Local Government and Communities Directorate
Planning and Architecture Division

Scottish Government
Riaghaltas na h-Alba
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Heads of Planning Services

Dear colleague,

I am writing to you on three matters which concern the granting of energy consents and related planning permissions in Scotland, to clarify current procedural expectations. The clarification is allied to a notification procedure that has been designed to be minimal in process and information required from authorities, acknowledging the pressures we all face.

The Consenting Regime - Background

Planning permission is needed for the construction of an electricity generating station. For generating stations which have a permitted capacity greater than 50MW, consent is also needed under Section 36 of the Electricity Act 1989 for the construction, or extension, and operation of the generating station.

Planning permission is also required for installation of overhead electricity lines. The installation and the keeping installed of certain overhead lines also require consent from the Scottish Ministers under Section 37 of that Act. Such consents under sections 36 and 37 are ‘energy consents’.

If consent is granted under Section 36 or Section 37, the Scottish Ministers have powers under Section 57 of the Town and Country Planning (Scotland) Act 1997 to direct that planning permission is deemed to be granted and there is no requirement for a separate application for planning permission to be made.

Extensions to generating stations require planning permission. If as a result of an extension to a generating station the cumulative generating capacity of that station will exceed 50MW, consent under Section 36 of the Electricity Act is needed for the extended generating station, and Ministers may on granting Section 36 consent for the extended generating station, direct that planning permission also is deemed to be granted.

Electricity Storage and the Consenting Regime

The first matter I wish to inform you about is the Scottish Government's position on electricity 'storage' and the appropriate consenting regime for decision making, noting the respective roles of the Town and Country Planning (Scotland) Acts and the Electricity Act 1989, summarised above.

The Scottish Government considers that a battery installation generates electricity and is therefore to be treated as a generating station.

As a result, a battery installation should be treated as any other generating station for the purposes of deciding whether Section 36 consent is required for its construction and operation.

At this time we envisage that as well as stand-alone battery installations, there will also be installations which are designed to form extensions to existing electricity generating stations, in particular wind farms.

This would mean that battery facilities which are to be constructed as extensions to existing electricity generating stations, should be considered under Section 36 of the Electricity Act 1989 where the combined output of the existing generating station and the proposed battery facility would exceed 50MW.

You are likely to be dealing with renewable energy companies working across the UK administrations. They naturally will have experience of the approaches taken in other administrations to the consenting regime under which different types of electricity generation stations are treated. For example, in England all wind farms are considered by planning authorities locally in the first instance.

The UK Government have consulted on the treatment of electricity storage within the planning system in England, and a follow up consultation closed in December 2019. The UK Government published its final policy position on 14th July 2020, stating its intention to remove the need for consenting at a national level for electricity storage technologies, except for pumped hydroelectric storage. The Scottish Government will consider what adaptations may be necessary to the consenting regime in Scotland to facilitate deployment of this emerging technology. We will seek your views as part of that work.

Any questions about this matter should be addressed in the first instance to Rebecca Young (Senior Planner) Rebecca.Young@gov.scot or Alan Brogan (Energy Consents Team Leader) alan.brogan@gov.scot.

Use of Section 42 Applications related to development permitted by Energy Consents

The second matter I wish to raise is about the circumstances in which Scottish Ministers would anticipate Section 42 of the Town and Country Planning (Scotland) Act 1997 to be used in relation to the conditions imposed on the grant of planning permissions (deemed or otherwise), associated with energy consents. I am aware that there is occasionally uncertainty as to whether applications in relation to conditions should be made to the planning authority through the Planning Act or to Ministers through the Electricity Act.

When accompanying an energy consent under Section 36 or Section 37 of the Electricity Act 1989, a 'deemed planning permission' granted under Section 57 of the Town and Country Planning (Scotland) Act 1997 may be provided. This covers the generating station or overhead line, as well as any ancillary development, such as access tracks, substations or borrow pits, necessary to support the generating station or overhead line.

A developer may later want to alter the terms under which the generating station or ancillary development may be constructed or operated. The developer may seek a new planning permission subject to different conditions. In the case of a generating station having consent under the Electricity Act, where the change relates to compliance with a condition about an ancillary element of the development imposed on the grant of deemed planning permission, permission for the change should be made through Section 42 of the Town and Country Planning (Scotland) Act 1997. Similarly in the case of an overhead line, if the change relates to compliance with a condition about an ancillary element of the development imposed on the grant of deemed planning permission, a Section 42 application should be made to the planning authority. Such applications for permission, if granted, result in a new and separate planning permission existing for the development.

In relation to the electricity generating elements, the Scottish Government has published guidance on the circumstances in which energy consents may be varied under provisions of the Electricity Act 1989. The guidance can be found at: https://www.gov.scot/publications/applications-variation-section-36-consents/.

However, for individual cases if you are unsure of who would be the appropriate decision maker, please contact the energy consents unit at: econsents_admin@gov.scot or on 0131 244 1241.

The Town and Country Planning (Notification of Applications) (Applications under section 42) (Scotland) Direction 2020

The third matter to make you aware of is a new Direction by Scottish Ministers relating to Planning applications made under Section 42 of the 1997 Town and Country Planning (Scotland) Act.

The direction is for planning authorities to notify Scottish Ministers on validation of Section 42 applications for planning permission for development of land without compliance with conditions set out by Scottish Ministers in planning permission deemed to be granted under section 57(2) or (2ZA) of the 1997 Town and Country Planning (Scotland) Act, where the deemed planning permission relates to development consented under Section 36 or 37 of the Electricity Act 1989.

I have set out earlier in this letter the circumstances under which developers may seek to make an application under section 42 where Scottish Ministers have given a direction that planning permission has been deemed to be granted under section 57 (2) or (2ZA).

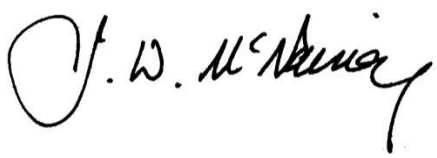
At present, there is no legal requirement for the holder of an energy consent to notify Scottish Ministers when making a Section 42 application to a planning authority. The Scottish Ministers wish to maintain an awareness of such amendments being made to planning permissions deemed to be granted by them. An additional consideration is that should a developer wish at a later stage to vary an energy consent, the Scottish Government's Energy Consents Unit (ECU) needs to be aware of the planning permission associated with it at that time, or to be aware of the planning permission which has been implemented by the developer in pursuit of the project. Notification will ensure that Ministers are made aware of any changes to conditions securing any mitigation or monitoring measures set by them in order to protect the environment, and to hold a record of the planning permission which has been implemented, or is intended to be implemented, in association with an existing energy consent.

The notification direction has been given separately to this letter, and will come into force on 28 August 2020. The direction sets out that details of any relevant applications should be sent by email to econsents_admin@gov.scot, or by letter to Energy Consents Unit, The Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU. The details required are the application reference number, the name and location of the development, and a copy of the application.

Should you wish to discuss the notification direction, please contact the energy consents unit at: econsents_admin@gov.scot or on 0131 244 1241.

Thank you for giving your attention to these three matters.

Yours sincerely



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