Scottish Electricity Consenting Team
Department for Energy Security and Net Zero
7th Floor
3-8 Whitehall Place
London SW1A 2AW

Delivered via email: EMAIL

6th December 2024

Dear Ms Richardson,

Response to: Electricity Infrastructure Consenting in Scotland Consultation

On behalf of Scottish Renewables and RenewableUK's members, we welcome the opportunity to respond to the consultation on **Electricity Infrastructure Consenting in Scotland:** ***Proposals for reforming the consenting processes in Scotland under the Electricity Act 1989.***

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 that is better for industry, billpayers, and the environment. We support over 400 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 across the industry.

Scottish Renewables and RenewableUK welcome the opportunity to respond to the proposals put forward in this joint UK Government and Scottish Government consultation on Electricity Infrastructure Consenting in Scotland. To achieve clean power by 2030, planning issues in Scotland need to be urgently addressed.

The sector is fully supportive of efforts to speed up consenting timelines from project development to consent.

The proposals put forward in this consultation may help to drive greater consistency in the quality of stakeholder engagement and help to frontload the identification and resolution of

issues where possible. However, it should be recognised that, whilst pre-application consultation (PAC) is not presently mandatory for applications made under the Electricity Act 1989, it is already standard practice across onshore and offshore energy projects with existing Scottish Government guidance and circulars under the Town and Country Planning regime readily applied to electricity infrastructure proposals. As such, the proposal to mandate pre-application community consultation and associated reporting is unlikely to represent any meaningful change from current practice.

In addition to responding to the individual questions in this consultation, we have a few general observations on this consultation and on electricity infrastructure consenting in Scotland that are not addressed in this consultation but could positively impact consenting timelines and processes.

- **Overall timelines**: We are concerned that the proposals do not set clear timelines for each stage of the pre-application process – including consultation periods and when consultees will return feedback. Without clear timelines, we are concerned that the proposals won't reduce the time it takes for developments to be consented.

- **Meaningful feedback and engagement**: We are also concerned that developers already participating in pre-application processes are not receiving meaningful engagement and consistent feedback. In some instances, we know that consultees do not respond until an application has been filed or decline to engage before EIA scoping. For the proposals put forward in this consultation to have an impact, it will be vital that feedback from statutory consultees, local authorities, the Marine Directorate and the Energy Consents Unit (ECU) are timely and meaningful. Continued extension of timelines and lack of substantive feedback – that could then be addressed at an early stage of a project – significantly impacts project timelines.

- **An overly bureaucratic process**: We are concerned that this proposal would result in an administratively burdensome exercise that creates additional barriers to renewable energy proposals. Much of this pre-application proposal is currently standard practice for onshore and offshore wind and is unlikely to represent any meaningful change from current practice. The development process for wind projects is well established. This proposal also frontloads work currently done later in the development process and adds checkpoints that will slow down the application process.

- **Resources:** Appropriate resourcing for all relevant government departments, local authorities, and statutory consultees, which includes upskilling of staff and ensuring retention of personnel, will be critical to meet the demand in casework to deliver electricity infrastructure at pace and to prevent unnecessary consenting delays. However, this consultation does not address how both governments plan to overcome this challenge and meet the demand for technically skilled staff needed to

ensure that applications are processed in a timely manner. We are concerned that by formalising the pre-application process, more pressure will be put on already stretched resources, including the ability to provide meaningful feedback to developers. We would request more information on how the proposal will guarantee adequate, ring-fenced funding resources for statutory consultees.

This will be particularly pertinent due to the increased diversity of generation and grid stability projects entering the Scottish consenting system. These now span long-duration pumped storage hydro, short-duration grid forming batteries and grid stability synchronous compensators to green hydrogen, in addition to Scotland's existing wind, solar and grid infrastructure projects.

- **Habitats Regulations Assessments (HRA) reform:** The operation of the HRA regime has been the most significant single source of delays and complexity in offshore wind consenting. Urgent change is required in how the Government, statutory advisors, and regulators approach HRA issues – with an urgent need to expedite the implementation of the Marine Recovery Fund and move towards packages of measures focussed on ecosystem functionality rather than 'like for like'. Goals of Habitats Regulations and wider protected sites legislation should also align with and explicitly support UK nature recovery targets. This will unlock substantial industry contributions to biodiversity targets and increase the UK's natural capital. However, there is a lack of recognition in this consultation that this challenge provides a significant barrier to consents across the UK.

As the volume of projects expands significantly in the period up to and immediately beyond Clean Power 2030, it will be critical that the challenges outlined above are also addressed urgently.

Sincerely,

Megan Amundson
Head of Onshore Wind and Consenting
Scottish Renewables

Friederike Andres
Policy Manager
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Consultation Questions

PROPOSAL 1: PRE-APPLICATION REQUIREMENTS

Pre-applications 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?

Firstly, we take issue with the premise of this proposal, which is based on data around incomplete proposals from 2007. In the Scottish Onshore Wind Sector Deal, the onshore wind industry has already agreed to submit complete and robust applications to accelerate application processing. A recent review of the Energy Consents Unit's (ECU) online portal showed that 86% of applications already complete a pre-application process with local planning authorities and associated reporting without a statutory requirement to do so.

