Detailed guide: Consents and planning applications for national energy infrastructure projects

Updated: Llanbrynmair and Carnedd Wen wind farm applications redetermination – new documentation and second round representations published.

Electricity development consents

Guidance on the consent process for onshore and offshore generating stations with a generating capacity above 50MW and 100MW in England and Wales.

Projects with a generating capacity of 50MW and less are considered under the provision of the Town and Country Planning Act 1990.

It is the government's intention to implement its manifesto commitment to give local people greater say in determining applications to build onshore wind farms in their local areas. Government is seeking to achieve this by removing new onshore wind farms above 50MW from the consenting regimes in the Planning Act 2008 and the Electricity Act 1989. The effect of this will be that new applications for onshore wind farms in England and Wales will need to apply for planning permission through the Town and Country Planning Act 1990. More detail on this can be found below.

Planning Act 2008

The Planning Act (as amended by the Localism Act 2011) passed responsibility for dealing with development consent applications for nationally significant infrastructure projects to the Planning Inspectorate, which will examine applications and make recommendations to the Secretary of State at Department for Business, Energy & Industrial Strategy (BEIS) for decisions on energy applications.

Developers of proposed nationally significant energy infrastructure projects should contact the Planning Inspectorate if considering submitting a development consent application. Details can be found on the national infrastructure planning portal.

The Planning Inspectorate has produced a guidance note for developers – PDF wishing to submit an application for a development consent for a nationally significant infrastructure project.

Developers should also have due regard to the Energy National Policy Statements – archived page.

Electricity Act 1989

The Planning Act 2008 disapplied the provisions of the Electricity Act in relation to consents for projects in England and Wales except in certain circumstances:

BEIS continues to deal with consent applications made under the Electricity Act 1989 that were submitted to it prior to the provisions of the Planning Act 2008 coming into force and which have not yet been determined.

You can find out more of the consenting process under section 36 of the Electricity Act in the BEIS guidance note.

In addition, the Marine Management Organisation (MMO) is responsible for considering and determining applications for consent under section 36 of the Electricity Act for offshore generating stations with a generating capacity of more than 1MW but less than or equal to 100MW. Details can be found on the MMO's website.

BEIS also administers the Electricity Act 1989 for overhead lines below 132kV and associated permissions (necessary wayleaves and compulsory purchase orders) in England and Wales. Section 37 (overhead lines) of the Electricity Act 1989 takes into account the views of the local planning authority, local people, statutory bodies (such as the Environment Agency), and other interested parties. All applications go through the local planning authority and appear on the local planning register. In some cases, there may be a public inquiry before the Secretary of State makes a decision, usually as a consequence of an objection being received from the local planning authority.

In July 2014 DECC published revised guidance on the section 37 statutory consents regime for overhead lines in England and Wales:

Guidance note: statutory consenting process in England and Wales under section 37 of the Electricity Act 1989
(PDF, 566KB, 30 pages)

Variations of S36 Consents

This guidance is about varying consents which have been granted under section 36 of the Electricity Act 1989 for the construction or extension, and operation, of electricity generating stations ("section 36 consents") granted by the Secretary of State for Business, Energy and Industrial Strategy (or his predecessors) or the Marine Management Organisation (MMO). It explains how to lodge an application for variation under the Electricity Generating Stations (Applications for Variation of Consent) Regulations 2013.

By applying to vary a section 36 consent it may be possible to obtain authorisation for a generating station to be constructed, extended and/or operated in a way that would not be consistent with the existing consent.

This guidance applies to England and Wales (and adjacent offshore areas)

only. It does not apply to Scotland, where applications to vary section 36 consents must be made to Scottish Ministers.

This guidance is likely to be of interest to:

- developers and operators of generating stations (or proposed generating stations) which are the subject of section 36 consents; and

- local authorities, statutory consultees and other interested parties who are given an opportunity to comment on applications from developers or operators to vary section 36 consents.

Variations of S36 Consents: Guidance

PDF, 415KB, 18 pages

Offshore Wind

Call for Information on the Southern North Sea cSAC Review of Consents

In January 2017, a candidate Special Area of Conservation (cSAC) was submitted to the European Commission to designate an area of the southern North Sea for the protection of harbour porpoise – a species of marine mammal. This designation has triggered a statutory duty, under the Habitats Regulations, for the Department to review a number of planning consents for offshore wind farm developments and to assess the impacts of these projects on the new cSAC.

