

2013 No. 1570

ELECTRICITY, ENGLAND AND WALES

**The Electricity Generating Stations (Variation of Consents)
(England and Wales) Regulations 2013**

<i>Made</i>	- - - -	<i>26th June 2013</i>
<i>Laid before Parliament</i>		<i>28th June 2013</i>
<i>Coming into force</i>	- -	<i>31st July 2013</i>

The Secretary of State, in exercise of the powers conferred by section 36C(2), (3) and (6) and section 60(2) of the Electricity Act 1989(a) makes the following Regulations.

Citation, commencement and extent

1. These Regulations—

- (a) may be cited as the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013;
- (b) come into force on 31st July 2013; and
- (c) extend to England and Wales.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Electricity Act 1989;

“the EIA Regulations” means the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000(b);

“applicant” means a person who has the benefit of a section 36 consent and makes a variation application in respect of it;

“development” has the meaning given in section 55 of the Town and Country Planning Act 1990(c) (meaning of “development” and “new development”);

“environmental statement” has the meaning given in the EIA Regulations as modified by regulation 7;

“generating station” includes a proposed generating station;

“MMO” means Marine Management Organisation;

(a) 1989 c. 29. Section 36C was inserted by section 20(1) and (2) of the Growth and Infrastructure Act 2013 (c. 27). There are amendments to section 60 of the Electricity Act 1989 but none is relevant here.

(b) S.I. 2000/1927, amended by S.I. 2007/1977 and S.I. 2011/1043.

(c) 1990 c. 8. Section 55 was amended by sections 13(1) and (2), 14 and 31(4) of, and paragraph 9 of Schedule 6 to, the Planning and Compensation Act 1991 (c. 34); by sections 118(1) and 120 of, and paragraphs 1 and 2 of Schedule 6 to, the Planning and Compulsory Purchase Act 2004 (c. 34); and by S.I. 1999/293. There are other amendments not relevant to these Regulations.

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

- (a) waters in or adjacent to England or Wales which are between the mean low water mark and the seaward limits of the territorial sea; or
- (b) a Renewable Energy Zone;

“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 90 development in respect of which section 36 consent is not required;

“relevant planning authority” means, where a variation application, or a request for a section 90 direction which accompanies the variation application—

- (a) relates to a generating station, or development ancillary to a generating station, which is or is to be located on land in England or Wales (“relevant land”)—
 - (i) if the relevant land is situated in a National Park for which a National Park authority is the local planning authority, that National Park authority; and
 - (ii) where sub-paragraph (i) does not apply, the local planning authority (within the meaning of section 1 of the Town and Country Planning Act 1990^(a) (local planning authorities: general)) within whose area the relevant land is situated; or
- (b) relates to an offshore generating station, any of the following bodies—
 - (i) a local planning authority in England and Wales;
 - (ii) a planning authority in Scotland (within the meaning of section 1 of the Town and Country Planning (Scotland) Act 1997^(b) (planning authorities)); or
 - (iii) the Department of the Environment in Northern Ireland,which are identified by the applicant under regulation 3(1)(e) or by the appropriate authority under regulation 4(7);

“relevant section 36 consent” means the section 36 consent in respect of which a variation application is made;

“section 36 consent” means a consent under section 36 of the Act^(c) (consent required for construction etc. of generating stations) to construct, extend or operate a generating station—

- (a) in England or Wales;
- (b) in waters adjacent to England or Wales up to the seaward limits of the territorial sea; or
- (c) in a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions^(d),

including any variations to that consent made under section 36C(4) of the Act (variation of consents under Electricity Act 1989);

“section 90 development” means, where the appropriate authority is the Secretary of State, any development in respect of which—

(a) Section 1 was amended by section 187(1) of, and paragraph 28 of Schedule 21 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); section 18 of the Local Government (Wales) Act 1994 (c. 19); sections 78 and 120(3) of, and Schedule 10, paragraph 32(1), and Schedule 24 to, the Environment Act 1995 (c. 25); and section 31(1) of the Greater London Authority Act 2007 (c. 24).

