RTPI Scotland
Royal Town Planning Institute

Consultation Response

Electricity Infrastructure Consenting in Scotland

About the RTPI

The RTPI champions the power of planning in creating sustainable, prosperous places and vibrant communities. We have over 27,000 members in the private, public, academic and voluntary sectors. Using our expertise and research we bring evidence and thought leadership to shape planning policies and thinking, putting the profession at the heart of society's big debates. We set the standards of planning education and professional behaviour that give our members, wherever they work in the world, a unique ability to meet complex economic, social environmental and cultural challenges.

Introductory Remarks

We welcome the opportunity to respond to this consultation on electricity infrastructure consenting in Scotland.

Our members have told us in the past of their desire to see reform of the legislation governing infrastructure consenting procedures in Scotland, which they consider to be outdated and no longer fit for purpose to realise Scotland's net zero ambitions.

This consultation recognises the need for reform of the current electricity infrastructure consenting procedures in Scotland, with a view to streamlining, modernising, and building more efficiencies into the consenting process. We are broadly supportive of the principle of reform of these consenting procedures, which we consider is long overdue.

We understand that England and Wales have already undergone reform of their electricity infrastructure consenting procedures. We also understand that the reforms proposed in the consultation paper would bring Scotland more in line with current consenting procedures in England and Wales, enhancing consistency of the consenting process for electricity infrastructure across Great Britain.

Whilst we acknowledge the need for reform of Scotland's electricity infrastructure consenting processes, we take this opportunity to make the following submissions in response to certain of the reform proposals set out in the consultation paper.

Pre-Application Requirements

We broadly support the principle of enhancing pre-application services to help facilitate more effective and efficient pre-application project development, engagement and decision-making for on- and off-shore applications. A more proactive, collaborative approach during pre-application has the potential to help identify and resolve issues early, thereby minimising risks, and creating greater certainty for all parties.

It is our understanding that a high proportion of applicants already undertake voluntary public engagement at the pre-application stage. However, we have also heard from our members that it can often be the quality of applications that is a cause for delay in the consenting process for electricity infrastructure. Making pre-application a statutory requirement through the proposed reforms would, in our view, support applicants in taking a consistent approach to public engagement, identify issues and frontload

solutions from the outset, thereby enhancing the quality of the application submitted to the Energy Consents Unit for determination. This in turn has the potential to enhance efficiency and certainty for applicants, communities, and local authorities with respect to electricity infrastructure consenting applications.

Notwithstanding with above, we believe that approaches to pre-application processes should be applied consistently, so there is alignment between the approach taken under the Electricity Act 1989 and the approach taken under the Town and Country Planning (Scotland) Act 1997. This would mean that pre-application requirements would apply only to applications for new or extension projects and not applications made under Section 36C of the Electricity Act 1989.

In addition to the above, we believe that the introduction of statutory pre-application requirements will only produce enhanced efficiency and streamlining of the consenting process if they are implemented with full regard to the following:

- Pre-application fees
  We agree with the proposal to introduce pre-application fees to help ensure the pre-application process is meaningful and impactful by providing the necessary support to applicants to carry out their statutory obligations.

  We note, however, that there is no indication in the consultation paper as to what proportion of these fees would go towards assisting statutory consultees in supporting a successful pre-application process.

  We understand from our members that local planning authorities currently carry out an extensive amount of technical planning work on Section 36 and 37 applications. This includes their assessment, the drafting of decision and agreements, monitoring, and enforcement – all of which are crucial to fostering approval from local communities. For a new statutory pre-application stage to be successful and to deliver its intended outcomes, it will require the active support and participation of local planning authorities as well as other statutory consultees to facilitate the engagement of communities, as well as the initial assessment of proposals and frontloading of issues and solutions identification prior to submission of the application.

