

Net Zero, Energy and Transport Committee

31st Meeting, 2022 (Session 6), Tuesday, 22 November 2022

SSI cover note for: The Electricity (Applications for Consent and Variation of Consent) (Fees) (Scotland) Amendment Regulations 2022 (SSI 2022/310)

Title of Instrument: [The Electricity \(Applications for Consent and Variation of Consent\) \(Fees\) \(Scotland\) Amendment Regulations 2022 \(SSI 2022/310\)](#)

Type of Instrument: Negative

Laid Date: 3 November 2022

Circulated to Members: 4 November 2022

Meeting Date: 22 November 2022

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 5 December 2022

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.

Background

2. The Scottish Government has responsibility for authorising consenting planning applications for electricity producers looking to operate certain onshore and offshore

generating stations, in addition to overhead power lines in Scotland. It also has authority to set costs which producers must pay for processing said applications.

3. The current costs levels and pricing structures for applications are set out in [The Electricity \(Applications for Consent and Variation of Consent\) \(Fees\) \(Scotland\) Regulations 2019](#).

4. According to the [Business Regulatory Impact Assessment](#) for the 2022 regulations—

“The Fees Regulations 2019 came into force on 30 June 2019. A review of the fee levels and structure at that time was required due to a significant shortfall in cost recovery for a number of years, and to address the imbalance between income from application fees under the Electricity Act and the costs of running the service provided by Scottish Ministers. Taking into account the comments received during the consultation period in 2018 the fee tariffs introduced in 2019 were lower than the proposals consulted upon, and did not achieve full cost recovery. The circumstances at that time led to widespread disagreement with the level of increases proposed from the onshore wind industry.”

5. This instrument seeks to amend the 2019 regulations to change fees being charged by the Scottish Government for processing applications from electricity producers. It also amends pricing structures for larger scale applications.

6. The Scottish Government undertook a consultation on changing the existing fees being charged for electricity applications. The analysis of the responses is available—

- <https://www.gov.scot/publications/proposed-changes-fees-charged-applications-under-electricity-act-1989-analysis-consultation-responses/>

7. The consultation proposed “an increase to existing fee categories of approximately 20%”. The fees proposed in the consultation have been included in the regulations.

8. An electronic copy of the Regulations is available at: <https://www.legislation.gov.uk/ssi/2022/310/contents/made>

9. A copy of the Scottish Government’s Explanatory and Policy Notes are included in **Annexe A**. A Business and Regulatory Impact Assessment has been prepared and a link is available in **Annexe B**.

Purpose

10. The purpose of the Regulations is to amend the Electricity (Applications for Consent and Variation of Consent) (Fees) (Scotland) Regulations 2019 (“the 2019 Regulations”) in order to introduce revised levels of fees in respect of applications for consents and variations to consents under the Electricity Act 1989 (“the Electricity Act”).

Delegated Powers and Law Reform Committee consideration

11. At its meeting on 15 November 2022, the Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Procedure for Negative Instruments

12. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

13. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Clerks
Net Zero, Energy and Transport Committee

Annexe A

Scottish Government Explanatory Note

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Electricity (Applications for Consent and Variation of Consent) (Fees) (Scotland) Regulations 2019 (“the 2019 Regulations”) in order to introduce revised levels of fees in respect of applications for consents and variations to consents under the Electricity Act 1989.

Regulation 3 ensures that any application made before these Regulations come into force will be subject to the 2019 Regulations as they were immediately before that date.

A [Business and Regulatory Impact Assessment has been prepared](#) and placed in the Scottish Parliament Information Centre. Copies can be obtained from Energy Consents Unit, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU.

Scottish Government Policy Note

POLICY NOTE

THE ELECTRICITY (APPLICATIONS FOR CONSENT AND VARIATION OF CONSENT) (FEES) (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/310

The above instrument was made in exercise of the powers conferred by sections 36(8), 36C(2) and 60(3) of, and paragraph 1(3) of Schedule 8 of the Electricity Act 1989. The instrument is subject to negative procedure.

Policy Objectives

Introduction

The purpose of the Regulations is to amend the Electricity (Applications for Consent and Variation of Consent) (Fees) (Scotland) Regulations 2019 (“the 2019 Regulations”) in order to introduce revised levels of fees in respect of applications for consents and variations to consents under the Electricity Act 1989 (“the Electricity Act”). The Regulations specify a range of fees to be paid on making applications to the Scottish Ministers under sections 36, 36C and 37 of the Electricity Act.

The Scottish Public Finance Manual (“SPFM”) sets out the standard approach to setting charges for public services. Public service costs should, in general, be recovered in full; the reasoning, duration and level of any subsidy of such services should be decided and documented clearly. The SPFM also emphasises the

importance of regular reviews, and if appropriate, revisions to the charging level. In cognisance of the SPFM, the Regulations will recover the administrative cost associated with Electricity Act applications.

Key Changes

The Regulations replace the previous fee structures, and provide for increased fee levels for applications made under sections 36, 36C and 37 of the Act.

The Scottish Energy Strategy: The Future Of Energy In Scotland published in 2017 sets out the Scottish Government's support for energy infrastructure including electricity generation and networks. The Scottish Government's 2050 vision for energy in Scotland is a flourishing, competitive local and national energy sector, delivering secure, affordable, clean energy for Scotland's households, communities and businesses.

Consultation

The Scottish Government consulted on proposals for an increase to all fee categories as well as the proposal to introduce new bandings for larger scale applications which include developments that exceed capacities of 500 Megawatt (MW), 750MW and 1 Gigawatt through the consultation entitled "Proposed changes to fees charged for applications under the Electricity Act 1989" between 30 March 2022 and 23 June 2022. Scottish Ministers have taken into account comments received and the final decision has been taken to ensure full cost recovery in line with the Scottish Public Finance Manual. The responses, analysis paper and a full list of those who responded and agreed to the release of information are available on the Scottish Government website at <https://consult.gov.scot/energy-and-climate-changedirectorate/changes-to-fees-electricity-act-applications/>.

Impact Assessments

A screening process was undertaken to establish whether an Equality Impact Assessment (EQIA) was required, this found that no EQIA was required.

Financial Effects

The Scottish Government consulted on a draft partial Business and Regulatory Impact Assessment (BRIA) as part of its March 2022 consultation paper. The partial BRIA concluded that some additional financial requirements would fall to developers. Amendments have been made to produce the final BRIA which reflects the final decision on fees to be implemented, based on responses received. The final BRIA is available on the Scottish Government website at <https://consult.gov.scot/energy-and-climate-change-directorate/changes-to-fees-electricity-act-applications/>.

Scottish Government
Directorate for Energy and Climate Change
October 2022

Scottish Government - Other documents

- [Business and Regulatory Impact Assessment](#) (BRIA)