(b) 1997 c. 8. Section 1 was amended by section 54(1) and (2) of the Planning etc (Scotland) Act 2006 (asp 17).

(c) Section 36 was amended by section 93(1) and (3) of the Energy Act 2004 (c. 20); section 36 of, and paragraphs 31 and 32(1), (2) and (3) of Schedule 2 to, the Planning Act 2008 (c. 29); and section 12(7)(a) and (8) of the Marine and Coastal Access Act 2009 (c. 23). Functions of the Secretary of State under section 36 have been transferred to the MMO by section 12(1) to (4) of the Marine and Coastal Access Act as regards certain offshore generating stations.

(d) Functions of the Secretary of State under section 36 have been transferred to the Scottish Ministers by S.I. 2006/1040, in so far as exercisable in or as regards Scotland (see also S.I. 2005/3153).

- (a) a section 90 direction was given on granting the relevant section 36 consent; or
- (b) the applicant, on making a variation application, requests the Secretary of State to give a section 90 direction;

“section 90 direction” means a direction under section 90(2) or (2ZA) of the Town and Country Planning Act 1990(a) (deemed planning permission for development with government authorisation); and

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

(2) In these Regulations, a reference to a numbered regulation is, unless otherwise specified, a reference to that regulation of these Regulations.

Content of variation applications

3.—(1) A variation application must—

- (a) be made in writing;
- (b) describe the location of the proposed development by reference to a map;
- (c) state—
 - (i) why it is proposed that the relevant section 36 consent should be varied;
 - (ii) what account has been taken of views expressed by persons who have been consulted by the applicant about the proposed variation;
- (d) include—
 - (i) a draft of the variations which the applicant proposes should be made to the relevant section 36 consent; and
 - (ii) copies of any maps or plans not referred to in the relevant section 36 consent but which the applicant proposes that the relevant section 36 consent should refer to after it is varied; and
- (e) if the application relates to an offshore generating station, identify which of the bodies referred to in paragraph (b) of the definition of “relevant planning authority” in regulation 2(1) are, in the applicant’s opinion, likely to have an interest in the variation application.

(2) A variation application must include particulars of—

- (a) the relevant section 36 consent, and, if that consent was not granted to the applicant, how the applicant has the benefit of that consent;
- (b) where the appropriate authority is the Secretary of State, any section 90 direction given on granting the relevant section 36 consent;
- (c) any permit, licence, consent or other authorisation (other than the relevant section 36 consent) given in connection with the construction or operation of the proposed development (a “relevant authorisation”), including any variation or replacement of a relevant authorisation; and
- (d) any application that has been made for a relevant authorisation or variation of a relevant authorisation.

(3) Where the appropriate authority is the Secretary of State and the applicant requests the Secretary of State to make a section 90 direction on varying the relevant section 36 consent, the application must—

- (a) identify the section 90 development in respect of which that request is made and describe its location by reference to a map;
- (b) state—
 - (i) why it is proposed that the direction should be made; and

(a) Subsections (2) and (2ZA) were inserted into section 90 by section 21(1) to (3) of the Growth and Infrastructure Act 2013.

- (ii) what account has been taken of views expressed by persons who have been consulted by the applicant about the proposed direction; and
- (c) include—
 - (i) a draft of the proposed direction; and
 - (ii) copies of any maps or plans to which it is proposed that the section 90 direction should refer which are not—
 - (aa) referred to in the relevant section 36 consent or any section 90 direction given on granting the relevant section 36 consent; or
 - (bb) included in the application in accordance with paragraph (1)(d)(ii).
- (4) If, under the EIA Regulations as modified by regulation 7, an environmental statement has been prepared, or is required to be prepared, in relation to the proposed development, the environmental statement must accompany the application.

