EDF Energy is one of the UK’s largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, storage, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

EDF Energy is pleased to respond to the Call for Evidence on the Planning (Scotland) Bill. It would be a significant benefit for Scotland to develop strategic planning in a way which reflects and responds to regional distinctiveness but also provides a coherent picture of both regional and national issues. We believe that authorities should engage with stakeholders in the preparation of the Planning (Scotland) Bill and welcome further engagement with the Scottish Government on this topic.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Simon Wood or myself.

I confirm that this letter and its attachment may be published on the Scottish Parliament Local Government and Communities Committee’s website.

Yours sincerely,

David Cameron
Head of Scottish Policy
Attachment

Call for Evidence on the Planning (Scotland) Bill

EDF Energy’s response to your questions

The Committee invites views on any aspect of the Bill but it would be helpful if written submissions could address the following questions:

1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?

EDF Energy welcomes the opportunity to respond the Call for Evidence on the Planning (Scotland) Bill. We believe that the majority of proposals listed in the consultation document will deliver better strategic planning allowing for greater flexibility while enabling more robust decisions.

We believe that it would be a benefit to develop Scottish strategic planning policy in a way which reflects and responds to regional distinctiveness but also recognises both regional and national needs. This would help to enable robust decisions to be made that consider the benefits of a project on wider infrastructure planning at the national and regional scales. For instance, EDF Energy believes that the Bill should have regard to the principles of the National Policy Statements (NPS), as the overarching Nationally Significant Infrastructure Project (NSIP) principles contained in the NPS apply across the UK and may be relevant to energy projects in Scotland. Therefore, we suggest that it is either embedded in Scottish Planning or clear reference made to it in guidance, as this would help Scottish Local Authorities in providing perspective on the low carbon policies in Scottish Planning Policy (SPP) and NPF.

2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

EDF Energy has no comment.

3. Do the proposals in the Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?

EDF Energy believes that the Bill needs to deliver a sufficiently robust structure for developers, authorities the public and the environment. As indicated in our response to question one, we believe that it is key that the Bill should have regard to the principles of the National Policy Statements (NPS), as the overarching Nationally Significant Infrastructure Project (NSIP) principles contained in the NPS apply across the UK and may be relevant to energy projects in Scotland. Therefore, we suggest that it is either embedded in Scottish Planning or clear reference made to it in guidance, as this would help Scottish Local Authorities in providing perspective on the low carbon policies in Scottish Planning Policy (SPP) and NPF.
4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?

EDF Energy believes that the changes in the Bill to the content and process for producing Local Development Plans will achieve the aim of creating plans that are focussed on delivery.

We believe that the continued practice of not allowing third party rights for appeal will enable greater delivery and more joined-up thinking across local authorities and Government in delivering cost-effective, fit for purpose, sustainable infrastructure.

We have a minor concern over what is being proposed in terms of planning charges for enforcement activity. This is because they could strengthen the case for Local Planning Authorities (LPAs) to insist that developers pay for planning monitoring officers to be deployed on some energy projects. We believe that the responsibility for investigating possible breaches of planning control rests with the local planning authority and is not something which the developer should be required to fund.

5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

EDF Energy believes very strongly that there should not be a spatial approach to development of energy infrastructure other than what presently exists through the development plan process and SPP. This is because developers will invest significant amounts of money into identifying the right site and the potential technology for deployment based on a number of technical factors. It would not be appropriate for an LPA to remove this through defining energy development zones.

6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area? Will the proposed Local Place Plans enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?

EDF Energy believes that Local Place Plans (LPPs) are a good way to enable communities to influence development plans in their local area. However, many local issues can be quite personal. With this in mind, we are of the opinion that this proposal could generate conflict, rather than resolve it. Therefore, we believe it would be important to make clear (through requirements or guidance) that local place plans should reflect the following:

1. Plans should be open and inclusive to communities of interest and the development sector;
2. Plans should not contradict local spatial strategies or national policy;
3. Plans should not have a negative effect on development proposals; and
4. Plans should not seek to address matters that are more appropriately handled at a strategic level e.g. significant infrastructure, national developments.

7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how could these provisions be improved?

EDF Energy believes that the increased levels of fines and recovery of expenses for non-compliance with enforcement notices are likely to promote better compliance. However, as currently proposed, the revised proposals may provide a basis where compliant developers pay for planning monitoring officers.

8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?

EDF Energy believes that the most appropriate approach to secure investment in new infrastructure from developers is for a new development project to fund the necessary additions and changes to infrastructure directly, as part of the development mitigation. A further levy on development is not necessary in that case. However, if the Scottish Government does consider levies for new infrastructure projects, then the rate should be proportional to the residual demands that the project makes on supporting infrastructure, having taken account of measures through the development itself. A levy should not simply be a tax on development – it should reflect the impacts that a new project has, which it does not address directly as part of the overall development itself.

We believe that there should be exemptions for infrastructure projects such as energy projects. Firstly, these are part of the supporting infrastructure enabling general development in any area, rather than a new load on infrastructure. Secondly, any necessary changes to supporting infrastructure (such as road access) are typically delivered and funded directly as part of the energy project and a levy to secure additional funding would be a double burden.

