STATUTORY INSTRUMENTS

2006 No. 2064

ELECTRICITY, ENGLAND AND WALES

The Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006

Made - - - -	*23rd July 2006*
Laid before Parliament	*27th July 2006*
Coming into force - -	*1st October 2006*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 36(8) and 60(3) of, and paragraphs 1(3), 2(3), 3(1) and 7A(**a**) of Schedule 8 to, the Electricity Act 1989(**b**) and by section 188 of the Energy Act 2004(**c**):

Citation, commencement and extent

1. These Regulations—

(a) may be cited as the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006 and shall come into force on 1st October 2006; and

(b) shall not extend to Scotland.

Application

2. These Regulations apply to an application which is received by the Secretary of State on or after the date on which they come into force.

Interpretation

3. In these Regulations—

"application" means an application under section 36 of the Electricity Act 1989 for a consent to construct, extend or operate an offshore generating station, together with any application under section 36A of that Act(**d**) for a declaration relating to rights of navigation which is made with the application under section 36;

"harbour" and "harbour authority" have the same meaning as in section 57 of the Harbours Act 1964(**e**);

"offshore generating station" means a generating station that is, or is to be, located—

(a) within the Renewable Energy Zone; or

(**a**) Paragraph 7A of Schedule 8 was inserted by section 93(2) of the Energy Act 2004 (c.20).
(**b**) 1989 c.29.
(**c**) 2004 c.20.
(**d**) Section 36A was inserted into the Electricity Act 1989 by section 99(1) of the Energy Act 2004.
(**e**) 1964 c.40.

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

"Renewable Energy Zone" means so much of the area designated by the Renewable Energy Zone (Designation of Area) Order 2004(**a**) as does not include the area designated by the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005(**b**) as an area in relation to which the Scottish Ministers are to have functions; and

"Wales" has the same meaning as in section 155 of the Government of Wales Act 1998(**c**).

Publication of notice of application for consent under section 36 and declaration under section 36A

4.—(1) The applicant shall publish notice of an 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;

(b) in Lloyd's List and in one or more national newspapers;

(c) 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; and

(d) in the London Gazette, or, in respect of an 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(**d**), the Belfast Gazette.

(2) The notice shall describe, by reference to a map, the location to which the application relates, and shall provide that the map may be inspected, during normal office hours, by members of the public either—

(a) at the offices—

(i) of each local planning authority in England and Wales upon whom the applicant serves notice of that application under regulation 6(2) or pursuant to a direction of the Secretary of State under regulation 6(4); or

(ii) of any relevant planning authority upon whom the applicant serves notice of the application under paragraph 2(1) of Schedule 8; or

(b) at an address which is reasonably accessible to those likely to be affected by the consent applied for if it is granted.

(3) Paragraphs (1) and (2) shall not apply to an application for an extension or change in the manner of operation where the Secretary of State—

(a) considers the extension or change to be of a minor character; and

(b) gives a direction dispensing with the requirements of those paragraphs.

Service of notice of application for consent under section 36 and for declaration under section 36A

5. The applicant shall serve notice of an application upon—

(a) the Joint Nature Conservation Committee;

(b) English Nature, except in the case of development in Wales;

(**a**) S.I. 2004/2668. This Order, made under section 84 of the Energy Act 2004, designated a Renewable Energy Zone covering waters whose co-ordinates are specified in the Schedule to the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996 (S.I. 1996/2128), as amended by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1997 (S.I. 1997/506).

(**b**) S.I. 2005/3153.

(**c**) 1998 c.38.

(**d**) S.I. 2002/791.

(c) the Countryside Agency, except in the case of development in Wales;

(d) the Countryside Council for Wales, in the case of development in Wales;

(e) the Environment Agency;

(f) English Heritage, except in the case of development in Wales;

(g) Cadw, in the case of development in Wales;

(h) the Maritime and Coastguard Agency;

(i) a harbour authority, in the case of development in or adjacent to a harbour under the control of that authority;

(j) the National Assembly for Wales, in the case of development in Wales; and

(k) such other persons as the Secretary of State may direct.

Service of notice of application where there is no relevant planning authority

6.—(1) This regulation applies where no part of the place to which an application relates is within the area of a relevant planning authority.

(2) Where in the applicant's opinion—

(a) any local planning authority in England and Wales;

(b) any planning authority in Scotland; or

(c) the Department of the Environment in Northern Ireland,

is likely to have an interest in the application, the applicant shall serve notice of the application upon that body and, within seven days of such service, inform the Secretary of State in writing of its identity and provide him with a copy of the notice.

(3) Where, in the applicant's opinion, no such body as is mentioned in paragraph (2)(a), (b) or (c) is likely to have an interest in the application, the applicant shall inform the Secretary of State of that fact.

(4) Where in the Secretary of State's opinion—

(a) any local planning authority in England and Wales;

(b) any planning authority in Scotland; or

(c) the Department of the Environment in Northern Ireland,

is likely to have an interest in the application, the Secretary of State may, unless he has received a notice under paragraph (2) to the effect that a notice of the application has been served on that body, direct that the applicant shall serve notice of an application upon that body.

(5) In paragraphs (2) and (4) "local planning authority" has the same meaning as in Part I of the Town and Country Planning Act 1990(**a**) and "planning authority" has the same meaning as in section 1 of the Town and Country Planning (Scotland) Act 1997(**b**).

