

Response from National Energy System Operator (NESO), 16 May 2025

Planning and Infrastructure Bill LCM response

Dear Mark,

Thank-you for your letter in relation to Holyrood's Net Zero, Energy and Transport Committee and the LCM it's considering on the Planning and Infrastructure Bill.

I have attached two documents, which should help with the committee's questions.

One is NESO's response to the Electricity Infrastructure Consenting consultation sent to DSNEZ in November last year.

The other is our response to the UK Ministry of Housing consultation on streamlining national infrastructure (it is dated Feb 2024, but my understanding is that is a mistake and should read Feb 2025).

Please get back to us if you need anything further.

Kind Regards,

Tom

Tom Peterkin

Public Affairs

Scotland

Public

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29 November 2024

NESO Response to – Electricity Infrastructure Consenting in Scotland

Dear Scottish Energy Consenting Team,

Thank you for the opportunity to respond to your consultation 'Electricity Infrastructure Consenting in Scotland – Proposals for reforming the consenting processes in Scotland under the Electricity Act 1989'.

NESO is the independent National Energy System Operator for Great Britain, recently established to help accelerate the country's energy transition.

A key element of our future strategic planning activity will be the production of a new Strategic Spatial Energy Plan (SSEP) for Great Britain, commissioned by the UK, Scottish and Welsh governments on 22nd October 2024. The joint approach is intended to ensure that the GB-wide Plan will be relevant to all of the GB nations, including working with devolved consenting regimes.

The overall goal of the SSEP is to help accelerate and optimise the country's transition to clean, affordable, and secure energy. A specific objective of the UK, Scottish and Welsh governments' commission for the SSEP is to '*Streamline planning consent processes for new energy generation and storage*'. The commission expects that the SSEP will foster a more efficient electricity system design, promoting anticipatory network investment to enable the reduction of waiting times for generation and storage projects to connect to the grid.

In our recent advice to the UK Government on achieving clean power by 2030, published on 5th November 2024, we highlighted the need to reform planning and consenting processes as a 'critical enabler' for speeding up the delivery of future transmission network projects. Our advice acknowledges that significant volumes of projects need to pass through the planning system to start construction in rapid timescales, while maintaining community consent which is vital to the mission. Given that construction for many of the required projects needs to begin in the next 6–24

months to be in place by 2030, upcoming planning reforms will need to streamline and speed up processes. The report acknowledged the devolved nature of planning in Scotland as well as Wales, together with the benefits of close collaboration and partnership between the UK and devolved governments in shaping possible changes that could help shorten the processes up to and beyond 2030.

Our Key Points

We welcome and agree with the overall package of proposed reforms to the consenting regime in Scotland for energy generating stations and electricity network projects under the 1989 Electricity Act. They appear to be a balanced and measured set of proposals that will modernise the system for the consenting of large-scale energy infrastructure projects in Scotland and enhance alignment with the system in England and Wales.

It is very positive to see the package's contribution to the delivery of the recommendations in the Electricity Network Commissioner's Recommendation Report and the government's subsequent Transmission Acceleration Action Plan. We consider the package of proposals has the potential to reduce consenting times for Section 36 and 37 projects and help accelerate the delivery of new energy infrastructure. In this way they will complement and help deliver the objectives of the SSEP.

We particularly support the introduction of a new Reporter-led examination process with flexible methods to consider the concerns of local planning authorities, to address issues raised in the Electricity Network Commissioner's report on lengthy public inquiries that have led to increased consenting processes for projects.

Please refer to the Annex for our detailed responses to your consultation questions which we hope are helpful. Should you require clarification or further information on our answers please contact Katharine Clench, SSEP External Governance Manager, at

[REDACTED]

Yours sincerely

Alice Etheridge

Head of Strategic Spatial Energy Planning

Annex

Introducing mandatory pre-application requirements and an Acceptance Stage (Consultation Questions 1 to 7 page 18)

