

Consultation Response

Onshore electricity generation: increasing the threshold for applications under The Electricity Act

March 2026



Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Planning Law and Energy Law sub-committees welcome the opportunity to consider and respond to the Scottish Government consultation: *Onshore electricity generation: increasing the threshold for applications under The Electricity Act*.¹ The sub-committees have the following comments to put forward for consideration.

Questions

1. Should there be a single threshold applicable to all technologies?

We have no comments.

2. What threshold should apply for applications for electricity generation to be determined by planning authorities?

- 50MW
- 100MW
- 150MW

We have no specific comments on the appropriate thresholds. From a practical point of view, increasing the threshold would naturally increase the workload for planning solicitors working in local authorities. We note that any increase in the threshold may result in planning authorities dealing with larger and more complex energy projects. This in turn will perhaps require access to specialist expertise in environmental assessment, engineering, landscape and visual impact, and

¹ [Onshore electricity generation: increasing the threshold for applications under The Electricity Act - Scottish Government consultations - Citizen Space](#)



decommissioning, either in-house or through shared services or framework arrangements.

We note that under NPF4, any development over 50MW is classified as a national development.² If left unamended, this could represent a disconnect between any proposed increase in the threshold and current policy; projects in the 50–100 MW or 50–150 MW band (depending on the threshold chosen) would be designated national developments for policy purposes but would fall to be determined by local planning authorities rather than by ministers.

We observe that there have recently been changes to guidance relating to applications made under Section 36 of the Electricity (Scotland) Act 1989 (“the 1989 Act”).³ Given this, we suggest consideration should be given as to the appropriateness of further changes in this policy area, given that they share similar policy goals to the amended guidance.

3. Any change to the threshold would apply only to new applications. Do you have any comments on transitional arrangements?

We consider it vital that there are clear transitional provisions and that there is clarity on how provisions will apply to current applications. Well-drafted transitional provisions will reduce legal risk and support investor confidence during the implementation period.

4. Do you have any other comments to add?

We consider that guidance should be provided as to how key environmental protections, monitoring obligations, and enforcement mechanisms that are typically included within consent and planning permissions made under Section 36 of the 1989 Act will be ensured with equal clarity and consistency if more projects are determined by planning authorities due to the increase in threshold.

5. Do you have any comments on the partial and draft impact assessments undertaken?

We have no comments.

² [National Planning Framework 4](#)

³ [Standard onshore wind conditions – section 36 consent and deemed planning permission: form and guidance - gov.scot](#)



6. Do you have any suggestions for additional sources of information on the potential impacts of the proposals that could help inform our final assessments?

We have no comments.



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