



Electricity Infrastructure
Consenting in Scotland

**Proposals for reforming
the consenting
processes in Scotland
under the Electricity Act
1989**

November 2024

About us

Solar Energy Scotland is the trusted industry trade body for solar energy in Scotland. Alongside Solar Energy UK, we represent a thriving member-led community of businesses and associates, ranging from ambitious and innovative SMEs to global brands.

Together with our members, Solar Energy Scotland works to shape policy to realise the potential of solar and energy storage in Scotland, and to work with Government and all stakeholders to deliver on climate change obligations and net zero greenhouse gas emissions by 2045.

Respondent details

- ♦ **Respondent Name:** Rachel Hayes
 - ♦ **Email Address:** rhayes@solarenergyuk.org
 - ♦ **Contact Address:** The Conduit, 6 Langley Street, London, WC2H 9JA
 - ♦ **Organisation Name:** Solar Energy Scotland
 - ♦ **Would you like this response to remain confidential:** No
 - ♦ **Submission date:** 28 November 2024
-

Introduction

Solar Energy Scotland welcomes the direction of travel presented in the Scottish Government's consultation on 'Energy Infrastructure Consenting in Scotland'. The ambition from Government to deliver new energy infrastructure more efficiently and through a more streamlined process is warmly welcomed.

We strongly support the Government's focus on making the process both robust and efficient, with an emphasis on the introduction of statutory requirements for the pre-application stage to expedite decision times and reforming the lengthy public inquiry process. A test of these reforms will be how much the planning process is accelerated for project determinations, given the gravity of the climate crisis and the need to deliver on targets.

In our response we outline recommendations that Scottish Government should consider:

- Aligning policy with the NPF4
- Introducing clearer timescales for determinations and pre-application consultations as these elements are essential to achieving faster decision-making outlined in the proposals, (Government could consider adopting appropriate elements of the NSIP regime in this regard)
- Any pre-application requirements should be proportionate to the scale, significance and impact of the project
- Scottish Government must look to introduce agreed time limits for the full planning process (not just pre-application)
- Increasing resourcing throughout the planning system; including but not limited to Local Planning Authorities, Energy Consent Unit, Statutory consultees)

We expanded on these in the questions below.

Consultation Questions

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?

We agree with proposal to introduce of a set of statutory pre-application requirements for all onshore applications. Identifying and resolving potential concerns from the outset of a project can improve the speed and efficiency of the consenting process by addressing local, environmental, and regulatory issues earlier in the development timeline. This approach will likely benefit both developers and stakeholders by increasing engagement and reducing the risk of challenges that can arise during the consenting process.

We are aware that the proposed requirements will mean developers will need to adopt a more front-loaded approach to project development, necessitating greater financial and 'human' resources at the pre-application stage than at present. As such it is important that the requirements are set out clearly from the beginning of the application process. This transparency will allow applicants to have a firm understanding of the full scope of costs and resourced involved from the start, helping them to plan their projects more effectively.

Under the consultation proposals, developers must seek views from the planning authority on the Statement of Community Consultation (SOCC) prior to any wider consultation with the public or statutory consultees. It is crucial for local authorities to provide timely feedback and address any discrepancies promptly to prevent unnecessary delays in the progress of solar applications.

We are confident that the proposed approach can be effective as many cases developers are already meeting several of the proposed pre-application requirements. For example, developers seeking to build projects between 20-50MW are already required to undertake statutory pre-application consultation (PAC) under the Town and Country Planning (Scotland) Act 1997 and produce a Proposal of Application Notice (PAN) to the local planning authority. Developers of Section 36 developments are also already using the TCPA PAC process as good practice anyway. Therefore, it makes sense to extend the PAN process as it exists to Section 36 development proposals as all Scottish stakeholders and developers are already familiar with this approach.

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?

Not applicable.

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, we agree that all onshore applications for electricity generating stations should be subject to the same minimum, mandatory pre-application requirements.

However, any pre-application requirements should be proportionate to the scale, significance and impact of the project and should therefore be tailored to different technology types where appropriate.

Government should set clear minimum expectations as to what they will accept. Too much discretion per project could result in applications requiring years to prepare before submitted, which does not meet the spirit of an efficient and speedy planning process for renewable developments.

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?

The TCPA Pre-application process is two stage and developers are already using and comfortable with this.

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?

Our main concern is that this stage could add an additional hurdle for developers to overcome unless it is strictly limited to compliance with the PAC requirements. While we agree that local authorities should have the opportunity to express their view on compliance with PAC requirements, we are concerned that LPAs are facing significant resource challenges and this stage, which should be short duration (weeks), could lead to a further slowing of the process.