We agree with and support the proposals for pre-application requirements (PAR) for onshore generating stations and network projects (requiring Environmental Impact Assessment) and offshore applications. We see that the proposals for PAR should help to improve the quality of consent applications, and better engage the public, local communities, key consultees and LPAs in the Section 36 and Section 37 consenting processes. The proposals for formalising current non-statutory good practice by some developers in terms of 'frontloaded' consultation activities, requiring initial project notification, allowing the Scottish Government and local planning authorities (LPAs) a greater scoping role through the proposed Statement of Community Consultation for onshore projects and land-based elements of offshore projects and setting firm new information requirements like the proposed Preliminary Information Report will be key to this. These changes have the potential to increase the understanding of projects for a range of interested organisations and individuals and provide the opportunity for them to positively shape projects at an early stage. This has potential to lead to superior proposals and applications that carry broader support, with possible associated benefits to overall consenting times. The duty for developers to notify the Scottish Government of projects should also assist in facilitate workforce/flow programming and project management during the consenting process.

We see it is sensible to provide flexibility for the consultation arrangements for major onshore overhead line projects as developers may, for example, wish to propose several draft corridors and route alignment options in the first instance before presenting more settled choices. However, the rounds of consultation should be kept to a proportionate level in order not to unduly extend the total end-to-end consenting period for such network projects.

We would also suggest that in relation to the single round of consultation proposed for generating station projects, more clarity on the timing and role of the proposed two public events in the consultation document would be beneficial. We wondered whether the intent was for the second or final event to be an opportunity for developers to demonstrate how earlier feedback from stakeholders from the first event has been taken into account in refining their initial ideas? This would align with the philosophy in the current 2022 Energy Consents Unit (ECU) Good Practice Guide for Section 36 and Section 37 Applications, as well as the approach for pre-application consultation in relation to major and national proposals under the town and country planning regime (as per Scottish Government Circular 3/2022 '*Development Management Procedures*' and associated Regulations).

We welcome and agree with the proposed introduction of an 'Acceptance Stage' into the consenting process. It seems reasonable and appropriate to us for the ECU to be able to reject an application if they consider the pre-application consultation reported by the applicant to have

failed the statutory criteria, having regard as well to the views of the LPA. This should help ensure applications reach the necessary quality standards prior to moving forward in the process. We would suggest that such a Stage should take no more than three to four weeks to conduct and conclude.

The introduction of fees to cover the processing costs of the ECU for pre-application services reflects standard modern cost recovery policy elsewhere in the Scottish public sector, as well as in the English and Welsh national infrastructure consenting system and is therefore understandable and reasonable. It will help provide funding that is necessary to support the ECU function.

Refining the application process/procedures (Consultation Questions 1 & 2 page 20, Questions 1 to 4 page 22, Questions 1 & 2 page 23 and Questions 1 & 2 page 26)

We support the proposal to clarify and increase application information requirements along the lines suggested and make their provision a proviso of application acceptance alongside satisfactory pre-consultation work. In this way, the ECU will be furnished with all the necessary information to progress applications in a timely fashion. We think developers would benefit from having a clearer and consistent picture of what is needed, reducing the risk of omissions and substandard applications. Regulations could be used to prescribe further details and would remove ambiguity over requirements. Like the PAR proposals, the requirement for increased/better information within submitted applications will raise their quality and should help avoid the ECU having to make and chase post-submission requests for key details that can cause delays to the determination of applications and decision-making timeframes.

We also support the proposals to explore innovative ways in which inter-agency communication, collaboration and joint working might be enhanced in terms of consultees' involvement when providing expert input to the ECU, especially through the possible use of processing time limits/timetables. There would seem to be potential for the experience of Scottish LPAs on Planning Processing Agreements to be looked at in this regard as well as for wider project management considerations during consenting.

We consider that the proposal to limit post-submission changes to onshore applications by developers will help prevent long consenting periods and speed up delivery. It may also aid the public in understanding the status of projects and provide them with confidence that projects will remain fixed after a certain point. It might be useful to consider a standard approach that is modified in each case depending on the circumstances, so developers and other participants can understand when a 'guillotine' might be applied following project acceptance.

