LINK Consultation Response

Planning and Infrastructure Bill

May 2025

Introduction to Scottish Environment LINK

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organisations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment. Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland.

LINK works mainly through groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits.

Introduction

There are significant concerns over the Planning and Infrastructure Bill as a whole, which as drafted, represents a serious risk to environmental protections in England. The Bill needs to be amended and these concerns have been expressed by Wildlife and Countryside LINK, along with proposed amendments. This response focuses on the clauses and issues in the LCM and seeks to address the Committees questions.

1) How do you anticipate the proposed procedural changes to the consenting process for electricity infrastructure will affect the delivery, timing, and costs of projects in Scotland?

There are some aspects of the Bill which are anticipated to improve the delivery of electricity infrastructure.

For instance, clause 14 (2) would introduce the power to introduce regulations specifying the information that must be included with an application and the introduction of an 'acceptance stage' where applications are only registered if they include sufficient information. These changes should help to avoid unnecessary delays further in the process. Additional information is often submitted with large scale S36 and S37 applications, and although this can be appropriate and necessary, it can lead to multiple consultations and a protracted process over a number of years which can lead to 'consultation' fatigue and additional resourcing strains on consultees.

If the information that is submitted at the determination stage (i.e. before a decision has been made) is detailed and clear, this is also likely to result in less post-consent work for planning authorities, making the discharge of conditions quicker and easier and giving more certainty to communities and other stakeholders. Any moves to rush through consents, leaving the submission of crucial information to after consent has been given, are likely to result in more pressures on

planning authorities and statutory authorities and worse outcomes for people and nature and potential further delays.

The ability to introduce fees for applications and at pre-application stages is likely to lead to better resourcing of the determination process and therefore more timeous processing of applications, without being overly onerous for applicants. It is noted that planning application fees were recently increased in Scotland and this should lead to better resourcing and a more efficient system. The system must be properly resourced to ensure good long-term outcomes are possible and putting measures in place to support this is likely to result in better outcomes and more efficiency.

2) What impact do you foresee from the Bill's provision to replace public inquiries with written submissions or informal hearings in cases of objection to large-scale electricity infrastructure applications?

Our understanding is that the provision to hold a public inquiry would remain, but this would not be automatically triggered by a local authority objection, under changes proposed by clause 14(3). Provided that the views of all parties are taken into account, the use of other procedures, such as written submission or hearings or a combination of these, is likely to result in a more proportionate and efficient decision-making process. It is often extremely difficult for participants, especially individual members of the public, community groups and charities to participate in full inquiries due to the costs and resource requirements involved. Public inquiries are also very expensive for local authorities, and this should not be a barrier to engagement and participation. A more tailored and proportionate approach is likely to be less cost-prohibitive for other parties and more inclusive.

Whichever procedures are used, it will still be essential to ensure that the process is open and transparent with opportunities for stakeholders, including members of the public and community groups, to take part. The effectiveness of this approach will depend on the judgement that is used by reporters to decide what procedures to pursue, and this could be assisted by clear guidance, but the changes proposed in this regard are overall considered likely to be beneficial.

We note that Clause 14(4) inserts a new paragraph 2A into schedule 8 of the 1989 Act setting out further the procedures that would apply following the Scottish Ministers' appointment of a reporter under the provisions inserted by clause 14(3). These procedures inserted by subclause (4) may be amended by the making of regulations by the Secretary of State or Scottish Ministers. We note that where regulations are made by the Scottish Ministers, they are subject to the affirmative procedure in the Scottish Parliament, and we agree that this is appropriate and would allow scrutiny of any changes. (Where a statutory instrument is proposed to be made by the Secretary of State, it must be approved by a resolution of each House of Parliament).

3) Do the revised consultation and engagement mechanisms outlined in the Bill provide sufficient opportunities for public and environmental scrutiny of electricity infrastructure proposals?

Clause 14 of the Bill would introduce powers to allow the Secretary of State or the Scottish Ministers to make regulations on specific matters, including pre-application requirements (14 (2)) and deadlines for responses to pre-application consultation for statutory consultees, and others (clause 14(5)).

The powers to allow the introduction of pre-application requirements is welcomed and could bring energy consents in line with the pre-application consultation requirements for major applications.

Although some developers choose to undertake pre-application consultation, this is not across the board and a mandatory requirement would give some certainty as to what to expect. We agree with the Scottish Government that pre-application engagement with people potentially impacted by development is essential and public bodies should be engaged early in the development of proposals. This is likely to result in a more efficient process and better-quality outcomes. However, we note that unless there is a requirement for developers to take account of pre-application comments then it may not add substantial benefit to the process, but simply a 'tick-box exercise' with no real improvement to outcomes.

