
WELSH STATUTORY INSTRUMENTS

2019 No. 295 (W. 73)

ELECTRICITY, WALES

**The Electricity (Offshore Generating Stations)
(Applications for Consent) (Wales) Regulations 2019**

<i>Made</i>	- - - -	<i>18 February 2019</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>20 February 2019</i>
<i>Coming into force</i>	- -	<i>1 April 2019</i>

The Welsh Ministers, in exercise of the powers conferred on them by sections 36(8A) and 60 of the Electricity Act 1989(1), make the following Regulations:

Title and commencement

1. The title of these Regulations is the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 and they come into force on 1 April 2019.

Interpretation

2.—(1) In these Regulations—

“the 1990 Act” (“*Deddf 1990*”) means the Town and Country Planning Act 1990(2);

“application” (“*cais*”) means an application to the Welsh Ministers for consent under section 36(3) to construct, extend or operate a generating station(4), together with any application under section 36A(5) for a declaration relating to rights of navigation which is made with the application under section 36;

“local planning authority” (“*awdurdod cynllunio lleol*”) has the same meaning as in Part 1 of the 1990 Act;

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- (1) 1989 c. 29. Subsection (8A) was inserted into section 36 by paragraph 47 of Schedule 6 to the Wales Act 2017 (c. 4) (“the 2017 Act”). Amendments to section 60 are not relevant to these Regulations.
- (2) 1990 c. 8.
- (3) Section 36 was amended by section 93 of the Energy Act 2004 (c. 20) (“the 2004 Act”), paragraphs 31 and 32 of Schedule 2 to the Planning Act 2008 (c. 29), section 12(7) and (8) of the Marine and Coastal Access Act 2009 (c. 23) (“the 2009 Act”), section 78 of the Energy Act 2016 (c. 20) and section 39(7) to (11) of, and paragraph 47 of Schedule 6 to, the 2017 Act. Other amendments are not relevant to these Regulations.
- (4) See section 64(1) of the Electricity Act 1989 (“the 1989 Act”) for the interpretation of “generating station”.
- (5) Section 36A was inserted into the 1989 Act by section 99(1) of the 2004 Act and was amended by section 12(7) and (8) of the 2009 Act and section 40(1) to (5) of the 2017 Act.

“relevant planning authority” (“*awdurdod cynllunio perthnasol*”) means in relation to land in Wales, a local planning authority;

“section 90 development” (“*datblygiad adran 90*”) means any development in respect of which an applicant on making an application requests the Welsh Ministers to give a direction under section 90(2) or (2ZA) of the 1990 Act⁽⁶⁾ (deemed planning permission for development with government authorisation).

(2) Unless otherwise stated, any reference in these Regulations to a numbered section is a reference to that section of the Electricity Act 1989.

Content of applications

3. An application must be in writing and must describe by reference to a map the place to which the application relates, that is, the place where—

- (a) it is proposed to construct the generating station, where the proposed extension will be or where the station proposed to be operated is situated; and
- (b) any section 90 development will be situated.

Service of notice of application on the relevant planning authority

4. Where an application is made to the Welsh Ministers and a part of the place to which the application relates is within the area of a relevant planning authority, notice of the application must be served on the relevant planning authority.

Service of notice of application where there is no relevant planning authority

5.—(1) This regulation applies where no part of the place to which an application relates is within the area of a relevant planning authority.

(2) Where in the applicant’s opinion any 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 the application upon that body and, within seven days of such service, inform the Welsh Ministers in writing of its identity and provide them with a copy of the notice.

(3) Where, in the applicant’s opinion, no such body as is mentioned in paragraph (2) is likely to have an interest in the application, the applicant must inform the Welsh Ministers of that fact.

(4) Where in the Welsh Ministers’ opinion any 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 Welsh Ministers may, unless they have received a notice under paragraph (2) to the effect that a notice of the application has been served on that body, direct that the applicant must serve notice of an application upon that body.

Service of notice of application on other persons

6.—(1) The applicant must serve notice of an application upon—

- (a) the Joint Nature Conservation Committee⁽⁷⁾;
- (b) the Natural Resources Body for Wales⁽⁸⁾;
- (c) the Maritime and Coastguard Agency;

⁽⁶⁾ Section 90(2) and (2ZA) were substituted by section 21(2) of the Growth and Infrastructure Act 2013 (c. 27) and were amended by section 39(13) of the 2017 Act.

⁽⁷⁾ The Joint Nature Conservation Committee was re-constituted in accordance with Schedule 4 of the Natural Environment and Rural Communities Act 2006 (c. 16); see section 31(b) of that Act.

⁽⁸⁾ The Natural Resources Body for Wales was established by article 3 of S.I. 2012/1903 (W. 230).

(d) a harbour authority, in the case of development in or adjacent to a harbour under the control of that authority;

(e) such other persons as the Welsh Ministers may direct.

(2) In this regulation, “harbour” (“*harbwr*”) and “harbour authority” (“*awdurdod harbwr*”) have the same meaning as in section 57 of the Harbours Act 1964⁽⁹⁾ (interpretation).

Publication of notice of application

7.—(1) The applicant must publish notice of an application—

(a) in two successive weeks in one or more local newspapers which are likely to come to the attention of those likely to be affected by the proposed development;

(b) in Lloyd’s List and in one or more national newspapers;

(c) if there are in circulation one or more appropriate fishing trade journals which are published at intervals not exceeding one month, in at least one such trade journal; and

(d) in the London Gazette.

