

POLICY NOTE

THE ELECTRICITY GENERATING STATIONS (APPLICATIONS FOR VARIATION OF CONSENT) (SCOTLAND) REGULATIONS 2013

SSI 2013/304

The above instrument was made in exercise of the powers conferred by section 36C of the Electricity Act 1989 as inserted by section 20 of the Growth and Infrastructure Act 2013.

Policy Objectives

1. Certain electricity generating stations cannot be constructed, extended or operated without a consent under section 36 of the Electricity Act 1989. Currently, section 36 does not provide for section 36 consents to be varied. However, it is not unusual for circumstances to arise in which the ability to vary a section 36 consent would be very useful. For example, power station development consents are often not implemented until some years after they are granted. Each consent reflects technology and industry practice at the time it was applied for, but such practices do not stand still, even in relatively mature sectors. This means that when a developer comes to construct a generating station, it will sometimes be uneconomic or cause avoidable detriment of the environment to do so according to all of the details specified in the consent. In practice, changes to the original section 36 consent may be necessary to convert the proposal into a feasible project. In the absence of a power to vary the section 36 consent, the developer's only option would be to apply for a fresh consent for the whole project (both modified and unmodified elements).
2. Accordingly, section 36C of the Electricity Act was inserted by section 20 of the Growth and Infrastructure Act 2013 to provide for the making of variations to section 36 consents.
3. The purpose of the Regulations is to provide a predictable, consistent and transparent process for making, publicising and considering applications to vary section 36 consents. In particular, they provide for the procedure which ensures that the relevant provisions of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (commonly known as the "Environmental Impact Assessment" or "EIA" Directive) will be implemented as necessary in relation to applications to vary a section 36 consent in the same way as they are in relation to an application for a section 36 consent.

Consultation

4. A number of relevant stakeholders, including local authorities and developers of electricity generating stations were consulted directly. Views were also sought through publishing the consultation on the Scottish Government website. This took place from 1 to 15 October. A limited number of responses were received. Some considered the ability to vary section 36 consents a sensible approach and others sought clarification on a few points. Guidance will be developed to support the Regulations and will clarify the points raised at consultation.

Impact Assessments / Financial Effects

5. Parallel regulations covering England and Wales came into effect on 31 July. A Business and Regulatory Impact Assessment was prepared for these by DECC on the basis that the Regulations have a positive impact on business. That BRIA can be found at : <http://www.legislation.gov.uk/uksi/2013/1570/impacts>

Scottish Government
Energy & Climate Change Directorate
October 2013