningless.
- (iii) The consenting/local authorities must be in control of the timing, content and administration of the pre-application stage. The applicant must not be allowed to be in control. As an example, please see <https://www.thecourier.co.uk/fp/news/perth-kinross/5126210/methven-solar-farm-door-to-door-calls/>
- iv) All responses must be sent directly to the consenting/local authority and Scottish Government. They should be properly recorded and published (with personal details redacted) so that an EIA scoping response is framed appropriately and that the 'meaningful' response to the pre-application consultation by the developer is actually transparent, accountable and auditable. Responses should not be sent solely to the applicant.
- (v) There is no provision for data and privacy protection if individuals send responses directly to a commercial developer. Personal details may be shared with unknown persons within and out with that company which may discourage participation for fear of retribution. This has happened in the past. Compliance with GDPR is crucial.
- (vi) Developments often impact more than one community council and straddle more than one local authority area. There needs to be at least two consultations in each community council area in all affected local authority areas at both the pre-application and application phase.
- (vii) There needs to be time to ensure consultations are well attended: community councils typically meet once a month and it is a challenge to alert dispersed rural communities. Consultations should not be held during or near to holiday/bank holidays. A minimum of 2 months' notice is required. Including the Preliminary Information Report, the Statement of Community Consultation and the Pre-application consultation report, we believe that 20

weeks would probably be acceptable for the pre-application phase. The Acceptance stage needs to allow time for communities and the relevant planning authority to respond to the report. Approximately 12 weeks would be our estimate.

(viii) For network projects, it is crucial that a multistage consultation process is implemented as these are large and complex and usually cover multiple community councils.

(ix) Generation proposals require transmission and are not viable without it, and vice versa. Both must be considered together.

(x) Communities are overwhelmed with pre applications/applications containing many technical documents which they do not understand. They are at a significant disadvantage compared to the applicant and planning authorities. They respond on a volunteer, unpaid basis and may have to fundraise to pay for experts to counter misleading statements made by developers. If they are unable to raise funds and that is very often the case, they may refrain from commenting. See responses to our [Petition PE1864: Increase the ability of communities to influence planning decisions for onshore windfarms](#) for more information.

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?

Response: We agree that there should be a pre-application phase for offshore wind farms. Our responses to Q1 above also applies to this question. Pre application consultation with fishing and affected coastal communities and the fishing industries should also occur, as well as with statutory consultees, including RSPB and Marine Scotland.

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?

Response: We agree there should be a pre-application phase for all onshore applications for electricity generating stations and for all network projects just as EIA requirements should also apply to all such developments. Wind farms (defined as two or more turbines) as well as industrial sized single turbines should all be subject to EIA.

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?

Response: We agree in principle. There should be a multistage consultation process for all Schedule 1 network projects to ensure meaningful consultation with all affected communities, many of which have poor internet connection. See Question 1 response for further comments.

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?

Response: We agree. The Pre-Application phase should allow time for meaningful consultation with communities and relevant planning authorities. To submit all the relevant reports would require at least 20 weeks (see comments (vii) in Question 1 above).

The Acceptance stage needs to allow time for communities and the relevant planning authority to respond to the report. Communities will already be aware of the application so this can progress more quickly, perhaps 8 weeks, with another 4 weeks for report writing, etc., giving a total of 12 weeks for the Acceptance stage.

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?

Response: We absolutely agree that the Scottish Government should charge fees for pre application functions. Local Authorities and Community Councils should also be able to charge fees to recover any costs they reasonably incur in responding to an application.

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?

Response: Impossible to say. Adequate and meaningful consultation cannot and should not be rushed. Communities need adequate time to respond and their views must be given proper consideration, otherwise consultation is worthless. The reforms may risk creating confusion and delay as all parties try to get to grips with new duties and requirements. It therefore remains to be seen whether the changes will be a help or hindrance.

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?

Response: We agree with the proposal for increased information requirements in applications but details of what increased information is required must be included in amended legislation so that this can be enforced, as is suggested in the consultation proposal

(i) alternative approaches should be considered e.g. undergrounding of cables, solar panels on rooftops/central reservation of motorways.

(ii) the statements of benefits must be realistic and give greatest consideration to the impact on people and the environment. Statements of benefits and costs to nature (as per the EIA) should **both** be clearly identified, given the harms that renewable developments cause the natural environment.

(iii) the statement of all components requiring consent should take a total project view, considering the impact of generating and transmission projects together.

(iv) Developers should be required by law to provide appropriate compensation to individuals/communities most affected by any development, including for loss of property value, negative impact on residential amenity etc. Other social and local economic benefits should be developed with communities and set out in a detailed way, forming part of the approval process.

