EXECUTIVE NOTE

THE ELECTRICITY ACT 1989 (REQUIREMENT OF CONSENT FOR HYDRO-ELECTRIC GENERATING STATIONS) (SCOTLAND) REVOCATION ORDER 2011

SSI 2011/ 115

Introduction

1. Scottish Ministers are committed to the promotion of renewable energy in Scotland; as part of this, they have set a target that 80% of the electricity generated in Scotland (as a proportion of consumption) should come from renewable sources by 2020, with an interim target of 31% by 2011. This commitment is an important part of a package of initiatives aimed at tackling climate change. The current consents threshold for hydro-electric generating stations has been identified as a barrier to the contribution that hydropower can make to those targets. This Revocation Order intends to remove that barrier.

Background to the threshold level

2. The threshold above which applications for hydro-electric generating stations are determined by Scottish Ministers under Section 36 of the Electricity Act 1989, rather than through planning authorities, has been debated since 2007 by the Forum for Renewable Energy Development in Scotland (FREDS) Hydro Group.

3. Following the closure of the group, the sector, through Scottish Renewables, put forward a case to raise the threshold from the current 1 MW level to over 50 MW in the summer of 2009. Meetings were held in October 2009 with interested parties such as COSLA, SEPA, Scottish Renewables, Scottish Natural Heritage and others stakeholders. The consensus was that, given that the need for the 1MW threshold was no longer there, raising the threshold to 50MW should be taken forward through a Scottish Government Consultation.

4. Historically the Electricity Act 1989 (Requirement of Consent for Hydro-electric Generating Stations) (Scotland) Order 1990 was put in place in order that the Fisheries Committee had the chance to comment on all applications of over 1MW. However, the Fisheries Committee was abolished last year and impacts on the water environment are now considered by SEPA under the Controlled Activities Regulations.

Background to the 2011 Revocation Order

5. The 2011 Revocation Order will revoke the 1990 Order and restore the threshold for the requirement of Consent for Hydro-electric generating stations to over 50MW. It will not impact on wave and tidal schemes or any offshore developments.

Enabling powers

6. Under section 36 of the Electricity Act 1989 the consent is required for the construction, extension or operation of an electricity generating station with a capacity exceeding 50 megawatts. It is possible for this limit to be varied by means of an order made under section 36(2) and (3) of that Act.

7. The Electricity Act 1989 (Requirement of Consent for Hydro-electric Generating Stations) (Scotland) Order 1990 Order ("the 1990 Order") made such a variation and prescribed a limit of 1 megawatt for hydro-electric generating stations in Scotland only. Article 2(1) revokes the 1990 Order with the effect that generating stations with a capacity over 50 megawatts will require the consent under section 36 of the Electricity Act 1989 to their construction, extension or operation. Article 2(1) saves the provisions of the 1990 Order in so far as they relate to applications made to the Scottish Ministers before 1st June 2011.

Consultation

8. A consultation took place between 8 September and 1 December 2010 on the changes contained within the 2011 Order.

Financial Impacts

9. Currently The Electricity (Applications for Consent) Amendment (Scotland) Regulations 2006. The cost of a hydro application within section 36 Consents process varies depending on the capacity. Applications not exceeding 10 MW pay £5,000, those exceeding 10 MW but not exceeding 100 MW pay £15,000, those exceeding 100 MW but not exceeding 200 MW pay 20,000, those exceeding 200 MW but not exceeding 500 Mw pay £30,000 and those exceeding 500 MW have to pay a charge of £50,000. On receipt of an application and associated fee from a developer, the Scottish Government will make a proportionate payment to the relevant PA, as set out in the Fees Regulations.

10. The planning application fee for planning permission for the erection, alteration or replacement of plant or machinery is in reality set on a sliding scale determined by the size of the site. From a planning authority perspective the proposed changes would increase the percentage of fees going directly to them.

Scottish Government
Renewables Strategy and Onshore Renewables Team
February 2011

RAISING THE THRESHOLD FOR CONSENT FOR ONSHORE HYDRO SCHEMES – CONSULTATION OUTCOME AND NEXT STEPS

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

Final and Implementation Stage Business and Regulatory Impact Assessment for introducing the Electricity Act 1989 (Requirement of Consent for Hydro-electric Generating Stations) (Scotland) Revocation Order 2011.

