



UK GOVERNMENT CONSULTATION: ELECTRICITY INFRASTRUCTURE CONSENTING

Report by Chief Planning Officer

PURPOSE

- 1.1 The purpose of the Report is to seek homologation of a response submitted to the UK Government's Consultation on Electricity Infrastructure Consenting in Scotland.

EXECUTIVE SUMMARY

- 2.1 The UK Government has published a consultation on the reserved matter of Electricity Infrastructure Consenting in Scotland. There is the perception that elements of the Scottish infrastructure consenting system are outdated and no longer fit for purpose and, through this consultation, the UK Government is seeking views on reform of the Scottish system to align with the recently modernised English and Welsh systems.
- 2.2 The text of the response submitted in response to this consultation, which fell between Committee series', is attached at Appendix 1 but the key points highlighted are:
 - structured pre-application processes should be introduced with fuller, formally recorded, community engagement;
 - completion of adequate community engagement should become a formal application 'gate';
 - any new Planning fees realised should not be retained by Government but should return to the Planning Authority processing the application(s);
 - Government should be resourcing the Planning service to an adequate level where Planning Authorities face an increase in major project applications;
 - the growing resource imbalance between Central Government Consents Units and Planning Authorities is of concern to the Comhairle;
 - removal of the statutory right to Public Inquiry in favour of a Reporter's Assessment, while time and cost saving for Government, should be approached with caution – the subjective view of a Reporter is no match for the rigour, independence and transparency of the Public Inquiry and the community should never feel disempowered, disenfranchised or excluded;
 - removal of the Public Inquiry option could undermine confidence in the Planning system while forcing participants down the expensive alternative route of legal challenge;
 - variations to projects should only be granted for non-material changes, closely defined and widely understood, with significant changes requiring re-application; and,
 - pace of delivery in consenting can be constrained by factors out with the control of the Planning Authority so Planning process changes, by themselves, do not guarantee accelerated delivery.

RECOMMENDATION

- 3.1 **It is recommended that the Comhairle homologate the response submitted to the UK Government's Consultation on Electricity Infrastructure Consenting in Scotland.**

Contact Officer: John Cunningham, Chief Planning Officer, jcunningham@cne-siar.gov.uk
Appendix: Response to Government Consultation on Electricity Infrastructure Consenting
Background Papers: None

IMPLICATIONS

4.1 The following implications are applicable in terms of the Report.

Resource Implications	Implications/None
Financial	None
Legal	None
Staffing	Additional workload and service delivery pressures for the Comhairle as Planning Authority (pre-application stage and as a statutory consultee) should the reforms be progressed as outlined in the consultation document.
Assets and Property	None
Strategic Implications	Implications/None
Risk	None
Equalities	None
Corporate Strategy	Links to the Corporate Strategy 2022-2027 action – ‘ensure our planning and connectivity infrastructure meets the needs of our community’.
Environmental Impact	None
Consultation	None

BACKGROUND

- 5.1 The UK Government has published a consultation on the reserved matter of Electricity Infrastructure Consenting in Scotland. There is the perception that elements of the Scottish infrastructure consenting system are outdated and no longer fit for purpose and, through this consultation, the UK Government is seeking views on reform of the Scottish system to align with the recently modernised English and Welsh systems.
- 5.2 The purpose of the consultation is to set out a package of reform that reflects Scotland’s growing renewable electricity sector and ensures that there is a robust, timely and proportionate consenting process which meaningfully involves communities and relevant planning authorities in decision-making.
- 5.4 As the consultation closed on 29th November 2024, homologation of the response at Appendix 1 is being sought.

CONCLUSION

- 6.1 The Comhairle’s response to the consultation highlights the extent to which proposals for Electricity Infrastructure Consenting reform in Scotland will lead to increased pressure on already under-resourced Planning Authorities, and that Planning Authorities must receive resources to deal with any additional workload generated as a result of these reforms. In addition, the removal of the statutory right to Public Inquiry is highlighted as a particular area requiring further consideration.

UK GOVERNMENT CONSULTATION ON ELECTRICITY INFRASTRUCTURE CONSENTING IN SCOTLAND

PRE-APPLICATION REQUIREMENTS

1. 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?

Yes, there should be structured pre-application processes for onshore applications to ensure a higher quality of application and meaningful engagement with the local community should be a central feature of this. There should be a protocol for advertising community engagement opportunities, promoted through the Community Council network, and any physical consultation should be replicated online to increase reach. Pre-application engagement with the Local Authority will increase the resource required to process Planning applications, leaving the Local Authority under-resourced while fees charged go to the Scottish Government. As things stand, Local Authority Planning Departments are barely equipped to handle day-to-day Planning applications and this pre-application burden will place further strain on the service. If this goes ahead, Planning Authorities must be resourced to deal with the resulting additional workload.

