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13 December 2024

To Whom It May Concern,

Response to: Consultation on the Ministry of Defence's approach to safeguarding the Eskdalemuir Seismological Array (Released September 28, 2024)

Scottish Renewables (SR) is the voice of Scotland's renewable energy industry. Our vision is for Scotland to lead the world in renewable energy. We work to grow Scotland's renewable energy sector and sustain its position at the forefront of the global clean energy industry. We represent over 360 organisations that deliver investment, jobs, social benefit, and reduce the carbon emissions which cause climate change.

RenewableUK's (RUK) members are building our future energy system, powered by clean electricity. We bring them together to deliver that future faster; a future which is better for industry, billpayers, and the environment. We support over 500 member companies to ensure increasing amounts of renewable electricity are deployed across the UK and to access export markets all over the world. Our members are business leaders, technology innovators, and expert thinkers from right across industry.

We are pleased to engage with the MOD on this consultation and appreciate the work the MOD is doing to resolve the question of further onshore wind development in the Eskdalemuir consultation zone.

We also recognise the need to minimise the use of MOD resources. It has been challenging for MOD to commit even the current amount of resources to resolving the challenges of developing renewable energy around the Eskdalemuir Seismic Array. Our comments below reflect the awareness that MOD's resources are stretched thin and make an effort to not require more from the MOD than what is absolutely necessary.

However, for clarity, this consultation document, particularly section 4, needs more explanatory text to ensure a consistent understanding of how development within the Eskdalemuir consultation zone will move forward. The brevity of this consultation document has led to some ambiguities that shape our response and that we seek to resolve.

We would welcome an opportunity to continue this conversation with the MOD. Should you have any questions, the Eskdalemuir Working Group is poised to support MOD's work to ensure continued onshore wind development within the Eskdalemuir consultation zone.

Sincerely,

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8.2.1 Is the MOD's proposal to consider applications on a first come, first served basis and add applications to its list, used to calculate the cumulative SGV of all such development, according to the date on which the application for consent was formally accepted as valid by the consenting authority, with a consistent approach for all types of application, clearly understandable and fair overall, and is it a practical approach?

1) The first-come, first-served approach appears fair in principle and removes the risk of discrimination between applications above and below 50MW. However, significant risk could be introduced if definitions for terminology, such as "validation", and distinctions between the types of applications and their respective stages in the planning process, are not clearly factored into the processes determined by the MOD.

2) The consultation proposes that an application will be listed by MOD with effect from 'the date at which it is validated by the consenting authority'. However, validation is not a term used within the Electricity Act 1989 (the 1989 Act) or the 1990 Rules for S36 applications, but only on a statutory basis for applications under the Town and Country Planning (Scotland) Act 1997 (the 1997 Act). Under S36 the ECU's Case Officer writes to the applicant to confirm receipt of the application and to say it has been placed on the portal. However, this is not a statutory process. We note that the UK Government consultation on S36 changes, which expired on 30th November 2024, may introduce a statutory basis for the validation of S36 applications, but still believe that the deemed validation approach set out in paragraph 3), and the alternative in paragraph 4) promote fairness in the best way, and minimises the use of public time.

3) Acknowledging (a) that MOD is resource constrained, (b) that times for validation of 1997 Act applications and notification of a complete S36 application by the ECU to the MOD may vary considerably, and (c) that the precise position of a project in the MOD's proposed list will only matter when headroom is exhausted, we propose a deemed validation date of 10 working days after submission. The MOD would update its list when notified by the planning authority/ECU by reference to the submission date.

4) We recommend an alternative approach that would also minimise the use of MOD resources and take account of the other points made in the previous two paragraphs. When the Applicant submits an application under either Act, it receives an electronic receipt. That is not validation (or acceptance of a S36 application), but it would enable the Applicant to send MOD the receipt with its seismic report. MOD would then log the application and, subject to safeguarding the Array, allot the proposed development a place in its list.

5) If either of these proposals are accepted it is suggested that the following will be required:

(a) A new Regulation, which the Scottish Government will need in any case to make to secure the proposed Seismic Impact Limit (SIL) and other matters, should require the electronic submissions of all applications for development within the Consultation Zone so as to provide proof of the date and time of the submission.