  Through current voluntary arrangements, planning authorities receive a lesser fee than if they determine an application themselves. RTPI Scotland has long held the view that these voluntary arrangements should be reviewed in order that planning authorities can be fully remunerated for their work. This will become more critical should a statutory pre-application stage be introduced, which will inevitably require active input from planning authorities and other statutory consultees. We are aware that capacity and resourcing pressures make it increasingly difficult for statutory consultees to respond to applications in a timely manner. This is not due to a lack of opinion or willingness to respond, and so it will be vital for the Scottish Government to consider how pre-application fees can assist statutory consultees to meaningfully engage with the pre-application stage of the process.

  In RTPI Scotland's response to the Scottish Government's Investing in Planning consultation, we argued for the preparation of a detailed Resourcing Framework. This would enable us to take a holistic approach to tackling the planning resourcing crisis in Scotland, as well as to fully grasp and navigate the complexities of the issues associated with this crisis. Our members have voiced to us that in their experience when new measures are introduced to improve, streamline, or speed up consenting processes, this has invariably pushed further responsibilities and duties onto local planning authorities, exacerbating capacity and resourcing challenges. The development of a

broader and more detailed Resourcing Framework would help us to avoid this scenario and to fill the current gaps and unanswered questions around Scotland's current resourcing challenges. It is our view that the introduction of pre-application fees should form part of this wider Resourcing Framework to fully understand where it sits as part of a broader package of solutions to Scotland's resourcing crisis.

- A Transparent Acceptance Stage
  We broadly support the introduction of an Acceptance Stage for on-shore applications in line with the Acceptance Stage already in place in England and Wales. Assessing and confirming the adequacy of proposed consultation arrangements at an early stage should help to ensure engagement is proportionate, effective, and undertaken efficiently, while still meeting statutory requirements.

  Our members have, however, highlighted the importance of embedding transparency within this stage of the process. Simply introducing a step that enables the consenting authority to declare that an applicant has met the pre-application requirements without providing its reasoning will do little to instil public trust in the process. For the Acceptance Stage to deliver its intended outcome of fostering enhanced public authority and community support for electricity infrastructure proposals, it will be important that the reasoning behind any decision to pass an application through the Acceptance Stage (or not) is clearly set out and made available to the public.

  In addition, verification and acceptance criteria should solely focus on procedural requirements - and not seek to predetermine stakeholder views or the planning merits of projects.

- The need for clear guidance
  The consultation paper includes a requirement at the pre-application stage for the applicant to prepare and submit a Preliminary Information Report. This Report, according to the consultation paper, should contain a description of the project, including "brief details of any environmental considerations made up until the point of publication/consultation". The paper goes on to say that "the Scottish Government may prescribe in more detail the preliminary information required".

  It is our understanding that it is not the intention that this report equate to a full and complete application. However, without clear guidance in place as to the extent of information to be included in this report, our members have expressed concerns that over time, such reports could become unwieldy in an attempt to take an abundance of caution approach to avoid the risk of not passing the Acceptance Stage. Such an abundance of caution approach could result in unnecessary delays and overwhelm the pre-application stage of the process. To give an example, our members have raised particular concerns that reference in the consultation paper to "brief details of any environmental considerations" is vague and could lead to a wide spectrum of information being submitted to satisfy this requirement, including full draft EIA reports which would require significant resources to prepare and review.

  For this stage of the process to remain proportionate, effective and consistent across Scotland, it is important that any reforms be accompanied by clear guidance from the Scottish Government which sets out applicant obligations with respect to any preliminary information to be submitted during the pre-application stage.

Application Procedures

We are broadly supportive of the proposal to expand the information that applicants must submit. We understand from our members that one factor that can slow down the assessment process is the quality of applications submitted, often with insufficient information. We can, therefore, appreciate that this is an important issue to address to ensure sufficient clarity and consistency is embedded into the assessment process.

Notwithstanding the above, certain of our members have expressed concern that it is unclear what criteria has been applied in the consultation paper's findings that as many as 43% of onshore applications have been submitted in substandard form since 2007. There is concern that this figure fails to adequately consider the evolution of the sector's practices since 2007, particularly in light of the Energy Consent Unit's publication of guidance and amendments to the EIA Regulations in 2017.