The Secretary of State has identified an indicative timeline and an approach to this review. This information can be viewed in the covering letter and supporting annexes available on the BEIS Energy Infrastructure site. Stakeholders are invited to respond with any comments by email to RoC@beis.gov.uk or in writing to the Department for Business, Energy and Industrial Strategy, Energy Infrastructure Planning, Level 3, Orchard 2, 1 Victoria Street, London SW1H 0ET. All responses must be received before 3 November 2017.

Onshore Wind

Consultation

As mentioned above government is seeking to achieve the manifesto commitment to give local people a greater say in determining onshore wind applications by removing new onshore wind farms above 50MW from the consenting regimes in the Planning Act 2008 and the Electricity Act 1989. New applications for onshore wind farms in England and Wales will therefore need to apply for planning permission through the Town and Country Planning Act 1990.

Views on this proposal were sought on 3 July 2015 from the two developers that had notified the Planning Inspectorate of three proposed applications for onshore wind farms but who had not yet completed the pre-application stage and submitted an application. A letter was therefore sent to SSE with regards to Keadby onshore wind farm extension and to Vattenfall with regards to Nocton Fen and Mynydd Lluest y Graig onshore wind farms.

View a copy of the letter:

Letter to SSE re Keadby onshore wind farm extension and to Vattenfall re Nocton Fen and Mynydd Lluest y Graig onshore wind farms
(PDF, 115KB, 3 pages)

One developer provided a nil response and one provided a response which was fed in to the Impact Assessment for this policy proposal. This response included a request that government introduce a grace period that would allow onshore wind farm projects, which were registered under the Planning Act process within 12 months from any legislation coming in to effect that would otherwise require such schemes to be considered under the Town and County Planning Act 1990, to be able to continue to progress through the Planning Act process.

Consideration was given to this proposal but as government has made a clear manifesto commitment to give local people the final say on onshore wind farm applications a grace period is not considered to be in line with this commitment. This is because it could result in government taking decisions on onshore wind farm applications long after legislation with the purpose of ensuring these decisions are made at a local level has come in to force.

Next Steps

- government’s manifesto commitment will therefore be implemented by transferring powers for decision making for new onshore wind farms to local planning authorities through two sets of changes – the primary clause already included in the Energy Bill and two Statutory Instruments.

- The Statutory Instruments (Orders) will shortly be introduced and

include;

  - an Order under an existing power in the Planning Act 2008 to remove onshore wind in England and Wales from the defined types of development which are required to have development consent under the Planning Act 2008; and

  - in advance of the Energy Bill coming into force (should it be passed), an Order to direct that the requirement for a consent under section 36 of the Electricity Act 1989 to construct, extend or operate generating stations will not apply to onshore wind farms.

- if the Energy Bill is passed, once in force, it will replace the Order under the Electricity Act 1989.

- the Orders will have the effect that new applications for all onshore wind farms in England and Wales, including those which are in the pre-application stage of the Planning Act 2008 process, would have to apply for planning permission under the Town and Country Planning Act 1990 – where the local planning authority is the principal decision maker.

The TEN- E Regulation EU347/2013 UK Manual of Procedures

The TEN- E Regulation EU347/2013 UK Manual of Procedures

PDF, 823KB, 60 pages

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The Regulation on guidelines for trans-European energy infrastructure EU 347/2013 (the TEN-E Regulation) sets out guidelines for streamlining the permitting processes for major energy infrastructure projects that contribute to European energy networks, referred to as “Projects of Common Interest” (PCIs). The first Union List of PCIs was published in the Official Journal of the European Union on 21 December 2013 and came into force on 10 January 2014.

The TEN-E Regulation establishes that PCIs are necessary to take forward EU energy networks policy and should be given the most rapid consideration in the permitting process that is legally possible. To ensure rapid treatment the TEN-E Regulation sets an overall timetable of 3.5 years for the permitting process, with an indicative period of 2 years for “pre-application procedures” – e.g. preparation of the necessary schedules, concept for public participation and public consultation on PCI proposals – and 1.5 years for determination of applications for “permits”. In the UK this may include planning permissions, development consent orders, marine licences and works authorisations as appropriate, depending on the type of PCI infrastructure and consenting regimes.

The Secretary of State for Business, Energy & Industrial Strategy is the designated national competent authority for PCIs in the UK.