1. Purpose and intended effect of Electricity Act 1989 (Requirement of Consent for Hydro-electric Generating Stations) (Scotland) Revocation Order 2011.

. **Objectives**

- To remove the perceived barrier that the 1MW threshold represents and to bring Scotland in line with England and Wales where the hydropower consents threshold is set at over 50 MW;
- To encourage developers to size schemes appropriate to their environment; and
- To allow planning authorities to receive full application fee, rather than a proportion of the consenting fee for hydro schemes of upto and including 50MW.

. **Background**

1.1 The question of the threshold above which projects are determined by Scottish Ministers under Section 36 of the Electricity Act 1989, rather than through planning authorities, has been debated since 2007 by the Forum for Renewable Energy Development in Scotland (FREDS) Hydro Group.

1.2 Following the closure of the group, the sector, through Scottish Renewables, put forward a case to raise the threshold from the current 1 MW level to over 50 MW in the summer of 2009. Meetings were held in October 2009 with interested parties such as COSLA, SEPA, Scottish Renewables, Scottish Natural Heritage and others stakeholders. The consensus was that, given that the need for the 1MW threshold was no longer there, raising the threshold to 50MW should be taken forward through a Scottish Government Consultation.

1.3 Initial legal opinion was that a revocation order would be required in order to change the threshold back to the original 50MW level.

Rationale for Government intervention

1.4 The proposal forms part of the wider work encompassing a more strategic look at maximising renewable resources in Scotland whilst reducing the number of barriers facing the development of new hydro schemes. It is the aim of the Scottish Government to raise the hydro planning threshold from 1 MW

to 50 MW so as to create greater certainty and efficiency in the planning system. It is vital that we achieve good quality public services that are valued by their customers and ensure that efficiencies are applied consistently and proactively across the whole public sector, and across all corporate / common services.

2. Consultation

2.1 A formal public consultation was open from 8 September to 1 December 2010. Respondents were invited to comment on a paper that set out proposals for raising the threshold to over 50MW. In addition, the consultation was made available electronically on the Scottish Government's website; The consultation was mentioned by Jim Mather MP in his keynote speech at the British Hydropower Association annual conference in October 2010, and was also highlighted at the Forum for Renewable Energy Development in Scotland meeting in November 2010. Officials also took a stand at the British Hydro Association annual conference and handed out copies of the consultation paper.

Within Government

2.2 A number of Scottish Government departments were sent the consultation including the Water Framework Directive Team; Planning and Environmental Appeals Division; Environmental Capital & Spatial Framework Monitoring Branch; Greener Scotland; Climate Change Division; the Renewables Strategy and Onshore Renewables team; Office of the Chief Economic Advisor and Historic Scotland.

Public Consultation

2.3 The full consultation was made available on the Scottish Government's website and was advertised in the Edinburgh Gazette. 14 responses were received from a range of sectors. However no comments were received from members of the public.

Business

2.4 Agencies and interested parties such as Forestry Commission Scotland, Highlands & Islands Enterprise, Scottish Environmental Protection Agency (SEPA), Scottish Natural Heritage (SNH), Scottish Renewables, COSLA and all 32 planning authorities in Scotland were also consulted.

2.5 A number of businesses of various sizes and locations throughout Scotland were contacted in relation to this consultation. Many of these businesses currently are members of the FREDS Micro-hydro sub group and others were members of the former FREDS Hydro group. Some of these businesses include: Baby Hydro; British Hydropower Association; Highland Eco-design; Scottish Power; SSE; Hydroplan; Gilbert, Gilkes & Gordon; RD Energy Solutions; Shawater Ltd; and SmartestEnergy.

2.6 The only organisation to object to the proposals was the Scottish Canoe Association, which was of the view that planning authorities would be unable to provide a consistent approach to determining large scale hydro

applications. Others disagreed and thought that planning authorities were better placed to make the decisions given their ability to apply local knowledge when assessing applications.