Objections by recipients of notice

7.—(1) Any notice published or served pursuant to regulation 4(1), 5 or 6 shall state the time (which shall not be less than 28 days from the date or latest date of publication of the notice, or less than 28 days from the date of service of the notice) within which, and the manner in which, objections to the application may be made to the Secretary of State, by persons other than any relevant planning authority.

(2) A relevant planning authority shall serve notification of any objection by it to an application upon the Secretary of State within four months of the date of the application, or within any longer period as may be agreed in writing by the authority with both the Secretary of State and the applicant.

(**a**) 1990 c.8.
(**b**) 1997 c.8.

(3) The Secretary of State may, for the purposes of paragraph 2(2) of Schedule 8, disregard any objection not notified by a relevant planning authority in accordance with paragraph (2).

Publication of notice of a public inquiry

8. Where a public inquiry is to be held in respect of the construction, extension or operation of a generating station, the whole or part of which is to be or is at a place that is not within the area of a relevant planning authority, and the applicant serves notice of the same pursuant to paragraph 4(1) of Schedule 8—

(a) the notice shall state that a copy of the application, and of the map referred to in it, can be inspected at the same location or locations used to display the map pursuant to regulation 4(2) or, if in relation to any such location that is not possible, at a suitable alternative location as near as possible to it ; and

(b) the area for the purposes of paragraph 4(2) of Schedule 8 (as modified by paragraph 7A(**a**) of that Schedule) shall be the same area within which the local newspapers referred to in regulation 4(1)(a) circulate.

Fees payable on applications for consent

9. The fee to be paid to the Secretary of State upon an application being made shall be as specified in the Table below.

Table

Subject matter of application for consent	*Fee*
1. **Construction** of an offshore generating station of megawatt capacity—	
(a) not exceeding 200	£5000.00
(b) exceeding 200 but not exceeding 500	£12000.00
(c) exceeding 500	£20000.00
2. **Construction and operation** of an offshore generating station of megawatt capacity—	
(a) not exceeding 200	£5000.00
(b) exceeding 200 but not exceeding 500	£12000.00
(c) exceeding 500	£20000.00
3. **Operation** of an offshore generating station of megawatt capacity—	
(a) not exceeding 200	£5000.00
(b) exceeding 200 but not exceeding 500	£12000.00
(c) exceeding 500	£20000.00
4. **Extension** of an offshore generating station	£1000.00
5. **Extension and operation** of an offshore generating station of megawatt capacity—	
(a) not exceeding 200	£5000.00
(b) exceeding 200 but not exceeding 500	£12000.00
(c) exceeding 500	£20000.00

(**a**) Paragraph 7A of Schedule 8 was inserted by section 93(2) of the Energy Act 2004 (c.20).

Disapplication of the Electricity (Applications for Consent) Regulations 1990

10. The Electricity (Applications for Consent) Regulations 1990(**a**) shall not apply to an application made on or after the date on which these Regulations come into force.

Malcolm Wicks
Minister of State for Energy
Department of Trade and Industry

23rd July 2006

(**a**) S.I. 1990/455.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to applications to the Secretary of State for Trade and Industry for consent under section 36 of the Electricity Act 1989 ("the 1989 Act") to construct, extend or operate an offshore generating station, defined as a generating station located either within the Renewable Energy Zone (save for those waters where Scottish Ministers have functions) or within waters in or adjacent to England and Wales between the mean low water mark and the seaward limits of the territorial sea. For the purposes of these Regulations a reference to an application for consent under section 36 includes any application under section 36A of the 1989 Act for a declaration relating to public rights of navigation, which is made with the section 36 application.

These Regulations disapply the Electricity (Applications for Consent) Regulations 1990 ("the 1990 Regulations") insofar as they previously applied to section 36 applications relating to offshore generating stations.

Regulation 4 identifies those publications within which notice of an application for consent under section 36 should be advertised. Additionally, the notice is required to include a map showing the location of the generating station and to indicate where such map may be inspected.

Regulation 5 identifies those public consultation bodies upon whom notice of an application under section 36 should be served.

Regulation 6 makes provision for service of notice of a section 36 application where no part of the place where the development is due to take place lies within the jurisdiction of a relevant planning authority. Notices shall be served upon planning authorities likely to have an interest in the proposed development. Where, by contrast, the proposed development falls wholly or partly within a relevant planning authority's jurisdiction, the obligation to serve notice upon a relevant planning authority (defined under paragraph 2(6) of Schedule 8 to the Electricity Act 1989) derives from paragraph 2(1) of Schedule 8, rather than under this regulation.

Regulation 7 requires an applicant when serving notice to state the time within which and the manner in which objections to a proposal should be notified to the Secretary of State. The regulation also requires any objection by a relevant planning authority to be made within four months of service of notice of an application, where a development falls within the jurisdiction of that relevant planning authority.

Regulation 8 makes provision for the publication of notice of any public inquiry to be held. This notice is required to state that a copy of the application, and of the map referred to in it, can be inspected at the same location or locations used to display the map pursuant to regulation 4(2) or, if that is not possible, at a suitable alternative location as near as possible to it.

Regulation 9 makes provision for fees payable upon applications for consent.

Regulation 10 provides that the Electricity (Applications for Consent) Regulations 1990 shall not apply to an application under section 36 relating to an offshore generating station made on or after the date these Regulations come into force.

A Regulatory Impact Assessment is available and can be obtained from the Department of Trade and Industry's website at: www.dti.gov.uk. Copies of the Regulatory Impact Assessment have been placed in the libraries of both Houses of Parliament.

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