Secondly, we are concerned that front-loading more work into a pre-application process and creating a formalised pre-application requirement to manage applications without addressing broader consenting challenges will not reduce consenting timelines and could increase developers' costs.

As highlighted in the introductory comments, a lack of meaningful feedback and engagement, attributed to the lack of resources, significantly contributes to delays in the consenting process. Appropriate resourcing for all relevant government departments, local authorities and statutory consultees, which includes upskilling staff and ensuring personnel retention, will be critical to meet the high demand in casework to deliver electricity infrastructure at pace and prevent unnecessary consenting delays.

For example, the Planning (Scotland) Act 2019 provides sufficient support for creating a more robust pre-application phase to ensure that applications are complete when submitted. Developers use the pre-application services that local planning authorities (LPA) offer; however, support and engagement are often limited because LPAs are not sufficiently resourced to provide adequate support as part of the pre-application process.

Cost factors already make developing renewable energy projects more costly in Scotland than in England or Wales. These include TNUoS charges, abnormal load costs and delays, oversail and overrun leases, and aviation mitigations. Therefore, it is important not to create a pre-application process that creates additional administrative costs and burdens.

This proposal begins to mimic the Development Consent Order (DCO) process in England, which industry has found to be document heavy, costly, and slow. Members share that the legal costs for DCO proposals exceed £800,000, and one recent proposal cost £1.1m. We

must avoid replicating this system in the Scottish planning system. It does not achieve the goal of shortening timelines and increases project costs.

The Scottish Onshore Wind Sector Deal paved the way for decreasing planning timelines and barriers to deployment, including ensuring costs do not make projects financially inviable. Creating a pre-application system that increases costs through administrative burden would be counterproductive to the ambitions of Scottish Ministers.

Thirdly, we are concerned about the preliminary report that is proposed in this consultation:

The formalised Preliminary Information Report is an additional administrative burden that duplicates developers' efforts to describe potential projects to local communities. Industry is very concerned that the preliminary report requires information that may not be available at this stage of a project's development. There is a risk that the preliminary report duplicates work that will be completed later in development, adding additional costs.

The consultation paper does not set clear expectations for Preliminary Reports or associated consultee responses to ensure that this new stage remains proportionate, efficient and adds value. The single reference to the provision of "brief details of any environmental considerations" is vague, misaligned with applicable tests under Environmental Impact Assessment (EIA) regulations and could lead to a wide spectrum of information being submitted, including full draft EIA reports, which would require significant resources and time to prepare and review.

Our members estimate that the time it takes to create the preliminary report, the time required for LPAs to review it, get feedback, and update the report so that it won't receive an objection once submitted, will add at least four to six months to the development process.

The ability of the relevant planning authority to comment on the quality of the Statement of Community Consultation and the Preliminary Information Report also provides an additional and unnecessary stage at which a project could be blocked. This will be particularly true if LPAs are not provided with additional resources to undertake this extra review. We are concerned that the additional burden of this proposal on LPAs will significantly slow down response times to this new proposed process.

Should the proposal for a preliminary report requirement be taken forward, guidance must be provided that clearly articulates that reports should focus on the key issues arising from the development.

A more collaborative and efficient approach is possible, for example, through the less prescriptive 'gate check' functions of the Energy Consents Unit (ECU), which ensure that any issues or omissions are addressed early on without introducing the delays associated with a formal rejection and resubmission process.

The process laid out in this proposal adds additional requirements to what makes an application ‘complete’ by frontloading work that currently happens later in the development process. By requiring information to be provided at an inappropriately early stage in the project development process, there will be less opportunity for consultation between developers and statutory consultees. Aspects of projects will need to be fixed in pre-application, leaving less opportunity for flexibility and changes to accommodate feedback received in pre-application. This will be especially true where statutory consultees lack the resources to engage fully in the pre-application process. This may create a process where communities get less say in how projects are developed and delivered than they do today. It is not our members’ experience that the pre-application process currently used in England prevents the need to respond to concerns or objections later in the process.

Transmission projects already undergo an extensive pre-application process. Given their complexity and the options laid before consultees, it makes sense to have a more robust community engagement process. A process of this scale is not proportionate to the scale of onshore renewable projects. What works for the transmission process should not be applied to smaller renewable projects.

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?

Our views on offshore are similar to our views on onshore expressed in our answer to question 1.

Industry recognises the benefits of robust pre-application engagement. However, it is already standard practice for Section 36 consenting, as it is for proposals that go through Town and Country Planning.

We are concerned that front-loading more work into a pre-application process and creating a formalised pre-application requirement to manage applications without addressing broader consenting challenges will not reduce consenting timelines and could increase developers' costs.

As highlighted in the introductory comments, a lack of meaningful feedback and engagement, attributed to the lack of resources, significantly contributes to delays in the consenting process. Appropriate resourcing for all relevant government departments, local authorities and statutory consultees, which includes upskilling staff and ensuring personnel retention, will be critical to meet the high demand in casework to deliver electricity infrastructure at pace and prevent unnecessary consenting delays.