Next Steps

2.7 The responses from the consultation exercise have fed into a final set of proposals prepared as an Amendment Order.

2.8 If Ministers agree, the Order will be laid in the Scottish Parliament.

3. Options

3.1 The main consultation paper only considered the one option of **raising the Section 36 Consents threshold to 50 MW**. This proposal was instigated and defined by key stakeholders within the FREDS Hydro group and Micro-hydro sub group. This approach would put Scotland in line with England and Wales on this issue.

3.2 Other options such as doing nothing or raising the threshold to 5MW were considered by the FREDS Hydro Subgroup and Scottish Renewables.

3.3 **Doing nothing** is an option but has the potential to limit the contribution of hydro development to Renewable Energy and Climate Change Targets.

3.4 **Raising the Threshold to 5MW** still had the potential to act as a barrier to development.

Sectors and groups affected

- Owners of non-domestic properties;
- Owners and occupiers of domestic and non-domestic property which neighbour sites where hydro generation equipment could be installed;
- The public at large;
- Firms manufacturing and/or installing hydro generation equipment included within the amendment Order (and those forms manufacturing components for those products);
- The Government in making progress towards its emissions reductions targets and sustainability national Performance Indicators;
- planning authorities;
- Umbrella organisations for the hydro generation industry and public sectors;

Benefits of raising the threshold to 50MW

- Helps to meet the deliverables within the Climate Change (Scotland) Act 2009 and the Renewable Action Plan 2009.

- Encourages developers to size their scheme appropriate to its environment and not to be deterred by a low threshold. The hydropower sector view the current 1 MW threshold as a barrier which dissuades

developers from creating micro hydro schemes over 1 MW, thus failing to optimise the capacity of these smaller schemes.

- Eliminates the perception that hydropower has a greater impact on the environment than other generating technologies of a similar capacity. This is due to the fact that other renewable energies operate with a 50 MW threshold whilst hydropower has a 1 MW threshold.

- Would bring Scotland in line with England and Wales where the hydropower consents threshold is set at 50 MW.

- Would allow planning authorities to recover more of their cost from application fees than they are currently able to do.

- Allowing planning authorities to determine all onshore hydro applications of 50 MW and below will result in having just one consultation and may decrease the potential for duplication and inefficiencies in the application process.

Costs

- Individual PA consultee lists may vary and/or be less comprehensive than the Section 36 consultee list. With PAs having a less wide-scoping consultee list, there is the possibility that potential interested parties could be unintentionally avoided. However, all authorities must abide by planning legislation which defines the minimum consultation requirements.

- Raising the threshold to 50 MW will allow for schemes within this threshold to be determined by planning authorities.

- A rise in the Consents threshold will lead to a subsequent rise in the number of applications being determined by planning authorities. This increase in workload may not be something that the PAs are prepared for, particularly with regards to skills and expertise. As well as specialist knowledge and skills across key areas of development management, there is a recognition that planning authorities need to develop core abilities and competencies in project management and negotiation expertise. However, it is worth noting that planning authorities are already consulting on applications under the Electricity Act and are doing much of the work that they would do were the case a planning application.

- If applications 50 MW or below are determined by PAs, there may be less consistency in the timing on decisions for CAR & hydro applications.

Costs of the Consent and Planning Application Processes

3.5 At present applications of 1 MW and over require the approval of Scottish Ministers and incur a fee under The Electricity (Applications for Consent)

Amendment (Scotland) Regulations 2006. The cost of a hydro application within section 36 Consents process varies depending on the capacity. Applications not exceeding 10 MW pay £5,000, those exceeding 10 MW but not exceeding 100 MW pay £15,000, those exceeding 100 MW but not exceeding 200 MW pay 20,000, those exceeding 200 MW but not exceeding 500 Mw pay £30,000 and those exceeding 500 MW have to pay a charge of £50,000.

3.6 On receipt of an application and associated fee from a developer, the Scottish Government will make a proportionate payment to the relevant PA, as set out in the Fees Regulations.