(b) To allow for reasonable fairness, the developer of the marginal project must be allowed under the suggested approach to demonstrate with appropriate proof that its project was in fact validated/accepted by the ECU, or in the alternative approach under paragraph 4 its application was received by the ECU, before another project, or that a project in the list has been finally refused or has been withdrawn. The project that might lose headroom could be well advanced in the planning process, and therefore, to prevent prejudice, a challenge to the order of projects based on the date/time of submission must be notified to MOD within a maximum of, for example, 20 working days of the project enjoying headroom being notified to the MOD.

6) What is proposed is unlikely, on the evidence to date of likely new available headroom and the SIL approach, to arise for some time if ever, and so caters for a once occurring long term eventuality.

7) What is proposed minimises the use of MOD and planning authority/ECU resources. What is proposed places the onus to resolve any inaccuracies on the marginal project, in whose interest it would be to resolve material discrepancies. If the MOD nevertheless chooses to deploy resources to ensure that its list is consistently up to date and accurate, then the industry would welcome this, but the deemed validation approach (or alternative approach under paragraph 4) nonetheless seems fair and proportionate.

8) It is important that MOD clarifies the status of currently submitted applications under the new approach. These should be prioritised in the new queue ahead of new submissions after the new list comes into operation on the basis of the MOD's existing records. This approach can be read between the lines in the consultation document, but must be explicitly spelled out to avoid any ambiguity. The MOD's ongoing work to validate the current operational and consented baseline is noted in this context.

8.2.2 Do consultees have any comment on the proposal that, in the event of two or more applications sharing the same date on which the applications where formally accepted as valid by the consenting authority/authorities, the application which has the earlier date on which a consultation request was received by the MOD will take priority?

1) If either of the deemed validation approach described in 8.2.1 (3) or the alternative set out in 8.2.1 (4) is accepted this issue will not arise.

1) If neither the deemed validation approach (8.2.1(3)),nor the alternative (8.2.1(4)), are accepted what is proposed seems fair. However, the additional proposal made in answer to 8.2.1 for electronic submission might in any case be a fair way of prioritising projects.

2) Ultimately, what is proposed by the MOD could be seen as unfair if project A was validated/accepted within 10 working days while an earlier submitted project B took notably longer to be validated/accepted by the relevant authority. This supports the deemed validation approach, or the SR alternative, as well as electronic submission.

8.2.3 Do consultees have any comment on the proposal for "applications" (as referred to in sub-paragraph 8.2.1 above) to include applications to vary, modify or amend existing consents (including "repowering" applications) subject to the exceptions proposed in paragraph 4.8?

1) The process set out in paragraph 4.8 seems fair and logical subject to the following points and to a more comprehensive explanation of the proposals being provided. As noted above, the otherwise commendable brevity of the proposals needs more explanation to avoid ambiguities.

2) If a S42 or S36 application is made that would generate more seismic ground vibration (SGV) than the consented project it would seem fair that only the additionally required SGV should be admitted to the end of the list, with the consented project (and its associated SGV) retaining its original position. In that way, confidence would be given to project funders who would otherwise see a potentially unacceptable risk, especially in circumstances where turbine availability and choice changes frequently. What is proposed would not prejudice projects lower than the consented project in the queue, but it would enable the varied consent to be implemented unless there was no available headroom for the additional SGV. This topic is also addressed in 8.2.7. We also propose that the same approach should be taken to repowering projects. These should enjoy the headroom held by the project to be repowered, noting that a calculation of the SGV of the existing development using either the 2014 predictive algorithm or that which may replace it would likely conclude a lower SGV than that noted in the old MOD listings. Again, there would be no prejudice to proposed new developments.

3) The MOD must define how S36C and S42 applications will be treated in relation to the queue. The proposal in paragraph 4.8 would, by implication, apply in both cases and seems fair. However, although a S42 permission, subject to its SGV requirement, would sit with the original consent in the list since either could be implemented, the same is not the case for a S36C consent, which replaces the original consent. While this is implied in paragraph 4.8, that the S36C consent may (subject to the required SGV) take the position of the first consent in the list needs to be made explicit to avoid any confusion.

8.2.4 Do consultees have any comment on the MOD's position regarding the use of suspensive conditions when there is no headroom available and the MOD's approach to a "waiting list"?

