

Agenda Item	8
Report No	HC/45/24

The Highland Council

Committee: The Highland Council

Date: 12 December 2024

Report Title: UK Government Consultation: Electricity Consenting in Scotland

Report By: Assistant Chief Executive - Place

1 Purpose/Executive Summary

1.1 On the 28 October 2024, the UK Government published the consultation *Electricity Infrastructure Consenting in Scotland*. The closing date for the consultation was 29 November 2024. The purpose of this report is to advise Members of the Officers response to this consultation. The UK Government has tentatively agreed that any further comments agreed at this Council meeting can be added to the formal response.

1.2 The response is contained within **Appendix 1** to this report.

2 Recommendations

2.1 Members are asked to:-

- i. **Note** the officer response set out in Appendix 1; and
- ii. **Agree** to add any further points raised at the meeting to the Council's formal response.

3 Implications

3.1 **Resource** – the proposals are likely to have resource implications although it is expected that these will be met from existing budgets.

3.2 **Legal** – one of the implications of the proposals are that Schedule 8 of the Electricity Act 1989, which currently requires a public inquiry to be held where a local planning authority object to a project that it is consulted on, will be disapplied and instead it will be for a Reporter appointed by Scottish Ministers to decide on the way in which a proposal will be examined prior to decision.

3.3 **Risk** - no specific implications to highlight.

3.4 **Health and Safety (risks arising from changes to plant, equipment, process, or people)** – no specific implications to highlight.

3.5 **Gaelic** – no specific implications to highlight.

4 Impacts

4.1 In Highland, all policies, strategies or service changes are subject to an integrated screening for impact for Equalities, Poverty and Human Rights, Children's Rights and Wellbeing, Climate Change, Islands and Mainland Rural Communities, and Data Protection. Where identified as required, a full impact assessment will be undertaken.

4.2 Considering impacts is a core part of the decision-making process and needs to inform the decision-making process. When taking any decision, Members must give due regard to the findings of any assessment.

4.3 This is a report relating to a consultation by the UK Government and therefore an impact assessment is not required.

5 Background

5.1 In Scotland, the Scottish Ministers are responsible for consenting energy projects over 50MW in size (1MW in the case of hydro) as well as electricity transmission projects.

5.2 For territorial applications the process is administered, on behalf of Scottish Ministers, by the Energy Consents Unit located within the Energy and Climate Change Directorate. This team is responsible for the receipt and processing of any application submitted to it under the Electricity Act. Some of that process is contained within The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and through Good Practice Guidance for Applications under Section 36 & 37 of the Electricity Act 1989. Provision exists to allow for variations to a consent.

5.3 While not the decision maker, the Local Planning Authority is a key consultee. It is the only consultee that has the power to call an automatic Public Local Inquiry (PLI) to be held if it objects within the specified period (two months for transmission projects and four for power stations).

5.4 An informal arrangement exists where the planning authority are provided a proportion of the fee for processing its consultation response. This reflects the role of the planning authority not only in administering the consultation but, as a consent will be followed by a planning permission deemed to be granted decision, that the Council will be responsible for the satisfaction, discharge and ongoing monitoring of conditions.

- 5.5 Information obtained from the Energy Consent Unit indicates that the time taken to consent a project can be considerable, anything from 2 to 4 years, which is a timescale reflected within the consultation documentation. It is in this context that the reform is proposed.
- 5.6 The Council has, by and large, managed to agree extended timescales in which to respond to ECU to reflect and manage the available resource and extent of amendment required on each proposal. With a requirement for quicker decisions, this has increasingly come under pressure. Having said that, this Council has typically been able to provide responses to consultations within 12-15 months; a figure that is around the average for Scotland as a whole.

6 Proposal

- 6.1 The proposals contained within the consultation document that are designed to make the process for consenting electricity infrastructure in Scotland faster, more efficient and more predictable are:-
1. Introducing mandatory pre-application requirements with relevant stakeholder inputs, including improving the process for community engagement at an earlier, more relevant stage.
 2. Refining the application process.
 3. Reforming the process for when a local authority objects to an application.
 4. Developing procedures for consent variations.
 5. Introducing fees for necessary wayleave applications.
 6. Moving to a consistent statutory right of appeal process for all onshore and offshore consenting in Scotland.