EDF Energy believes that safeguards should be set to ensure any levy is actually spent delivering what is necessary, and that the levy is based on providing the necessary marginal infrastructure and not on the basis of a proportion of the project value. This should be combined with measures placing a duty on the local authority to adopt that infrastructure as soon as possible.

Based on the above points, in our view, free standing structures such as pylons and wind turbines should be exempt from any levy. Energy-related buildings which people only enter for inspections and maintenance should also be exempt. As this could be a complex issue we recommend that a full consultation is undertaken any proposed levy.
We believe that the Scottish Government should re-consider the use of local review bodies in relation to renewable energy development. We are concerned that the threshold of 20MW for major development prescribed in the Development Management Regulations has the effect of deterring small to medium projects coming forward into the planning process where there will be no effective right of appeal to a wholly independent body such as the Planning and Environmental Appeals Division (DPEA).

9. Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?

EDF Energy believes it is very important to ensure that local planning authorities are sufficiently resourced to manage the wide range of important responsibilities and duties they undertake in respect of the planning system. We believe that planning councillors must have appropriate training to exercise their role. Councils should ensure that they have planned for continuity particularly in the wake of local elections where there were not enough trained councillors remaining to hold a quorate planning committee.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

EDF Energy believes that improvements can be made. However, if the Scottish Government intends to increase planning fees to do this then performance should be monitored and improvements made.

11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high – performing planning system the Scottish Government wants? If not, what needs to change?

EDF Energy believes it is very important to ensure that local planning authorities are sufficiently resourced to manage the wide range of important responsibilities and duties they undertake in respect of the planning system. We believe that the fee structure needs to be fit for purpose and situations should be avoided where there are different fees occurring at different local authorities.

In addition, EDF Energy supports the legal recognition in the Bill that planning fees should not exceed the cost of providing the service. This is because we do not consider it appropriate to increase fees until the link between the level of fees and performance has been more clearly established. Further information on measures to dis-incentivise poor performance also needs to be provided.

We are disappointed that the Scottish Government intends to proceed with plans to remove provision for a second planning application to be made at no cost following a refusal. EDF Energy is opposed to the introduction of fees in respect of planning appeals. In particular, the principle of no additional fee for a resubmission of the same application with a minor amendment to the scheme or “second submission”
following a first refusal of planning permission allows developers to bring forward revised proposals which address specific issues and thereby enable developments to proceed with minimum further delay, and can reduce the number of planning appeals.

12. Are there any other comments you would like to make about the Bill?

There are a number of redevelopment options that are available to obtain additional value from an existing onshore windfarm. The generic term of “repowering” is often used to refer to these options. However, different stakeholders use the term in different ways, so repowering can refer to any of the following distinct categories:

- Life extension; or
- Refurbishment; or
- Plant upgrading; or
- Full replanting and redevelopment of a site.

Full replanting is comparable, in scale, scope and cost, to a new build wind farm. Replanting will include the dismantling of the original wind turbines and towers, with a new planning application for the new infrastructure, along with the relevant environmental and planning assessments. Replanting works might also include new grid connections, site roads and the turbine bases in new locations for a site. Replanting therefore offers the opportunity to use the latest technology at the most appropriate scale. Conversely, the choice of turbines and technology for upgrading and refurbishment will be constrained by the existing infrastructure and this is less likely to deliver a significant increase in output.

Increasing levels of repowering proposals can be expected in future years, starting with the sites that received financial support under the (now closed) Non-Fossil Fuel Obligation (NFFO) scheme. Then, from 2027 onwards, from sites reaching the end of 20 years of support under the Renewables Obligation (RO) scheme. The first sites to consider repowering will be the oldest onshore wind sites, which use relatively small turbines and include technology details that have since been superseded. These sites offer considerable scope for full replanting and replacement with the latest turbine technologies.

Such redevelopment will require a level of investment that is very similar to a new wind farm on a previously undeveloped site and, as a result, is likely to need a similar form of revenue support/stabilisation as a new build project.

A planning system that facilitates repowering and life extension proposals is critical to ensure continuing progress towards the UK’s decarbonisation targets, as well as securing the economic and social benefits the onshore wind sector delivers for communities.

Under the planning conditions of an operational wind farm there will usually be a condition to decommission and restore the site at the end of the operational life. This would require the operator to render the site to its pre-windfarm state, with an assumption that no further development would be expected to take place until a new application is submitted. However, as highlighted, it would be beneficial to re-power
sites where there is a good wind resource and the latest onshore technology can be deployed.

We believe that the Scottish Government should set clear guidelines for repowering at its earliest convenience to ensure a proportionate approach is taken.

Section 22 of the 1997 Town and Country Planning (Scotland) gives provisions that a planning authority may adopt supplementary guidance as part of its development plan, providing certain procedures are followed during its preparation (including adequate publicity and consultation). Section 4 of the Bill repeals section 22 of the 1997 Act. This removes the ability for supplementary guidance to be prepared, adopted and issued in connection with the development plan which then forms part of the development plan. Making guidance part of the development plan leads to use as ‘policy criteria’ or tests which must be met. So, we think that removing the link is correct as it re-establishes that guidance as guidance.

EDF Energy would welcome the opportunity to engage with the Scottish Government on this.

EDF Energy
February 2018