

POLICY NOTE

The Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020

SSI 2020/123

The Scottish Ministers make the above Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 36(8), 36C(2), 60(2) and (3) and paragraph 1(3) of schedule 8 of the Electricity Act 1989, and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the instrument

In light of the current public health advice relating to the COVID 19 outbreak, the purpose of this instrument is to temporarily modify various regulations to remove a number of requirements that would be contrary to the current public health policy as regards COVID 19. It removes the requirements for:

- applicants for consent under section 36 and section 37 of the Electricity Act 1989 to make application documents and Environmental Impact Assessment reports physically available for inspection by the public at a named place;
- planning authorities to make physically available for public inspection Scottish Ministers' determinations and opinions in relation to such applications, and
- applicants for consent to provide hard copies of application documents and EIA reports to the Scottish Ministers.

These requirements are replaced by requirements to make all such documents available electronically. The modifications are limited in duration to an 'emergency period', which will expire on the same day as the Coronavirus (Scotland) Act 2020 expires.

Policy Objectives

The Coronavirus (Scotland) Act 2020 deals with any statutory requirements for the Scottish Ministers or a Scottish public authority to make documents physically available for inspection, allowing them instead to make the information available online during the emergency period. However, the provisions do not extend to generation, transmission or distribution of electricity as the policy area is reserved. It is necessary therefore to temporarily amend the Regulations which set out the process for applications made under the Electricity Act 1989 to ensure that the impacts arising from the coronavirus emergency are minimised.

Procedures applying to applications for consent

Regulations 4 (2) and 5(2) of The Electricity (Applications for Consent) (Scotland) Regulations 1990 require that, in relation to applications under section 36 and section 37 of the Electricity Act 1989, an applicant must in a public notice name a place in the locality where a map of the proposed development may be inspected. Regulations 7 and 10 of these Regulations provide that objections may be made and notices served in physical form.

Regulation 2 amends these Regulations, suspending the requirement for a map to be made available by the applicant in physical form in a public place and replacing this with the requirement for a map to be published by the applicant on a website during the emergency period. The amending regulation provides that objections may be made electronically during this period.

Procedures applying to applications for variations of consent

Regulation 4 of The Electricity Generating Stations (Applications for Variation of Consent) Regulations (Scotland) 2013 requires that applications to vary section 36 consents, made under section 36(C) of the Electricity Act 1989, be made available by the applicant at a place in the locality of the proposal for physical inspection by the public.

Regulation 3 provides that this requirement does not apply during the emergency period.

Procedures applying to Environmental Impact Assessments

Regulations 14 and 20 of The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 require that an applicant for consent under section 36 or section 37 of the Electricity Act 1989 must publish a notice stating the times and places at which either an EIA report or additional information to be included in an EIA report may be inspected by members of the public.

Regulation 4 amends these requirements such that it is not necessary for any applicant to name a place where such information may be inspected during the emergency period.

Regulation 15 of The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 places an requirement on the planning authority in which a proposed section 36 or section 37 development is situated to make available for physical inspection copies of screening and scoping opinions issued by the Scottish Ministers, and regulation 23 of these regulations requires the planning authority to make Ministerial determinations physically available for public inspection.

Regulation 4 temporarily replaces these requirements with requirements for the relevant planning authority to make such documents available electronically.

Regulation 17 of The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 requires the developer to submit hard copies of an EIA report to the Scottish Ministers.

Regulation 4 provides that this requirement is suspended during the emergency period, and that a hard copy shall be made available to the Scottish Ministers following the emergency period.

Regulation 18 of The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 places a requirement upon a developer to make available an EIA report, on submission of an EIA application, for physical inspection at a named place.

Regulation 4 suspends this requirement during the emergency period.

Consultation

As this is an emergency measure, and intended to be temporary, no formal public consultation was undertaken.

Financial Effects

There will be no financial costs imposed on business as a result of these changes. Applicants submitting application documents and EIA reports will be spared any costs that might be associated with making hard copies available.

Assessments

A Business and Regulatory Impact Assessment (BRIA) and an Equalities Impact Assessment (EQIA) have been carried out although due to the emergency nature of this instrument, it has not been possible to carry out the usual consultation. A Children's Rights and Welfare Impact Assessment (CRWIA) and a Fairer Scotland Duty Assessment were considered and screened out, as the changes are technical and temporary in nature.

The EQIA and CRWIA screening acknowledge that some may be disadvantaged due to potentially limited access to the internet. However, the alternatives of suspending public participation in decision making or the processing of applications are not considered tenable options in the circumstances.

These Regulations fall out with the scope of Strategic Environmental Assessment as per Section 4(3)(a) as their sole purpose is to serve a civil emergency. A Data Protection Impact Assessment is not considered relevant to the changes. In the circumstances, we have not done an Islands Impact Assessment, though it is acknowledged that more remote areas with more limited online capabilities may be at something of a disadvantage for this temporary period.

DECC: Energy Consents
Scottish Government
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