For these proposals to have meaningful impact to enhance efficiency, there must be clarity embedded in the process with information requirements set out clearly in regulations. These new information requirements must be proportionate and applied consistently to provide clarity for all stakeholders, with requests for additional information clearly reasoned. This must be supported by an efficient validation process and an objective pathway to resolve disputes arising around the adequacy of information provided with an application.

Application Input from Statutory Consultees

We agree with the consultation paper that a successful application process requires consistent and predictable assessment and determination timelines. This, in turn, requires those involved in the assessment process to have access to the right skills, capacity and resources. This has been a significant challenge for statutory consultees, including local planning authorities who have experienced significant cuts to planning expenditure over the last decade coupled with a declining and aging workforce. Figures from 2022/2023 show that staff in local authorities were at their lowest level in five years and experienced a 28.6% drop in expenditure since 2010/11[1].

We are pleased to see recognition in the consultation paper that it is not just about placing punitive measures on statutory consultees who fail to respond within time. Although it would be ideal if statutory consultees all responded in a timely manner to applications, we do not believe that their failure to do so is due to a lack of willingness or opinion. We are aware that many statutory consultees are struggling with resources and recruitment which often means that they cannot respond quickly or in full to every application, which then results in knock-on impacts for the wider assessment process.

The top priority should be to address the root of this problem, and not to place further pressures on already struggling statutory consultees through the application of punitive measures.

With respect to the proposed measures set out in the consultation paper, whilst we can see the potential benefits of creating a collaborative forum to drill into the detail of the problem (measure 1) and develop a framework for delivering the application process (measure 2), these measures miss the crucial point that first and foremost statutory consultees need to be adequately resourced in order to carry out their functions effectively and efficiently. Whilst well intentioned, focusing valuable time, energy and resources on measures to examine the problem and create a framework will only take us

[1] https://www.rtpi.org.uk/research-rtpi/2023/december/resourcing-the-planning-service-rtpi-scotland-research-briefing/

so far if the resources aren't in place for statutory consultees to reasonably and realistically implement the findings and solutions from these additional activities.

We believe, if done in the right way, measure 3 has the potential to greatly assist statutory consultees to carry out their functions by providing them with access to the right specialist knowledge. However, there is too little detail in the consultation paper to be able to determine the likely impact this would have. Questions arise around where this specialist support would come from, how it would be equitably distributed across statutory consultees, and how it would be resourced in a way that did not take the valuable skills and resources that statutory consultees have away from them to fund a centralised skills network.

Whilst we can see the benefit of setting statutory time limits for each stage of the application process (measure 4), this will only be effective if statutory consultees have the resources, skills, knowledge, and capacity to reasonably meet these time limits. We also understand that such time limits will have little meaning unless they can be properly enforced. However, as previously stated, we can see little merit in imposing punitive enforcement measures on statutory consultees who are already experiencing significant resourcing pressures. Such measures would only aggravate, rather than solve, the issues identified in the consultation paper.

We reiterate that without a clear resourcing strategy for statutory consultees that sits within a broader Resourcing Framework, we fear the measures proposed in the consultation paper will have little impact on the efficiency and streamlining of electricity infrastructure consenting in Scotland.

Amendments to Applications

We broadly agree that the introduction of a limit for amendments could help to address current issues and frontload meaningful engagement and issue resolution in the pre-application and statutory consultation phases. The availability of high-quality advice from statutory consultees and other important stakeholders should be a key consideration in the setting of any deadline.

We agree with the proposal to limit post-submission amendments, providing that any such limitations do not prevent meaningful dialogue between applicants and consultees during the determination phase and protect the ability to respond to consultee feedback, especially regarding new matters or evidence, through amendments where necessary and appropriate.

Any decision as to what point in the process a limit on amendments is applied should be clear and proportionate, applied consistently and implemented in a consultative fashion.