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The consultation paper does not set clear expectations for Preliminary Reports or associated consultee responses to ensure that this new stage remains proportionate, efficient and adds value. The single reference to the provision of "brief details of any environmental considerations" is vague, misaligned with applicable tests under Environmental Impact Assessment (EIA) regulations and could lead to a wide spectrum of information being submitted, including full draft EIA reports, which would require significant resources and time to prepare and review.

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?

Evaluating EIA reports places the greatest demand on consenting authorities' capacity. Currently, there is no standard scope for EIAs, so they have become increasingly complex, encompassing issues of varying relevance and impact.

If the Government is committed to introducing pre-application requirements, a formal consultation on a standard EIA scope is required. For example, we recommend excluding life extension applications and Varied Consent applications under Section 36C from the full requirements. Previously consented projects varying that consent or approaching the end of their consent and which need to apply for an extension to that operational period should not be subject to these onerous pre-application requirements.

This approach would align with existing practice under the Town and Country Planning regime and avoid proposals for minor variations after the principle of development has already been confirmed from being subject to resource-intensive and disproportionate requirements.

If this were to be applied to projects that do not require an EIA, developers would need to be provided with a list of assessments to ensure transparency about what is required where the scoping process does not apply.

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?

Industry is concerned about the additional consultation requirements resulting from the proposals set out in this consultation – which could risk increasing timelines.

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?

Industry does not agree with introducing an Acceptance Stage without more information on how it would work.

It would be essential to clarify what information is required for the decision maker to determine an application, for example, how closely it would follow current Section 55 of the Planning Act (2008).

We furthermore strongly object to enabling planning authorities to raise objections during the Acceptance Stage based on perceived inadequacies in pre-application consultation. Planning authorities should not be allowed to object to whether the proposal meets pre-application requirements.

The ECU should make all determinations on whether an application is complete, and verification and acceptance should be based solely on procedural requirements rather than predetermining stakeholder views on projects' planning merit.

In addition, we recommend that the word ‘rejection’ be avoided in this context. It implies that the project was refused rather than submitted incompletely.

Overall, the consultation document lacks clarity regarding the benchmarks or a legislative framework as within the Planning Act 2008 that case officers will use to assess the adequacy of pre-application consultations. Without clear benchmarks, there is a risk of inconsistent decision-making and the potential for delays as applicants seek to address subjective interpretations of the requirements.

Before providing any qualitative response to this question, we request that the Scottish Government provide detailed guidance on the criteria that planning authorities will use to assess these consultations, including the specific benchmarks that will determine acceptability.

With regard to a timeline, we propose 28 days for onshore and offshore developments – which aligns with England and Wales.

Without clarity on timescales and clear guidance, the Acceptance Stage may create another administrative burden for LPAs, risking delays to proposals or opportunities to object to submissions. Further uncertainty impacts projects overall, including investor confidence.

The requirement within Section 55 of the Planning Act 2008 is for the local authority to provide a response to Planning Inspectorate (PINS) on behalf of the Secretary of State

confirming in their opinion if the applicant carried out their pre-application duties under sections 42, 47 & 48 in terms of their duty to consult and publicise. This is a less onerous requirement than is suggested in this consultation for an objection procedure.

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?

We recognise that the provision of meaningful pre-application engagement and advice requires to be supported by adequate resourcing, which inevitably incurs costs. Equally, statutory planning functions and duties must be adequately funded by relevant public bodies without relying upon additional contributions from applicants to 'top up' budgets. Any revenue generated from such charges should be used to improve service delivery rather than fill existing capacity gaps. Should the Scottish Government set a requirement for applicants to use a chargeable pre-application function, this would need to demonstrably deliver added value beyond baseline practice.

However, as outlined in SR's response to the Resourcing the Planning System consultation in May of 2024, planning fees have risen substantially over the last decade, but there has not been a corresponding improvement in service.

For example, an Application for Consent under s36 of the Electricity Act 1989 (with a request for deemed planning permission) for a generating station with a rated capacity of 100-200MW:

Fee in *Electricity (Applications for Consent) Regulations 1990*	**£5,000**	
Fee in *Electricity (Applications for Consent) Amendment (Scotland) Regulations 2005*	**£20,000**	A real terms increase of £13,008.20 in 2005, if you take the inflation factor at 2.3% from 1990 to 2005, or 186% increase.
Fee in *The Electricity (Applications for Consent and Variation of Consent) (Fees) (Scotland) Regulations 2019: (noting thresholds changed)*	50–100 MW = **£125,000** 100–300MW = **£180,000**	A real terms increase of £97,393 (353% increase) in 2019 for a 99MW wind farm, taking inflation to be 2.3% between 2005–2019. A real terms increase of £152,393 (552% increase) for a 105MW wind farm, taking

		inflation to be 2.3% between 2005–2019.

For a 49MW wind farm under the Town and Country Planning regulations the costs would be:

2004 regs	capped at **£13,000**	a fee of £260 per 0.1 ha
2022 regs	capped at **£150,000**	a fee of £500 per 0.1 ha

Offshore wind projects already pay £264k plus £15k per 5 MW over 1 GW.[1]

Evidence of the decline in service for onshore projects can be seen in the reduction in pre-application engagement, the long delay in responses to communications and planning authorities regularly asking for extensions to the 16-week period in which they are expected to respond as statutory consultees. On this final point, there are cases where planning authorities have asked for extensions of up to 2 years.