If an acceptance stage is introduced, it is crucial to establish clear, pre-agreed timescales so that developers can incorporate this into their project planning. While we recognise that each application may need to be assessed individually, we recommend that, as a general guideline, the acceptance stage should be a fixed period (i.e. not subject to extensions) and not exceed four weeks. In addition, we ask

that the ECU is not able to extend the period.

This aligns with the DCO regime where the respondent period is 28 days. This timeframe should provide sufficient opportunity for relevant authorities to raise any objections and reach an appropriate resolution. If an LPA fails to respond timeously, that should not delay acceptance of an application.

More broadly, we ask that there is a clear signal to LPAs emphasising that the primary focus of the acceptance stage is to assess whether the PAC requirement have been met. It should be clarified that this process is not intended to address the principle of the development or any substantive issues beyond compliance with PAC obligations. This approach ensures a more streamlined and purpose-driven evaluation, helping to avoid unnecessary delays or misunderstandings in the application process.

This could lead to objections based on lack of capacity to review the information rather than substantive options, which is often what happens today that significantly slows down the planning process.

We would welcome further information on the acceptance stage before we are able to provide a more detailed response.

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?

In principle, the industry is supportive of charging a fee for pre-applications services however this must be proportionate to the level of service provided for the delivery of that project. This would help to ensure that planners are able to deal with renewable energy applications in a timely manner, improving the quality of service for the applicant and improving the efficiency of the planning system.

Clear guidance on fees, as they relate to each stage of the planning process, will be essential to prevent overinflated costs. There may be concerns about the potential for delays in PAC and at the 'acceptance stage'. However, with well-defined resourcing and support, this stage should not become an obstacle to project progress.

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?

Overall, we are supportive of the pre-application proposals as set out in the consultation and are confident that they will provide the framework needed to deliver earlier engagement from the public, communities and consultees in order to build a fairer and more efficient consenting system in Scotland.

However, to fully accelerate the consenting process, it is essential to address the current resourcing gaps within planning departments and statutory consultees. Without adequate staffing and expertise, all stages of the planning process will continue to struggle. To address this, we suggest ring-fencing planning fees from renewable energy applications specifically for development planning and management services rather than redirecting them to other areas. This approach will ensure that planning fees directly address resourcing needs in these departments. We welcome the proposal for the creation of planning hubs, as addressed below.

We also encourage the Scottish Government to unlock additional funding to train and upskill officers within Local Planning Authorities and statutory consultees. Developing dedicated energy experts, particularly within bodies like NatureScot and Historic Environment Scotland, will foster greater consistency and efficiency in application determinations, ultimately reducing delays.

Lastly, with additional expertise in place, the Planning and Environmental Appeals Division (DPEA), LPAs, statutory consultees and those with responsibility for determining decisions will be better equipped to process applications more quickly.

Ministers have asked where they could go further however – and dealing with subjectivity in a more streamlined way may be one where significant efficiency gains could be made. The highly subjective nature of many objections to renewable energy development often leads to much toing and froing over subjective opinions, such as the effects on historic environment setting or landscape effects for example. This can cause hugely prolonged decision-making timescales. At the end of such prolonged deliberation, Ministers still have to make a judgement balancing subjective concerns and weigh up all the pros and cons, to make their decision.

Application Procedures

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?

It is unclear whether this proposal actually fills a need and makes the process any

more or less efficient. Applications will still need to be reviewed, and any gaps or shortfalls will then result in a request for additional information. However, making sure that developers are clear about what is required may reduce the incidence of additional or further information being requested.

We would ask that any additional, substantive changes, or those which result in increasing costs or extra requirements, that go beyond the current levels of information normally expected of a complete application, must be consulted upon before initiation.

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?

With our answer to the previous question in mind, it is unclear whether this requires regulation to impose, unless government is thinking of adding new burdens on development proposals. If a reiteration of current expectations, this could simply be issued as guidance that requires developers to produce complete information as part of their application. We ask that Scottish Government consults with industry on any new information requirements.

Finally, we agree that a technology agnostic approach across onshore and offshore generating technologies is important – meaning that all developments whether onshore or offshore should be subject to similar information requirements. This would stop one technology being favoured over another; which is important as the Scottish energy system will need a range of renewables to ensure net zero if met.

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?

To deliver impactful reforms, Government should look at setting clear timeframes for responses and providing cost recovery to applicants, should timeframes not be met. Requests for extensions to deadlines should be made well in advance of the deadline, and be consulted upon with the developer rather than automatically provided based on the wishes of the consultee

Government could go further and require that statutory consultees simply comment on whether the applicant has reflected any subjective effects accurately to inform a decision-makers judgement– rather than default to an objection if the concern of a

statutory consultee is based entirely on a subjective effect (for example on setting of scheduled monuments or landscape and visual effects.) This could take a lot of pressure and resource drain away from statutory consultees.