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

Response: We agree detailed information requirements should be set out in regulations.

A detailed plan showing location of all infrastructure should be a basic requirement of any planning application. All components of the development must be provided and mapped at the pre application stage to avoid uncertainty and allow efficient understanding and processing of an application.

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

Response: Professional support for community councils should be funded through the Scottish Government to help with their understanding of multiple, technical documents to enable them to make well informed decisions at the pre application and application stages.. Funding is also necessary to allow the community council to survey the entire community by post or by phone (this will require additional time). For more information see [Petition PE1864: Increase the ability of communities to influence planning decisions for onshore wind farms, part 2 \(empowering local authorities to ensure local communities are given sufficient professional help to engage in the planning process.](#) Funding should now be extended to community councils responding to applications for all renewable energy developments including associated infrastructure. This would allow community councils to participate on equal terms with other consultees.

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?

Response: The forum should include lay membership and representation from rural community councils. As currently proposed it does not adequately represent the public's interest.

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

Response: Professional support is essential for statutory consultees in order to allow them to make an informed response and compete on equal terms with the applicant's experts. ECU environmental and planning expertise should be made available on request to answer questions from all statutory consultees, including community councils.

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

Response: We agree that well resourced developers should have time limits imposed on them in which to submit required information. Time limits for under resourced statutory consultees would not be helpful, particularly Community Councils. They generally only meet on a monthly basis and have to consult residents across a wide area.

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?

Response: We absolutely agree. Multiple amendments by applicants cause delay and frustration due to the extra work created for communities, consultees and individuals. The submission of amendments by applicants is regarded as a deliberate strategy to gain consent for a development which would otherwise have attracted significant objection. Multiple amendments submitted close to an Inquiry is unfair and causes confusion.

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?

Response: We agree there should be a time limit with an enforced deadline after which no further amendments can be made. This should help to shorten the time for the determination of planning decisions.

PUBLIC INQUIRIES

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

Response: Many of our members have been involved in both public inquiries and hearings. Individuals and communities are disadvantaged in a Public Inquiry situation where they face teams of professionals and the applicant's consultants, who are well able to present windfarm applications in their most favourable light, and at the same time seek to

marginalise the evidence from public witnesses. Third party objectors often cannot afford any expert help/professional representation whatsoever.

Live streaming and archived video footage of Inquiries visible on the DPEA website, has resulted in prospective public and lay participants witnessing what they perceive to be personal and vicious attacks on local objectors by experienced lawyers employing aggressive cross examination techniques. Whilst such techniques might be suitable in a criminal court setting, in those circumstances, the witness would have the protection of counsel or intervention by a judge if there was irrelevant and intimidating questioning. No such protection is provided for a public witness at a planning Public Inquiry; it is seen as a 'no holds barred' arena for the appellant's legal team. Many bona-fide people, giving of their best in the local interest feel they cannot cope with the psychological or financial strain of becoming involved in such a combative and unequal process. It seems to us that the appellant's legal team frequently seeks to discredit a public witness on a personal basis and, as a consequence, their opinions and evidence before the Inquiry are diminished and ignored. Some Community Councils and members of the public will simply withdraw their representation.

We believe that this is a one-sided process which acts as a barrier to effective public engagement in the planning process; the opposite result to that which the Scottish Government is seeking to achieve.

Our Petition PE1864 to the Scottish Parliament requests public funding for the provision of an independent advocate to give professional help and support to local participants and ensure they are not bullied and intimidated during public inquiries and to help them compete on a level playing field with the appellant. A survey of our members indicated that the vast majority are more than happy to take part in an Inquiry if they have adequate support to do so. This information has been passed to DPEA.

Fundraising to pay for professional help is out of the question for many small communities. Many larger communities are able to raise enough funds to take part in one Inquiry but when faced with multiple inquiries, they are unable to raise sufficient funds and they may withdraw from the process.

This consultation promotes a "watering down" of inquiries, further removing public participation. This cannot be allowed to happen. Less inquiries would of course avoid expense being incurred by the Scottish Government for the provision of a public advocate to support individuals and communities at inquiries, as required in our Petition. We believe this may be one of the reasons behind this proposal to hold less inquiries. Taking part in Inquiries with the support of an advocate is of particular importance to our members and is supported by the Committee and consultees to the Petition. It would increase public participation and level the playing field between third parties and the appellant.

Without professional help and advice any inquiry participant would be disadvantaged. This is an obvious breach of Article 6 of the European Convention on Human Rights.