The fees outlined in this proposal are to be used to facilitate the process between developers and stakeholders. As developers already do the work outlined in the pre-application proposal and facilitate those meetings independently, we don't recognise the value of this proposal. The service required from the Marine Directorate and ECU is to make decisions on applications, not facilitate the application process. Should fees be charged, they should be used to adequately resource statutory consultees – including consultees with the necessary technical expertise – to provide meaningful and timely feedback and decision-making. And they should be ringfenced for that specific purpose.

Currently, ECU is increasing its capacity to address the increasing number of applications, which means more application fees are coming in. The current fee system should be sufficient to pay for the required work. If there were a business case for increasing fees for ECU and the Marine Directorate decision-making, developers would require that the need be demonstrated, with a solid understanding of the resource required for applications and how the current fee system falls short.

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, industry supports frontloading stakeholder engagement and issue resolution into the pre-application stage. However, we are concerned that the proposals in this consultation would not shorten the overall timeframes for applications but instead introduce more complex and administrative heavy processes.

[1] Marine licensing and consenting: application fees - gov.scot

We are concerned that the proposal shifts work to earlier in the process by adding additional pre-application administrative burden and cost. This will increase the pre-application processes and introduce fees without guaranteed input from statutory consultees, resulting in higher costs for developers overall and additional administrative costs for Section 36 proposals.

Without sufficient resources for statutory consultees to comply with their new obligations, this proposal risks lengthening the planning process and reducing developers' ability to respond to pre-consultation feedback.

We are concerned that, as outlined in our introduction, these proposals do not address the specific issues causing delays in the consenting process in Scotland.

Finally, there is a risk that this does not expedite the decision-making process committed to in the Onshore Wind Sector Deal, especially if the goal of streamlining projects 'in planning' is not as successful as hoped.

In addition, the proposals themselves have limitations:

- **Timelines:** For the proposals to address concerns around long consenting timelines, it will be critical that clear timescales for determinations and pre-consultations be incorporated.

- **Flexibility:** We agree that formalising the consultation process can benefit the process. However, industry urges a level of flexibility concerning how consultations are conducted. Expecting a fixed round of consultation or mandatory public meetings, which can be challenging for all stakeholders to attend, may not provide the meaningful level of input that will be required.

  Developers already use several other ways to engage with communities that have been very useful in reaching a wider audience, such as targeted advertisement on Facebook, offering virtual meetings or hosting webinars. Instead of being prescriptive about the level of engagement, it will be critical to ensure that developers gather constructive feedback that will be valuable for the development of a project.

- **Resourcing:** Delays in the current consenting process can often be attributed to overstretched, under-resourced, or insufficiently experienced statutory bodies. Therefore, it is essential for all public bodies involved to ensure that an effective and timely planning system throughout the UK is well-resourced and that existing resources are used as efficiently and effectively as possible. We are concerned that increased pre-application requirements could cause further delays without significant additional resources and increased efficiency of existing resources.

- **Engagement and feedback:** For the proposals to positively impact the process, consultees must provide relevant, bespoke, and evidence-based advice at an early stage and maintain consistency throughout. Statutory consultees should furthermore be held accountable for providing meaningful engagement with applicants.

Finally, we support the digitalisation of processes and planning materials as another strategy to increase the efficiency of existing resources by ensuring that they are signposted and standardised where possible. Pre-application consultation should be mainly a digital exercise, with paper copies only being provided on request. This would facilitate general as well as additional targeted consultations. Generally, digital approaches adopted during the pandemic have worked well and should be retained. Automatic alerts of examination hearings and deadlines would be helpful, as well as automated online subscriptions to hearings.

We would like to highlight a project underway in Europe. In 2023, WindEurope, AWS and Accenture developed a cloud-based, open-source solution that could help public administration and local communities embrace and speed up the whole permitting process. Further information on EasyPermits can be found here: https://windeurope.org/easypermits/

PROPOSAL 2: APPLICATION PROCEDURES

Application Procedures

Application information requirements

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?

While we recognise the intention behind this proposal, we would like to highlight that applications are already substantive, including all relevant information. We are furthermore concerned about the additional time it will require to provide increased information at an earlier stage and the risk of duplication.

A clear, standardised, and well-defined set of information requirements will contribute to a more efficient and effective consenting process; it will be important that the proposal will guarantee that:

- Regulations set clear information requirements and support their consistent and proportionate application. They are supported by an efficient validation process and an objective pathway to resolve any disputes arising regarding the adequacy of applications. This is important to avoid delays in processing applications where parties hold conflicting views on the adequacy of information submitted.

- Increased information required is proportional and clearly explains the reasoning behind requests. Setting out such requirements in advance will help ensure that requirements will not be blindly applied.
- Coordinating and aligning the consenting regimes for offshore projects is essential to streamlining the process and avoiding redundant submissions.
- This guidance should emphasise avoiding redundant submissions by explicitly signposting to existing documents like EIA reports and planning statements where the required information is already provided.

Finally, according to this consultation, 43% of onshore applications since 2007 have been submitted in a substandard form. It is unclear from the application which criteria have been applied through this analysis. We want to highlight the evolution of the sector since 2007. Any additional information on the data that has fed into this analysis would be very useful to clarify why such applications have been regarded as substandard.