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?

Establishing a forum

We strongly support the proposal to introduce a forum for the Energy Consents Unit and statutory consultees to share learned experiences within the planning process. By doing so, it is hoped that a more standardised approach would be taken to addressing common concerns which could reduce delays in application timelines.

More broadly, improving a consistent and foundational understanding of solar and storage technologies across the planning regime is crucial for advancing an efficient and informed consenting process. The solar industry can and has already supported this goal by facilitating workshops and training opportunities for planning professionals in England and Wales, including planning inspectorates and UK government departments, to build a robust understanding of solar and storage industry practices. Solar Energy Scotland is willing to collaborate with the Scottish Government to promote greater awareness of solar technologies on any platform that best suits these needs. Solar Energy Scotland and Solar Energy UK have developed advice notes for Local Planning Authorities (LPAs) and planning officers on areas such as archaeology, biodiversity and site selection.

Developing a framework

Yes, we agree that creating a clear framework for managing the application process for all statutory consultees is valuable. We request that, during the framework's development, the ECU consults with the solar industry to ensure the process is practical and achievable for all parties involved.

Finally, the framework should align with the NPF4. It is important to recognise, as NPF4 does, that renewable infrastructure has, and will become more so, part of the human environment.

Specialist support

We warmly welcome the Scottish Government's commitment to establishing a

planning hub. The combination of increased planning resource at all levels of the planning system, and through the creation of planning hubs, Government can expect greater efficiency and consistency in how planning applications are determined. We would recommend that the Planning Hub be a central resource with experts specifically for renewable energy applications. Local Authorities could lean on this resource when they are unsure on how to move forwards with an application. The Planning Hub would be most useful filled with a bank of experts, rather than a bank of information – but it may be important to ensure independence of the advice away from statutory consultees.

Setting time limits

We agree to setting time limits, not just for the pre-application stage but for the whole consenting period.

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

Establishing a pool of specialists within the Energy Consents Unit (or via a resource hub) who are available to advise and support statutory consultees on renewable energy application. This would provide a resource for statutory consultees to use to ensure consistent guidance, reduce delays caused by uncertainty, and improve decision-making efficiency. We are aware that there is a specific shortfall in expertise within ecology, landscape and archaeology, we ask that these specialisms seek to be addressed first.

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

Yes, establishing agreed time limits would create a clear, structured framework for all parties involved in the consenting process to follow. We emphasise that these time limits should be set at the beginning of the project to enable statutory consultees and other stakeholders to allocate the necessary resources at every stage of the application process. Any extensions should be made in advance and subject to applicant consultation as above.

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?

We partially agree with the proposal to restrict timing on when amendments to applications can be made.

We acknowledge that setting limitations can encourage developers to submit higher quality applications upfront, potentially speeding up the planning process. However, we are concerned about potential unintended consequences. Many applicants amend applications based on consultation feedback. Restricting amendments could limit the ability to effectively incorporate input from the public and statutory consultees. Additionally, if the deadline for amendments falls after the consultation period closes, valuable stakeholder input may not be fully integrated, undermining the consultation's purpose. If amendments are minor and do not require a new application, then it is not clear how this would impact significantly on determining authority resources.

The ability to amend applications provides developers with an opportunity to refine their proposals based on feedback (as discussed above). In some cases, this can help avoid the need for costly and time-consuming public inquiries, ultimately streamlining the consenting process and reducing delays.

If limits on amendments are introduced, we recommend implementing a defined window of time during which amendments can be made, for example 2 months (with no additional environmental information required) or 4 months (if additional environmental information is required) or any longer period as may be agreed after the receipt of the last consultation. If an applicant were unable to meet the agreed timeframes, then we would recommend that rather than a project being refused or revoked, the project would lose priority handling. This would ensure that Scottish Government is still delivering on the object to increase consenting capacity.

More information is needed on the detail of proposals, although in most cases we suspect that a case-by-case approach, with clear criteria, may be a better option. In addition, if changes to the project are the result of fresh consultee feedback – government should welcome this, rather than avoid having to handle the complexity. We would welcome further details as to the time limits that Scottish Government intends to work to.

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?

It is impossible to respond to this question until we more fully understand criteria and

scope of the proposal. Case by case and standardised approaches both have pros and cons.

Public Inquiries

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

As recognised by the consultation, the PLI process can be a useful tool where facts are in dispute, there is conflicting professional opinion or novel/new points (e.g. policy interpretation). Through this process, precedent is sometimes created that helps guide developers and statutory consultees for future applications.