DECC published the Manual of Procedures on the permit granting process for PCIs in the UK. This Manual is of interest to developers responsible for PCIs on the first Union List, parties considering an application for PCI status for a proposed energy network project, regulatory authorities in the UK and other interested parties, who wish to comment on applications for consent for PCIs. This Manual will be updated as necessary to take account of any future changes in the permitting processes in the UK.

Scotland

Marine Scotland, a directorate of the Scottish Executive is responsible for dealing with applications for consent under section 36 of the Electricity Act for offshore generating stations in Scottish waters. The Scottish Executive is responsible for dealing with application for consent made under the same legislative regime for generating projects onshore.

Other consenting mechanisms

BEIS also administers applications made under the Transport and Works Act 1992 in respect of energy-related projects in those UK territorial waters adjoining England. For similar developments adjacent to Wales, the National Assembly for Wales is the determining body. (NB: the Transport and Works Act does not apply in Scotland.)

Environmental Impact Assessment Regulations (England & Wales)

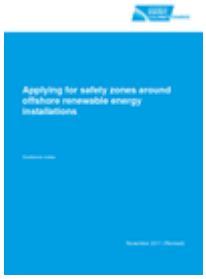
When processing development applications, BEIS considers the environmental consequences of proposals, applying European requirements for Environmental Impact Assessments (EIAs). You can download our guidance on the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000.

These regulations were updated in 2007 to reflect the EU's Public Participation Directive, covered in the supplementary guidance note.

Offshore generating stations safety zones

The Electricity (offshore generating stations) (safety zones) (application procedures and control of access) Regulations 2007

Ministry of Justice: The UK Statute Law Database – The Electricity (offshore generating stations) (safety zones) (application procedures and control of access) Regulations 2007



Applying for safety zones around offshore renewable energy installations: guidance notes

PDF, 153KB, 19 pages

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Decommissioning offshore renewable energy installations (OREIs)

Sections 105 to 114 of the Energy Act 2004 introduce a decommissioning scheme for offshore wind and marine energy installations. Under the terms of the

Act, the Secretary of State may require a person who is responsible for one of these installations to submit (and eventually carry out) a decommissioning programme for the installation.

These decommissioning provisions reflect the department's view – taking into account our international obligations under UNCLOS (United Nations Convention on the Law of the Sea) and OSPAR – that anyone who constructs, extends, operates or uses an installation should be responsible for ensuring that it is decommissioned at the end of its useful life. They should also be responsible for meeting the costs of decommissioning – the 'polluter pays' principle.

BEIS believes it is imposing a legal obligation on businesses to prepare and carry out a decommissioning programme – and potentially requiring them to provide financial security – reduces the risk of them defaulting on their decommissioning liabilities. At the same time, we do not want to hinder the development of offshore renewable energy installations.

The approach is to seek decommissioning solutions which are consistent with our international obligations, as well as UK legislation, and which have a proper regard for safety, the environment, other legitimate uses of the sea and economic considerations. BEIS will act in line with the principles of sustainable development, and we aim to ensure that interested parties are given clear information on the operation of the decommissioning scheme. It is intended that processes for approving decommissioning programmes should be open and transparent, and that decisions should be taken in an efficient way, with as little administrative work as possible.

Full guidance on decommissioning offshore renewable energy installations

PDF, 379KB, 66 pages

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Decommissioning offshore wind installations: cost estimation

BEIS commissioned an independent report to inform thinking around the range of possible future decommissioning costs and liabilities (the report does not necessarily reflect BEIS policy or views):

Decommissioning offshore wind installations: cost estimation

Exploring combined heat and power (CHP)

When submitting power station proposals (except renewable energy projects) under section 36 and under section 14, developers need to show they have explored opportunities to use combined heat and power. You can find the latest guidance on this in English and Welsh.

The guidance also applies to applications to the National Infrastructure Directorate of the Planning Inspectorate for generating stations of 50MW or more, under the Planning Act 2008.

Carbon capture readiness (CCR)

DECC published guidance on the government's policy on carbon capture readiness (CCR)(implemented through section 36 of the Electricity Act 1989). It is intended to supplement the existing guidance on the full application process for consent under section 36. The guidance also applies to applications to the National Infrastructure Directorate of the Planning Inspectorate for generating stations of 50MW or more, under the Planning Act 2008.

The guidance is relevant to applications for power stations with an electrical generating capacity at or over 300 MW (gross capacity) and of a type covered by the EU Large Combustion Plant Directive and only covers consent applications in England and Wales.