Assessment of suitability for publication

- 4.—(1) Where the appropriate authority receives a variation application, it must—
 - (a) consider whether or not it is suitable for publication in accordance with regulation 5; and
 - (b) give the applicant a notice under paragraph (2) or (6) within three weeks of receipt.
- (2) If the appropriate authority does not consider that the application is suitable for publication, it must give notice to the applicant—
 - (a) of its decision and the reasons for that decision; and
 - (b) that it may make representations to the appropriate authority with a view to persuading the appropriate authority that the application is suitable for publication.
- (3) Where the appropriate authority gives notice under paragraph (2), it must—
 - (a) specify in writing a date by which any representations under paragraph (2)(b) are to be made; and
 - (b) if the applicant fails to make representations by the date so specified, give the applicant a refusal notice.
- (4) Paragraph (5) applies where the applicant makes representations to the appropriate authority further to a notice given to it under paragraph (2)(b).
- (5) If, having considered the applicant's representations, the appropriate authority—
 - (a) still considers that the application is not suitable for publication, it must give a further notice under paragraph (2) or a refusal notice; or
 - (b) considers that the application is suitable for publication, it must give a notice under paragraph (6).
- (6) If the appropriate authority considers that the application is suitable for publication, it must give the applicant notice of its decision.
- (7) Where—
 - (a) paragraph (6) applies;
 - (b) the variation application relates to an offshore generating station; and
 - (c) there are bodies referred to in paragraph (b) of the definition of “relevant planning authority” in regulation 2(1)—
 - (i) that the appropriate authority considers are likely to have an interest in the application; and
 - (ii) that have not been identified by the applicant under regulation 3(1)(e),
 the appropriate authority must identify those bodies in the notice given under paragraph (6).
- (8) For the purposes of this regulation, a variation application is suitable for publication in accordance with regulation 5 if it appears to the appropriate authority that—

- (a) the applicant wishes to construct, operate or extend a generating station in a way which the relevant section 36 consent does not authorise it to do;
- (b) the proposed development does not differ from the generating station to which the relevant section 36 consent refers to such an extent (in its construction, extension, operation or likely environmental effects) that it requires authorisation by—
 - (i) an order granting development consent within the meaning of section 31 of the Planning Act 2008^(a); or
 - (ii) (where the appropriate authority is the MMO) a new section 36 consent (rather than a variation to the relevant section 36 consent); and
- (c) there is sufficient information in the application and any environmental statement that accompanies it to enable—
 - (i) the appropriate authority to determine the application; and
 - (ii) other persons to understand its likely environmental effects.

(9) In this regulation, a “refusal notice” is a notice that the appropriate authority has decided under section 36C(4) of the Act that it would not be appropriate to make any variation to the relevant section 36 consent.

Publication

5.—(1) Where an applicant has received a notice under regulation 4(6), the variation application must be published, and its publication advertised, 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) the application;
 - (iii) a link to the relevant section 36 consent, any section 90 direction given on granting it and any statement (in the form of a decision letter or otherwise) given by the appropriate authority under regulation 9(3) of the EIA Regulations^(b) when granting the relevant section 36 consent; and
 - (iv) any environmental statement prepared in relation to the proposed development; and
- (b) serve a copy of the application and any environmental statement on the relevant planning authority (if any).

(3) The applicant must publish notice of the variation application—

- (a) in two successive weeks in one or more local newspapers which are likely to come to the attention of those likely to be affected by the proposed development; and
- (b) in the London Gazette, or, in respect of a variation application relating to an offshore generating station located or to be located in that part of the Renewable Energy Zone that lies within the part of the sea which is to be treated as adjacent to Northern Ireland for the purposes of article 3(1) of the Adjacent Waters Boundaries (Northern Ireland) Order 2002^(c), the Belfast Gazette,

and serve a copy of the notice on the relevant planning authority (if any).

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

- (a) in Lloyd’s List and in one or more national newspapers; 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.

^(a) 2008 c. 29.

^(b) Amended by S.I. 2007/1977.

^(c) S.I. 2002/791.

- (5) The notices required by paragraphs (3) and (4) must—
- (a) not be published before the applicant has complied with paragraph (2);
 - (b) state—
 - (i) that a variation application has been made and that the applicant has received a notice under regulation 4(6);
 - (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, not less than four weeks after the date on which the last notice is to be published, by which any person other than a relevant planning authority must send objections to the proposed development, or other representations about the application, to the appropriate authority; and
 - (iv) the address to which any such representations are to be sent; and
 - (c) identify—
 - (i) the applicant;
 - (ii) the appropriate authority;
 - (iii) the relevant section 36 consent;
 - (iv) the generating station to which it relates; and
 - (v) a place which is reasonably accessible to those likely to be affected by the proposed development where copies of the variation application and any environmental statement prepared in connection with the application may be inspected.