7 Key issues

- 7.1 The overall aim from Government is clearly to speed up the process of consenting. It intends to do this at the same time as increasing the opportunity for community engagement and placing more emphasis on all other aspects of pre-application.
- 7.2 The document includes reference to a need to front load the process, reduce the opportunity that applicants have to amend applications through the process and give clearer target dates to consultees. A crucial change is the proposal to amend the rules around public inquiries.
- 7.3 It is clear that there is a need to improve consultation with communities prior to the submission of a proposal. This should be supported, albeit that what this might mean in practice is not established. Further detail will be required to ensure that this engagement is meaningful and that communities will have influence over projects. There is no suggestion that there will be provision for additional resource to communities to assist with their capacity in engagement.
- 7.4 Overall, these aspects are bringing the Electricity Act closer to the way in which major and national planning applications are dealt with under the Planning Acts.

- 7.5 The proposal to remove the automatic right of public local inquiry (PLI) where there is a timeous objection would also bring the consenting process in line with that of the appeals process under the Planning Acts. It is accepted that not all matters that may be raised within an objection may need to be tested within a formal public inquiry setting; many aspects are dealt with already under written submission and/or within hearing session procedures. However, it is an important safeguard to ensuring that the views of the local authority are taken seriously.
- 7.6 The more significant reasons for the delay for the Council responding to consultation requests can be explained by two key limiting factors: the quality of applications at submission and that changes to proposals are often made during their processing. The consultation document proposes greater scrutiny at pre-application and a reduction in the ability to amend schemes during the process. These are both welcome amendments. Having said that the Council operates a pre-application advice service that is well utilised and provides a valuable additional income stream. There are concerns that the proposed emphasis on pre-application might involve Council's inputting at an earlier stage in another process or one that by-passes the Council's current arrangements.
- 7.7 Resource is a constraint to managing the process. While the Council's planning team has a good level of experience with energy development applications and resource is available, the volume of applications expected over the next few years and the availability of experienced planning officers does present a challenge. This will also be experienced by internal consultees that make a valuable contribution to the Council's responses. The current fee arrangements are voluntary with no indication of whether they will be increased to accommodate any proposed pre-application processes. There is also no guarantee that they will remain in place.
- 7.8 The Resourcing Planning consultation recently undertaken by Scottish Government provided an indication that there would be reconsideration of the current MW thresholds that may have the effect of more applications for onshore generating stations to be considered under the Town and Country Planning (Scotland) Act (TCP(S)A). While this is relevant to the fee issue, providing increased revenue in which to invest in Council services, ensuring that more applications come under the remit of TCP(S)A rather than the Electricity Act, would mean that decisions would not only be made more quickly, increasing certainty and investment confidence, but would reduce the current perceived imbalance in democratic accountability that is often highlighted in representations and has been an issue that has been raised with Scottish Government through the public petitions committee. The Scottish Ministers have the ability to amend the MW threshold. As such it does not form part of this consultation.
- 7.9 The current process is in effect double handling. While the evidence indicates that it takes longer than it should for Local Planning Authorities to respond to these consultations it would appear that this timescale is unlikely to be greater than it would take to process an application for planning permission. Having provided a response, it can take as long again to be considered by the Energy Consent Unit before Ministers then have a chance to sign it off.

7.10 While many of the proposed changes, subject to further detail, are likely to result in positive changes to the consenting process, in particular the proposals relating to pre-application consultation, with consequent improvements in timescales, the removal of the automatic right of PLI could weaken the ability of the Council to secure positive amendments to a scheme and protect the interest of communities.

