

## EXPLANATORY MEMORANDUM TO

### THE ELECTRICITY (CONNECTION OFFER EXPENSES) REGULATIONS 2018

2018 No. 254

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 A person<sup>1</sup> wishing to connect to the electricity distribution network applies for a connection offer from the relevant distribution network operator (DNO). In providing connection offers, DNOs incur expenses. Currently, DNOs are only able to recover the costs of providing connection offers from those prospective customers (“applicants”) who accept a connection offer. This instrument will allow DNOs to charge applicants for the costs of providing a connection offer irrespective of whether the applicant accepts the offer.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 This instrument is principally made under section 16A(4A) to (4C) of the Electricity Act 1989 as inserted by section 98 of the Energy Act 2008. It applies to applications for a connection offer made on or after 6 April 2018.
- 4.2 These will be the first Regulations made under the power conferred by Section 16A(4A) to (4C) of the Electricity Act 1989.
- 4.3 Provision for determination of disputes arising under these Regulations is made in section 23 of the Electricity Act 1989, as amended by section 52 of the Infrastructure Act 2015.
- 4.4 Requirements imposed on DNOs by this instrument will, by virtue of paragraph 5(b) of Schedule 6A to the Electricity Act 1989, be ‘relevant requirements’ that are subject to Ofgem’s enforcement powers in sections 25 to 28 of that Act.

---

<sup>1</sup> Comprising generation, demand and storage developers such as solar farms, wind farms and housing developments. All but the smallest of projects, e.g. solar panels on domestic properties, are required to apply for a connection.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales and Scotland.
- 5.2 The territorial application of this instrument is England and Wales and Scotland.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 When an applicant wishes to connect to the electricity distribution network, DNOs are legally required to offer terms of that connection, including the cost of connecting to the network in order that the applicant may decide whether to proceed. In providing connection offers, DNOs incur expenses.
- 7.2 DNOs are able to recover the costs of providing connection offers from applicants who accept a connection offer under the broader power to recover reasonably incurred expenses in providing a connection under section 19 Electricity Act 1989. These Regulations enable DNOs to also recover costs from an applicant who does not accept a connection offer.
- 7.3 In recent years the number of connection offers provided by DNOs has increased significantly while the proportion of accepted offers has declined. This has been driven by an increase in generation projects seeking a connection, a subsequent reduction in available network capacity meaning that applicants submit speculative applications to determine where capacity is available, and the fact that DNOs cannot recoup their connection offer expenses from applicants who do not accept connection offers. Providing connection offers for speculative applications ‘ties up’ network capacity until the applicant responds to the offer. This creates inefficiencies in the connection process because capacity could otherwise be allocated to subsequent applicants.
- 7.4 The Department believes that, by allowing DNOs to recoup connection offer expenses in these circumstances, these Regulations will bring greater cost reflectivity to the connections process, with more applicants paying towards the costs of preparing connection offers. It should also bring benefits in improving the efficiency of the connections process and the service that applicants receive. The increased ability of DNOs to recoup connection offer expenses should incentivise engagement between applicants and DNOs to address requirements and practicalities before embarking on the process of preparing a connection offer, meaning less resource is used by DNOs to provide offers that will not be accepted.

## **8. Consultation outcome**

- 8.1 A Call for Evidence on connection offer expenses ran from 24<sup>th</sup> March to 6<sup>th</sup> May 2016. The Call for Evidence was published on the gov.uk website and was proactively disseminated to developers, DNOs, community energy groups, Ofgem and independent connection providers. We received 26 responses from DNOs, independent connection providers, developers, trade associations, community energy

groups, and Ofgem. The vast majority of respondents favoured allowing DNOs to charge connection offer expenses. In responding, many stakeholders also called for:

- smaller projects to be exempt from paying connection offer expenses in these circumstances,
- DNOs to improve customer service and provide transparency in connection offer expenses;
- a clear definition of what activities connection offer expenses would cover; and
- safeguards to prevent DNOs over recovering connection offer expenses.

8.2 Having considered the responses to the Call for Evidence and other engagement with stakeholders, we decided to implement secondary legislation to allow DNOs to recoup connection offer expenses where the offer is not accepted. We believed that doing so would be fairer, with more applicants paying towards the costs of preparing connection offers and that it would bring further benefits in improving the efficiency of the connections process and the service those applicants receive. We were also confident that the concerns raised by stakeholders responding to the Call for Evidence could be addressed through the secondary legislation and implementation process.

8.3 We consulted from 21<sup>st</sup> September to 2<sup>nd</sup> November 2017 on how best to allow DNOs to recoup connection offer expenses. We particularly sought views on a draft Statutory Instrument and an initial assessment of the economic impacts. The consultation was published on the gov.uk website and disseminated directly or through intermediaries to developers, DNOs, independent connection providers, community energy groups, Local Enterprise Partnerships, Ofgem, and respondents to the Call for Evidence. We received 22 responses to the consultation from developers, DNOs, trade associations, independent connection providers, an electric vehicle company, and one individual.

8.4 Again there was strong support from respondents for introducing the Statutory Instrument. There continued to be some calls for exemptions, transparency and safeguards but a greater recognition that this was more appropriate for implementation rather than for the Statutory Instrument itself. There was general support for the approach, assumptions and evidence provided in our initial assessment of the economic impacts of the policy. In response to issues raised by respondents we redrafted the Statutory Instrument to be clearer on types of connection offer activities that could be recovered by DNOs and provide greater clarity on how applicants are to be informed of the expenses and payment of them.

8.5 Fuller analysis of the Call for Evidence and consultation responses is available at <https://www.gov.uk/government/consultations/assessment-and-design-fees-consultation-on-draft-regulations>.

## **9. Guidance**

9.1 No further guidance will be provided. Should DNOs decide to recoup connection offer expenses there are established regulatory mechanisms to ensure that they do this within the framework set by the Statutory Instrument. DNOs will publish their

connection charging statements<sup>2</sup>, alongside the additional requirement in the Regulations for individual applicants to be informed of the connection offer expenses.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is estimated to have a present value over ten years of £153m (2016 prices, discounted to 2018). This is made up of £935m of quantified benefits and £782m of quantified costs.
- 10.2 The quantified benefits are due to freed-up and better deployed resources for DNOs and a transfer benefit for applicants accepting offers, who now face lower costs. Unquantified benefits include an increased sense of equity and the value attached to improved service provision in the connections market by both applicants and DNOs. Potential knock-on benefits include benefits for the System Operator and Transmission Owners due to the potential for fewer or more targeted requests.
- 10.3 The quantified costs are due to implementation and administration costs for DNOs and Ofgem, costs for all applicants for better service provision and a transfer cost from applicants who accept connection offers to those who do not and would now have to pay connection offer expenses.
- 10.4 There is no impact on the public sector.
- 10.5 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific actions are proposed to minimise regulatory burdens on small business.
- 11.3 The basis for this decision is that the burden of administering the Regulations will be with DNOs, which are not small businesses.

## **12. Monitoring & review**

- 12.1 Regulation 3 of this instrument requires the Secretary of State to carry out a review of these Regulations and publish a report of the conclusions at intervals not exceeding five years.

## **13. Contact**

- 13.1 Paul Hawker at the Department for Business, Energy and Industrial Strategy, Telephone: 0300 068 5824 or email: paul.hawker@beis.gov.uk can answer any queries regarding the instrument.

---

<sup>2</sup> The Connection Charging Statements set out DNO connection charges and provide other information to explain to applicants the options available for obtaining a connection and the processes that need to be followed. They are approved by Ofgem.