

Minister for Public Finance, Planning and Community Wealth submission of 18 August 2022

PE1864/OOOOO: Increase the ability of communities to influence planning decisions for onshore windfarms

Thank you for your letter of 7 July, following up on my attendance at the Citizen Participation and Public Petitions Committee on 15 June 2022 to discuss these two petitions.

Correction

Following discussions with officials, I would take this opportunity to apologise and address some incorrect technical information that I, and officials that were present, inadvertently provided on the 15th June 2022 on the matter of Electricity Act thresholds.

The Committee asked whether the Scottish Government has competence to increase or abolish the 50MW threshold for renewable energy developments that can be considered by planning authorities. The Committee were informed that the Scottish Government does not have any competence to do anything with the provisions of the Electricity Act 1989, which is a reserved piece of legislation, that there is a general reservation of energy in the Scotland Act 1998, and that the processes that pertain to Electricity Act consenting are, in line with that, also reserved.

Matters pertaining to generation, transmission, distribution and supply of electricity are reserved in the Scotland Act 1998, and therefore it is not within the powers of the Scottish Parliament to introduce primary legislation in relation to these matters. It is not within the power of Scottish Ministers to alter the Electricity Act 1989 itself. Certain executive functions in the Electricity Act 1989, as far as these may be exercised in Scotland, are however exercisable by Scottish Ministers. These include functions under section 36 of the Electricity Act 1989 – ‘consent required for the construction etc. of generating stations.’

Section 36 (1) provides that a generating station shall not be constructed, extended or operated except in accordance with a consent granted by “the appropriate authority”. The “appropriate authority” in relation to a generating station in or to be constructed in Scotland is the Scottish Ministers. This provision is subject to subsection (2) which states that subsection (1) does not apply to a generating station whose capacity does not exceed the ‘permitted capacity’ which is 50 megawatts; and, in the case of a generating station which is to be constructed or extended, will not exceed the permitted capacity when it is constructed or extended.

Powers are available to the Scottish Ministers under section 36 to make subordinate legislation to alter the “permitted capacity” threshold in section 36(2).

Section 36(2) and (3) enables the Scottish Ministers by order to ‘provide that subsection (2) shall have effect as if for the permitted capacity... there were substituted such other capacity as may be specified in the order’. Section 36(4) enables the Scottish Ministers by order to direct that section 36(1) shall not apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order.

The summary of the above is that by order, Scottish Ministers are in a position to make different provision in terms of the generating capacity of all, or of certain specific types, of generating station which would not require consent under section 36(1).

I hope this is helpful to the Committee as to the correct position on the matter of thresholds and what powers Scottish Ministers have available to them.

Requests for Clarification

You sought clarification on a number of specific matters and I have set out the Scottish Government’s response on those points below.

The Scottish Government’s current position regarding the benefits/disadvantages of altering the 50MW threshold for determining applications for renewable energy developments

The Scottish Government has not explored the benefits or disadvantages of altering the 50MW threshold for renewable energy developments.

Which discussions, if any, have taken place between the Scottish Government and UK Government regarding:

- **The 50MW threshold**
- **Possible amendments to the Electricity Act 1989, which would enable the devolution of the consent process to local planning authorities for developments over 50MW**

No discussions have taken place between the Scottish and UK Governments regarding the 50MW threshold.

The Cabinet Secretary for Net Zero, Energy and Transport wrote to the Secretary of State for Business, Energy and Industrial Strategy at the UK Government on 23 May 2022, requesting devolved powers for energy consenting. In response, the Secretary of State advised that he would be content for matters to be discussed between officials. Mr Matheson subsequently, on 28 June, wrote to request a Ministerial meeting regarding both Electricity Act devolution and Habitats Regulations devolution, relating to onshore and offshore wind matters.

As set out above, devolution of legislative competence is not required to set thresholds differently and it is possible to provide that more planning proposals for renewable energy developments are dealt with at a local authority level. The request for legislative devolution in this area seeks to address other matters within the Electricity Act process, which are not within the power of the Scottish Parliament to change, and where there is currently no scope for modernisation or alignment with wider Scottish planning processes.

The role Local Place Plans and early community engagement in the planning process can play in encouraging Community Shared Ownership

The new right for communities to produce local place plans enables and encourages them to set out their aspirations for the future development of their places. When they do so, there is a requirement on planning authorities to take local place plans into account when preparing their

local development plans. While it is for community bodies to produce the content of their local place plans, there is not a direct role for those plans in encouraging community shared ownership schemes to be delivered through the planning system, given the restrictions on requiring such schemes within the terms of a planning permission. However, at the pre-application stage, planning authorities may be able to direct a renewable energy business towards sources of information about known community aspirations.

Your views on the petitioner's suggestion, in relation to PE1885, that 'developers must offer and secure 15% Community Shared Ownership investment'

Shared Ownership can generate lasting social and economic benefit for local communities across Scotland, as well as support the Scottish Government to realise its 2GW by 2030 community and locally owned energy target.

The Scottish Government has no powers to mandate shared ownership. However, we do have longstanding Good Practice Principles (GPPs) for Shared Ownership of Onshore Renewable Energy Developments (revised 2019). The GPPs set national standards, which we encourage renewable energy businesses and communities alike to adopt and observe, and include guidance for all parties about how to discuss and develop potential shared ownership opportunities.

Taking a stake in a commercial renewable development represents a significant long term investment for local communities. It can carry a number of risks which might result in losses or lower than expected profits. It is therefore essential that communities take their own independent advice, including independent financial advice, so that they can make an informed decision on whether the shared ownership opportunity is right for them. Support is available through the Scottish Government's Community and Renewable Energy Scheme (CARES) for communities considering shared ownership offers and opportunities.

I hope the Committee finds this response helpful.