STATUTORY INSTRUMENTS

2017 No. 580

ELECTRICITY, ENGLAND AND WALES

The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017

Made - - - -	*21st April 2017*
Laid before Parliament	*24th April 2017*
Coming into force - -	*16th May 2017*

The Secretary of State is a Minister designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to the environment.

The Secretary of State has taken into account the selection criteria set out in Annex III to Directive 2011/92/EU of the European Parliament and of the Council of 13th December 2011 on the assessment of the effects of certain public and private projects on the environment [F3].

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by section 36C(2) of, and paragraph 1(3) of Schedule 8 to, the Electricity Act 1989 [F4], makes the following Regulations:

F1 See article 2(a) of S.I. 2008/301.

F2 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46), **section 27** of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations created or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993. Annex XX to that Agreement provides that the term "Member State" in Directive 2011/92/EU includes Iceland, Liechtenstein and Norway. Regulation 24 of these Regulations makes provision in relation to "EEA states".

F3 O.J. L 26, 28.1.2012, p. 1. The Directive was amended by Directive 2014/52/EU of the European Parliament and of the Council of 16th April 2014, O.J. L 124, 25.4.2014, p. 1.

F4 1989 c.29. Section 36C was inserted by section 20 of the Growth and Infrastructure Act 2013 (c.27). Section 36C was amended by section 39 of, and paragraph 48 of Schedule 6 to, the Wales Act 2017 (c.4), but these amendments are not yet in force. "Regulations" in subsection (2) of section 36C is defined in subsection (6) to include regulations made by the Secretary of State other than in the case of section 36 consents relating to generating stations (or proposed generating stations) in Scotland. Functions of the Secretary of State under Schedule 8 of the Electricity Act 1989, in so

far as exercisable in or as regards Scotland, have been transferred to the Scottish Ministers by S.I. 1999/1750.

PART 1

Preliminary

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017.

(2) These Regulations come into force on 16th May 2017.

(3) These Regulations extend to England and Wales.

Application

2.—(1) These Regulations apply to applications for—

(a) section 36 consents;

(b) section 36 variations; and

(c) section 37 consents,

for development in England or Wales or in relevant waters [F5].

(2) Paragraph (1) is subject to—

(a) regulation 38 (exemptions for defence and civil emergencies);

(b) regulation 49 (exemptions where EIA development requires marine licence, etc. for which environmental impact assessment is also required);

(c) regulation 42 (transitional provision).

F5 Functions of the Secretary of State under section 36 of the Electricity Act 1989, in so far as exercisable in or as regards Scotland or in the area of the Renewable Energy Zone designated as the area in relation to which the Scottish Ministers are to have functions, have been transferred to the Scottish Ministers by S.I. 2006/1040. Functions of the Secretary of State under section 37 of the Electricity Act 1989, in so far as exercisable in or as regards Scotland, have been transferred to the Scottish Ministers by S.I. 1999/1750.

Interpretation

3. In these Regulations—

"additional environmental information" has the meaning given in regulation 27(2);

"application website" must be interpreted in accordance with regulation 28;

"consultation body" has the meaning given in regulation 4;

"development" means the carrying out of building, engineering or other operations in, on, over or under land or sea;

"EIA development" has the meaning given in regulation 5;

"EIA Directive" means Directive 2011/92/EU of the European Parliament and of the Council of 13th December 2011 on the assessment of the effects of certain public and private projects on the environment;

"EIA report" must be interpreted in accordance with regulation 17;

"electric line" has the meaning given in section 64 of the Electricity Act 1989;

"environmental impact assessment" must be interpreted in accordance with regulation 7;

"further environmental information" has the meaning given in regulation 26(9);

"generating station" must be interpreted in accordance with section 64 of the Electricity Act 1989;

"Habitats Directive" means Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora [F6];

"local planning authority" has the same meaning as in the Town and Country Planning Act 1990 [F7];

"planning register" means the register kept under—

(a) article 40(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [F8]; or

(b) article 29(1) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 [F9];

"relevant authority" means—

(a) the Secretary of State; or

(b) in relation to an application for a section 36 consent or for a section 36 variation made (or to be made) to the Marine Management Organisation, the Marine Management Organisation [F10];**[**[F11]or

