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4 June 2019

Dear Gordon,

**ELECTRICITY (APPLICATIONS FOR CONSENT AND VARIATION OF CONSENT)  
(FEES) (SCOTLAND) REGULATIONS 2019 (2019/176)**

Thank you for your letter dated 29 May 2019 regarding the above instrument. The following response provides information on the points you raise, taken in turn below.

**Rationale for how the proposed fees were arrived at:**

The Scottish Government's key objective when revising the fees for applications under the Electricity Act 1989 was to address the considerable imbalance between income from fees arising from applications and the costs of running the consenting functions to deliver determinations on those applications. The consultation undertaken in 2018 proposed fees that were a significant increase over the current fees. The majority of respondents agreed that, in principle, application fees should be revised to maintain and improve Energy Consents Unit service levels. There was however widespread disagreement with the level of increases proposed and industry considered the increases proposed were disproportionately high in a number of contexts.

When reviewing the consultation responses received, consideration was given to comparing the fees paid for onshore electricity generating stations under the local planning regime (Town and Country Planning (Scotland) Act 1997). In 2016 there was a Consultation on Raising Planning Fees under the Town and Country Planning (Scotland) Act 1997. The outcome of this consultation introduced a new maximum fee of £125,000 for major applications in June 2017.

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Applications not exceeding 50 megawatts have fees established under the Town and Country Planning (Fees for Applications and deemed Applications) (Scotland) Amendment Regulations and Amendment (No. 2) Regulations 2017. An onshore wind farm with installed capacity 50 megawatts or below determined under the Town and Country Planning (Scotland) Act will have an application fee set according to the land take. The typical land take required for a wind farm of this capacity is likely to incur the maximum fee of £125,000. Therefore the view was taken that applications for generating stations (greater than 50 megawatts) determined under the Electricity Act should be more consistent with the local planning fees and this would allow for a smoother transition around the 50 megawatt threshold between applications under the Town and Country Planning (Scotland) Act 1997 and under section 36 of the Electricity Act 1989.

The above instrument will introduce, where an application exceeds this 50 megawatt threshold and the application is made to Scottish Ministers under section 36 of the Electricity Act, the fee will be no greater than £125,000 unless the installed capacity exceeds 100 megawatts.

### **Reason for proposing fees which would not fully cover the estimated costs**

Taking into account the consultation responses, while considering a cost which would not substantially impact upon the viability of future projects, it was considered that the full cost recovery option was of least benefit to applicants and developers. The consultation feedback from the industry emphasised that the increase in fee levels proposed in the consultation would be excessive and disproportionate, would bring a risk that generation would be uneconomic to develop, would impact negatively on consumers bills and impede progress to energy and climate change targets. We have therefore sought to implement proposals that strike an appropriate balance between maintaining viability and increasing the proportion of consenting costs recovered via fees.

### **Time period the revised fees will cover and when they will be revised**

The Electricity (Applications for Consent and Variation of Consent) (Fees) (Scotland) Regulations 2019 will be monitored by the Scottish Government and the fees will be reviewed again after 2 years. It is intended to monitor the implementation of these fees over the next 2 years as a step towards full cost recovery. This is more closely aligned to the project development cycle for such applications and will allow a variety of applications to proceed to determination over this period to allow data to be gathered for future analysis.

### **Comparison of proposed fees in Scotland with those elsewhere in the UK**

Unfortunately there is no direct comparison between fees for applications under sections 36, 36C and 37 of the Electricity Act to be implemented in Scotland with fees elsewhere in the UK. The local planning and national infrastructure development planning processes in England and Wales have changed significantly and in most cases no longer fall under the Electricity Act – see <https://www.gov.uk/guidance/consents-and-planning-applications-for-national-energy-infrastructure-projects>. The processes are different, the means of calculating the fee are different, and the permissions included in the consent may also be different in some cases. Key differences to note are:

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## Applications for onshore wind farms in England

Applications are all now determined by local authorities under local planning, and fees are no longer set for any of them by the Electricity (Applications for consent) Regulations. Applications fees are not set by installed capacity in megawatts but by land-take (hectares). Please find a link to a House of Commons briefing paper which may help provide background to that –

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN04370#fullreport>

The fees are set by the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017 -

<https://www.legislation.gov.uk/uksi/2017/1314/contents/made>

Under the English planning regime, full planning permission for the erection of plant or machinery (such as onshore wind farms) with land take approximately 79 hectares will cost £125,000 and will rise as land take increases, up to a maximum of £300,000 for wind farms in excess of approximately 205 hectares. It may be instructive to look at the two most recently determined section 36 applications in Scotland. Dulater Hill was an application for an onshore wind farm with installed capacity 57.8 megawatts, land-take 640 hectares. Upper Sonachan was an application for an onshore wind farm with installed capacity 68 megawatts, land-take 990 hectares. Under the English system the planning fee for each would be £300,000. In Scotland, under the fees to be implemented for section 36 applications from 30 June, the application fee for wind farms such as the above or others up to 100 megawatts would be £125,000.

## Applications for National Infrastructure in England and Wales

Fees are not set on a megawatt basis, but an application has a number of fees payable. Firstly there is a fixed acceptance fee, and a pre-examination fee depending on the number of inspectors on the panel looking at the case. Once examination starts there is then a daily rate based on the number of inspectors and the time spent. Up to six months of examination is allowed. The link below provides information on the time taken to examine and determine comparable applications which have been determined and infer the fees which must have been paid.

<https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

This process extends to many forms of energy infrastructure including offshore generating stations with a capacity of more than 100 megawatts and overhead lines, but not onshore wind farms. The range of permissions granted may be broader than possible under the Electricity Act in Scotland, including, for example, land rights.

For relevant offshore generating stations in English and Welsh waters the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006 apply – for fees, see <http://www.legislation.gov.uk/uksi/2006/2064/contents/made>.

I trust the above is helpful to the Committee and addresses the points raised.

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*Kind regards*

*Paul Wheelhouse*

**Paul Wheelhouse MSP**  
**Minister for Energy, Connectivity and the Islands**

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