Public Inquiries

We support the amendment of legislation to allow a reporter to make an informed decision about the examination procedures to be adopted having regard to the particular application, rather than a public inquiry being triggered automatically when a planning authority objects to an application.

We have heard from certain of our members who have had previous involvement in PLIs that they can be triggered by relatively narrow points of objection, but then broaden to issues which are already acknowledged to be common ground. As a result, the process can become protracted, disproportionate and adversarial reducing their accessibility to communities who may not feel they have the resources and skills to participate in the process actively and fully.

Given the above, we would welcome enhanced discretion being given to the assigned reporter to judge the appropriate procedures to be followed when there is an objection to an application. Again, we would underline the benefit of alignment, and suggest consistency with the current development planning examination process set out in the Town and Country Planning (Development Planning) (Scotland) Regulations 2023.

Variation of Consents without an application

We agree the logic for there to be an efficient route to rectify errors without generating unnecessary delays or administrative burdens. It is vital that this be achieved in a way that instils confidence in the consenting system and does not introduce any additional uncertainty or inconsistencies.

The Package of Reforms

We are broadly supportive of the package of reforms set out in the consultation paper. However, we take this opportunity to stress that for this reform package to effectively streamline the consenting process for electricity infrastructure in Scotland, all stakeholders involved in the consenting process must be adequately resourced.

We believe this is a vital missing consideration from the proposed package of reforms. Although the consultation paper proposes to introduce fees for a statutory pre-application process to bring about full cost recovery, it is unclear if this full cost recovery would be to cover only the Scottish Government's costs associated with facilitating this process, or if it would also cover the costs of statutory consultees who would be required to actively engage in this new statutory process.

It is also unclear how the measures proposed to be introduced to support statutory consultees to carry out their duties in a timely manner will address the resourcing, recruitment, skills and capacity pressures many statutory consultees are currently facing. These pressures are intrinsic to the ability of statutory consultees to undertake their duties under the Electricity Act 1989 in an efficient and timely manner. Although voluntary arrangements enable local planning authorities to recoup some of the costs associated with their work to assess these applications, these do not adequately reflect the amount of work required to be undertaken, which we understand from our members is not significantly less than the extent of work required if they were to determine the application themselves.

The above relates to another missing element from the current package of reforms – a review of the 50MW threshold which determines the applications for onshore electricity generating stations that are assessed by Scottish Ministers rather than by the local planning authority. This matter was considered in the Scottish Government's 'Investing in Planning' consultation which closed in May of this year. The consultation paper identified a need to review this threshold in light of technological advancements in onshore wind energy which are now seeing wind farm proposals more and more likely to exceed the 50MW threshold with only (approximately) 8 or 9 turbines. This is resulting in a greater proportion of applications being assessed by Scottish Ministers, which is also impacting negatively on decision timescales.

It is vital that electricity infrastructure consenting in Scotland takes a proportionate approach, and this must include a review of the 50MW threshold that determines at which point an application should be determined by a local planning authority or by Scottish Ministers. Our members have long held the view that the current threshold is no longer fit for purpose and must be reviewed as part of any package of reforms to the Electricity Act 1989. We understand that such reviews have already been considered in England and in Wales and it is vital that Scotland follow suit.

In addition to the above, we also take this opportunity to highlight that the Electricity Act 1989 is one of the very few consenting regimes across the UK that is not 'plan-led'. This is at odds with the rest of Scotland's plan-led system and undermines

transparency, leading to inconsistent and unpredictable outcomes which shake confidence in the system. This could be addressed by requiring determinations on applications to be made “in accordance with applicable legislation and policies, unless relevant and important considerations indicate otherwise”. This type of nuanced amendment would prevent determinations from being perceived to be subjective and would help to propose consistency in relation to the application of relevant plans and policies, whilst retaining sufficient latitude for Scottish Ministers to reflect the unique circumstances of each case.