1) The MOD's outright opposition to suspensive conditions removes a potential mechanism for flexibility, which could otherwise allow projects to proceed under conditional approval pending future SG and MOD policy. By rejecting this option, the MOD introduces the risk of indefinite delays to decision making, which could deter investment in projects affected by such delays and investment in future projects. There is a risk that otherwise acceptable projects could be refused, simply because of potential prejudice to the Array, in circumstances where (a) it is accepted by all parties that the 2014 predictive algorithm will be revised in due course to allow further development; and (b) there are already reasonable prospects that additional headroom will be available within the implementation period normally allowed of five years.

2) Therefore, both in legal terms (well known and so not set out) and in policy terms under Circular 4/1998, it is wrong and indefensible to deny any suspensive conditions. It must also be noted that the role of the MOD is to protect the Array. It is not to affect consenting decisions that can be taken without impacting on the Array. If current applications were to be refused when a suspensive condition would have protected the Array, valuable opportunities to achieve 20GW by 2030 will be lost, and further investment within the consultation zone deterred.

3) It is noted that in its October 2023 submission in the now recovered and still undetermined Little Hart Fell appeal, the MOD said that it *'does not oppose the use of suspensive conditions as a matter of principle'*. It continued that '*the MOD has been clear that its position is that the use of a suspensive condition in the context of this application and appeal would prejudice the safeguarding of the Array. This remains its position. Of course, that is not to prejudice the possible use of suspensive conditions in the future, where to do so would be appropriate*'.

   The MOD's position in the Little Hart Fell appeal is consistent with the commitment made by the Scottish Government in the Onshore Wind Sector Deal. This commitment refers to intention to work collaboratively with MOD to finalise a new approach to the Array, and the Scottish Government stated: *'This new approach will aim to support the consenting of projects via deliverable suspensive conditions, if necessary, that provide appropriate protection to MOD while maximising efficient wind energy generation'*.

4) Although under paragraph 4.8 of the consultation paper, S42 and S36C consents not requiring additional SGV do not merit suspensive conditions as the consultation paper discusses, it is worth noting that there is no reason why they should not be consented

subject to a condition that SGV should be demonstrated to be equal to or less than that of the consented project. Such a condition would only be suspensive in the sense that pre- and perhaps post-implementation proof could be required of the calculated SGV. The MOD has already agreed such an approach at Twentyshilling Wind Farm (Dumfries and Galloway Council application 18/0206/FUL). The condition was subsequently purified.

5) For reasons given in paragraph 1) it is considered appropriate to consider the imposition of conditions on first consents for a site that prevent the implementation of development until a consenting authority, after consulting the MOD, confirms that SGV will not exceed the appropriate limits. We propose that such conditions could be applied at any time if the pre-implementation proof required was that the SGV of the project, when added to that of all operational and consented developments, and those already submitted and on the MOD's list did not cause the 0.336nm ceiling to be breached. Noting the need for MOD to be assured of final turbine positions before responding positively to Ministers or the Planning authority on a request to purify a suspensive condition, we suggest that a condition such as this would adequately safeguard the Array while justifying continued inward investment within the consultation zone.

   '*No turbine shall be erected until and in sequence:*

   (1) The final locations of all turbines following micro-siting permitted until Condition X have been submitted to and approved by the Scottish Ministers/the Planning Authority; and

   (2) The Scottish Ministers/the Planning Authority (following consultation with the Ministry of Defence) confirm in writing that the seismic ground vibration of the wind turbines within the Development shall not cause seismic ground vibration of wind turbines within 50km of the Array to exceed 0.336 nanometres. The turbines shall thereafter be constructed at the locations approved by the Scottish Ministers under Condition X which shall be notified to the Ministry of Defence under this condition'.

6. While conditions requiring proof of engineered mitigation have been rejected after an inquiry, what is proposed now has not been tested. Such a condition would clearly satisfy the Circular 4/1998 tests of validity and could not prejudice the Array or the MOD's management of headroom. The project would sit in its correct place in the list and the MOD would be able to take that into account. There could be no uncertainty which might prejudice the protection of the Array

7. We understand MOD's position on conditions involving engineering mitigation or curtailment. At this stage, our preference would be not to rule out the potential for these in the future, acknowledging that further work will be required before agreement on their

imposition can be reached. This maintains the incentive for developers to explore these types of solutions without compromising MOD's safeguarding capabilities.

