



Energy Act 2004

2004 CHAPTER 20

PART 2

SUSTAINABILITY AND RENEWABLE ENERGY SOURCES

CHAPTER 2

OFFSHORE PRODUCTION OF ENERGY

Navigation and civil aviation

99 Navigation

(1) After section 36 of the 1989 Act insert—

“36A Declarations extinguishing etc. public rights of navigation

- (1) Where a consent is granted by the Secretary of State or the Scottish Ministers in relation to—
- (a) the construction or operation of a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters, or
 - (b) an extension of a generating station that is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters or an extension of such an installation,
- he or (as the case may be) they may, at the same time, make a declaration under this section as respects rights of navigation so far as they pass through some or all of those places.
- (2) The Secretary of State or the Scottish Ministers may make such a declaration only if the applicant for the consent made an application for such a declaration when making his application for the consent.

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- (3) A declaration under this section is one declaring that the rights of navigation specified or described in it—
- (a) are extinguished;
 - (b) are suspended for the period that is specified in the declaration;
 - (c) are suspended until such time as may be determined in accordance with provision contained in the declaration; or
 - (d) are to be exercisable subject to such restrictions or conditions, or both, as are set out in the declaration.
- (4) A declaration under this section—
- (a) has effect, in relation to the rights specified or described in it, from the time at which it comes into force; and
 - (b) continues in force for such period as may be specified in the declaration or as may be determined in accordance with provision contained in it.
- (5) A declaration under this section—
- (a) must identify the renewable energy installations, or proposed renewable energy installations, by reference to which it is made;
 - (b) must specify the date on which it is to come into force, or the means by which that date is to be determined;
 - (c) may modify or revoke a previous such declaration, or a declaration under section 100 of the Energy Act 2004; and
 - (d) may make different provision in relation to different means of exercising a right of navigation.
- (6) Where a declaration is made under this section by the Secretary of State or the Scottish Ministers, or a determination is made by him or them for the purposes of a provision contained in such a declaration, he or (as the case may be) they must either—
- (a) publish the declaration or determination in such manner as appears to him or them to be appropriate for bringing it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; or
 - (b) secure that it is published in that manner by the applicant for the declaration.
- (7) In this section—
- “consent” means a consent under section 36 above;
- “extension”, in relation to a renewable energy installation, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004;
- “relevant waters” means waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea.

36B Duties in relation to navigation

- (1) Neither the Secretary of State nor the Scottish Ministers may grant a consent in relation to any particular offshore generating activities if he considers, or (as the case may be) they consider, that interference with the use of recognised sea lanes essential to international navigation—
- (a) is likely to be caused by the carrying on of those activities; or

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- (b) is likely to result from their having been carried on.
- (2) It shall be the duty both of the Secretary of State and of the Scottish Ministers, in determining—
- (a) whether to give a consent for any particular offshore generating activities, and
 - (b) what conditions to include in such a consent,
- to have regard to the extent and nature of any obstruction of or danger to navigation which (without amounting to interference with the use of such sea lanes) is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried on.
- (3) In determining for the purposes of this section what interference, obstruction or danger is likely and its extent and nature, the Secretary of State or (as the case may be) the Scottish Ministers must have regard to the likely overall effect (both while being carried on and subsequently) of—
- (a) the activities in question; and
 - (b) such other offshore generating activities as are either already the subject of consents or are activities in respect of which it appears likely that consents will be granted.
- (4) For the purposes of this section the effects of offshore generating activities include—
- (a) how, in relation to those activities, the Secretary of State and the Scottish Ministers have exercised or will exercise their powers under section 36A above and section 100 of the Energy Act 2004 (extinguishment of public rights of navigation); and
 - (b) how, in relation to those activities, the Secretary of State has exercised or will exercise his powers under sections 95 and 96 and Chapter 3 of Part 2 of that Act (safety zones and decommissioning).
- (5) If the person who has granted a consent in relation to any offshore generating activities thinks it appropriate to do so in the interests of the safety of navigation, he may at any time vary conditions of the consent so as to modify in relation to any of the following matters the obligations imposed by those conditions—
- (a) the provision of aids to navigation (including, in particular, lights and signals);
 - (b) the stationing of guard ships in the vicinity of the place where the activities are being or are to be carried on; or
 - (c) the taking of other measures for the purposes of, or in connection with, the control of the movement of vessels in that vicinity.
- (6) A modification in exercise of the power under subsection (5) must be set out in a notice given by the person who granted the consent to the person whose obligations are modified.
- (7) In this section—
- “consent” means a consent under section 36 above;
 - “offshore generating activities” means—

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- (a) the construction or operation of a generating station that is to comprise or comprises (in whole or in part) renewable energy installations; or
- (b) an extension of a generating station that is to comprise (in whole or in part) renewable energy installations or an extension of such an installation;

“the use of recognised sea lanes essential to international navigation” means—

- (a) anything that constitutes the use of such a sea lane for the purposes of Article 60(7) of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941); or
- (b) any use of waters in the territorial sea adjacent to Great Britain that would fall within paragraph (a) if the waters were in a Renewable Energy Zone.

(8) In subsection (7) “extension”, in relation to a renewable energy installation, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004.”

(2) In paragraph 8 of Schedule 8 to that Act (supplementary provisions relating to applications under section 36 of that Act), after sub-paragraph (2) insert—

“(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.”

(3) In section 3D of that Act (principal objective and general duties not to apply to Secretary of State’s functions under section 36 or 37), for “section 36 or 37” substitute “sections 36 to 37”.

(4) ^{F1}In subsection (1) of section 35 of the Coast Protection Act 1949 (c. 74) (operations not requiring consent under section 34), after paragraph (g) insert—

“(ga) subject to subsection (3) of this section, any operations comprised in offshore generating activities carried out in accordance with a consent under section 36 of the Electricity Act 1989 granted after the commencement of section 99 of the Energy Act 2004;”.]

(5) ^{F1}After subsection (2) of that section insert—

“(3) Operations in or as regards Scotland fall within paragraph (ga) of that subsection only if and to the extent that the Scottish Ministers by order made by statutory instrument so provide.

(4) A statutory instrument containing an order under subsection (3) shall not be made unless a draft of the instrument has been laid before and approved by a resolution of the Scottish Parliament.

(5) In that paragraph “offshore generating activities” has the same meaning as in section 36B of the Electricity Act 1989.”]

Textual Amendments

F1 S. 99(4)(5) repealed (S.) (6.4.2011) by [Marine \(Scotland\) Act 2010 \(asp 5\)](#), s. 168(1), [Sch. 4 para. 3](#) (with s. 162); [S.S.I. 2011/58](#), art. 3(d)

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Commencement Information

- I1** S. 99 in force at 1.3.2005 for specified purposes by [S.I. 2005/442, art. 2\(1\)](#), **Sch. 1**
- I2** S. 99(1) in force at 1.9.2005 for specified purposes by [S.I. 2005/442, art. 2\(3\)](#), **Sch. 3**
- I3** S. 99(1) in force at 1.10.2005 in so far as not already in force by [S.I. 2005/877, art. 2\(2\)](#), **Sch. 2**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 137(3)(c)-(e) inserted by [2011 c. 16 s. 117\(b\)](#)
- s. 173(2C) inserted by [2023 c. 52 Sch. 14 para. 10](#)
- Sch. 22 para. 4(1A) inserted by [2023 c. 52 Sch. 14 para. 11\(2\)\(b\)](#)