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?

For offshore projects, developers already provide a substantial amount of information as part of the Marine License application process. Ensuring that the increased information requirements for Electricity Act applications do not lead to duplication of effort and unnecessary burdens is crucial. Coordination and alignment between the consenting regimes for offshore projects are essential to streamline the process and avoid redundant submissions.

In addition, we are concerned that the proposed list of information requirements repeats information already supplied in all Section 36 applications for onshore wind farms, for example:

- The Design Evolution chapter in an EIA Report and the Design and Access Statement provides a statement on the alternative approaches considered.
- Planning Statements, Policy chapters and Socio-Economic Benefit Statements all provide the ECU with the benefits and needs of a proposal.

Therefore, we are unclear about the need and purpose of reforming legislation to mandate them.

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?

We are concerned that the proposed changes will burden statutory consultees more. They don't have the resources to do their current work, much less the additional requirements this proposal would impose.

We prefer more discipline around when and how statutory consultees respond to proposals in the pre-application process and applications. Today there is inconsistency around which statutory consultees provide feedback during pre-application phases, which ones don't provide feedback until after an application has been submitted and staying on required deadlines. A key driver for slowing down S36 and S37 applications is that statutory consultees and the ECU do not all have the resources or the desire to engage at an early stage. However, most developers attempt to engage them early.

An important aspect of reform would be setting timeframes for response and providing recovery on behalf of the application should timeframes not be met. Statutory consultees should not be able to ask for more time, as they repeatedly do currently.

Rather than the pre-application phase laid out in this proposal, it would be more effective if statutory consultees all engaged in effective project scoping so that developers can consider ecosystem solutions. This would fulfil NPF4's goal of enhancing the environment.

Improve Clarity and Consistency of Guidance: Existing guidance must be updated to reflect current industry practices and technological advancements. Clear, concise, and readily accessible guidance would streamline the process and reduce ambiguity, leading to faster responses.

Address Resource Constraints within Statutory Consultees: Ensuring they have adequate staffing, expertise, and resources is vital for efficient and timely application handling. This might involve considering recruiting technical experts to bolster their capabilities in handling complex technical aspects of applications.

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?

While beneficial in the long term, establishing new forums and frameworks could initially create additional work for already stretched resources. Their effectiveness will be limited if underlying resource constraints within statutory consultees are not addressed. Careful planning and resource allocation are crucial to mitigate this.

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

Ringfenced financial resources would help support statutory consultees' ability to do their work effectively. Providing additional support and funding to statutory consultees shouldn't be limited to specialist support for improving the management of highly technical matters, as suggested in proposed change #3. As a matter of urgency, there should also be additional all-round support to assist caseloads for statutory bodies.

Providing a pool of officers who can cover central topic areas in which LPAs may not have expertise would be helpful. If the Planning Hub effectively provides this expertise to LPAs, it could be a valuable tool for speeding up timeframes.

The ECU should consider bolstering its technical expertise to effectively support statutory consultees in evaluating complex projects. This could involve recruiting specialists with relevant experience.

Developers could work with the Scottish Government and other stakeholders through industry forums to update and clarify guidance documents, focusing on streamlining information requirements and submission procedures. This collaborative approach would help address inconsistencies and ambiguities, ensuring smoother interactions between applicants and statutory consultees.

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

New time limits for input into the application process would be welcomed if all consultees were held accountable to them. Time limits are not complied with today, and nothing in this proposal would change that.

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 recognise that a limit on amendments could help address current issues and frontload meaningful engagement and issue resolution in the pre-application and application statutory consultation phases. However, to benefit from a limit, the availability of high-quality advice from statutory consultees and other important stakeholders should be a key consideration in setting any deadline.

In addition, the following examples illustrate the benefit of amendments to an application:

- In most cases, relatively minor changes are required at later stages. Such stages usually aim to prevent an objection and subsequent public local inquiry.

- In some instances, consultees have not provided adequate advice per the outlined timeframes. The ability to make changes later to respond is in all parties' interest.

At this stage, we are not fully supportive of implementing a limit for application amendments. Should a limit for amendments be implemented, the following criteria will need to be fulfilled:

- It must have a clear rationale and be carefully managed.
- It should kick in only after all consultees have responded and the developer has had a chance to adapt the proposal accordingly. In many instances, changes to an application post-submission by one statutory consultee can contradict suggestions by another, which requires discussion with the planning authority to determine the balanced position.
- A 'substantive amendment' must be clearly defined and agreed upon upfront. A clear distinction between substantive and non-substantive amendments would prevent ambiguity and potential disagreements during the application process.

There are numerous examples of externalities for which developers should not be penalised by the consent process. This is alluded to in the variations section of the consultation document, where it is acknowledged that large-scale infrastructure projects are long-term where conditions and technology can change. Changes include, but are not limited to:

- Power price fluctuations
- Commodity pricing of energy
- Updated guidance by statutory consultees
- Updated policy e.g. NPF4
- Delays in decision-making and grid connection dates
- Turbine manufacturing market reacting to advances in technology
- Aircraft detection systems for aviation lighting
- Changes to ornithology baselines, particularly the establishment of golden eagle habitats
- Land rights changes
- New designations such as National Parks (e.g. Galloway), important landscapes, World Heritage Sites, SSSIs and SACs, etc

Because of delays in the grid consenting and build process, a wind farm will likely not be constructed or fully commissioned for several years after a planning submission. This could lock developers into outdated technology with no options for optimising the scheme. These outside forces often drive amendments to applications.

