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Changes to legislation: Electricity Act 1989, SCHEDULE 8 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

F¹ SCHEDULES

SCHEDULE 8

Section 36(8).

CONSENTS UNDER SECTIONS 36 AND 37

Modifications etc. (not altering text)

- C1** Sch. 8: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750](#), arts. 1, 2, [Sch. 1](#) (with art. 7)
- C2** Sch. 8 modified in part (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [ss. 12\(5\)\(a\)](#), 324(3); [S.I. 2010/298](#), art. 2, [Sch. para. 4](#) (with art. 4(1))

Applications for consent

- 1 (1) An application for a consent under section 36 or 37 of this Act shall be in writing and shall describe by reference to a map the land to which the application relates, that is, the land—
- (a) on which the generating station is proposed to be constructed, extended or operated; or
 - (b) across which the electric line is proposed to be installed or kept installed.
- (2) An application for a consent under section 37 of this Act shall also state—
- (a) the length of the proposed line and its nominal voltage; and
 - (b) whether all necessary wayleaves have been agreed with owners and occupiers of land proposed to be crossed by the line,
- and shall be supplemented, if the Secretary of State so directs, by such additional information as may be specified in the direction.
- (3) The Secretary of State may by regulations make provision for determining the fees to be paid on applications for consent under section 36 or 37 of this Act, and the circumstances in which they are to be paid.
- (4) Any sums received by the Secretary of State under this paragraph shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

- C3** Sch. 8 para. 1(4) excluded (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [ss. 12\(6\)](#), 324(3); [S.I. 2010/298](#), art. 2, [Sch. para. 4](#) (with art. 4(1))

Objections by relevant planning authority

- 2 (1) Where an application is made to the Secretary of State for his consent under section 36 or 37 of this Act, notice of the application shall be served on the relevant planning authority.

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- (2) Where the relevant planning authority notify the Secretary of State that they object to the application and their objection is not withdrawn, the Secretary of State—
- (a) shall cause a public inquiry to be held; and
 - (b) before determining whether to give his consent, shall consider the objection and the report of the person who held the inquiry.
- (3) For the purposes of sub-paragraph (2) above the Secretary of State may make regulations limiting the time within which notification of objections may be made to the Secretary of State by relevant planning authorities, and providing that objections which are not notified within the time so limited may be disregarded for those purposes.
- (4) Sub-paragraph (2) above shall not apply where the Secretary of State proposes to accede to the application subject to such modifications or conditions as will give effect to the objection of the relevant planning authority.
- (5) The Secretary of State may make regulations providing that, in relation to applications for consent under section 37 of this Act for electric lines of a nominal voltage less than 132 kilovolts, the provisions of this paragraph shall have effect with such modifications as may be prescribed.
- (6) In this Schedule “relevant planning authority”—
- (a) in relation to [^{F1}land in England ^{F2}... which is not in a National Park for which a National Park authority is the local planning authority], means a local planning authority within the meaning of [^{F3}the Town and Country Planning Act 1990,] except that in relation to a non-metropolitan county and an application for consent under section 37 of this Act it includes the county planning authority only—
 - ^{F4}(i)
 - (ii) where the line will have a nominal voltage of not less than 132 kilovolts;
 - ^{F5}[(aa) in relation to land in England ^{F6}. . . which is in a National Park for which a National Park authority is the local planning authority, means that National Park authority; and]
 - ^{F7}(ab) in relation to Wales, means a local planning authority;.]
 - (b) in relation to Scotland, means a general planning authority, or a district planning authority, within the meaning of Part IX of the ^{M1}Local Government (Scotland) Act 1973.

