

## Briefing for Citizen Participation and Public Petitions Committee for petition [PE2095: Improve the public consultation processes for energy infrastructure projects](#)

### Brief overview of issues raised by petition

The [Good Practice Guidance](#) sets out a procedure for applications made under section 36 and 37 of the Electricity Act 1989 ('The Act') where the development concerned is an Environmental Impact Assessment (EIA) development. Section 3.2 relates to Pre-Application Consultation and Engagement.

Section 36 of the Act requires any proposal to construct, extend, or operate an onshore electricity generating station with a capacity of over 50 megawatts (MW), to gain the consent of Scottish Ministers, with applications processed on behalf of Scottish Ministers by the Energy Consents Unit (ECU).

Section 37 requires proposals to install and keep installed an overhead electric line to conform to the same requirements.

There are no statutory Pre-Application Consultation (PAC) requirements for energy consent applications under Section 36 or 37 of the Act. Instead, the carrying out of PAC with the public is considered 'good practice'.

In the Good Practice Guidance for Applications, section 3.2 relates to 'Pre-Application Consultation and Engagement', and it states that:

- "The carrying out of pre-application consultation with the public is **considered good practice** and applicants are encouraged to have meaningful engagement at the **earliest possible stage** with any communities or groups who would be affected by development proposals."
- "Whilst there are **no statutory pre-application consultation procedures** for section 36 and section 37 applications under the Electricity Act, the minimum expectation is that applicants carry out pre-application consultation as set out in Table 1 below. The applicant is asked to set out in advance to ECU how they will carry out pre-application consultation. Applicants for section 36 and 37 consents are asked to submit a preapplication consultation report with their application for proposed developments that are EIA developments."

The stipulated expectations for PAC (from the aforementioned Table 1) include:

- "... to hold at least two public consultation events prior to submitting the application"
- "At least seven days before holding a public event, the applicant should publish on the applicant's website and in a local newspaper circulating in the locality in which the proposed development is situated a notice containing" details of the event
- The applicant should provide a description of the development at the public event and publish these details on the applicant's website
- The applicant is expected to prepare a pre-application consultation report ("PAC Report") setting out what has been done to accord with the guidance

## **Background to electricity infrastructure**

A single integrated electricity grid operates on the island of Great Britain, with responsibility for most energy policy resting with the UK Government and UK Parliament. This includes the regulation of the energy sector which is delegated by statute to an independent regulator; the Office of Gas and Electricity Markets (Ofgem).

While policy and regulation relating to electricity networks are reserved matters, devolved policy can have substantial implications for the networks' future, as [planning and consents law is 'almost entirely devolved'](#).

## **Policy developments**

The Scottish Government's [Draft Energy Strategy and Just Transition Plan](#) sets out that:

- "Significant infrastructure investment in Scotland's transmission system is needed to ameliorate constraints and enable more renewable power to flow to centres of demand. National Grid ESO has identified the requirement for over £21 billion of investment in GB electricity transmission infrastructure to meet 2030 targets. Over half of this investment will involve Scottish Transmission owners SPEN and SSEN. The most recent Network Options Assessment from the ESO also includes two major subsea links to England from Peterhead."

The [National Grid recently published a Beyond 2030 Report](#) which 'makes a set of network recommendations throughout the 2030s' with network upgrades totalling £58billion. They plan to publish a Centralised Strategic Network Plan in 2026.

Further recent policy developments that affect the planning and consenting of electricity infrastructure include the [National Planning Framework 4 \(NPF4\)](#).

In the NPF4, "New and/or replacement upgraded on and offshore high voltage electricity transmission lines, cables and interconnectors of 132kv or more" is classed as a 'national development'.

- 'A development contributing to 'Strategic Renewable Electricity Generation and Transmission' in the location described, within one or more of the Classes of Development described below and that is of a scale or type that would otherwise have been classified as 'major' by 'The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009', is designated a national development'

On Energy, the 'Policy Intent' section set out:

- 'To encourage, promote and facilitate all forms of renewable energy development onshore and offshore. This includes energy generation, storage, new and replacement transmission and distribution infrastructure'.

The wider Energy policy section included the following:

- 'Development proposals for all forms of renewable, low-carbon and zero emissions technologies will be supported.' Including 'enabling works, such as grid transmission and distribution infrastructure;'
- 'Grid capacity should not constrain renewable energy development. It is for developers to agree connections to the grid with the relevant network operator. In the case of proposals for grid infrastructure, consideration should be given to underground connections where possible.'

The UK's Electricity Networks Commissioner, Nick Winser, was appointed in July 2022 as an independent advisor to government. The [Winser Review findings and recommendations](#) were published in August 2023. The recommendations include some that were focused on planning in Scotland:

- SP1: 'The automatic requirement for a public local inquiry when the planning authority objects should be removed. An alternative process should be introduced that would allow Scottish Ministers to hear more about a specific issue raised by statutory consultees as an alternative to a public inquiry.'
- SP2: Further improvements should be made to the planning process to reduce the time taken to obtain planning consent to twelve months. Changes to the Electricity Act 1989 could be made or a new supporting process introduced. Changes should include, but are not limited to:
  - Introduction of pre-application requirements to reduce the need for additional information requests. Pre-application requirements could include environmental surveys and community engagement.

## Scottish Parliament Action

[PQ \(S6O-02961 Tess White\) \(Lodged 10<sup>th</sup> January 2024\)](#): To ask the Scottish Government whether it plans to review the consultation process for energy infrastructure projects.

Response (The Minister for Energy and the Environment (Gillian Martin)):

“The power to alter the Electricity Act 1989 to change the legislative basis for consultation processes under that act is reserved to the United Kingdom Government. However, the UK Government’s transmission acceleration action plan, or TAAP, makes it clear that changes to the consenting regime in Scotland under the 1989 act are necessary to accelerate the determinations process, and the UK Government has committed to a review. The Scottish Government supports such a review, and we will work with the UK Government to progress it.

The Scottish Government is currently undertaking work to streamline the consenting regime for offshore energy infrastructure projects, including reviewing the consultation processes.”

**Niall Kerr**  
**Senior Researcher, SPICe**  
14/05/2024

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