8.2.5 Do consultees have any other comment on the definition of applications in paragraph 4.7 above?

1) Reference is made to the position of now submitted applications addressed under 8.2.1.

8.2.6 Do consultees have any comment on the proposal to remove applications from the MOD's list (and therefore the calculation of cumulative SGV) on final refusal (including the final refusal of any appeal, statutory challenge or Judicial Review or the end of the period within which any such application can be made)? Is this clear, fair and practical?

1) The proposal to remove applications after final refusal or the expiration of appeal periods is a fair approach and helps maintain an accurate SGV headroom calculation.

2) However, paragraphs 4.10 and 4.11 of the consultation paper do not explain how the MOD will know when the events referred to have occurred. It seems unlikely that a disappointed developer who has lost an appeal or lost in court will think to inform the MOD. A database that is only ever approximately right is of no use if accuracy at any time matters. In this case, the driving force for accuracy will be the developer who is told that there is no headroom for a project. Nothing else will be reliable. And, given the proposed SIL approach, the end of headroom is likely to arise only once and not for some time.

3) If the MOD chooses to use its resources to keep its list accurate, that would be welcome, but perhaps not essential. An alternative would be to issue a contact to a consultancy to regularly update the list, and this is suggested if the MOD feels that the list needs to be kept as accurate as possible.

8.2.7 Do consultees have any comment on the proposal that re-consultation will be required if any changes to the information (referred to in in paragraph 4.13 above) were to be proposed during the application process and that, in the event of re-consultation which has the effect of increasing the predicted SGV of the development, the MOD will consider the application anew as if it had been validated on the date of re-consultation and that the MOD will move the application on its list to this new date?

1) The procedure for additional SGV for a S42 or S36C application could equally be applied to variations to applications made before determination and is put forward for

consideration. Whilst the MOD's 're-consultation' approach (i.e. moving a project's position in the list when the required SGV is increased) could prevent premature submissions and ensure project readiness, this proposal introduces significant risk and uncertainty for developers. Re-consultation due to SGV increases would reset an application's position in the queue, leading to prolonged delays that might inhibit funding and jeopardise project timelines. The mechanism suggested at 8.2.3 minimises these risks whilst retaining MOD's ability to accurately record SGV and safeguard the Array.

8.2.8 Do consultees have any comment on the proposal to remove developments from the MOD's list if development has not taken place, there is no potential for the consent to be implemented, the consent having expired; or where development has been implemented, the development has been finally decommissioned and any underlying consent has clearly and unambiguously expired.

1) Reference is made to the comments at 8.2.6 which apply equally here.

8.2.9 As noted at paragraph 4.13 above, in order that the MOD can calculate the SGV from proposed developments, it will require certain information to be provided with the application, and that information will need to be captured by way of planning condition or otherwise in any consent. Is the MOD's proposal clear, fair and practical?

1) This seems fair, noting the need to accommodate the additional SGV process proposed at 8.2.3. However, the information required should only be that strictly needed so that MOD can do what is required to assess the headroom that would be taken by a proposed development.

8.2.10 Do consultees have anything to add?

1) The renewables industry is rapidly evolving, with new technologies and innovations that could mitigate SGV impacts. We encourage the MOD to collaborate with developers and researchers to explore these advancements, such as vibration dampening techniques or more efficient turbine models, to expand the capacity for wind energy within the consultation zone while maintaining the integrity of the Array. The MOD's policy/approach could further explore how ongoing technical developments (such as improved turbine models or mitigation measures) will be incorporated into the SGV calculation methodology. As wind energy technology evolves, there may be opportunities to safely accommodate more developments within the SGV threshold.

2) Given the dynamic nature of the renewable energy sector and the potential for cumulative SGV to change over time, and in the absence of a tool which would provide up-to-date

information, we recommend that the MOD regularly reviews and updates its SGV calculations, particularly as projects progress through difference stages of development (e.g. construction, operation, decommissioning). The renewable industry would ask that the MOD commit to providing annual updates on available SGV headroom and queue positioning until a tool becomes available. This would give developers clearer visibility into future development opportunities and ensure that capacity is not reserved for projects that will not proceed.

3) While the MOD may be hesitant to outsource technical work, engaging third-party accreditation bodies to monitor and update SGV headroom could reduce the burden on MOD resources while maintaining accuracy.