2. 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?

As answer to Q1 above.

3. 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?

Yes, pre-application engagement should enhance the level of detail submitted with the main application. The sheer volume of EIA documentation being submitted under the current regime can make assessment of EIA's by a small Planning team challenging. Any opportunity to guide developers towards a more focused and relevant EIA through pre-application discussion would be welcome.

4. 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?

Introduction of a Scottish Government acceptance stage makes sense and should encourage more robust pre-application consultation. Local Authorities should be given the opportunity to judge whether community engagement at the local level has been sufficient so pre-application consultation reports should be shared with Local Authorities for this assessment to be made before the Government confirms acceptance. Online consultation should be required alongside the two community engagement events proposed – this will ensure deeper engagement with the community.

5. 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?

As for Q4 above and the acceptance stage should be in the range of 21 to 28 days. Impact here is on Scottish Government processing times so little impact on Local Authority services.

6. 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?

Yes but a considerable proportion of pre-application activity will inevitably fall on the Local Authority Planning service at a time when it is not resourced to meet this demand. As noted in Q1 above, this will be another new, unfunded duty for the Planning Authority so a proportion of the fee charged should go to relevant the Local Authority to ensure sufficient processing resource is in place (similar to the arrangement where Marine Consenting shares fee with the Local Authority for statutory consultation work).

7. 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?

Effective pre-application processes should speed up the entire process as the application will reflect a deeper understanding of community opinion and should be of a higher quality overall. The acceptance provision should ensure effective pre-application engagement with the Planning Authority, the community and key stakeholders and should result in the submission of more targeted, focused and relevant information with the main application with less need for the Planning Authority to go back over areas overlooked by the applicant.

APPLICATION INFORMATION REQUIREMENTS

1. 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?

Yes. The current practice of requesting a description of infrastructure with reference to a map is inefficient. A detailed plan showing all infrastructure should be required with statements on option appraisal and cost-benefit analysis work. This aligns with the level of detail TO's are required to submit to OFGEM in their Needs Cases. Applications should be validated against a defined list of required information before processing of the application commences.

2. 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?

Yes, as Q1 above.

APPLICATION INPUT FROM STATUTORY CONSULTEES

1. What are the reforms that would be most impactful in enabling your organisation to provide timely input on section 36 and section 37 applications?

Comhairle nan Eilean Siar is facing a period of massive growth in Renewable Energy consenting. At this point in time, one 200MW Onshore Wind Farm has just been re-consented, a second 200MW Onshore Wind Farm is going through re-consenting and a 1.8GW HVDC Converter Station is in EIA Scoping, ahead of a full Planning application in February 2025. Immediately following that, the Comhairle will be Statutory Consultee for two Marine Scotland Offshore Wind Farm consents totalling 1.4GW and has been notified that it will be the Planning Authority for three related onshore substations. Existing staffing resource within the Planning service is barely sufficient for delivery of day-to-day Planning and yet the Planning service is expected to lead the consenting process for the £6.2bn worth of construction contracts coming towards the Comhairle between now and 2030. Repeated calls to the Scottish Government for additional Planning resource have not borne fruit and, regrettably, the Comhairle has been forced to divert part of its Crown Estate revenues towards supporting the Planning service. It is unlikely that a new Planning Hub providing technical advice and training will help in dealing with this challenge – the real need is for Planning Officers to process applications in-house. Setting time limits for a chronically under-resourced service will be counterproductive and will lead to stress and demotivation.

2. 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?

It is difficult to see how a chronically under-resourced service will benefit from a forum which considers reasons for delay. The Planning team is already working to capacity and beyond and the only effective intervention is additional Planning resource, but this has not been made available.

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

NatureScot are currently trialling a new, AI-driven, 'Informed Decision' consultation process in the South of Scotland. Early indications are positive, and the Energy Consents Unit should assess this process for wider roll-out. AI access to internal databases will be important and it is understood that a level of interoperability with Local Authority Planning Portals may be required although a serious cyber incident in November 2023 resulted in the loss of all historic Comhairle nan Eilean Siar online Planning Portal content. Again, additional

resource will be required for the laborious task of re-populating the Portal with historic data but there is no indication of where this resource might come from. On the face of it, NatureScot's system could significantly improve consultation response times, translating through to speeded up consenting processes.

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

No. Unless accompanied by new staffing resource, this will simply add pressure to already overstretched staff and lead to frustration, demoralisation and, possibly, burnout.