The purpose of the CCR guidance is to ensure these relevant power stations can be retrofitted with carbon capture and storage (CCS) equipment at some point in the future when it is technically and economically viable.

Table 1 in the CCR guidance provides an indicative requirement of the amount of space required based on a generating station with 500MW capacity. Since the publication of the CCR guidance, that requirement has been reviewed by Imperial College, London in the Assessment of the validity of "Approximate minimum land footprint for some types of CO2 capture plant" report.

Wayleaves and compulsory purchase orders

BEIS also administers the process for necessary (compulsory) wayleaves and compulsory purchase orders sought by electricity companies for rights over third party land. You can download our guidance on wayleave procedures for

applicants, landowners and occupiers.

BEIS follows the practice set out in the planning circular DoE 1990/14 and WO 1990/20.

Public inquiries relating to electric lines are held in accordance with The Acquisition of Land Act 1981, The Compulsory Purchase (Inquiries Procedure) Rules 2007. You can download guidance on the rules.

Local Authorities' role in new planning regime/new nuclear power stations

The Planning Act 2008 changed the role of local authorities in the new planning regime with particular regard to the development consent process for new nuclear power stations. This letter from the Office for Nuclear Development (OND) and Department for Communities and Local Government (CLG) explains the changes.

National Policy Statements for energy infrastructure

On 18 July 2011 the House of Commons debated and approved the six National Policy Statements for Energy (NPS). On 19th July 2011, the Secretary of State for Energy and Climate Change designated the NPSs under the Planning Act 2008.

Designation of the energy NPSs ensures that we have a planning system that is rapid, predicable and accountable. Planning decisions will be taken within the clear policy framework set out in the NPSs, making these decisions as transparent as possible.

The energy NPSs set out national policy against which proposals for major energy projects will be assessed and decided on by the National Infrastructure Directorate (NID) within the Planning Inspectorate. NID will use NPSs in its examination of applications for development consent, and ministers will use them when making decisions.

It is essential that ministers and officials working on development consent decisions act, and are seen to act, fairly and even-handedly by bringing an unbiased, properly directed and independent mind to the consideration of the matter. DECC therefore published the guidance they follow when dealing with stakeholders who are interested in such cases.

The energy NPSs designated on 19 July 2011 are:

- EN-1 Overarching Energy NPS [PDF, filesize: 960.06Kb]
- EN-2 Fossil Fuel Electricity Generating Infrastructure NPS [PDF, filesize: 232.06Kb]
- EN-3 Renewable Energy Infrastructure NPS [PDF, filesize: 344.8Kb]
- EN-4 Gas Supply Infrastructure & Gas and Oil Pipelines NPS [PDF, filesize: 289.82Kb]

- EN-5 Electricity Networks Infrastructure NPS [PDF, filesize: 322.06Kb]
- En-6 Nuclear Power Generation NPS – Volume I [PDF, filesize: 312.2Kb]
- En-6 Nuclear Power Generation NPS – Volume II

Prior to designation, the energy NPSs were subject to two rounds of Parliamentary Scrutiny and public consultation. The previous government consulted on the draft energy NPSs between November 2009 and February 2010. The second consultation was conducted between 18th October 2010 and 24th January 2011.

Material relating to these consultations can be found at the Energy National Policy Statement (NPS) consultation archive.

You can also download the government response to Parliament, the government response to the consultation and impact assessment.

You can read further information on:

- Appraisals of Sustainability (AoS) which informed the drafting of the NPSs
- Habitats Regulations Assessment (HRA) for the NPSs
- the Strategic Environmental Assessment post-adoption statement which explains:
  - how environmental considerations have been integrated into the NPSs
  - how the AoSs, the views of statutory consultees and others have been taken into account in preparing them
  - why the NPSs set out the development control policies they do rather than any of the reasonable alternatives to them set out in the AoSs
- the Monitoring Strategy which sets out how we will monitor significant environmental effects of implementation of the NPSs
- responses received during the second consultation