Textual Amendments

- F1** Words in Sch. 8 para. 2 (6)(a) substituted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 30(3)(a)(4)(5)** (with ss.7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**
- F2** Words in Sch. 8 para. 2(6)(a) repealed (1.4.1996) by 1994 c. 19, ss. 20(4), 66(8), Sch. 6 Pt. II para. 22, **Sch. 18** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**
- F3** Words substituted by **Planning (Consequential Provisions) Act 1990** (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 83(1)**
- F4** Sch. 8 para. 2(6)(a)(i) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**
- F5** Sch. 8 para. 2(6)(aa) inserted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10**, para. 30(3)(b)(4)(5) (with ss. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**

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- F6** Words in Sch. 8 para. 2(6)(aa) omitted (1.4.1996) by virtue of 1995 c. 25, s. 78, **Sch. 10 para. 30(3)(c)(4)(5)** (with s. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**; S.I. 1996/396, art. 4, **Sch. 2**
- F7** Sch. 8 para. 2(6)(aa) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 22** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2** and renumbered as Sch. 8 para. 2(6)(ab) (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 30(6)** (with ss. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**

Marginal Citations

- M1** 1973 c. 65.

Objections by other persons

- 3 (1) The Secretary of State may by regulations make provision for securing—
- (a) that notice of any application for consent under section 36 or 37 of this Act shall, in such circumstances as may be prescribed by the regulations, be published in such manner as may be so prescribed;
 - (b) that notice of any such application shall, in such circumstances as may be prescribed by the regulations or where the Secretary of State so directs, be served on such persons as may be so prescribed or, as the case may be, specified in the direction;
 - (c) that every notice published or served in pursuance of the regulations shall state the time within which, and the manner in which, objections to the application may be made by persons other than the relevant planning authority, and that the time so stated shall not be less than such minimum period as may be prescribed by the regulations; and
 - (d) that, in so far as any such notice requires objections to be sent to any person other than the Secretary of State, copies of the objections shall be sent to the Secretary of State by that person;

and in relation to applications for consent under section 36 of this Act to the extension of a generating station or to the operation of such a station in a different manner, the regulations may include provision for enabling the Secretary of State to give directions dispensing with the requirements of the regulations in such cases as he thinks fit.

- (2) Where in the case of an application for consent under section 36 or 37 of this Act—
- (a) the Secretary of State is not required by virtue of paragraph 2(2) above to cause a public inquiry to be held; but
 - (b) objections or copies of objections have been sent to the Secretary of State in pursuance of regulations made under this paragraph,

the Secretary of State shall consider those objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the application and, if he thinks it appropriate to do so, shall cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the application.

Public inquiries

- 4 (1) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held in respect of an application for consent under section 36 or 37 of this Act, the Secretary of State shall inform the applicant accordingly; and the applicant shall in two successive weeks publish a notice stating—

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- (a) the fact that the application has been made, and the purpose of it, together with a description of the land to which it relates;
 - (b) a place in the locality where a copy of the application, and of the map referred to in it, can be inspected; and
 - (c) the place, date and time of the public inquiry.
- (2) A notice under sub-paragraph (1) above shall be published in one or more local newspapers circulating in the locality in which the land in question is situated, or circulating respectively in the several localities in which different parts of that land are situated, as the applicant may consider appropriate.
- (3) If it appears to the Secretary of State that, in addition to the publication of a notice in accordance with sub-paragraphs (1) and (2) above, further notification of the public inquiry should be given (either by the service of notices, or by advertisement, or in any other way) in order to secure that the information specified in paragraphs (a) to (c) of sub-paragraph (1) above is sufficiently made known to persons in the locality, the Secretary of State may direct the applicant to take such further steps for that purpose as may be specified in the direction.
- (4) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held in respect of an application for consent under section 36 or 37 of this Act and the Secretary of State is proceeding concurrently as mentioned in section 61(2) or (4) of this Act, the public inquiry shall extend to all the matters arising in the concurrent proceedings, and any notice of the inquiry (in addition to any other matters required to be stated in it) shall indicate the extent of the inquiry accordingly.
- (5) In the application of this paragraph to Scotland, for sub-paragraphs (1) to (3) there shall be substituted the following sub-paragraph—
- “(1) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held, and it appears to the Secretary of State that in addition to any public notice of such an inquiry any further notification concerning the inquiry is necessary or expedient (either by way of service of notice upon any person or in any other way), the Secretary of State may direct the applicant to take such further steps for this purpose as may be specified in the direction.”

