

Executive Note
The Electricity (Applications for Consent) Amendment (Scotland) Regulations 2006
(S.S.I. 2006/18)

1. The above instrument was made in exercise of the powers conferred by sections 36(8) and 60(3) of, and paragraph 1(3) of Schedule 8 to, the Electricity Act 1989. The instrument is subject to negative resolution procedure.

Policy Objectives

2. The purpose of this instrument is to reduce the scale of fees associated with consent applications not exceeding 10 Mega Watts (MW) which are made to the Scottish Ministers under section 36 of the Electricity Act 1989. Section 36 of that Act deals with applications to construct, extend or operate generating stations with an installed capacity in excess of 50 MW, or in the case of hydro and marine developments or any other generating station wholly or mainly driven by water, 1MW.

3. Applications below these thresholds are made direct to the planning authority. However, even where the application has been made to the Scottish Ministers, the local authority is served with notice of the application and is heavily involved as a consultee in the decision making process. If the local authority maintains an objection to an application, Ministers are required to hold a public inquiry prior to making any decision.

4. The current level of fees were set by the Electricity (Applications for Consent) Amendment (Scotland) Regulations 2005 (S.S.I. 2005/295), which came into effect on 1 July 2005. The fees had not been revised since 1990 and were considered too low compared with local authority fees for applications made direct to them and in relation to our own costs. A revised scale of fees was therefore introduced which would allow for cost recovery to the Executive and which, in conjunction with other powers, would allow a portion of the fee to be paid to the relevant planning authority.

5. The Enterprise and Culture Committee considered S.S.I. 2005/295 on 21 June 2005 and were concerned about the increase from £5,000 to £15,000 for projects not exceeding 100MW acting as a deterrent to small-scale hydroelectric developers by virtue of the increased financial burden placed on them. The Committee agreed that it may seek evidence from small-scale hydroelectric developers but in the meantime requested the Executive to re-examine this level of fee.

6. Several factors were taken into consideration when re-examining this fee; the likely reduced work of the Executive in assessing hydro applications due to the coming into force of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (S.S.I. 2005/348), from 1 April 2006, the amount of work required by the planning authorities and the level of fee to be requested by SEPA under the Controlled Activities Regulations. Argyll and Bute Council were informally consulted on the complexity of assessing small hydro developments and confirmed that whilst assessing hydro developments is a far reaching and complex process and requires the input of experienced planning officers, these applications do not attract the same level of third party interest as wind farms and are slightly less time consuming. The Executive also accepts that fees can comprise a much more significant

amount of project costs for small projects and that a reduction in the fee for small-scale hydroelectric projects not exceeding 10MW would reduce those effects.

7. The Executive also considered the possibility of reducing the fee for projects exceeding 10MW but not exceeding 50MW. However, these applications will undoubtedly require a more detailed assessment by the Executive and the relevant planning authority and the associated costs incurred by both parties must be taken into consideration. It is vital to the consents process that adequate cost recovery continues.

8. Following this re-examination of the fee we have decided to reduce the fee for applications not exceeding 10MW. As a result of the Electricity Act 1989 (Requirement of Consent for Hydro-electric Generating Stations) (Scotland) Order 1990 (S.I. 1990/392), which reduces the general 50MW threshold for section 36 consent applications to 1MW for “generating stations wholly or mainly driven by water”, this will reduce the fee paid to Scottish Ministers for small-scale hydroelectric projects.

Consultation

9. A formal consultation has not been carried out. A consultation exercise was carried out during the preparation of the Electricity (Applications for Consent) Amendment (Scotland) Regulations 2005. Some responses from the Scottish Renewables Forum and renewable energy companies were re-considered by the Executive. An informal consultation was carried out with a planning authority and the concerns raised by some members of the Enterprise and Culture Committee on 21 June 2005 have been given careful consideration. The Committee raised its concerns following representation made by the Scottish Renewables Forum.

Financial Effects

10. The instrument has minimal financial effects on the Scottish Executive, local government and on businesses wishing to develop power stations. The reduction in the level of fees for projects not exceeding 10MW will have a positive impact on small-scale hydroelectric developers.

11. A regulatory impact assessment is available from:

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Renewables and Consents Policy
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Scottish Executive
ETLLD
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