

2013 No. 304

ELECTRICITY

The Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013

Made - - - - - *29th October 2013*

Laid before the Scottish Parliament *31st October 2013*

Coming into force - - - *1st December 2013*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 36C(2) and (3) and 60 of the Electricity Act 1989(a) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 and come into force on 1st December 2013.

(2) These Regulations extend to Scotland only(b).

Interpretation

2. In these Regulations—

“the Act” means the Electricity Act 1989;

“applicant” means, in relation to a variation application, the person who made the application;

“the EIA Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000(c);

“environmental statement” has the meaning given by regulation 2(1) of the EIA Regulations as modified by regulation 5;

“generating station” includes a proposed generating station;

“offshore generating station” means a generating station that is, or is to be, located within—

(a) a Renewable Energy Zone; or

(b) waters in or adjacent to Scotland which are between the mean low water mark and the seaward limits of the territorial sea;

(a) 1989 c.29. Section 36C was inserted by section 20 of the Growth and Infrastructure Act 2013 (c.27). Section 60 was modified by section 3(2) of the Utilities Act 2000 (c.27).

(b) “Scotland” is defined in section 36C(6) of the Electricity Act 1989 and includes for these purposes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland and the part of the Renewable Energy Zone where the Scottish Ministers have functions. This latter area is designated by S.I. 2005/3153.

(c) S.S.I. 2000/320 as amended by S.S.I. 2008/202, S.S.I. 2008/246 and S.S.I. 2010/460.

“proposed development” means—

- (a) the generating station, or extension of a generating station, which the applicant would be authorised to construct under a relevant section 36 consent if that consent were varied as requested in a variation application;
- (b) the way in which a generating station so constructed or extended would be authorised to be operated under the relevant section 36 consent as so varied; and
- (c) any section 57 development in respect of which section 36 consent is not required;

“relevant section 36 consent”, in relation to an application, means the section 36 consent in respect of which that application is made;

“section 36 consent” means a consent under section 36 of the Act to construct, extend or operate a generating station including any variations to that consent already made under section 36C(4) of the Act;

“section 57 development” means any development in respect of which—

- (a) a section 57 direction was given on granting the relevant section 36 consent; or
- (b) the applicant, on making a variation application, requests the Scottish Ministers to give a section 57 direction;

“section 57 direction” means a direction under section 57(2) or (2ZA) of the Town and Country Planning (Scotland) Act 1997^(a) (deemed planning permission for development with government authorisation); and

“variation application” means an application made to the Scottish Ministers under section 36C(1) of the Act (variation of section 36 consents) to vary a section 36 consent.

Content of variation applications

3.—(1) A variation application must—

- (a) be made in writing;
- (b) describe the proposed development and identify the location of the proposed development by reference to a map;
- (c) explain why it is proposed that the relevant section 36 consent should be varied; and
- (d) include—
 - (i) a draft of the variations which it is proposed should be made to the relevant section 36 consent;
 - (ii) copies of any maps or plans not referred to in the relevant section 36 consent which it is proposed should be referred to in the relevant section 36 consent as so varied; and
 - (iii) particulars of—
 - (aa) the relevant section 36 consent, and, if that consent was not granted to the applicant, how the applicant has the benefit of that consent; and
 - (bb) any section 57 direction given on granting the relevant section 36 consent.

(2) If it is proposed that the Scottish Ministers should on varying the relevant section 36 consent make a section 57 direction, the application must—

- (a) explain why it is proposed that the section 57 direction should be made; and
- (b) include—
 - (i) a draft of the proposed section 57 direction; and

^(a) 1997 c.8. Section 57(2) and (2ZA) were substituted by section 21(5) of the Growth and Infrastructure Act 2013 (c.27).

- (ii) copies of any maps or plans not—
 - (aa) referred to in the relevant section 36 consent or any section 57 direction given on granting the relevant section 36 consent; or
 - (bb) included in the application in accordance with paragraph (1)(d)(ii),to which it is proposed should be referred to in the section 57 direction.

Publication and service of notice of application

4.—(1) Notification of the variation application must be given in accordance with this regulation.

(2) The applicant must—

- (a) publish on a website (“the application website”)—
 - (i) a summary of the variation application;
 - (ii) a copy of the application;
 - (iii) a link to the relevant section 36 consent, any section 57 direction given on granting it and any statement (in the form of a decision letter or otherwise) given by the appropriate authority under regulation 10(3) of the EIA Regulations when granting the relevant section 36 consent; and
 - (iv) any environmental statement prepared in relation to the proposed development;
- (b) serve a copy of the variation application on the planning authority (if any);
- (c) publish notice of the variation application—
 - (i) in two successive weeks in one or more local newspapers; and
 - (ii) in the Edinburgh Gazette and in one or more national newspapers; and
- (d) other than where the variation application relates to an offshore generating station, serve notice of the variation application on the owner and occupier of the land to which the variation application relates.

(3) If the variation application relates to an offshore generating station, the applicant must also publish notice of the application—

- (a) in Lloyd’s List; and
- (b) 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.