Preservation of amenity

6.—(1) Paragraph (2) applies where the appropriate authority is the MMO.

(2) For the purposes of the application of paragraph 1(2) of Schedule 9 to the Act^(a) to relevant proposals (within the meaning of that paragraph), the variation of a section 36 consent further to a variation application is to be treated as an electricity consent function within the meaning of section 12(2) of the Marine and Coastal Access Act 2009^(b).

Application of the EIA Regulations with modifications

7.—(1) The EIA Regulations apply in relation to variation applications as they apply in relation to section 36 consents, with the modifications below.

(2) Where the appropriate authority is the MMO, references to the Secretary of State in the EIA Regulations are to be read as references to the MMO.

(3) References in the EIA Regulations to—

- (a) an application for section 36 consent are to be read as references to a variation application;
- (b) cases where an application for section 36 consent is “for EIA development” are to be read as referring to cases where a variation application is made in respect of proposed development which is EIA development;
- (c) proposed development or “the development” are to be read as references to proposed development (as defined in these Regulations);
- (d) the granting of a section 36 consent are to be read as references to the variation of a section 36 consent; and

(a) Paragraph 1 of Schedule 9 was amended by S.I. 2001/3264. Functions of the Secretary of State under paragraph 1(2) of Schedule 9 have been transferred to the Marine Management Organisation by section 12(5)(b) of the Marine and Coastal Access Act (as regards certain offshore generating stations).

(b) 2009 c. 23. Section 12 has been amended, but the amendment is not relevant for the purposes of these Regulations.

- (e) the local planning authority are to be read as references to the relevant planning authority.
- (4) 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 5 is published.
- (5) Regulation 11(3A) of the EIA Regulations^(a) is to be disregarded and references to it in other provisions of those Regulations are to be read as references to regulation 5(2)(b).
- (6) Part 2 of Schedule 4 to the EIA Regulations is to be read as requiring the inclusion in a statement prepared pursuant to regulation 4(1) of the EIA Regulations of—
 - (a) 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
 - (b) a non-technical summary of the differences referred to in sub-paragraph (a).

Public inquiries

8.—(1) The appropriate authority may cause a public inquiry to be held into a variation application if it considers it appropriate to do so having considered—

- (a) any representations made about a variation application to the appropriate authority—
 - (i) which a relevant planning authority makes within two months of the date on which a copy of the application was served on it under regulation 5(2)(b); and
 - (ii) which any other person makes on or before the date specified in accordance with regulation 5(5)(b)(iii),
 where those representations are not withdrawn; and
 - (b) all other material considerations.
- (2) If the appropriate authority causes a public inquiry to be held into a variation application—
- (a) it may do so in addition to or instead of any other hearing or opportunity to make representations about the application; and
 - (b) the following apply to the inquiry as they would apply to a public inquiry held under paragraph 3(2) of Schedule 8 to the Act—
 - (i) subject to paragraph (3), paragraphs 4(1) to (4), 5A, 7A(5) and 8(3) of Schedule 8 to the Act^(b); and
 - (ii) subject to paragraph (4), the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007^(c) (“the Inquiry Rules”).
- (3) For the purposes of the application of paragraphs 4(1) to (4), 5A, 7A(5) and 8(3) of Schedule 8 to the Act to variation applications—
- (a) where the appropriate authority is the MMO, references to the Secretary of State are to be read as references to the MMO;
 - (b) references to paragraph 2(2) or 3(2) of Schedule 8 to the Act are to be read as references to this regulation;
 - (c) references to an application for section 36 consent in those paragraphs are to be read as references to a variation application;
 - (d) the reference to “the locality” in paragraph 4(1)(b) of Schedule 8 to the Act is to be read as referring to the locality where those likely to be affected by the proposed development live or work;

^(a) Inserted by S.I. 2007/1977.