We strongly support the introduction of a new Reporter-led examination process with flexible methods to consider the concerns of local planning authorities, to address issues raised in the Electricity Network Commissioner's report on lengthy public inquiries that have led to increased consenting processes for projects. For example, if cross-examination is needed to test evidence,

but allowing the use of other less-time consuming and more commensurate procedures such as site inspections, further written submissions and hearing sessions, or indeed no further procedures where appropriate. The facility for a Pre-Examination Meeting would also enable robust timetabling/scheduling of the examination stage. We see that these changes should help speed up the consenting process. They might also encourage and enable the greater participation of lay people in the examination stage of project consenting.

Developing procedures for consent variations after consent is granted (Consultation Question 1 page 27, and Questions 1 & 2 page 29)

As a simple new variation process for Section 37 network projects, similar to that which currently exists under Section 36 for generating stations, would avoid applicants having to apply again for more or less the same entire proposal. This change should both speed up decisions on such cases and help the ECU (and others) focus their resources on new and arguably more important projects. We therefore support the proposed introduction of a prescribed procedure for such variations.

We note the proposal to give the Scottish Government the ability to make non-material changes to both Section 36 and 37 consents without an application e.g., to correct errors or address a change in technology/environmental circumstances, and that this would expedite matters and avoid the need for full process and payment of a full fee. We are supportive of this.

Introducing fees for Necessary Wayleave applications (Consultation Questions 1 & 2 page 31)

Given the likely volume of such applications in Scotland over coming years in relation to new network projects and current charging in England and Wales, it is understandable and reasonable that the Scottish Government wishes to make this change. Such cost recovery is normal elsewhere in the Scottish public sector and should help the ECU to provide the application processing service. We have no objection to this.

Moving to a consistent statutory right of appeal process for all onshore and offshore consenting in Scotland (Consultation Questions 1 & 2 page 33)

Altering the 1989 Electricity Act and 1997 Town & Country Planning (Scotland) Act to make the statutory right of appeal the legal mechanism in Scotland for onshore consenting rather than Judicial Review, would align onshore with offshore projects and bring the challenge period down from three months to six weeks. This would reduce the period of uncertainty and construction delay at the tail end of the consenting process. We welcome this proposal.

Transitional arrangements (Question 1 page 34)

We support the proposal that projects already submitted before the changes to the 1989 Electricity Act come into force will transfer over to the new process from the stage that they have already reached. It should ensure efficiencies for the ECU. Developers and their advisers will of

course need to anticipate and prepare for any such switch over. It will be in everybody's interest to plan for this point with projects that are in flight.

Overview – the Package of Reforms (Consultation Questions 1 & 2 page 35)

We welcome and agree with the overall package of proposed reforms to the consenting regime in Scotland for energy generating stations and electricity network projects under the 1989 Electricity Act. They appear to us to be a balanced and measured set of proposals that will modernise the system for the consenting of large-scale energy infrastructure projects in Scotland and bring it into greater alignment with the system in England and Wales. They should deliver important recommendations in the Electricity Network Commissioner's Recommendation Report and the government's subsequent Transmission Acceleration Action Plan. We consider the package of proposals has the potential to reduce consenting times for Section 36 and 37 projects and help accelerate the delivery of new energy infrastructure. In this way they will complement the SSEP.

Possible steps to improve the future project planning process could include guidance to developers, local planning authorities (LPAs) and the public about the new system and its key stages such as pre-application and good engagement practices, new application information requirements, and expected timescales for different stages of the process. In this respect it might be possible to apply lessons learned/principles from Scottish LPAs' use of Planning Processing Agreements mentioned above. The ECU's website could be modernised to access the resources that are developed as well as to notify/submit applications and allow LPAs and others to track the status of applications at the various stages. This would need coordination with the Directorate of Planning and Environmental Appeals for the Examination stage of the process. It would be useful too if a monitoring process could be established to gather information for use in gauging the performance of the new system once implemented, that would enable corrective actions and review if the anticipated improvements are not being fully realised.