Modifications etc. (not altering text)

- C4** Sch. 8 para. 4(4)(5) applied (with modifications) (S.) (1.12.2013) by [The Electricity Generating Stations \(Applications for Variation of Consent\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/304\)](#), **reg. 6(3)**

Provisions supplementary to paragraphs 2 to 4

- 5 (1) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held and the application for consent relates to land in the areas of two or more relevant planning authorities—
- (a) the application shall not be the subject of a public inquiry in so far as it relates to land which is not within the area of a planning authority who have notified the Secretary of State that they object to the application, unless the Secretary of State otherwise directs having regard to objections by other persons of which he has notice; and

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- (b) in so far as the application is to be the subject of a public inquiry in relation to land in the areas of two or more relevant planning authorities, the Secretary of State may direct that separate public inquiries shall be held; and, where the Secretary of State gives any such directions, the provisions of paragraphs 2 to 4 above shall apply with the necessary modifications.
- (2) For the purposes of sub-paragraph (1)(a) above a relevant planning authority who have notified the Secretary of State that they object to the application shall be treated as not having done so if the Secretary of State proposes to accede to the application subject to such modifications or conditions as will give effect to the objection.

f^{F8} Additional inspectors

Textual Amendments

F8 Sch. 8 para. 5A and cross-heading inserted (E.W.) (6.4.2007) by *Energy Act 2004 (c. 20)*, ss. 182(1), 198(2); S.I. 2007/1091, art. 2(a)

- 5A (1) This paragraph applies in the case of—
- (a) a public inquiry in England and Wales by virtue of paragraph 2(2) or 3(2); or
 - (b) a public inquiry in England and Wales which is a combination under section 62 of this Act into one inquiry—
 - (i) of two or more such inquiries; or
 - (ii) of one or more such inquiries and one or more other inquiries.
- (2) At any time after appointing a person to hold the inquiry (“the lead inspector”), the Secretary of State may direct him—
- (a) to consider such matters relating to the conduct of the inquiry as are specified in the direction; and
 - (b) to make recommendations to the Secretary of State about those matters.
- (3) After considering the recommendations of the lead inspector, the Secretary of State may—
- (a) appoint for the purposes of the inquiry such number of additional inspectors as he thinks appropriate; and
 - (b) direct that each additional inspector must consider such of the matters to which the inquiry relates as are allocated to him by the lead inspector.
- (4) An additional inspector must—
- (a) comply with every direction as to procedural matters given to him by the lead inspector; and
 - (b) report to the lead inspector on every matter allocated to him.
- (5) It is to be for the lead inspector to report to the Secretary of State on the consideration of both—
- (a) the matters which he considered himself; and
 - (b) the matters the consideration of which was allocated to additional inspectors.
- (6) The power of the Secretary of State to give directions to the lead inspector may be exercised on one or more different occasions after the appointment of the lead inspector.

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- (7) Accordingly—
- (a) the recommendations that may be made by the lead inspector following such a direction include, in particular, a recommendation for varying the number of additional inspectors; and
 - (b) the power of the Secretary of State to appoint an additional inspector includes power to revoke such an appointment.
- (8) A direction by any person under this paragraph may be varied or revoked by a subsequent direction by that person.]