^(b) Paragraphs 5A, 7A and 8(3) of Schedule 8 were inserted by the Energy Act 2004 (c. 20), sections 182(1), 93(2) and 99(2) respectively. Functions of the Secretary of State under Schedule 8 have been transferred partly to the Scottish Ministers (by S.I. 2006/1040, in so far as exercisable in or as regards Scotland) and partly to the Marine Management Organisation (by section 12(5)(a) of the Marine and Coastal Access Act, as regards certain offshore generating stations).

^(c) S.I. 2007/841, amended by S.I. 2008/2831.

(e) paragraph 4 of Schedule 8 to the Act is to be read as if in place of paragraph 4(2) of that Schedule there were inserted a requirement to publish a notice under paragraph 4(1) of that Schedule in one or more local newspapers which are likely to come to the attention of those likely to be affected by the proposed development; and

(f) paragraphs (a)(ii) and (b) of paragraph 7A(5) are to be disregarded.

(4) For the purposes of the application of the Inquiry Rules to variation applications, the following terms, where they are defined in rule 2 of the Inquiry Rules or used elsewhere in the Inquiry Rules, are to be understood as follows—

(a) “application” is to be understood as referring to a variation application;

(b) “qualifying objector” is to be understood as referring to any person who has made representations (which have not been withdrawn) objecting to a variation application in accordance with regulation 5(5)(b)(iii);

(c) “qualifying planning authority” is to be understood as referring to a relevant planning authority within the meaning of these Regulations, if it has made representations (which have not been withdrawn) objecting to a variation application; and

(d) “relevant planning authority” is to be understood as referring to a relevant planning authority within the meaning of these Regulations.

Withdrawal of variation applications

9.—(1) An applicant may withdraw a variation application at any time by notice in writing to the appropriate authority.

(2) If a variation application is withdrawn after it has been published in accordance with regulation 5, the appropriate authority must notify the relevant planning authority and the consultative bodies within the meaning of the EIA Regulations that it has been withdrawn.

Allowing further time

10. The appropriate authority may 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.

Review

11. Before 31st July 2018, the Secretary of State must—

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

26th June 2013

Gregory Barker
Minister of State for Climate Change
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations make provision in England and Wales 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 (c. 29) (“section 36 consents”).

In England and Wales and adjacent offshore areas, section 36 consents are granted by the Secretary of State or the Marine Management Organisation (“the appropriate authority”). Under section 36C of the 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 appropriate authority that granted the consent for the consent to be varied. On such an application, the appropriate authority may make such variations to the consent as appear to it 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. By regulation 4, the appropriate authority is required to conduct an initial assessment of whether the application is suitable for publication (as defined in regulation 4(8)) and to give the applicant an opportunity to make representations if the appropriate authority does not consider that the application is suitable for publication. If the appropriate authority still does not consider the application is suitable for publication following such representations it must either invite the applicant to make further representations or refuse the application. If the appropriate authority considers that an application is suitable for publication, the application must be published, and its publication advertised, in accordance with regulation 5.

Regulations 6, 7 and 8 provide for the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (S.I. 2000/1927), the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 (S.I. 2007/841), and certain provisions of Schedules 8 and 9 to the Electricity Act 1989 (relating to public inquiries and the duty to have regard to certain amenity considerations when formulating proposals about generating stations), to apply to variation applications, with specified modifications. In contrast to the position under Schedule 8 as regards applications for section 36 consents, the appropriate authority always has a discretion to hold a public inquiry into a variation application.

Regulation 9 makes provision about the withdrawal of variation applications. Regulation 10 allows the appropriate authority to extend the time allowed for a given step under the Regulations in a particular case.

An impact assessment has been prepared in respect of the effect that this instrument will have on business. Copies can be obtained from the Department of Energy and Climate Change, National Infrastructure Consents Team, 3rd Floor, 3 Whitehall Place, London, SW1A 2AW. Copies have been placed in the libraries of both Houses of Parliament.

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