

# **Sustainability Committee**

**SC(3)-01-10 (p1, annex A): 11 January 2010**

## **Current and proposed energy consent powers in Wales**

Energy is largely a reserved matter, that is, largely the responsibility of the UK Government in consultation, where appropriate, with the devolved administration. However, the Scottish Ministers have executive powers to grant consent for large power stations under S36 etc. of the Electricity Act. The Welsh Assembly Government has asked for similar executive devolution of S36 etc. powers but this request has been consistently refused. In Wales, the granting of s.36 etc. consent for power stations with a capacity of more than 50 MW on land and 1 MW at sea remains a matter for the Department of energy and Climate Change (DECC) determination. The Assembly Government is formally consulted on all such applications, as is the host local authority (LA), and if the host LA objects to the application a public inquiry must be held. Section 36 etc. consent is not required for generating stations on land with a capacity of 50 MW or less. Such power stations are determined by the LPA under the town and country planning regime, with any appeal/call in being a matter for the Welsh Ministers and the Planning Inspectorate in Wales.

Projects at sea within our territorial waters can also be consented by the Welsh Ministers under Transport and General Works Act powers. Projects at sea also often require Food and Environment Protection Act licences, which are granted by the Welsh Ministers within territorial waters (except in relation to matters concerning or arising from the exploration for, or production of, petroleum); they may also require Coast Protection Act consent from DEFRA]. Most projects at sea also require Crown Estate leases relating to the seabed. Coal mining at current or disused mines requires a licence from the Coal Authority as well as LA planning consents for any land based installations. Undersea carbon storage and associated CO2 pipeline licences will be a matter for DECC.

In future, from April 2010, consents in Wales for large power stations (above 50 MW on land and 100 MW at sea) and large power infrastructure (including gas pipelines and electricity grid) projects, but not on land gas terminals, will normally be a matter for Infrastructure Planning Commission (IPC) determination. However, in making these determinations, the IPC will have to decide the applications in accordance with any relevant UK National Policy Statements (NPSs) unless certain specified circumstances apply.

Figure 1 – Proposed Consent Bodies for Electricity Installations

Installation size	Current consent body	Future consent body
> 50 MW onshore	Secretary of State for Energy and Climate Change,	Infrastructure Planning Commission
< 50 MW onshore	Local Authorities	Local Authorities
> 100 MW offshore	Secretary of State Energy and Climate Change,	Infrastructure Planning Commission
1 - 100 MW offshore	Secretary of State Energy and Climate Change and the Welsh Assembly Government	Marine Management Organisation & Welsh Assembly Government
< 1 MW offshore	Welsh Assembly Government	Welsh Assembly Government

The Welsh Ministers currently have a number of executive powers and duties that may be relevant to project consents. Energy projects often require environmental impact assessments, appropriate assessments in environmental sensitive areas covered by the Habitats and Ramsar Directives, environmental permits from Environment Agency Wales, planning consents for associated works such as sub-stations, transport permissions, offer supply chain, economic development and innovation (including Wales European Funding Office (WEFO) grant, SFI and Finance Wales support) opportunities, FEPA consents for marine operations. The extent of devolution in each of these areas is complex, but often the Welsh Ministers will have executive functions in relation to such matters, whether as primary decision maker, appellate body or in some other supervisory capacity.

Welsh Ministers also have significant powers relevant to delivering wider aspects of a low carbon economy such as responsibilities for transport, economic development, skills and education, housing, regeneration and local government.