Evidence and Analysis (Consultation Questions 1 to 3 page 36)

We agree with the rationale for intervention and preferred (and chosen) option. As indicated above we consider it vital for the energy consenting process to be reformed and streamlined in Scotland. This will require technical amendments to the existing legislation that sets the consenting framework. The impacts set out in the Theory of Change Table look reasonable and we note the estimated reduction in consenting time to be two years. We have no firm evidence to counter or test this figure but note that the average time of 18 months for current public inquiries as well as three months for Judicial Review of onshore projects – both of which will reduce through the proposed reforms. There could be savings of a year from these changes alone.



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26 February 2024

NESO Response to – Planning Reform Working Paper: Streamlining Infrastructure Planning

Dear NSIP Reform Team,

Thank you for the opportunity to respond to your informal consultation on the 'Planning Reform Working Paper: Streamlining Infrastructure Planning'.

NESO is the independent National Energy System Operator for Great Britain, recently established to help accelerate the country's energy transition.

A key element of our strategic planning activity is concerned with the production of a new Strategic Spatial Energy Plan (SSEP) for Great Britain, commissioned by the UK, Scottish and Welsh governments on 22nd October 2024.

The overall goal of the SSEP is to help accelerate and optimise the country's transition to clean, affordable, and secure energy. A specific objective of the UK, Scottish and Welsh governments' commission for the SSEP is to '*Streamline planning consent processes for new energy generation and storage*'. The commission expects that the SSEP will foster a more efficient electricity system design, promoting anticipatory network investment to enable the reduction of waiting times for generation and storage projects to connect to the grid.

Public

In our advice to the UK Government on achieving clean power by 2030, published on 5th November 2024, we highlighted the need to reform planning and consenting processes as a ‘critical enabler’ for speeding up the delivery of future transmission network projects. Our advice acknowledged that significant volumes of projects need to pass through the planning system to start construction in rapid timescales, while maintaining community support which is vital to the mission. We were therefore pleased to see the Government comprehensively address planning and consenting issues in their published Clean Power 2030 Action Plan December 2024, including the commitments to update the National Policy Statements for Energy in 2025 and to introduce legislative changes to update the NSIP planning system in the Planning Act 2008 in England and Wales for all infrastructure projects.

Our Key Points

We welcome and agree with the overall package of proposed reforms set out in the Working Paper. We consider that this package of measures will help to update the NSIP/Development Consent Order (DCO) process to take account of more than a decade of practical experience. We also believe that they have the potential to help deliver faster decisions on key infrastructure projects, including those vital to achieve the Government’s clean power and net zero ambitions. We want new energy infrastructure projects to be consented quickly but with a proportionate degree of public engagement and effective scrutiny. The proposals look to us to achieve this balance.

Please refer to the Annex for our responses to your consultation questions which we hope are helpful. Should you require clarification or further information on our answers please contact Katharine Clench, SSEP External Governance Manager, at [REDACTED] .

Yours sincerely

Alice Etheridge

Head of Strategic Spatial Energy Planning

Annex

Consultation Question a. Would the package of measures being proposed in this paper support a more streamlined and modernised process? Are there any risks with this package taken as a whole or further legislative measures the government should consider?

As indicated in the main body of our letter, we consider that the package of measures set out in the Working Paper will help to update the NSIP/DCO process to take account of more than a decade of practical experience. We also believe that they have the potential to help deliver faster decisions on key infrastructure projects, including those vital to achieve the Government's clean power and net zero ambitions. We want new energy infrastructure projects to be consented quickly but with a proportionate degree of public engagement and effective scrutiny. The proposals look to us to achieve this balance. We have no additional suggestions for reform.

Consultation Question b. Are the proposed changes to NPSs the right approach and will this support greater policy certainty?

We particularly welcome the proposals for ensuring that National Policy Statements (NPSs) are kept up to date, through ongoing reflective amendments and full backstop five yearly reviews. As recognised by the Working Paper, it is vital for NPSs to be able to be more easily amended to take account of changes to published government policy and forthcoming wider strategies and plans, including the Strategic Spatial Energy Plan (SSEP). We consider that having up-to-date NPSs on new energy infrastructure that reference the SSEP, will set the right framework for decisions on critical clean power projects necessary to achieve the Government's energy policy ambitions to combat climate change. We also consider that this will be a key mechanism in helping ensure the SSEP becomes part of the UK's planning system as envisaged by the inter-Governmental Commission.