(2) The notice must describe, by reference to a map, the place to which the application relates, and must provide that the map may be inspected, during normal office hours, by members of the public either—

(a) at the offices—

(i) of any relevant planning authority upon whom the applicant serves notice of the application under regulation 4; or

(ii) of each local planning authority in Wales upon whom the applicant serves notice of the application under regulation 5(2) or pursuant to a direction of the Welsh Ministers under regulation 5(4); or

(b) at an address which is reasonably accessible to those likely to be affected by the consent applied for if it is granted.

(3) Paragraphs (1) and (2) do not apply to an application for an extension or change in the manner of operation where the Welsh Ministers—

(a) consider the extension or change to be of a minor character; and

(b) give a direction dispensing with the requirements of those paragraphs.

Objections by recipients of notice of application

8.—(1) Any notice served or published pursuant to regulations 5, 6 or 7(1) must state the time (which must not be less than 28 days from the date of service of the notice, or less than 28 days from the date or latest date of publication of the notice) within which, and the manner in which, objections to the application may be made to the Welsh Ministers, by persons other than any relevant planning authority.

(2) A relevant planning authority must serve notification of any objection by it to an application upon the Welsh Ministers within four months of the date of the application, or within any longer period as may be agreed in writing by the authority with both the Welsh Ministers and the applicant.

Public inquiries where there are objections by the relevant planning authority

9.—(1) Where the relevant planning authority notify the Welsh Ministers that they object to the application and their objection is not withdrawn, the Welsh Ministers—

(9) 1964 c. 40. Section 57 was amended by paragraph 33(a) of Schedule 13 to the Merchant Shipping Act 1995 (c. 21). Other amendments to section 57 are not relevant to these Regulations.

- (a) must cause a public inquiry to be held;
- (b) before determining whether to give their consent, must consider the objection and the report of the person who held the inquiry.

(2) Paragraph (1) does not apply where the Welsh Ministers propose to accede to the application subject to such modifications or conditions as will give effect to the objection of the relevant planning authority

(3) The Welsh Ministers may, for the purposes of paragraph (1), disregard any objection not notified by a relevant planning authority in accordance with regulation 8(2).

Public inquiries where there are objections by other persons

10.—(1) This regulation applies where—

- (a) the Welsh Ministers are not required by virtue of regulation 9(1) to cause a public inquiry to be held; but
- (b) objections or copies of objections have been sent to the Welsh Ministers in accordance with these Regulations.

(2) The Welsh Ministers must—

- (a) consider objections or copies of objections sent to them in accordance with these Regulations, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the application; and
- (b) cause a public inquiry to be held if they think it appropriate to do so, either in addition to or instead of any other hearing or opportunity of stating objections to the application.

Scope of public inquiries where there are one or more relevant planning authorities

11.—(1) This regulation applies where—

- (a) a public inquiry is to be held in accordance with regulation 9(1) or 10; and
- (b) the application relates to a place a part of which is in the area of one or more relevant planning authorities.

(2) Except in so far as the Welsh Ministers otherwise direct, an inquiry held under regulation 9(1) must be confined to so much of the application as relates to land within the area of the authority by whom an objection has been made.

(3) The Welsh Ministers must have regard to objections made otherwise than by the authority in question in determining whether to give a direction under paragraph (2) and in determining (where they give one) what direction to give.

(4) The Welsh Ministers may direct that separate inquiries may be held in relation to any or each of the following—

- (a) so much of the application as relates to land within the area of a particular relevant planning authority;
- (b) so much of the application as relates to anywhere that is not within the area of a relevant planning authority.

(5) For the purposes of paragraph (2) a planning authority that has made an objection is to be treated as not having done so if the Welsh Ministers propose to accede to the application subject to such modifications or conditions as meet that objection.

Combined notice

12. A notice required by these Regulations may be combined with a notice required by or under Schedule 16 to the Energy Act 2004⁽¹⁰⁾ (applications and proposals for notices under section 95) in any case involving the same generating station.

Consequential amendment

13.—(1) Regulation 90(3) of the Conservation of Habitats and Species Regulations 2017⁽¹¹⁾ (consents under Electricity Act 1989: procedure on review) is amended as follows.

(2) Before sub-paragraph (a) insert—

“(za) in a case where the Welsh Ministers are the competent authority, the relevant planning authority within the meaning of regulation 2(1) of the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019 (interpretation),”.

(3) At the beginning of sub-paragraph (a) insert “in any other case,”.

18 February 2019

Julie James
Minister for Housing and Local Government,
one of the Welsh Ministers

⁽¹⁰⁾ 2004 c. 20. Schedule 16 was amended by section 62(1), (17), (18) and (19) of the Scotland Act 2016 (c. 11) and paragraph 61 of Schedule 6 to the 2017 Act. Other amendments are not relevant to these Regulations.

⁽¹¹⁾ S.I. 2017/1012.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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 under section 36A of that Act 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 generating stations (or proposed generating stations) in Welsh waters which have or will have a capacity not exceeding 350 megawatts.

“Welsh waters” means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Wales, and the Welsh zone. “Welsh Zone” has the meaning given in section 158 of the Government of Wales Act 2006.

These Regulations make provision about—

- (a) the making of applications;
- (b) service and publicity requirements;
- (c) the circumstances in which public inquiries are to be held; and
- (d) 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.

They also make a consequential amendment to the Conservation of Habitats and Species Regulations 2017.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.