Legislating a limit on the number of amendments that can be made to applications is not conducive to the iterative nature of these developments and could prove particularly counterproductive to the deliverability of onshore wind farm projects.

With the best intentions, developers cannot always guarantee the PAC process will work well. If objections from statutory consultees can be addressed, developers should have every opportunity to do so so that the project does not have to start over in the planning process. There is also a risk of a JR from non-statutory consultees if an applicant cannot amend a proposal in response to post-PAC feedback.

There needs to be, at a minimum, one round of addressing the concerns that come from statutory consultees through this process. Scottish Ministers should not be able to create a limit on the number of rounds of amendments until all statutory consultees have responded to the application. Amendments arising from recommendations by statutory consultees should be accommodated even if they fall outside the set timeframe.

Many objections cannot be anticipated before an application is submitted. And some consultees do not engage in detail at the pre-application stage. It is in all parties' best interest to allow developers to amend project applications to address consultee concerns. This is a helpful part of the application process. While keeping timelines short for the application process is everyone's goal, it should not be at the expense of a project being able to meet consultee concerns.

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?

We disagree with providing blanket authority to Scottish Ministers to stop a process of developers working to meet statutory consultee needs. Until all responses have been received, it will be impossible to know if any or what type of amendments may be required to resolve objections. However, we would like to propose strict time limits for amendment submission and response, ensuring all parties work collaboratively and constructively to try and find solutions.

Public inquiries

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

A public local inquiry can be a helpful tool in defining and resolving complex matters and in circumstances where parties cannot reach an agreement. A meaningful debate is essential in reaching balanced decisions on nationally important infrastructure projects.

In addition, the PLI process can serve as a valuable tool for clarifying policy, particularly with NPF4 and policies that have been untested on the ground. This process creates a precedent that helps guide developers and statutory consultees for future applications. In addition,

inquiry sessions can be beneficial when there are technical topics where the Reporter needs to carefully examine issues in a way that cannot happen in a public hearing.

However, the consultation does not recognise the increasing scope of Public Local Inquiries and its growing challenge to the consenting process.

According to ECU analysis, PLIs are by far the biggest driver of determination periods (an extra 1-2 years). In addition, LPAs were the sole cause of 62% of PLIs and were involved in 85% overall.

Industry is concerned that PLIs have become disproportionate and, instead of focusing on a narrow set of unresolved objections, can become a process that rehashes a wide range of issues previously resolved in the planning process. We would encourage reforms to PLI to include limiting the scope to unresolved issues. Removing mandatory PLIs, would furthermore be in line with the recommendations from the UK's Electricity Networks Commissioner, Nick Winser, and should be taken forward as part of the reform package:

The public should still be able to express their concerns throughout this process. That could be achieved through public sessions rather than formal sessions. Without the public's ability to have a voice in this process, they may not accept the final result.

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

Public Local Inquiries have become disproportionate in the past few years. PLIs should focus on a narrow set of specific unresolved objections or issues that are material to the consenting decision. In addition, the timescales for reports or recommendations to be completed, reviewed, or accepted are highly unpredictable and prone to significant delay.

To regain a sense of proportionality and ensure any examination adds value to the consenting process, the Act should be amended to limit the scope of examinations to only the consideration of unresolved objections or issues, as determined by the appointed Reporter. This would mirror existing provisions within Regulation 17 of The Town and Country Planning (Development Planning) (Scotland) Regulations 2023. Furthermore, clear guidance on an expected date or outcome of an examination is needed to avoid any unnecessary delays.

While we would like to retain the right for applicants to request a PLI, some reforms would help speed up the process. Moving more towards written representations is a positive change, less resource-intensive and costly for all parties, while retaining the flexibility for the Reporter to elect to hold a Public Inquiry if this is in the public interest.

In many cases, the key issues and concerns regarding a project can be effectively addressed through comprehensive written submissions from the applicant, statutory consultees, and members of the public. An oral process via a Hearing could be used where the Reporter wishes to test evidence further, and full inquiry sessions should be required to test very complex technical evidence. This should be for the Reporter to determine, as with current appeal procedures under the Section 36 legislative framework, with input from the developer.

By investing so much money in the development of a proposal up until this stage, a developer's interest in a full examination should be heavily weighted. This approach reduces costs, minimises delays, and allows for more focused and evidence-based decision-making.

PROPOSAL 3: VARIATIONS

Variations of network projects

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?

This will depend on the technology.

We welcome variations, particularly for offshore projects.

Variations of 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 do not agree that the Scottish Government should be able to vary, suspend or revoke consent as proposed in this consultation.

We recognise that the proposed powers would allow correcting errors in the drafting of consent without generating an administrative burden. Therefore, we would support the ability to 'modify' a consent to avoid S36C applications for minor variations or errors to speed up the planning process.