Designation: Assistant Chief Executive – Place

Date: 29 November 2024

Author: David Mudie, Area Planning Manager – South

Background Papers: Electricity Infrastructure Consenting in [Scotland](#)
Electricity Infrastructure Consenting in Scotland – Options
[Assessment](#)

Appendices: Appendix 1 - Officer response to consultation 29 November 24

**UK Government Consultation
Electricity Infrastructure Consenting in Scotland
28 Oct 2024**

An officer response by David Mudie, Area Planning Manager, The Highland Council
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Consultation Document

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?
	<p>Largely agree. The requirement for mandatory pre-application with the community brings the requirements of the Electricity Act into line with the existing provisions of the Town and Country Planning (Scotland) Act in respect of national and major development. The current requirements are however limited in scope.</p> <p>It is vitally important for communities to have a say on proposals that are within their area. Early engagement is most important. However, this needs to be meaningful, with communities appropriately engaged and supported [including financially?] in order to fully participate effectively.</p> <p>It is important that there is clear guidance on how such consultation should be approached so that both developers and communities know what to expect. Having said that, there may however need to be some in-built flexibility to enable communities to decide themselves on how they wish to engage in the process rather than design a 'one size fits all' approach. The proposal indicate that engagement strategies will be pre-agreed. The consultation does not propose that this agreement will be with the affected communities but the Energy Consent Unit, and potentially the Local Planning Authority. This may lead to a mistrust of the consultation process.</p> <p>In terms of pre-application with the Planning Authority, this Council has a long established and well used pre-application advice service for national and major applications. This is diarised monthly one year in advance. It provides the opportunity for applicants to present proposals in a roundtable format with the Council providing written advice within 4 weeks of that meeting. This process includes participation from many of the statutory and other consultees. There is a concern that the proposed pre-application approach will impact not only on the Council's capacity to engage with a separate process but may also reduce take up in the service already offered and thereby reduce the current level of fee income achieved at pre-application stage. It is suggested that the proposals should take advantage of the existing processes offered by local authorities, where these exist, rather than duplicate them.</p>

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 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?
	As a principle, yes. However, it is recognised that for some network operations it will depend on their scale and nature i.e. restringing existing lines where there is limited impact. This may also require further consideration.
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?
	<p>Yes.</p> <p>Linear infrastructure projects by their nature are complex and will go through a number of design iterations to refine the preferred line route. It may be useful, both to operator, the community and consultees, to present this at various stages in the consideration of the scheme to ensure that all matters of concern/opportunities have been considered. A multi-stage consultation approach should in theory result in less conflict at application stage.</p>
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?
	<p>Having an agreement over the consultation strategy is necessary in order to reduce dispute at a later stage. However, it should not simply be seen as a tick box exercise, nor should it be independent from those that are being consulted. There would be a concern if the Local Planning Authority was essentially being asked to sign off on the consultation strategy on behalf of the communities.</p> <p>Clear guidance on the expected protocols/principles need to be provided in the form of best practice guidance so that all parties are aware of their respective roles and expectations.</p>
6.	Do you agree that the Scottish Government should be able to charge fees for preapplication functions? Why do you agree/not agree? How might it impact you and/or your organisation?

	<p>While the SG should be able to recover fees, it needs to be recognised that there is a cost to consultees and the public in participating in pre-application engagement.</p> <p>As explained above, there is a concern around the proposed approach to pre-application impacting on fees currently available to the Council through its existing pre-application advice service.</p>
7.	<p>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?</p>
	<p>Pre-application can improve the speed of decision making but only where that pre-application has been meaningfully undertaken and where the outcomes have been properly reflected on to improve the quality of the proposal and the application itself. While the proposal sets out an acceptance stage for the pre-application engagement, who is responsible for ensuring that it has been carried through to the application? This is likely to be the most critical point.</p>

Application procedures

1.	<p>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?</p>
	<p>The required information is set out as including:</p> <ul style="list-style-type: none"> • A detailed plan showing the location of all infrastructure • A statement setting out pre-application engagement with interested parties and how their input has been reflected in the application • A statement on the alternative approaches considered • A statement of benefits and needs • A statement of all components of the proposal requiring consent <p>These will be helpful to determine the full nature and scope of the proposal. It is unclear whether this is apart from or could be contained within the EIAR (where it is EIA development) with the former being more useful. It will not however ensure that there is an improvement in quality of the application. It is therefore difficult to be sure how this will ensure greater efficiency as anticipated within the consultation document.</p>
2.	<p>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?</p>
	<p>Setting out this information in Regulations will ensure a consistency of approach.</p>