We note that secondary legislation brought under the powers would be subject to negative procedures, with minimal scrutiny. We suggest that they should be subject to affirmative procedures to allow greater engagement in what would be useful and meaningful engagement measures for the public and other stakeholders.

Clause 14 (5) would insert a new section 7B to Schedule 8 to the Electricity Act 1989, to enable deadlines to be set in regulations for all parties, including statutory consultees and relevant planning authorities, to respond to pre-application consultation.

The powers for the setting of deadlines in regulations for consultees to respond to pre-application consultations could be counterproductive, particularly if consultees are not able to respond in time due to resourcing pressures, negating the benefits of pre-application processes. Similarly, the general power to make regulations on timescales could result in a process that is focussed on timescales to the detriment of quality of outcome. Although an overall time limit for determination (unless agreed otherwise) would be in line with planning applications there is currently no specified maximum time period for consultees' response in planning. The detail of this will depend on detail in regulations, but there is potential that it could lead to a lack of time for the public and loss of opportunity for scrutiny. It is not clear what the consequences might be if consultees were not able to respond within and set timescale and whether a determination could go ahead without crucial advice. We note that such regulations would be subject to negative procedures, within minimal scrutiny.

It is crucial to be mindful of the complexity of many proposals which come forward as section 36 and Section 37 applications. This is further added to by the amount of cumulative development which now needs to be considered, both in terms of other windfarms and supporting infrastructure. Sufficient time therefore needs to be given to those engaging with the process.

The difficulty in taking account of all the relevant information is made more difficult as there is no central information point. The Onshore Wind Sector Deal includes a commitment by the renewables sector and Scottish Government that they will establish a mechanism by which onshore wind developers can submit information produced as part of the consenting process (such as the site location, dimension and habitat management plans details) to a central data repository. This is to include a mechanism for submitting the data gathered in response to planning conditions such as annual bird monitoring, habitat management and peatland management. The document states that, '*This data will be used to create a central geospatial database that will be regularly maintained and updated, and which can be accessed for various analytical and monitoring purposes*'. This commitment was planned for Q1 2024, so now almost a year overdue. Although there is unfortunately little sign of progress we understand this commitment remains and is likely to be helpful in supporting consultees and the public to make more effective and timeous responses.

Clause 16

Clause 16 of The Bill would significantly reduce the time limits for starting legal challenges against onshore electricity consent decisions, and would therefore have a detrimental impact on access to justice . The existing route for challenge is judicial review, which must be started within 3 months of

the date of the decision. The procedure for challenge would be reduced from 3 months to 6 weeks for onshore wind development. Although it is appreciated that this would be in line with the existing provisions for offshore and some planning decisions made by Scottish Ministers, this is not a justification for a reduction in the opportunity for public challenge. This is an extremely tight period, to start a legal challenge, , especially for community groups, charities and members of the public. The process requires obtaining legal advice and securing sufficient funding, which takes time and would be very difficult to do in 6 weeks.

The Committee is also interested in the broader implications of the Bill for environmental standards in Scotland, both in relation to the impacts of the clauses requiring legislative consent, and the evolving environmental regulatory landscape in England and its potential future impact in devolved aspects of Scots law.

4) What are the potential environmental impacts of the UK Planning and Infrastructure Bill as it relates to environmental matters for which the Scottish Parliament and Scottish Government have devolved responsibility? We are interested in any views you may have on:

- **the potential impacts of the specific provisions highlighted in the LCM as requiring legislative consent in devolved areas, and**
- **the potential for further impacts in devolved areas taking into account wider developments regarding EIA regimes and the Habitats Regulations in England and how they may influence or interact with environmental standards and procedures in Scotland (In this context, you may wish to specifically note the proposed powers in Part 2 of the Natural Environment (Scotland) Bill and existing powers in Section 152 of the Levelling-up and Regeneration Act 2023)**

Significant concerns have been expressed by Wildlife and Countryside LINK in regards to the Planning and Infrastructure Bill and proposals which would affect England. They have highlighted the risk of significant watering down of environmental protections that the Bill as drafted would result in. There is a need to amend the Bill to ensure that safeguards are not rolled back and development benefits people and nature. Environmental standards need to be maintained in Scotland, and we hope that this is reflected in the final Natural Environmental Bill and the approach taken by planning and energy consents in Scotland.

In terms of the potential impacts of the specific provisions highlighted in the LCM as requiring legislative consent, we have significant concerns for potential effects on the environment and people in relation to clause 15.

Clause 15 introduces new powers for Scottish Ministers to change s36 and s37 consents “due to changes in environmental or technological factors” (new Section 37B of the Electricity Act). The agreement of consent holders would be needed, however, we are extremely concerned that there is no specification for public consultation or wider engagement or detail on how a decision should be made on such a change.