Proceedings for questioning certain decisions under paragraph 3(2)

- [^{F9}5B (1) If a person is aggrieved by a decision of the Scottish Ministers to which this paragraph applies, and wishes to question the validity of the decision on either of the grounds mentioned in sub-paragraph (2), the person (the “aggrieved person”) may make an application to the Inner House of the Court of Session under this paragraph.
- (2) The grounds are that—
- (a) the decision is not within the powers of the Scottish Ministers under this Schedule,
 - (b) one or more of the relevant requirements have not been complied with in relation to the decision.
- (3) This paragraph applies to a decision under paragraph 3(2) as to whether a public inquiry should be held with respect to an application for consent to construct, extend or operate a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters.
- (4) An application under this paragraph must be made within the period of 6 weeks beginning with the date on which the decision to which the application relates is taken.
- (5) On an application under this section, the Inner House of the Court of Session—
- (a) may suspend the decision until the final determination of the proceedings,
 - (b) may quash the decision either in whole or in part if satisfied that—
 - (i) the decision in question is not within the powers of the Scottish Ministers under this Schedule, or
 - (ii) the interests of the aggrieved person have been substantially prejudiced by failure to comply with any of the relevant requirements in relation to the decision.
- (6) In this paragraph—
- “relevant waters” has the same meaning as in section 36A(7);
- “the relevant requirements”, in relation to a decision to which this paragraph applies, means the requirements of this Act, or of any regulations made under this Schedule, which are applicable to that decision.

Textual Amendments

- F9** Sch. 8 paras. 5B, 5C inserted (26.2.2015) by [The Regulatory Reform \(Scotland\) Act 2014 \(Consequential Modifications\) Order 2015 \(S.I. 2015/374\)](#), arts. 1(1), **4(3)** (with art. 4(4))

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Applications under paragraph 5B: requirement for permission

- 5C (1) No proceedings may be taken in respect of an application under paragraph 5B unless the Inner House of the Court of Session has granted permission for the application to proceed.
- (2) The Court may grant permission under sub-paragraph (1) for an application to proceed only if it is satisfied that—
- (a) the applicant can demonstrate a sufficient interest in the subject matter of the application, and
 - (b) the application has a real prospect of success.
- (3) The Court may grant permission under subsection (1) for an application to proceed—
- (a) subject to such conditions as the Court thinks fit, or
 - (b) only on such of the grounds specified in the application as the Court thinks fit.]

Textual Amendments

- F9** Sch. 8 paras. 5B, 5C inserted (26.2.2015) by [The Regulatory Reform \(Scotland\) Act 2014 \(Consequential Modifications\) Order 2015 \(S.I. 2015/374\)](#), arts. 1(1), **4(3)** (with art. 4(4))

Special provisions as to consents under section 37

- 6 (1) Where an application for consent under section 37 of this Act states that all necessary wayleaves have not been agreed with owners and occupiers of land proposed to be crossed by the electric line, the Secretary of State may—
- (a) give notice to the applicant that he does not intend to proceed with the application until he is satisfied, with respect to all the land over which wayleaves have not been agreed, that the applicant has applied to the Secretary of State for consent under paragraph 6 (acquisition of wayleaves) of Schedule 4 to this Act; or
 - (b) grant his consent subject to the condition (either in respect of the whole of the line or in respect of any part of it specified in the consent) that the work is not to proceed until the Secretary of State has given his permission.
- (2) In determining at any time whether to give permission for any work to proceed, either generally or in respect of any part of the line, the Secretary of State—
- (a) shall have regard to the extent to which the necessary wayleaves have been agreed by that time; and
 - (b) in so far as any such wayleaves have not then been agreed in respect of any part of the line, shall take into account any prejudicial effect which, in his opinion, the giving of permission (whether in respect of that part or of any adjacent part of the line) might have on any subsequent proceedings relating to the outstanding wayleaves.

Deemed planning permission etc.