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?
	<p>In relation to the proposed amendments to the current process contained within the consultation, it will be necessary to consider setting reasonable timescales with consultees. This should include an option to stagger consultation so that the Local Planning Authority has time to consider the comments received from consultees and the public and report to the relevant planning committee without the risk of losing the right to further procedure. Consultees also require additional resource.</p>
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?
	<p>A forum for discussion on reasons for delay may be useful however it is most likely that information is currently available, gained through experience over several decades. Would a forum deliver any real benefit?</p> <p>It is considered fundamental for there to be a clear process, or framework, for how the application process will work for consultees. This needs to consider the different stages at which consultees will be engaged and a response is required.</p> <p>While it is appreciated that some local authorities will not have specialist advisors within their staffing compliment, providing that advice through a centralised 'Hub' type model would be challenging for this Council. While some aspects of advice may seem to be more technical than others, there is often a need for interpretation/judgement and then discussion on finer details. This requires an understanding on the part of the advisor of the issues at hand on the ground and the position that the authority may have on a certain issues. For example, the authority look to secure lower night time noise levels than recommended in ETSU guidance given the lower background noise levels experienced, or in the case of transportation, while the road may in theory be capable of the intended flows it may not actually be in a fit state of repair in which to accommodate the volumes or type of vehicle. Advice requiring this type of judgement would be difficult to achieve in a centralised resource.</p> <p>Capacity building within authorities may be a better solution or shared resource within geographically linked areas as an alternative.</p>

3.	What specialist or additional support could the Scottish Government's Energy Consents Unit provide to facilitate the statutory consultees' ability to respond?
	It is not considered that there is need for specialist advice that would assist with our responses.
4.	Would new time limits help your organisation to prioritise its resources to provide the necessary input to the application process?
	Yes. However, there would always be a need for flexibility. The Council takes a programme management approach to timescales in which the Committee target date is the key milestone. So, providing all information is present and correct and there is no need for revision/amendment, then in theory that timescale should be met. However, this may not be within 4 months as it will depend on the volume of applications and available resource at that time. There should always be a case by case assessment with parties acting with all reasonable endeavour. Again, it would also be useful for the timescales for responses to be staggered so that the Council has sufficient time to consider the comments of consultees and the public before coming to its decision.

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. As set out within the consultation the current ability of an applicant to amend a scheme through the process results in delay; not only prolonging the consideration of that scheme but can also severely impact on the management of all cases under consideration as resource needs to be constantly shifted. Having a defined point at which amendments can no longer be accepted should reduce this.
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?
	Yes. There does need to be flexibility. However, this must be agreed with all stakeholders as it is likely that amendments will most likely require re-consultation and engagement.

Public inquiries

1.	What is you or your organisation's experience of public inquiries? What are the advantages? What are the disadvantages?
	The Council has significant experience of public inquiries, particularly with regard to renewable energy proposals. The advantages are that the relevant matters can be tested properly with the Reporter able to take a

	<p>more informed position than would be the case with written representations or hearing session, which although can be useful are not as rigorous. The disadvantages are cost, time and that their adversarial nature which can often be a barrier to participation by third parties.</p>
2.	<p>Do you agree with the proposed 'examination' process suggested? Why do you agree/not agree? How might it impact you/your organisation?</p>
	<p>Under Schedule 8 para 2 of the 1989 where a Council object to an application and that objection isn't withdrawn, the legislation states that the Secretary of State "shall cause an inquiry to be held". The 'shall' is a clear indication that something will happen.</p> <p>The opportunity for a Planning Authority to cause a PLI is a key tool in ensuring that the views of the local authority are given an appropriate level of weight in the consideration of a proposal. This is particularly helpful when negotiating changes to a scheme during the consultation.</p> <p>It is recognised that the proposals for examination may be similar to that already available under the Planning Acts and not too distant from the usual hybrid approach currently adopted by Reporters, leaving any negotiating to an examination stage will be too late to incentivise appropriate mitigations to address concerns. It should not be a negotiation at this stage, something that is inferred from practice in England and Wales.</p> <p>The proposal would result in the need for the Council to make representations to the Reporter as to why an inquiry is required and thereby leave the decision to the Reporter on whether those representations are persuasive or not. While having fewer inquiries would be less resource intensive, inquiries can be a key tool into teasing out the issues of a proposed development beyond a case officer's assessment.</p>