3.7 A minor planning application has been estimated to cost on average £1,450 http://www.scotland.gov.uk/Publications/2010/02/05083644/90). The planning application fee for planning permission for the erection, alteration or replacement of plant or machinery is in reality set on a sliding scale determined by the size of the site, beginning at £319 rising to a limit of £15,950.

3.8 It is likely that the reasons it is difficult to have a reasonable degree of precision on the average cost of the planning application are:

- The site size will change with each individual application;
- The planning fee does not include the cost of drawings, assessments and negotiations. There is no real consistency between firms as to how much of the work outside what is needed to create a valid planning application and secure consent incurs a charge to clients.

3.9 Question 7 of the consultation asked whether the change in fees would be a significant issue for developments of this size. Planning application fees are calculated based on the size/area of a development, rather than by the power it generates, with the current maximum fee set at £15,950. Again, the responses were fairly evenly split. From a planning authority perspective the proposed changes would increase the percentage of fees going directly to them and they were welcomed in this respect. Others agreed that the fees structure for planning applications should allow planning authorities to deal with a potential increase in applications.

3.10 A number of developers and industry bodies thought that the switch to the planning fee structure may impact on schemes of up to 10MW, whilst others suggested that an increase in local authority fees should reflect an increase in service provision.

3.11 The Partial BRIA also asked respondents whether they agreed with the range suggested for the cost of planning and consent applications, as well as the benefits and costs outlined above.

3.12 Three of those interviewed agreed with the range of costs and benefits identified.

3.13 One respondent commented that the assumptions regarding increase in Planning Authority work load may not be accurate. Planning authorities currently comment on all section 36 applications. The process of providing

comment/opinion is likely to be no different than the full planning determination process. The rate of schemes being proposed should remain unaffected as the previous 1MW barrier would likely mean that schemes would have been down rated rather than not progressed.

3.14 Another respondent agreed with the benefits but did not agree that Planning Authority consultations will be any less thorough. With local knowledge comes the ability for more targeted consultation, adding and subtracting from the consultees list as required to make the process altogether more efficient.

3.15 A further respondent commented that without certainty over whether a Planning Authority has the 'skills, expertise, specialist knowledge, core abilities and competencies in project management and negotiation' – then the impact is difficult to quantify. Some level of commitment to support a transition and provision of the resources required may be necessary.

3.16 With this in mind, the introduction to online planning guidance on renewables has allowed this guidance to be updated to encourage early engagement with SEPA and to emphasise the importance of consistency in the way in which applications are determined.

3.17 Given that there is no clear agreement on this issue, it is proposed that the fees for onshore hydro schemes of up to and including 50MW will be as set out in the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 (the Fees Regulations), as amended.

4. Scottish Firms Impact Test

4.1 Several Scottish firms had a major part in the preliminary discussions regarding the proposal to raise the Section 36 Consents threshold, and they were the initial proponents of the proposal. Although no formal questionnaire or interviews were undertaken, in depth debates have been occurring within the FREDS Hydro group and Micro-hydro sub group since 2007.

4.2 Some of these businesses include: Baby Hydro; British Hydropower Association; Highland Eco-design; Hydroplan; Gilbert, Gilkes & Gordon; RD Energy Solutions; Scottish Renewables; Scottish & Southern Energy; Sgurr Energy; Shawater Ltd; and SmartestEnergy.

Competition Assessment

4.3 Throughout the pre-consultation discussions and the consultation, concerns about competition between businesses within the hydro sector were never raised.

4.4 This is primarily due to the fact that the proposal is an administrative provision that will only move the decisions for permitting schemes up to 50 MW from the Scottish Government to the PAs.

4.5 Two respondents felt that there would be no impact on Scottish firms and competition. One felt that it will increase competition for sites as presently the S36 process is viewed (rightly or wrongly) as a barrier for small hydro development.

4.6 In principle, the proposal will not affect competition; it will not change the location of where schemes are placed, nor will it create large developments requiring more works and infrastructure, but may encourage each scheme to optimise its capacity and output.

Test run of business forms

4.7 There are no new business forms proposed.

5. Legal Aid Impact Test

5.1 It is not expected that this proposal will give rise to increased use of legal processes or create new rights or responsibilities.