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

Response: We do not agree. We do not wish to see the automatic triggering of a public inquiry diminished. It currently allows individuals and communities the right to present their concerns and supporting evidence. That does not happen at a Hearing where participants are invited to speak on matters as directed by the Reporter, or in written proceedings where a decision is made after a Reporter considers objectors comments, which will often have

been subject to a cut off date and made months before a consent decision is made by Scottish Ministers. The Reporter currently has the discretion to set a combination of written and oral proceedings, but to decide whether or not third parties can make any meaningful contribution to determination puts too much power into the hands of one person.

VARIATIONS OF NETWORKS 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?

Response: We agree that there should be a clear statutory process for variations of networks projects, however we do not agree that this should be at the sole discretion of the Scottish Government. It must include the opportunity for communities and relevant planning bodies to give input and object. The right to object and make comment must be retained - as laid out in EIA regulations, when there is any new information submitted by the developer. This should include the right to comment and object if the Scottish Government decides unilaterally to change a consent. At the moment, it is proposed that right is only given to the developer/consent holder and the local authority.

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?

Response: We do not agree. Public notification must be given with the opportunity for any interested party to comment on proposed substantial variations. Substantial variation or change from the agreed consent must be defined in legislation.

The proposals remove regard to any public notification or representation. This is not democracy!

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?

Response: Should any application documents be submitted by the developer/agent which are incomplete or imprecise, the Scottish Government should be able **to suspend or revoke consents**.

FEEES 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?

Response: We agree that Scottish Government should charge fees for wayleaves applications and recover their costs.

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?

Response: We agree that consenting and planning authorities should charge fees for pre-application functions and recover their costs.

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?

Response: We do not agree. The proposed changes will make it more difficult for third parties wishing to appeal as it reduces the avenues available and the timescale to organise and raise funds to support an appeal. The proposed changes are focused on pushing through more "renewables" infrastructure, doing so faster, and reducing risk (and therefore costs) for developers. The public, justice and the environment have been disregarded.

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?

Response: We do not agree. The proposed change is likely to contravene the Aarhus convention and related EU Directives on public access to Justice in Environmental Decision making.

6 weeks is not enough time to initiate a challenge to a consenting decision for onshore electricity infrastructure. These are complex projects that significantly impact people and the environment. Time is needed for consideration and fund raising. Protective expenses orders and/or legal aid take time to organise. This suggestion is preposterous and restricts access to justice. The period must be maintained at 3 months.

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?

Response: We do not agree. This has the potential to be problematic. Some aspects of the proposed changes might adversely affect objections to ongoing applications.

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?

Response: We disagree with the package. Please refer to comments in all sections above.

The Consultation document contains no mention of nor shows any apparent intention of changing the 50MW threshold in conjunction with ensuring that demonstration of local support is a key material consideration in the decision-making process, as requested in our

Petition. This was supported by the Petition Committee in their letter to the Minister dated 17 March 2023. Despite the vast majority of respondents to the Investing in Planning Consultation being in favour of an increase in threshold (only developers and their agents being opposed), this important issue appears to have been ignored by the Scottish Government. Whilst the Scottish Government (and UK Government) are evidently able to consider and timetable an imminent change to the Electricity Act and Town and Country Planning (Scotland) Regulations to facilitate faster consenting of large onshore windfarms and new network applications (to comply with the new Labour UK Government targets and imperatives), there is no such imperative to allow communities more say in the consenting process, other than at the pre application stage. This is contrary to what the petition requested. Legislative changes are potentially being rushed through to facilitate consent of commercial applications in a matter of months. The consultation actually appears to make community influence on the consenting process even more limited than at present.

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

Response: Ensure Environmental Statements are completed by experts whose qualifications and experience can be easily verified and all concerns raised by members of the public and statutory consultees have been addressed at the pre application stage.

ADDITIONAL COMMENT

To this day there is not a level playing field, and these proposals won't create one. Applicants can far more readily afford to pay expensive lawyers and consultants to fight their corner than can objectors and they can set those expenses against tax. If government genuinely wishes to see communities properly consulted, considered decisions made, and inappropriate developments turned down, then the playing field should be levelled. We have long argued that funding should be made available to enable objectors to present their objections in a professional manner. Among the proposed changes we find this (on page 22): "*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*". Community Councils need to be given the same status and support as other statutory consultees for this to be applicable.

That has long been a requirement of the Environmental Impact Regulations since 2017 for applicants and consenting authorities and this need was reiterated by the UK Supreme Court in July 2024.

We say it's beyond time to provide specialist support (or funding to facilitate specialist support) to objectors. That is what our Petition to the Scottish Parliament requests and it has the support of the Public, the Petitions' Committee and Consultees.
<https://www.parliament.scot/get-involved/petitions/view-petitions/pe1864-increase-the-ability-of-communities-to-influence-planning-decisions-for-onshore-windfarms>

Aileen Jackson

On behalf of Scotland Against Spin