

21 May 2025

Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee
Scottish Parliament
Edinburgh
EH99 1SP

Sent by email only to: netzero.committee@parliament.scot

Dear Convener,

**Evidence on the Planning and Infrastructure Bill legislative consent motion
Clause 16 – consultation defects, detrimental impacts on access to justice and Aarhus
Convention compliance**

This letter is our response to the Committee's request for evidence on the Planning and Infrastructure Bill legislative consent motion ('LCM').

We write regarding Clause 16 of the Bill, which – if passed – will significantly reduce the time limits for starting legal challenges against onshore electricity consent decisions.

We wish to raise two matters with the Committee relating to Clause 16.

First, we wish to make the Committee aware of the significant detrimental impact Clause 16 will have on accessing justice.

Second, the consultation which led to Clause 16 was deeply flawed in several respects.

We respectfully recommend that the Committee refuses consent for Clause 16 in light of the above.

1. Detrimental impacts on access to justice

Clause 16 of the Bill will significantly reduce the time limits for starting legal proceedings to challenge onshore electricity consents, and as a result, will have a substantial detrimental impact on access to justice.



At present, legal challenges against onshore electricity consenting decisions are made by judicial review and must be started within three months of the date of the consent decision. Clause 16 will reduce that time limit so that legal challenges will have to be started within 6 weeks of the date of the consent decision.

Clause 16 will reduce the time limits for starting legal challenges by more than 50%.

Civil society organisations and members of the public will struggle to meet a six-week time limit for initiating legal challenges against onshore electricity consents.

An individual considering a challenge against electricity consents must generally take several steps before going to court.

They must first be aware of a consent decision. In our experience, those affected by onshore electricity consents are not always aware of decisions timeously. A six-week time limit may be insufficient for those affected to identify that consent has been granted.

They will then need to obtain legal advice on whether there is any basis for a legal challenge and the process and practicalities of going to court.

Having obtained advice, if they wish to go to court, they will need to secure adequate funding and instruct legal representatives to prepare and lodge the papers timeously.

Each of these steps takes time. The introduction of a six-week time limit will make it very difficult for most members of the public to challenge onshore electricity consent decisions.

Further, access to justice is already highly restricted in this area due to the costs of litigating in the Court of Session. Reducing time limits will create an additional barrier to accessing justice. Reducing time limits will make it even more difficult for members of the public to make suitable funding arrangements to support a legal challenge.

There was no assessment of the impact this change would have on access to justice in the consultation which preceded the Bill.

2. Consultation defects

The Committee will be aware that the Bill follows a consultation exercise carried out by DESNZ in 2024, centred around an October 2024 consultation document titled '[Electricity Infrastructure Consenting in Scotland: Proposals for reforming the consenting processes in Scotland under the Electricity Act 1989](#)'.



It has come to light post-consultation that there were several errors in the consultation document in respect of the proposal to reduce the time limits for legal challenges against onshore electricity consent decisions.

Our analysis of the information disclosed post-consultation by DESNZ indicates that there are significant problems with the evidence used in support of Clause 16 as follows:

- DESNZ had very limited evidence to support the claim made at page 32 of the consultation document that reducing the time limit for starting legal challenges to 6-weeks period “would allow for sufficient time to initiate a challenge”.
- The evidence used by DESNZ in the consultation document to support the claim that the current three-month time limit delays the development of electricity infrastructure was deeply flawed. It used irrelevant data, including cases which were brought before the statutory three months judicial review time limit came into effect on 22 September 2015 to support the claim that same time limit causes delays to the consenting process. It also relied on cases involving legal challenges brought by developers against the refusal of consents – those cases cannot be said to cause delays to the consenting process because they are challenges brought by developers against decisions to *refuse* (rather than to *approve*) consent.
- The consultation document stated that “Available data shows that, where challenges were brought against section 36 consents for onshore wind in Scotland using the Judicial Review process, the majority were lodged after 90 days”.¹ The available data held by DESNZ shows that most petitions for judicial review against onshore electricity infrastructure consent decisions are lodged timeously.

We wrote to DESNZ on 23 and 24 January 2025 in respect of the above issues.

On 2 April 2025 we received a letter from the Minister Michael Shanks MP which acknowledged “discrepancies in the data” used in the consultation document.

Our view is that describing these errors as “discrepancies” grossly underplays their significance.

There were critical errors in the evidence-gathering and use of evidence in support of Clause 16, which fatally undermine the claims made in the consultation document in favour of Clause 16.

¹ Page 32.



In light of the matters discussed in this letter, we respectfully recommend that the Committee refuses consent for Clause 16.

We hope this information assists the Committee and would be happy to provide any further evidence to assist the Committee's consideration of the LCM.

Yours sincerely,

In-house solicitor
Environmental Rights Centre for Scotland