The need for a clause which is so wide ranging and vague is highly questionable and concerning. There is the existing ability for an applicant to seek to vary energy consents, therefore it is unclear why this additional power is needed. Although consents are in place for years and technology changes, it is essential that sufficient scrutiny and public participation isbe maintained. This situation could be said about a number of other types of development and is not acceptable for the planning or consenting process to be circumvented.

We would draw attention to the Delegated Powers and Law Reform Committee's recent report [1]on the Inquiry into Framework Legislation and Henry VIII powers, which includes the finding: "The Committee considers powers allowing flexibility 'just in case' are unlikely to meet the test for the necessity of the power, and as such, be considered inappropriate." It appears that a 'just in case' approach is being taken in this Bill.

It is currently unclear whether safeguards would be in place to protect the environment or communities and whether this would allow significant changes, for instance, in the layout or number of turbines, without sufficient scrutiny.

The Bill as drafted states that the requirements of the process, such as notification of parties, "may" be set in regulations (under subsection (4)). Scottish Ministers or the Secretary of State would be able to make regulations which make provision for procedure, such as the process for getting agreement, publicity, notification, and consultation requirements, and the right to make representations (as set out in new section 37B(4)). However, it is unclear whether the new section of the Electricity Act allowing amendments to consents could be enacted before such Regulations came into force .

Clause 15 would seem to allow changes to be made to large scale wind farms and other renewable energy generation and infrastructure such as overhead power lines for very general reasons and without clear guidance on what could be considered as a variation and what would need a new application and without clarity on consultation processes. If this proposal remains, The Bill should be changed to ensure that regulations must be put in place before the new powers under 3BA (1) are enacted.

In addition, the Bill introduces powers for Scottish Ministers to correct 'errors or omissions' in a consent (new s37C). Although we can appreciate the desire to ensure that small errors do not result in unintended consequences or delays, there is potential for this to be used too widely within any public notification or consultation. Seemingly small errors or changes in wording could be potentially significant. It is not clear that there are safeguards to prevent this.

There does not seem to be a time limit for allowing errors/omissions to be corrected, therefore, there is potential that changes could be made years after a consent without scrutiny or public notification or consultation. If such a clause is needed, then it is suggested that a 6 week time limit is given for the identification and remediation of such errors to give some certainty to communities.

Clause 20 – Environmental Impact Assessment for Electricity Works

Clause 20 only applies to energy consents in Scotland and allows the Secretary of State or Scottish Ministers to make 'procedural' amendments to the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (EIA Regulations). We note this intention is said to be needed to put in place powers that Scotland had before the UK exit from the EU.

Environmental Impact Assessments (EIAs) are a vital protection for the natural environment. Development and other changes of use of land and sea are significant drivers of biodiversity loss, and it is necessary that, when new development or other proposals are likely to have a significant environmental effect, decision making is informed by an understanding of these impacts, and crucially, ecological mitigation is required. The EIA process is a critical tool to enable public scrutiny on how decisions are made, which upholds our right to participate in public decision-making

[1] https://digitalpublications.parliament.scot/Committees/Report/DPLR/2025/3/24/57919905-5cf0-46b8-86ef-3e457b3ba74d

enshrined in the Aarhus Convention. Any proposed changes to the EIA Regulations must be carefully scrutinised and any significant changes should be the subject of primary legislation.

The Bill sets out purposes for which EIA Regs can be amended, and we note that these are procedural. The powers would enable regulations to provide for:

- the charging of fees for EIA screening and scoping opinions
- the requirement for a screening opinion to have been given before the submission of an application without an EIA report
- copies of EIA reports for Scottish Ministers and for inspection in public places
- the publication of environmental information
- time limits for representations and for the provision of information

Therefore, the proposed changes affecting EIA Regulations do not appear to be far reaching and could provide clarity in the EIA process, for instance ensuring that there is a time limit for the submission of additional information.

It is noted that it is the intention of the UK Government to introduce a system of 'Environmental Outcomes Reports', rather than EIA Reports. We welcome the intention of the Scottish Government to retain protections under the EIA framework but note that they will consider further detail before taking a position on the adoption of EOR for Scotland and this could be introduced in the future. Given a number of other proposals in the current Planning and Infrastructure Bill have the potential to seriously weaken nature protections, we are deeply concerned at the apparent direction of change. The consenting system and development proposals need to support nature and there should not be changes which lessen environmental scrutiny. Our concerns are heightened in the context of the Natural Environment (Scotland) Bill which proposes, as currently drafted, the introduction of sweeping, largely open-ended powers for Scottish Ministers to modify or restate EIA legislation. Scottish Environment LINK members strongly oppose the introduction of such powers which could be used to make extensive reforms to our most vital environmental protections with little scrutiny.

We are extremely concerned in the direction of any measures that could erode environmental protections, and such measures could affect Scotland to a greater degree in the future. We urge members to continue to ensure that crucial protections for people and the environment are not rolled back.

This response is supported by:

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