Welsh translations of documents

- EN-1 Datganiad Polisi Cenedlaethol Cyffredinol am Ynni [PDF, filesize: 960.06Kb]
- EN-2 Datganiad Polisi Cenedlaethol am Seilwaith Cynhyrchu Trydan Tanwydd Ffosil [PDF, filesize: 232.06Kb]
- EN-3 Datganiad Polisi Cenedlaethol am Seilwaith Ynni Adnewyddadwy [PDF, filesize: 344.8Kb]
- EN-4 Datganiad Polisi Cenedlaethol am Seilwaith Cyflenwi Nwy a Phiblinellau Nwy ac Olew [PDF, filesize: 289.82Kb]
- EN-5 Datganiad Polisi Cenedlaethol am Seilwaith Rhwydweithiau Trydan [PDF, filesize: 322.06Kb]
- EN-6 Datganiad Polisi Cenedlaethol am Gynhyrchu Ynni Niwclear – fersiwn mis Ebrill 2011 Cyfrol I o II [PDF, filesize: 312.2Kb]
- EN-6 Datganiad Polisi Cenedlaethol am Gynhyrchu Ynni Niwclear Cyfrol II o II – Atodiadau

Public inquiries for energy infrastructure

Section 36 of the Electricity Act 1989 – Redetermination of Llanbrynmair / Carnedd Wen wind farm applications

All documentation relating to the redetermination of the Llanbrynmair and Carnedd Wen wind farm applications are available here:

Llanbrynmair and Carnedd Wen wind farm applications redetermination

Environmental consultations for overhead line applications

Application from National Grid Electricity Transmission plc seeking consent to keep installed a replacement tower and 2 sections of overhead conductors on the Pentir to Trawsfynydd 400kV Overhead Electricity Transmission Line. Request by the Secretary of State for further information from the applicant under The Conservation of Habitats and Species Regulations 2010. The Secretary of State is seeking any comments by 27 January 2017.

Recent decisions on energy Infrastructure applications

Recent decision documentation for energy infrastructure applications (including those considered at public Inquiry)

Related information

You can find more information on the Ministry for Justice: The Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 webpage.

Guidance on the inquiries procedure is available in English and Welsh.

Codes of practice on optimum phasing for high voltage power lines

In October 2009 the government made its Response to the Stakeholder Advisory Group on Extremely Low Frequency Electric and Magnetic Fields First Interim Assessment: Power Lines and Property, Wiring in Homes and Electrical Equipment in Homes that was delivered to the Public Health Minister in April 2007.

In that response, the government supported the Stakeholder Advisory Group on Extremely Low Frequency Electromagnetic Fields (SAGE) recommendation to introduce the optimum phasing of all new double-circuit high voltage overhead power lines of 132kV and above and to convert existing power lines where practicable in those circumstances where this would significantly reduce public exposure to extremely low frequency (ELF) electromagnetic fields (EMF) and would be cost effective to do so.

Current government policy on electric and magnetic fields (EMFs) is that power lines should comply with the 1998 International Commission on Non-

Ionizing Radiation Protection (ICNIRP) Guidelines on exposure to EMFs in terms of the 1999 EU Recommendation.

In 2009 2 voluntary codes of practice were developed and agreed between the Energy Networks Association (ENA) and the government. Both codes of practice applied in England, Scotland and Wales. We are pleased to issue a new version of both codes that have now been agreed with the Northern Ireland Executive. These two codes of practice will apply in England, Scotland, Wales and Northern Ireland.

The first voluntary code is intended to provide information to the general public and other interested parties about how the optimal phasing of high voltage double circuit overhead lines can help reduce public exposure to EMFs. The code also sets out clearly what the electricity industry is agreeing to undertake and also how government will monitor compliance with the code.

A second voluntary code of practice has also been developed – Power Lines: demonstrating compliance with EMF public exposure guidelines. This code of practice implements current government policy in relation to public exposure to EMFs and is intended to introduce clarity to the important process by which industry will demonstrate compliance. It sets out the measures the electricity industry will utilise to calculate and demonstrate compliance with assessment field levels in accordance with ICNIRP exposure limits to protect public health.

The ENA will also maintain a publicly available list on its website of types of equipment where the design is such that it is not capable of exceeding the ICNIRP exposure guidelines with evidence as to why this is the case. It will also detail equipment that normally complies with public exposure limits but also where this will need to be demonstrated on a case-by-case basis when required, for example when apply for consent or a wayleave for a line or cable.

Further information can be found on the Energy Networks Association (ENA) website.

The ENA has published Guidelines for Best Practice in relation to Electric and Magnetic Fields (EMFs) in the Design and Management of Low Voltage Networks, the product of the work DECC asked the industry to undertake in order to fulfil the SAGE 2 recommendations in regard to measures relating to low voltage distribution networks and substations.