(4) The notices required by paragraphs (2)(c) and (d) and (3) must—

- (a) not be published or served, as the case may be, before the applicant has complied with paragraph (2)(a) and (b);
- (b) state—
 - (i) that an application to vary a relevant consent has been made under section 36C of the Act;
 - (ii) the address of the application website, and that further information about the application is to be found on the application website;
 - (iii) the date by which representations about the variation application may be made to the Scottish Ministers by any person other than the planning authority; and
 - (iv) the address to which any such representations are to be sent; and
- (c) identify—
 - (i) the applicant;
 - (ii) the relevant section 36 consent;
 - (iii) the generating station to which it relates; and

- (iv) a place which is reasonably accessible to those likely to be affected by the proposed variation where copies of the variation application and any environmental statement prepared in connection with the variation application may be inspected.
- (5) The date to be stated in the notice in accordance with paragraph (4)(b)(iii) must—
 - (a) in the case of a notice to be published under paragraph (2)(c), be a date which is not less than 28 days after the date on which the last notice is published; and
 - (b) in the case of a notice to be served under paragraph (2)(d), be a date which is not less than 28 days after the date on which the notice is served.
- (6) Representations about the variation application may be made to the Scottish Ministers—
 - (a) by the planning authority, within a period of two months after the date on which the last notice is published in accordance with paragraph (2)(c); and
 - (b) by any other person, on or before the date stated in the notice in accordance with paragraph (4)(b)(iii).

Application of the EIA Regulations with modifications

5.—(1) The EIA Regulations apply in relation to a variation application as they apply in relation to an application for consent under section 36 of the Act with the modifications specified in paragraph (2).

- (2) The modifications are—
 - (a) References in the EIA Regulations (however worded)—
 - (i) to an application for a section 36 consent are to be treated as references to a variation application;
 - (ii) to the proposed development and to the development in respect of which the application for a section 36 consent relates are to be treated as references to the proposed development (as defined in these Regulations) to which the variation application relates; and
 - (iii) to the grant of consent are to be treated as references to the variation of a section 36 consent;
 - (b) regulation 9 of the EIA Regulations is not to be read as requiring or permitting a notice under that regulation to be published before a notice under regulation 4(2)(c) of these Regulations is published; and
 - (c) Part 2 of Schedule 4 to the EIA Regulations is to be read as requiring the inclusion in an environmental statement of—
 - (i) the main respects in which the applicant considers that the likely significant effects on the environment of the proposed development would differ from those described in any environmental statement that was prepared in connection with the relevant section 36 consent; and
 - (ii) a non-technical summary of the differences referred to in sub-paragraph (i).

Public inquiries

6.—(1) The Scottish Ministers may cause a public inquiry to be held into a variation application if they consider it appropriate to do so.

(2) A public inquiry may be held into a variation application in addition to or instead of any other hearing or opportunity of making representations about the variation application.

(3) If the Scottish Ministers cause a public inquiry to be held into a variation application, the provisions of paragraph 4(1) (as substituted by paragraph 4(5)) and (4) of Schedule 8 to the Act apply, subject to the modifications specified in paragraph (4) below, to the inquiry as they apply to a public inquiry caused to be held by the Scottish Ministers by virtue of paragraph 2(2) or 3(2) of Schedule 8 to the Act.

(4) The modifications are—

- (a) references in those paragraphs to paragraph 2(2) or 3(2) of Schedule 8 to the Act are to be treated as references to this regulation; and
- (b) the reference in paragraph 4(4) to an application for consent under section 36 is to be treated as a reference to the variation application.

Withdrawal of variation applications

7.—(1) An applicant may withdraw a variation application at any time by notice in writing to the Scottish Ministers.

(2) If a variation application is withdrawn after it has been published in accordance with regulation 4 the Scottish Ministers must notify the relevant planning authority (if any) and the consultative bodies (within the meaning of regulation 2(1) of the EIA Regulations) that it has been withdrawn.

Allowing further time

8. The Scottish Ministers may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of these Regulations, and references in these Regulations to a day by which, or a period within which, any step is required or enabled to be taken are to be construed accordingly.

St Andrew's House,
Edinburgh
29th October 2013

FERGUS EWING
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in Scotland about the procedures for handling applications to vary consents for the construction, extension and operation of electricity generating stations that have been granted under section 36 of the Electricity Act 1989 (“section 36 consents”).

In Scotland and adjacent offshore areas, section 36 consents are granted by the Scottish Ministers. Under section 36C of that Act (inserted by section 20 of the Growth and Infrastructure Act 2013 (c.27)), the person for the time being entitled to the benefit of the section 36 consent (“the applicant”) may apply to the Scottish Ministers for the consent to be varied. On such an application, the Scottish Ministers may make such variations to the consent as appear to them to be appropriate, having regard to the reasons for which a variation is sought, the variations proposed, any objections to the variations and the views of consultees (as well as the outcome of any public inquiry held into the application).

Regulation 3 sets out what must be included in or accompany a variation application. Regulation 4 sets out the requirements for publication and notification of the variation application.

Regulation 5 applies the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 to variation applications with specified modifications. Regulation 6 makes provision for the holding of a public inquiry in connection with a variation application and applies certain provisions of Schedule 8 to the Electricity Act 1989 (relating to public inquiries) with modifications.

Regulation 7 makes provision about the withdrawal of variation applications. Regulation 8 allows the Scottish Ministers to extend the time allowed for a given step under the Regulations in a particular case.

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