We are aware there have been process improvements led by the DPEA in recent years and it is increasingly normal for the process to be a ‘hybrid’ process with any full inquiry sessions limited to one or two key topics with other evidence addressed through hearings and/or written submissions. Timescales have also been improving in recent times, however we acknowledge that public inquiries can still be a cause of elongated determination timescales. We recommend further consideration of whether objections on the grounds of subjective effects from development might be handled more efficiently. We consider this to be an area where significant efficiencies can be made. The proportionate response to subjective issues in light of the climate crisis should also be considered.

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

We somewhat agree. A list of recommendations is provided below:

- Solar Energy Scotland supports the intention to deliver an examination process where applications are subject to an appropriate level of scrutiny.
- Relying solely on a single Reporter's view introduces a risk that decisions may be influenced by subjective opinions. To enhance confidence in the decision-making process, we recommend implementing more checks and balances, such as a peer review process, to ensure a more balanced and proportionate assessment.
- Where narrow subjective effects of development proposals are the focus of consultee concerns – there ought to be a much higher bar for causing delay through planning inquiries.

- The consultation discusses written submission-based enquiries as an alternative method of examination. We recognise that in some cases this can be useful however there is a risk that developers lose their right to be heard and challenge information put forward by objectors.

Variations

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?

Any initiative to ease the delivery of network upgrades to facilitate clean energy is very welcome.

Variations with 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?

We partially agree. In principle, we support the Scottish Government having the authority to modify applications to correct small, obvious errors or improvements. This approach would reduce both time and cost by allowing the government to expedite corrections without requiring a full process or additional fee, which is likely to be well-received by the solar industry.

However, we strongly disagree with the proposal to give the Scottish Government the unilateral power to vary, suspend, or revoke consents without any request from or the agreement of a development due to 'changes in environmental circumstances' or 'relevant technological advancements'. Developers typically seek to reduce costs and maximise generation, often through the adoption of new technologies. The need to minimise cost is an imperative to deliver a reasonable rate of return on investment in the context of downward pressure via the Contract for Difference auction process. Projects also face procurement lead times and delays cannot be subject to an additional risk that a 'technological advancement' is unilaterally imposed after the fact, e.g. when contracts have been placed with the supply chain.

To reach financial close on a project to progress to construction, it is also necessary to understand and have reasonable certainty over the likely costs of not only

constructing but also then operating the project. This proposal could make the process more cumbersome and costly for developers, ultimately creating additional burdens and inefficiencies.

We would appreciate more detailed information on the specific situations where this would apply, examples of where it might have improved efficiency and how it would be implemented, as the consultation currently provides limited detail.

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?

Generally, no, unless a variation to a consent can make a project more efficient at no additional cost or loss of revenue from a project.

Going further, government might consider allowing minor changes to consented projects where improvements and efficiencies in operation and costs can be delivered, for example allowing expansions of sites, or incorporating latest technology to improve yield to avoid having to make a new application, on a case-by-case basis.

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, we agree that it is reasonable to introduce a fee to process necessary wayleave applications however this fee should be proportionate to the level of service required.

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?

As above, fees should be proportionate. Renewable energy developers already incur significant land costs, and every extra cost burden is passed on to the consumer from network development.

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?

No comment.

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?

We strongly support the proposal to shorten the time limit for initiating a challenge to a consenting decision from three months to six weeks. As outlined in the consultation, a shorter window for filing a challenge will help to minimise uncertainty and reduce potential delays in project timelines.

This would also align the challenge period for both onshore and offshore applications.

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?

We partially agree. While we appreciate the intent of the proposed arrangements, our concern is that applications submitted under the current regime could be required to suddenly meet the requirements of a new regime part way through the process. We recommend that the transitional arrangements apply only to projects that have not yet been submitted to the Scottish Government. Applications already under review or further along in the planning and who have initiated pre-application consultation process should adhere to the existing regime. Applicants 'in-flight' could also be offered the option rather than having it imposed upon them.

Given the limited detail provided in the consultation, we would welcome further information to support developers with both ongoing projects and new applications entering the planning system.

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?

Overall, we are supportive of the direction of travel of the consultation.

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

Further emphasis should be placed on proper resourcing of all parties across the planning process. Without such, there process will not become any more efficient. We expand on this further in our response to question 7.

Evidence and Analysis

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

No response.

2) Familiarisation: 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)? b) How many people in your business need to review the legislation?

No response.

3) Impact: a) Do you agree with the impacts that have been identified? i) If not, please explain why with supporting evidence. ii) If you think there are other impacts that have not been identified, please set out the additional impacts with supporting evidence.

No response.

b) Can you provide further data and evidence to: i) Support a detailed assessment of each of the impacts? ii) Establish whether this policy is likely to reduce delays to transmission network build, renewables or storage projects, and if so how long by? 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? Please provide supporting evidence.

No response.