



Law Society
of Scotland

Consultation Response

Scottish Parliament

Economy, Energy and Fair Work Committee

Energy Inquiry

14 January 2020



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Energy Law sub-committee welcomes the opportunity to consider and respond to the Scottish Parliament's Economy, Energy and Fair Work Committee's (the Committee) call for views in relation to their Energy Inquiry (Inquiry). We recognise that this Inquiry is broad based and at a high level.

Accordingly, the sub-committee has not sought to respond to the specific questions. It seeks instead to put forward comments on the wider context of the Committee's Inquiry, the legal role and interests applying to the Inquiry and the possible implications arising from the Brexit and European perspective.

General Comments

The context for the Inquiry's call for views outlines that the intention is to carry out a three-part energy inquiry linking with an overview of the Royal Society of Edinburgh's Scotland Future Energy Report (RSE Report)¹ with consideration of electronic vehicles (EVs) infrastructure and locally owned energy.

It appears that consideration of the EVs infrastructure and locally owned energy is to be considered separately and specifically provides the focus for this consultation in seeking views. It recognises that there is a link to "decarbonising energy system and increasing the generation of renewable electricity, balancing transmission and distribution networks while powering the increasing numbers of EVs and delivering innovative local energy systems"² which is one of the strategic priorities of Scotland's Energy Strategy.³

That states:

¹ <https://www.rse.org.uk/energyinquiry/>

² Scottish Parliament Energy Inquiry

³ <https://www.gov.scot/publications/scottish-energy-strategy-future-energy-scotland-9781788515276/>

“Innovative local energy systems – we will empower our communities by supporting the development of innovative and integrated local energy systems and networks.”

Exactly how the Committee intends the Inquiry to link more widely with the RSE’s Report regarding both its remit⁴ and outcomes is of interest as is exactly how the rest of this three-part Inquiry is to be progressed.

At this stage, we would outline for the Committee’s information what the spectrum of interests of the Energy Law subcommittee are and its makeup. That includes solicitors who represent various clients’ interests in the energy related field as well as academics specialising in the field.

When considering the outcomes of the RSE Report, our members and their clients whose interests they represent while not necessarily directly involved at these high-level discussions are relevant when taking forward the outcomes which include:

- **Engagement:** This is specified as including the public, industry, communities, local and central government and other interested bodies. Our members are interested in contributing to such informed debates and when considering any specific legislative proposals that are being out forward.
- **Findings:** When findings are reached with recommendations for policymakers and stakeholders at the local, Scottish, UK, and European level, we would highlight the Society’s role in the rule of law and the Scottish legal context as outlined above.

Local Energy

There is reference to the Scottish Government undertaking a consultation on local energy systems which concluded on 4 December 2019 where we await the outcome of that consultation and how it interrelates with the context of this Inquiry.

Question 6 of the Inquiry refers to “the role of local authorities in delivering community and locally owed projects.”

Communities and energy-related initiatives involving local collaborative solutions “are expected to play an important role in the energy transition as they can enable the development of sustainable energy technologies and bring a variety of benefits to local communities.”⁵

The energy market is a complex one.

⁴ To review critically the current forecasts of energy demand in Scotland and the influences on it

To examine how that demand may be met, assessing the feasibility and security of the range of possible sources of supply

To take account of the environmental imperative to reduce carbon emissions, and associated political commitments

To consider the moral and ethical implications of the various options open to Scotland; how and where energy resources are developed, the way in which we use them, and the level of responsibility we have as a nation for the energy we consume

⁵ Models of Local Energy Ownership and the Role of Local Energy Communities in Energy transition in Europe - <https://cor.europa.eu/en/engage/studies/Documents/local-energy-ownership.pdf>

To ensure that as many local and community projects as possible are to be successful, it is important that support is available for those seeking to create a community or locally owned energy organisation (in whatever legal format that is envisaged to take). These structures may vary and may involve a range of possible legal identities including partnerships, co-operatives, community trusts and foundations, companies, non-profit customer-owned enterprises, housing associations and municipal ownership. We would anticipate that legal advice on the setting up of such entities and the implications arising from involvement in such projects would be required.

Access to that relevant expertise for such organisations will be required in relation to a range of areas of work. That includes technical expertise, market knowledge (e.g. network connection processes, the revenue streams available to the scheme for energy generation and/or provision of energy services), financial advice (e.g. in relation to funding and tax arrangements) and access to funding. Property and asset ownership, planning consents and funding are also highly pertinent.

We note in relation to such initiatives that the Scottish Government is seeking to encourage participation from the widest range of groups and communities. The interests and expertise of our members should be regarded.

Developing a stable policy and appropriate regulatory legal framework are very important. Consideration should be given to establishing simplified processes for and/or giving priority to applications made by community and locally owned energy projects to encourage their development.

Exactly how the ongoing Brexit and inevitable UK policy implications and debate will affect the Inquiry will need to be factored. Consideration of and the inevitable overlap with the development of other Scottish Government policies such as on climate change, transitions to a greater use of renewable energy sources and developing and adaptation of new technologies are all required. Looking to the work already carried out in the European context and how that affects and benefits Scotland and its policies now and the future would seem a useful comparative approach to consider at the outset.⁶

These illustrate too just how important and making available technical information, expertise, guidance and funding routes are. That is relevant to the role of communities too to assist in planning and setting up such projects.

The Committee may wish to have regard to how best to ensure that is a consideration taken account of and planned for at an early stage.

⁶ Models of Local Energy Ownership and the Role of Local Energy Communities in Energy transition in Europe - <https://cor.europa.eu/en/engage/studies/Documents/local-energy-ownership.pdf>



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