

SL(5)344 – The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations

Background and Purpose

These Regulations make provision about applications to the Welsh Ministers to vary consents for the construction, extension and operation of certain offshore electricity generating stations in Welsh waters that have been granted under section 36 of the Electricity Act 1989 (the “1989 Act”).

Section 36C of the 1989 Act will allow, from 1 April 2019, a person entitled to the benefit of a section 36 consent to apply to the Welsh Ministers, for that consent to be varied, in certain circumstances. This will be possible where the consent relates to a generating station (or proposed generating station) in Welsh waters that does not (or will not) exceed 350 megawatts.

These Regulations make provision about the making of variation applications to the Welsh Ministers. This includes:

- what needs to be included in, or accompanying, a variation application;
- notification and publicity requirements;
- when public inquiries are to be held;
- the withdrawal of variation applications; and
- extending the time allowed for a given step to be taken under these Regulations.

These Regulations also revoke the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 in so far as they apply to an application to the Welsh Ministers under section 36C of the 1989 Act.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2(v) that for any particular reason its form or meaning needs further explanation

Regulation 5(5)(c) notes that a variation application must be published “...in one or more national newspapers”. However, the Regulations does not specify whether “national” refers to a Welsh national newspaper or a UK newspaper.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.



Standing Order 21.3(ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

Regulation 2 includes various definitions which are used in the Regulations. The definition of “relevant planning authority” is said to include (in the circumstances listed in the Regulations) a local planning authority in England and Wales and the Department of the Environment in Northern Ireland, (as identified by the applicant under regulation 3(1)(e) or by the Welsh Ministers under regulation 4(7), as being likely to have an interest in the application). This definition does not include references to appropriate corresponding bodies in Scotland or the Isle of Man. We understand that the reason for not including Scotland in these provisions is due to the distance between Welsh waters and Scotland. However, the reasoning as to why the Isle of Man has not been included within this definition is unclear.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

Technical Scrutiny

The technical scrutiny element of the draft report refers to one drafting error. The draft report notes that regulation 5(5)(c) provides that a variation application must be published... “in one or more national newspapers”. However the Regulations do not specify whether “national” refers to a Welsh national newspaper or a UK newspaper.

The Government’s position is as follows.

Regulation 5(5)(c) of the Regulations provides that the Applicant must publish notice of the variation application “in Lloyd’s List and in one or more national newspapers”. Because Lloyd’s list is a UK publication the reference to “national newspapers” in the context in which it appears is a reference to UK newspapers.

The Regulations also make clear that bodies outside Wales could have an interest in a variation application (see definition of “relevant planning permission” in regulation 2). Therefore in the context of the Regulations as a whole the reference to “national newspapers” in regulation 5(5)(c) is a reference to UK newspapers.

Therefore an amendment to address the technical scrutiny point is not considered necessary.

Merits Scrutiny

The merits scrutiny element of the draft report is concerned with the definition of “relevant planning authority” in regulation 2. It is noted that the reasoning as to why a corresponding body in the Isle of Man has not been included within this definition is unclear.

As explained at paragraph 4.8 of the Explanatory Memorandum to the Regulations the policy intention is make equivalent provision to the Electricity (Offshore Generating Stations) (Variation of Consents) (England and Wales) Regulations 2013 (“the 2013 Regulations”) with minor amendments to reflect the Welsh Ministers’ role as appropriate (consenting) authority. The Regulations do not introduce new policy or changes to the existing procedure. A body in the Isle of Man is not a relevant planning authority for



the purposes of the 2013 Regulations. The definition of “relevant planning authority” in the Regulations is consistent with the definition in the 2013 Regulations and therefore accords with the policy intent.

Legal Advisers

Constitutional and Legislative Affairs Committee

13 March 2019