AMENDMENTS TO APPLICATIONS

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

Yes, developers will soon adapt, and work, to the new deadline and the volume of potentially abortive work by Planning staff will be reduced.

2. 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?

No, for consistency and predictability the limit should be standard across all applications.

PUBLIC INQUIRIES

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

The Comhairle has limited experience with public inquiries. Nevertheless, the public inquiry can be a valuable tool for Local Authorities and others who object to projects, ensuring rigour, independence and transparency in the handling of challenge. At the same time, it is acknowledged that a public inquiry can be very time-consuming and expensive in terms of legal representation for participants, including the Local Authority.

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

Removal of the statutory right to a public inquiry should be approached with caution. While enhanced pre-application engagement with the community might speed up processes, the community should never feel disempowered, disenfranchised or excluded. The subjective view of a reporter is no match for the rigour, independence and transparency of the public inquiry and removal of the public inquiry option could undermine public confidence in the Planning system while forcing participants down the expensive, alternative route of legal challenge. While the Comhairle is concerned about the time-consuming nature of the public inquiry and the potential cost of employing KC-level legal representation where required, this must be balanced against a perception of a democratic deficit and compromised transparency should the statutory right to a public inquiry be removed.

VARIATIONS OF NETWORK PROJECTS

1. 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?

Yes but variations should only be granted for non-material change with 'non-material' closely defined and widely understood. This cannot become a back door for significant variations which should require re-consenting. The requirement for full re-consenting for a material variation should be retained.

VARIATION OF CONSENTS WITHOUT AN APPLICATION

1. 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?

Variations of consent should only be made for non-material variations (see above) and at the consent holder's request and there should be provision for this through a 'non-material variation request' process which does not require a whole new S36 or S37 consent application. It is difficult to justify the Government unilaterally modifying a consent without the permission of the consent holder.

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?

No.

FEES FOR NECESSARY WAYLEAVES

1. 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 but the same principle of identifying additional funding to address "increasing financial and staffing pressures, which will create additional burdens on already constrained services" should be applied to Planning Authorities struggling to cope with Renewable Energy infrastructure expansion. The Government's staff complement for consenting seems to be growing while the Local Authority's is shrinking at a time when more and more unfunded Planning duties are being passed to Local Authority Planning services. There should be a comprehensive review of the resourcing of Planning services across all Scotland's Planning Authorities as staff levels seem to differ markedly from comparable Planning services in England.

2. 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 but again, the Government should pursue the same principle for Planning Authorities as it does for its own services – ensuring that adequate resource is in place with full cost recovery.

STATUTORY APPEALS AND JUDICIAL PROCEEDINGS

1. 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?

The Comhairle has limited experience of judicial proceedings but the current system, which has developed through the mature Planning in Scotland, seems to be working well.

2. 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?

Reduction of the current three month window to six weeks should not affect the viability of challenge.

TRANSITIONAL ARRANGEMENTS

1. 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?

No view on this.

THE PACKAGE OF REFORMS

1. 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?

The reforms should not be approved or rejected as a single package. Some are acceptable, others are less acceptable, and some differentiation should be allowed within the package. It should be remembered that intervention in consenting does not guarantee increased pace in other areas of the infrastructure delivery process and there is the danger of potentially disruptive consenting changes not delivering the speeded up whole process that the Government seeks. The growing resource imbalance between central Government and Local Authorities could be perceived as part of a drift towards centralised Planning and this is something the Comhairle will vigorously oppose.

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

The single most significant improvement would be the adequate resourcing of Planning Departments. Year-on-year Government cuts to Local Authority budgets have led to an erosion of Planning Departments and it is now no surprise that many Planning teams will struggle to process the growing volume of Renewable Energy applications being received. Planning Hubs, time limits and increased powers for the Energy Consents Unit will do little to improve processing times in a chronically under-resourced Planning service.

EVIDENCE AND ANALYSIS

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

It is accepted that modernisation of processes in Scotland will require amendments to primary legislation, but the scale and nature of this modernisation is the key issue. As illustrated above, some changes will result in an acceleration of consenting but could also have the potential to disenfranchise the community and erode public confidence in the Planning system. Individual changes should be taken on a case-by-case basis and should not be hastily pushed through as a package. The Comhairle has particular concerns around the removal of the statutory right to the public inquiry process and how that might impact public confidence in the Planning system and perceptions of democratic deficit. Similar questions exist around the idea of statutory appeal versus judicial proceedings.

Although changes here relate to UK legislation, they will feed through to Scottish policy and should, therefore, be subject to an Islands Community Impact Assessment under the Islands (Scotland) Act 2018.