

SL(5)345 – The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019

Background and Purpose

These Regulations make provision about the grant of consents under section 36 of the Electricity Act 1989 (the "1989 Act") to construct, extend or operate an offshore generating station in respect of which the Welsh Ministers are the appropriate authority.

For the purposes of these Regulations, a reference to an application for consent under section 36 of the 1989 Act includes any application made under section 36A for a declaration relating to public rights of navigation which is made with an application for consent under section 36 of the 1989 Act.

The Welsh Ministers are the appropriate authority in relation to applications made after 1 April 2019 under section 36 of the 1989 Act, relating to generation stations (or proposed generating stations) in Welsh waters which have or will have a capacity not exceeding 350 megawatts.

These Regulations make provision about:

- the making of applications;
- service and publicity requirements;
- the circumstances in which public inquiries are to be held; and
- the scope of public inquiries where there are one or more relevant planning authorities.

These Regulations also make provision for the circumstances in which a notice required by these Regulations may be combined with a notice required by or under Schedule 16 to the Energy Act 2004.

Additionally, these Regulations make a consequential amendment to the Conservation of Habitats and Species Regulations 2017.

Procedure

Negative.

Technical Scrutiny

One point are identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation

Regulation 7(1)(b) notes that a notice of application must be published "...in one or more national newspapers". However, the Regulations does not specify whether "national" refers to a Welsh national newspaper or a UK newspaper.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.3(ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly



Regulation 5 provides that, where an applicant (regulation 5(2)), or the Welsh Ministers (regulation 5(4)) consider that a local planning authority in England and Wales or the Department of the Environment in Northern Ireland is likely to have an interest in the application, the applicant must serve notice of an application of that body (regulation 5(2)) or the Welsh Ministers may direct the applicant to do so (regulation 5(4)). These provisions do not include references to appropriate corresponding bodies in Scotland or the Isle of Man. We understand that the reason for not including Scotland in these provisions is due to the distance between Welsh waters and Scotland. However, the reasoning as to why the Isle of Man has not been included within these provisions is unclear.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

Technical Scrutiny

The technical scrutiny element of the draft report refers to one drafting error. The draft report notes that regulation 7(1)(b) provides that a notice of application must be published... "in one or more national newspapers". However the Regulations do not specify whether "national" refers to a Welsh national newspaper or a UK newspaper.

The Government's position is as follows.

Regulation 7(1)(b) of the Regulations provides that the Applicant must publish notice of an application "in Lloyd's List and in one or more national newspapers". Because Lloyd's list is a UK publication the reference to "national newspapers" in the context in which it appears is a reference to UK newspapers.

The Regulations also make clear that bodies outside Wales could have an interest in an application (see regulation 5). Therefore in the context of the Regulations as a whole the reference to "national newspapers" in regulation 7(1)(b) is a reference to UK newspapers.

Therefore an amendment to address the technical scrutiny point is not considered necessary.

Merits Scrutiny

The merits scrutiny element of the draft report is concerned with the service of notice of the application under regulation 5. It is noted that the provisions do not include reference to appropriate corresponding bodies in Scotland or the Isle of Man and that reasoning as to why the Isle of Man has not been included within the provisions is unclear.

As explained at paragraph 4.5 of the Explanatory Memorandum to the Regulations the policy intention is to make equivalent provision to Schedule 8 to the Electricity Act 1989 and the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006 ("the 2006 Regulations") with minor amendments to reflect the Welsh Ministers' role as appropriate (consenting) authority. The Regulations do not introduce new policy or changes to the existing procedure.

Regulation 5 of the Regulations makes equivalent provision to regulation 6 of the 2006 Regulations. Bodies listed in regulation 6 of the 2006 Regulations do not include a body in the Isle of Man. Regulation 5 of the Regulations is consistent with regulation 6 of the 2006 Regulations and therefore accords with the policy intent.



Committee Consideration

The Committee considered the instrument along with the Government response at its meeting on 18 March and reports to the Assembly in line with the reporting points identified.