5.2 Three respondents agreed that the proposal will have no impact on the use of legal processes or create new rights or responsibilities and no other comments were made on this issue.

6. Enforcement, sanctions and monitoring

6.1 PAs will now have decision making responsibilities for all onshore hydro scheme applications up to 50 MW. Where development subject to regulation through the planning system has not been implemented correctly, planning authorities remain responsible for taking enforcement action. Similarly, the Scottish Government Consents and Deployment team will enforce all conditions relating to the Section 36 consent for onshore hydro schemes over 50 MW.

6.2 This proposal will not necessarily result in an increase in more hydro schemes applications, but is only shifting the threshold of responsibility to PAs for schemes under 50 MW. In addition, this proposal does not set out any altered or additional framework or directives for hydro scheme applications.

6.3 However, despite this transfer of hydro scheme proposals from the Scottish Government to PAs, there are no expected impacts on Community legislation on the environment as this is an administrative amendment to existing legislation.

6.4 Question 4 of the consultation asked whether respondents agreed that this proposal will have no impact on the enforcement, sanctions and monitoring of hydro scheme application process, and if not why?

6.5 Three respondents agreed that the proposal will have no impact on the enforcement, sanctions and monitoring of hydro scheme application process.

7. Implementation and delivery plan

7.1 The Plan will require the creation of the Electricity Act 1989 (Requirement of Consent for Hydro-electric Generating Stations) (Scotland) Revocation Order 2011. The amendment of the policy will be carried out by the Scottish Government's Renewable Energy team.

7.2 From 1 June 2011, applications for hydropower stations of 50MW or less will be made to planning authorities.

7.3 Online Planning Guidance on Renewables will be made available in advance of this and should help planning authorities carry out their responsibilities in this regard.

Post-implementation review

7.4 Views will be canvassed from the Micro-hydro subgroup and other stakeholders in order to assess the impact of the legislative changes. This will happen at least 6 months after the revocation Order comes into force.

Economic, Social & Environmental	
Benefits	**Costs**
Helps to meet the deliverables within the Climate Change (Scotland) Act 2009 and the Renewable Action Plan 2009 Shift the determination of all onshore hydro scheme applications up to 50 MW to Planning Authorities (PAs). The Scottish Government Section 36 Consents team would determine any schemes above 50 MW. Encourage developers to size their scheme appropriate to its environment and not to be deterred by a low threshold. The hydropower sector view the current 1 MW threshold as a barrier which dissuades developers from creating micro hydro schemes over 1 MW, thus failing to optimise the capacity of these smaller schemes. Eliminate the perception that hydropower has a greater impact on the environment than other generating technologies of a similar capacity. This is due to the fact that other renewable energies operate with a 50 MW threshold whilst hydropower has a 1 MW threshold.	Individual PA consultee lists may vary and/or be less comprehensive than the Section 36 consultee list. With PAs having a less wide-scoping consultee list, there is the possibility that potential interested parties could be unintentionally avoided. However, all authorities must abide by planning legislation which defines the minimum consultation requirements. Raising the threshold to 50 MW will allow for schemes within this threshold to be reviewed by a PA, and may bolster the relationship between industry and regulators. A rise in the Consents threshold will lead to a subsequent rise in the number of applications being determined by PAs. This increase in workload may not be something that the PAs are prepared for, particularly with regards to skills and expertise. As well as specialist knowledge and skills across key areas of development management, there is a recognition that planning authorities need to develop core abilities and competencies in project management and negotiation expertise.

Bring Scotland in line with England and Wales where the hydropower consents threshold is set at 50 MW. Allow PAs to recover more of their cost from application fees than they are currently able to do. Allowing PAs to determine all onshore hydro applications of 50 MW and below will result in having just one consultation and may decrease the potential for duplication and inefficiencies in the application process.	If applications 50 MW or below are determined by PAs, there may be less consistency in the timing on decisions for CAR & hydro applications.

Declaration and publication

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Minister for Enterprise, Energy and Tourism

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Date:… ……