Variations of network projects

1.	<p>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?</p>
	<p>Yes. Any proposed Regulations should however ensure that there is re-consultation and the similar opportunity provided to comment further.</p>

Variations of consent without application

1.	<p>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?</p>
	<p>While a variation to modify errors may not have a significant implication and arguably would be non-material, changes relating to environmental</p>

	circumstances or technology may have a material impact. While in principle this seems a sensible approach, there needs to be clear guidance on what would or would not qualify as a material change that would require Ministers to require a S36 variation of consent. Suspending or revoking consents would not have the same implications and would be supported.
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 comment.

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?
	No comment.
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?15 How might it impact you or your organisation?
	No comment.

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?
	Yes.
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?
	Yes.

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?
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	From a practical perspective, it seems appropriate for the provisions to apply to those schemes already in the system at the point that the legislation comes into effect.
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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?
	<p>While broadly the changes will improve much of the process and provide greater opportunity for public involvement, the removal of the Schedule 8 provision whereby a timeous objection shall cause a public inquiry to be held is not recommended. This will have a detrimental impact on our ability as a local authority to influence the outcome of the project.</p> <p>Although not within the scope of the consultation, and a matter for Scottish Ministers to decide, amending the MW thresholds that would bring the majority of onshore generating stations within the scope of the Town and Country Planning system, would achieve much of the change proposed under this consultation, would lead to quicker decisions and greater local democratic accountability.</p> <p>This approach is estimated to take half the time to process an application to decision when compared with the existing consenting process. It would also have the benefit of providing the full planning fee to the Planning Authority in which to increase resource and provide opportunities for skills development.</p>
2.	What steps could we take to ensure the project planning process (including the preapplication stage) can be completed as fast as possible?
	<p>Engage with the existing systems that are in place within the Council and set achievable key milestones that fit with the calendar of pre-application meetings and committee target dates.</p> <p>Arrangements should be made to formalise the current voluntary fee arrangement and other aspects of resource to ensure that there is capacity to respond to consultations promptly.</p>

Options Assessment

Evidence and analysis

1.	Do you agree with the rationale for intervention? Are there any points we have missed?
	While intervention is required, the objectives set out in this consultation could be achieved by amending the MW thresholds to bring more applications into the current Town and Country Planning process rather

	<p>than to tweak the existing system that contains elements of double handling. This approach would result in quicker decisions being made overall.</p> <p>It is not clear from the consultation whether this option was considered and if so why it may have been dismissed.</p>
2.	<p>Familiarisation:</p> <p>a) How long do you think it would take your business to familiarise with the changes to the legislation and how much of an impact on your pre development costs do you expect this to have (either a saving or an increased cost)?</p> <p>b) How many people in your business need to review the legislation?</p>
	No comment.
3.	<p>Impact:</p> <p>a) Do you agree with the impacts that have been identified?</p> <p>i) If not, please explain why with supporting evidence.</p> <p>ii) If you think there are other impacts that have not been identified, please set out the additional impacts with supporting evidence.</p> <p>b) Can you provide further data and evidence to:</p> <p>i) Support a detailed assessment of each of the impacts?</p> <p>ii) Establish whether this policy is likely to reduce delays to transmission network build, renewables or storage projects, and if so how long by?</p> <p>iii) Establish whether there are any groups you expect would be uniquely impacted by these proposals, such as small and micro businesses or people with protected characteristics? If yes, which groups do you expect would be uniquely impacted?</p> <p>Please provide supporting evidence.</p>
	No comment.