However, we are concerned that the proposed measures would appear to give the Scottish Government the ability to modify, suspend, or revoke consents where environmental circumstances have changed, particularly concerning subjective environmental grounds. This would introduce uncertainty and weaken investor confidence.

This is particularly pertinent if new requirements are applied to consented projects that already have their business model in place or have been constructed and are operational. It could potentially increase the funding costs associated with delivering such projects. An example of this could be the inscription of a World Heritage Site after consent has been provided to a proposal. Revoking consent after the fact would be unfair because the policy landscape has changed. Ministers should not have the scope to change the planning consent retrospectively without requiring the consent of the operator or without being required to pay full compensation for the value of the consent.

It should be noted that section 30 of The Marine Scotland Act 2010 already provides procedures for a formal process before such a decision is made for offshore projects. For onshore proposals, this could significantly harm project feasibility and investor confidence.

The ability to have consent revoked would impact long-term investment in projects, long-term maintenance and service agreements, and the project's financial feasibility if turbines needed to be curtailed to accommodate future mitigation measures. Projects will go into a final investment with a validated model and a validated energy yield, and changes to the model or the yield after the final investment decision would impact the financial feasibility of the projects after the fact. This uncertainty could have a significant cooling effect on investment in Scotland.

This proposal will require more clarity to address those concerns before being taken forward. Any proposal to allow for revocation of consent needs to have proper safeguards in place to prevent abuse. The power to ‘suspend or revoke’ consent based on a change in environmental or technical information is unreasonable. In the Planning Act, the ability to revoke consent is the exception, and there are many parameters around when and how revocation can be invoked.

We are concerned that people could use this to object to onshore renewable energy projects after they have been built. Rather than going through the planning authority in the current process, they could request that the LPA request a revocation of consent. Without a compensation provision, the uncertainty this would create for renewable energy projects would be a significant issue and ultimately harm the Scottish economy.

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.

PROPOSAL 4: FEES FOR NECESSARY WAYLEAVES

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?

We agree with introducing a fee, but all fees proposed here should be ringfenced and guarantee service improvements.

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?

No response.

PROPOSAL 5: STATUTORY APPEALS AND JUDICIAL PROCEEDINGS

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?

We agree with the proposal that a statutory appeal rather than a judicial review process should be used to challenge Scottish Ministers' onshore electricity consenting decisions. The number of judicial review processes for planning applications has increased in the last few years. The long and complex timescales of judicial reviews are adding another barrier to new projects. Statutory appeal has several benefits, including short timelines and stricter criteria.

Finally, adopting a unified statutory appeal process for both onshore and offshore projects would streamline the system, making it more accessible and efficient.

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 welcome the proposal to introduce a six-week time limit for initiating a challenge to a consenting decision of Scottish Ministers for onshore electricity infrastructure.

This is a welcome change that addresses an anomaly: the challenge period offshore is 6 weeks, but 3 months onshore. This will help speed up developers’ ability to reach a final investment decision.

Introducing a clear timeline will provide more certainty for projects on when to expect a challenge by at the latest. Six weeks should furthermore be sufficient time to raise concerns. Concerns raised at a later stage will add uncertainty that could inadvertently delay projects.

Overall, clear timelines on the consenting process, including from statutory consultants, will provide clarity for all parties involved.

PROPOSAL 6: TRANSITIONAL ARRANGEMENTS

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 disagree with the proposal for transitional agreements.

Applications have been developed and submitted using the current process and should not be penalised for their timing.

If a project is ready for submission under the current process as these rules go into place, requiring it to comply with this new pre-application process would mean that developers would have to redo the pre-application process, which will be costly and time consuming.

One key goal of the consultation process is seeking feedback on proposals and refining them through the development process. If developers have already committed to months or years of engagement for projects under the current process, requiring them to redo that process would not increase engagement. Still, it would increase time and cost for the development portion of the project. This may alienate community members if they are double consulted on the same project for no real purpose or change in outcome.

This would seriously undermine investor confidence as well as put what would otherwise have been viable projects at risk.

We recommend the following process:

- Limited transitional arrangements should be in place to inadvertently delay submissions of Section 36 applications in 2025.
- A grace period of twelve months should be introduced from the enactment of the legislative changes and before the preliminary information report consultation stage is required for projects which have already completed EIA Scoping and are intended to be submitted in 2025. We are concerned that implementing the changes for projects that have completed EIA scoping or are currently going through the process could delay those projects by four to six months, as developers would have to undertake a consultation on a Preliminary Report.

PROPOSAL 7: THE PACKAGE OF REFORMS

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?

Industry recognises the ambitions of the reform package. While proposed measures regarding pre-application requirements are reasonable in isolation, when considered in their entirety, we are concerned that the new requirements frontload rather than streamline the work required in the planning stage. Because developers currently participate in pre-application processes where available, we do not believe creating an administratively burdensome pre-application process serves the interest of a shorter application process.

While frontloading additional work into the pre-application process may allow for the ECU to spend less time on an application, it does not meet the spirit of expediting the planning process, nor does it expedite decision-making.

To overcome the challenges of consenting in Scotland, it will be essential to look at the broader challenges of the consenting process, as highlighted throughout this response. In addition to broader reforms, for example, around EIA, statutory consultees, Local Planning Authorities, and the Marine Directorate need to be well-resourced and engage with the industry promptly and consistently. For offshore wind, the main reason for a delay in decisions is the issues with the derogation provisions within the Habitat Regulations and the requirement for like-for-like compensation, which does not exist.