Consultation Question c. Do you think the proposals on consultation strike the right balance between a proportionate process and appropriate engagement with communities?

As noted above in our answer to Question a, we consider the proposals to be acceptable. Provided relevant guidance is revised it seems reasonable to us that at the acceptance stage, The Planning Inspectorate should be able to apply judgement over the adequacy of consultation that has been undertaken and for there to be leeway for minor changes to be made as part of this process.

Consultation Question d. Do you agree with the proposal to create a new duty to narrow down areas of disagreement before applications are submitted? How should this duty be designed so as to align the incentives of different actors without delaying the process?

In our view, the proposed new duty for joint working between parties to resolve issues during consultation would be beneficial by enabling the Examination to focus on just principal areas of disagreement/substantive matters, thereby shortening the consenting process overall. This is another valuable way in which decision-making would be accelerated because of the package of proposed reforms. In terms of design, we would suggest the use of an indicative timescale for the negotiation process between key parties and resolution of matters backed up by oversight/direction from the Examining Authority as appropriate.

Consultation Question e. Do you support the changes proposed to Category 3 persons?

We see the merit of removing the requirement to consult 'Category 3' persons during the pre-application stage (as well as simpler consultation reports).

Consultation Question f. With respect to improvements post-consent, have we identified the right areas to speed up delivery of infrastructure after planning consent is granted?

We have no direct experience of how problematic minor errors in DCOs are so we unable to offer any detailed views/comments on this topic. However, we do consider that the proposal to remove the distinction between what is material and non-material for post-consent changes to a DCO would provide greater clarity for applicants and agree that this measure could deliver potential time savings, again helping expedite infrastructure planning decisions.

Consultation Question g. What are the best ways to improve take-up of section 150 of the Planning Act? Do you think the approach of section 149A has the potential to be applied to other licences and consents more generally?

Greater take-up might be achieved by clearer guidance to applicants about this option and its benefits. We note (and support) the proposed new power for the Secretary of State to make guidance regarding the DCO/NSIP consenting process. This should help all participants to better understand matters especially given the proposed changes set out in the Working Paper. The guidance could signpost people to additional resources and support that might be made available from The Planning Inspectorate.

Consultation Question h. With respect to providing for additional flexibility, do you support the introduction of a power to enable Secretaries of State to direct projects out of the NSIP regime? Are there broader consequences for the planning system or safeguards we should consider?

We gather from paragraph 44 of the Working Paper that it would be for the applicant to request to opt out of the DCO/NSIP system to another, more appropriate regime and for Ministers to decide to use this power on a case-by-case basis according to a published set of criteria. This flexibility/choice would appear to us to be a welcome option to the infrastructure consenting space

and has the prospect of ensuring the right process is used for the right type of project, with concomitant benefits for the workload/flow. This of course assumes that those bodies responsible for the operation of the alternative consenting regimes are geared up and resourced for handling additional casework.

Consultation Question i. Do you believe there is a need for the consenting process to be modified or adapted to reflect the characteristics of a particular project or projects? Have we identified the main issues with existing projects and those likely to come forward in the near future? Can we address these challenges appropriately through secondary legislation and guidance; or is there a case for a broad power to enable variations in general? What scope should such a power have and what safeguards should accompany it? If a general process modification power is not necessary, what further targeted changes to the current regime would help ensure it can adequately deal with the complexity and volume of projects expected over the coming years?

Whilst seeing the advantages of being able to adjust the standard DCO/NSIP process for the type of projects discussed in the Working Paper, we are not able to advise on the best legal means for effecting this. We therefore welcome the proposal that there would need to be further consultation on this matter e.g. if a 'general process modification power' is to be introduced, as well as other safeguards to ensure its judicious use (as per paragraph 55). We note that an example is given for the power's use in terms of projects of greatest need, which might include those identified through forthcoming sectoral spatial plans such as the SSEP. Whilst supporting that purpose, we think that it is important to clarify that the SSEP will be a demonstrative plan to identify optimal locations for new energy infrastructure at a broad zonal rather than project-level.