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Textual Amendments

F10 Sch. 8 para. 7 repealed (E.W.) by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 3, [Sch. 1 Pt. II](#) and (S.) (27.5.1997) by [1997 c. 11, ss. 3, 6\(2\)](#), [Sch. 1 Pt. I](#) (with s. 5, Sch. 3)

[^{F11}Generating stations not within areas of relevant planning authorities

Textual Amendments

F11 Sch. 8 para. 7A and cross-heading inserted (1.3.2005) by [Energy Act 2004 \(c. 20\)](#), s. [93\(2\)\(4\)](#), [198\(2\)](#); [S.I. 2005/442](#), art. [2\(1\)](#), [Sch. 1](#)

- 7A (1) This paragraph applies to every case where an application for a consent under section 36 of this Act relates to—
- (a) the construction or operation of a generating station the whole or a part of which is to be, or is, at a place that is not within the area of a relevant planning authority; or
 - (b) the extension of a generating station at or to a place the whole or a part of which is not within such an area.
- (2) This Schedule shall have effect in relation to cases to which this paragraph applies with the following modifications.
- (3) In paragraph 1(1), for the words from “land to which” onwards substitute “ place to which the application relates, that is, the place where it is proposed to construct the generating station, where the proposed extension will be or where the station proposed to be operated is situated. ”
- (4) Paragraph 2 does not apply where no part of the place to which the application relates is within the area of a relevant planning authority.
- (5) In paragraph 4—
- (a) in sub-paragraph (1)—
 - (i) in paragraph (a), for “land” substitute “ place ”; and
 - (ii) in paragraph (b), for “in the locality” substitute “ in the area specified in or determined in accordance with regulations made by the Secretary of State ”;
 - (b) in sub-paragraph (2), for the words from “the locality” onwards substitute “ the area specified in or determined in accordance with regulations made by the Secretary of State. ”; and
 - (c) in sub-paragraph (3), for “in the locality” substitute “ who are likely to be affected by the consent applied for if it is given ”.
- (6) Paragraph 5 does not apply; but sub-paragraphs (7) to (10) apply where—
- (a) a public inquiry is to be held in accordance with paragraph 2(2) or 3(2); and
 - (b) the application for consent relates to a place a part of which is in the area of one or more relevant planning authorities.
- (7) Except in so far as the Secretary of State otherwise directs, an inquiry held in accordance with paragraph 2(2) 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.

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- (8) The Secretary of State must have regard to objections made otherwise than by the authority in question in determining whether to give a direction under sub-paragraph (7) and in determining (where he gives one) what direction to give.
- (9) The Secretary of State 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.
- (10) For the purposes of sub-paragraph (7) a planning authority that has made an objection is to be treated as not having done so if the Secretary of State proposes to accede to the application subject to such modifications or conditions as meet that objection.]

Modifications etc. (not altering text)

- C5** Sch. 8 para. 7A functions modified (12.4.2006) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) \(No. 2\) Order 2006 \(S.I. 2006/1040\)](#), arts. 1(2), **2** (with art. 6)
- C6** Sch. 8 para. 7A: transfer of functions (13.4.2006) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) \(No. 2\) Order 2006 \(S.I. 2006/1040\)](#), arts. 1(1), **3** (with art. 6)

Supplemental

- 8 (1) In this Schedule “relevant planning authority” has the meaning given by paragraph 2(6) above.
- (2) In section 149 of the ^{M2}Local Government, Planning and Land Act 1980, each of the following, namely—
- (a) subsection (3)(a) (power of Secretary of State to confer on urban development corporation functions of local planning authority in England and Wales); and
 - (b) subsection (8)(a) (which makes corresponding provision in relation to Scotland),
- shall have effect in relation to the provisions of this Schedule (so far as applying to applications for consent under section 37 of this Act) as it has effect in relation to the provisions referred to in that subsection.
- [^{F12}(3) Where an application for a declaration under section 36A of this Act is made with an application for a consent under section 36 of this Act, the application for the declaration shall be treated for the purposes of this Schedule as part of the application for the consent.]

Textual Amendments

- F12** Sch. 8 para. 8(3) inserted (1.3.2005) by [Energy Act 2004 \(c. 20\)](#), ss. **99(2)**, 198(2); S.I. 2005/442, art. 2(1), Sch. 1

Marginal Citations

- M2** 1980 c. 65.

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