We are concerned that the proposal in this consultation would create an overly bureaucratic and administratively onerous process that does not address the core cause of lengthy application processes.

Therefore, should the reforms be taken forward, it will be essential to clarify how and when applications will be determined, which should include information about the process of the statutory bodies. Additionally, it will be critical that the transitional arrangement and changes to the current process do not inadvertently delay projects that have advanced post the scoping stage.

Onshore–specific feedback and additional proposal

Concerning onshore developments, this reform package misses the opportunity to provide renewable developers with the ability to secure land rights in Scotland. Currently, developers are required to create leases individually with landowners for oversail and overrun rights. As land becomes scarcer for renewable energy developments, projects can have as many as

fifty leases for oversail and overrun. Landowners have begun holding developers to ransom for payments the proposed projects can't financially support. These negotiations are putting projects at risk

Currently, the only solution for developers is a compulsory purchase order, which is not fit for purpose for this application. It is too blunt a tool and would give the developer who uses it full land rights, when multiple developers will likely need access to those same pinch points. The state should provide an option for a remedy that is below the land acquisition. In England, developers can occupy land for the purpose of construction, while not acquiring the land. There is no mechanism for this in Scotland.

We recommend the creation of a new provision in the Electricity Act allowing developers to apply to Scottish Ministers for short-term oversail and overrun wayleave rights when required, during the construction process and for any repairs during the lifetime of the wind farm. This should be subject to compensation payment and land reinstatement after use. Compensation should be determined on a statutory basis. Because of the need to deploy renewable energy projects quickly, we suggest removing any time-bound requirement for negotiations and require that negotiations have been done with landowners.

Additional proposal to address an essential element of the consenting process:

The consultation overlooks an essential element of consenting processes under the Electricity Act 1989: the basis and timing of Ministerial determinations on applications at the end of the process.

Whilst the inherent flexibility within the Act to allow decisions to reflect the unique circumstances of individual cases is to be welcomed and should not be removed, we observe that there is presently nothing within the Act to guide either the timing or basis of decision-making to ensure consistency, transparency, equity, and predictability.

This differs markedly from other consenting legislative frameworks and undermines confidence in the system, especially during the often lengthy period following the completion of a PLI when it is not known when or on what basis a Ministerial decision will be made. The absence of any guidelines on determinations under the Electricity Act 1989 also means that it is now one of only very few consenting regimes across the UK that are not 'plan-led'. This is at odds with the rest of Scotland's plan-led system, undermines transparency and leads to inconsistent and unpredictable outcomes, including, for example, through the application of different policies from the National Planning Framework 4, and to differing extents, on the face of Ministerial decision notices for cases which share similar attributes.

To address this and provide greater certainty, modest legislative amendments could clarify the basis of determinations and introduce a time limit on Ministerial decision-making following the making of consenting recommendations.

As a wide range of legislation and policies are relevant to the determination of consenting applications for energy infrastructure, unlike Section 25 of the Town and Country Planning (Scotland) Act 1997, which focuses on the statutory Development Plan, it would be more appropriate to require determinations on applications to be made “in accordance with applicable legislation and policies, unless relevant and important considerations indicate otherwise”. This nuanced amendment would prevent determinations from being perceived to be subjective and would help to promote consistency concerning the application of relevant plans and policies whilst retaining sufficient latitude for ministers to reflect the unique circumstances of each case.

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

To ensure the project planning process can be completed as fast as possible, we propose the following additional solutions:

- Clear timelines and milestones**:** Establishing clear timelines for each stage of the pre-application process, including consultation periods and information submission deadlines, would enhance predictability and enable efficient project scheduling.

- Digital submission and tracking: Implementing a digital application submission and tracking platform would enable efficient information management and communication, reducing processing times.

- Adequate Resources for Statutory Consultees: Adequate resources for statutory consultees are essential to ensure timely responses to consultations. This includes upskilling staff where necessary.

- Update existing guidance: Clear, concise, and readily accessible guidance would streamline the process and reduce ambiguity, leading to faster responses.

PROPOSAL 8: EVIDENCE AND ANALYSIS

Evidence and analysis

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

We disagree.

While we agree that action is needed to shorten the planning process for renewable energy projects, this proposal does not focus on the pinch points that currently slow down applications.

The proposal in this consultation suggests that developers are currently not providing complete applications, referencing outdated data. However, industry best practices have moved on significantly since 2007.

As highlighted in our response, onshore wind developers have committed to submitting complete applications as part of the Scottish Onshore Wind Sector Deal. Meanwhile, pre-application is already common practice for offshore wind developers.

We are concerned that the proposals put forward in this consultation do not address the main reasons for longer determination timelines – as outlined throughout the consultation, which include:

- The lack of a proportionate EIA and challenges around HRA.
- The lack of adequate resourcing of statutory consultees.
- The lack of meaningful pre-application engagement and feedback, even where pre-application services are provided.

We are concerned that, in light of under-resourced statutory consultees, the proposal will require more resources and time to adjust to and implement the proposals.