(c) in relation to an application for a section 36 consent or for a section 36 variation made (or to be made) to the Welsh Ministers, the Welsh Ministers;**]**

"relevant waters" means—

(a) waters adjacent to England or Wales that are between the mean low water mark and the seaward limits of the territorial sea; and

(b) waters within a Renewable Energy Zone within the meaning of section 84(4) of the Energy Act 2004 [F12] (other than an area in relation to which the Scottish Ministers have functions);

"screening decision", in relation to proposed development, means a decision about whether or not the development is EIA development;

"section 36 consent" means a consent under section 36 of the Electricity Act 1989 [F13];

"section 36 variation" means a variation of a section 36 consent under section 36C of the Electricity Act 1989;

"section 37 consent" means a consent under section 37 of the Electricity Act 1989 [F14];

"Wild Birds Directive" means Directive 2009/147/EC of the European Parliament and of the Council of 30th November 2009 on the conservation of wild birds [F15].

F6 O.J. L 206, 22.7.1992, p. 7.
F7 1990 c.8. See section 336(1) for the definition of "local planning authority".
F8 S.I. 2015/595.
F9 S.I. 2012/801, to which there are amendments not relevant to these Regulations.

F10 The Marine Management Organisation was established by section 1 of the Marine and Coastal Access Act 2009 (c.23). Certain functions under section 36 of the Electricity Act 1989 were transferred to the Marine Management Organisation by section 12 of that Act.

F11 Words in reg. 3 inserted (1.4.2019) by The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019 (S.I. 2019/292), regs. 1, **2(2)**

F12 Section 84(4) was substituted by paragraph 4 of Schedule 4 to the Marine and Coastal Access Act 2009. S.I. 2005/3153, made in exercise of the power in section 84(5) of the Energy Act 2004, sets out the area of the Renewable Energy Zone in relation to which the Scottish Ministers have functions.

F13 Section 36 was amended by section 93 of the Energy Act 2004, Schedule 1 to S.I. 2006/1054, **paragraph 32** of Schedule 2 to the Planning Act 2008 (c.29), **section 12** of the Marine and Coastal Access Act 2009 and section 78 of the Energy Act 2016 (c.20). Amendments made by section 39 of, and paragraph 47 of Schedule 6 to, the Wales Act 2017 are not yet in force.

F14 Section 37 was amended by paragraph 33 of Schedule 2 to the Planning Act 2008. Amendments made by section 42 of the Wales Act 2017 are not yet in force.

F15 O.J. L 20, 26.1.2010, p. 7.

Meaning of consultation body

4.—(1) Each of the following is a consultation body for the purposes of these Regulations—

(a) every local planning authority for the area in which the development will be carried out and every principal council for that area, if not the local planning authority;

(b) in relation to development in England or in relevant waters adjacent to England that are between the mean low water mark and the seaward limits of the territorial sea—

(i) the Environment Agency [F16];

(ii) the Historic Buildings and Monuments Commission for England [F17];

(iii) Natural England [F18];

(c) in relation to development in Wales or in relevant waters adjacent to Wales that are between the mean low water mark and the seaward limits of the territorial sea—

(i) **[**[F19]save where the Welsh Ministers are the relevant authority,**]** Cadw (that is to say, the executive agency responsible for administering the exercise of functions vested in the National Assembly for Wales relating to the historic environment);

(ii) the Natural Resources Body for Wales [F20];

(d) in relation to development in relevant waters beyond the seaward limits of the territorial sea, the Joint Nature Conservation Committee [F21].

(2) In this regulation, "principal council" has the meaning given in section 270(1) of the Local Government Act 1972 [F22].

F16 The Environment Agency was established by section 1 of the Environment Act 1995 (c.25).

F17 The Historic Buildings and Monuments Commission for England was established by section 32 of the National Heritage Act 1983 (c.47).

F18 Natural England was established by section 1 of the Natural Environment and Rural Communities Act 2006 (c.16).

F19 Words in reg. 4(1)(c)(i) inserted (1.4.2019) by The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) (Wales) Regulations 2019 (S.I. 2019/292), regs. 1, **2(3)**

F20 The Natural Resources Body for Wales was established by article 3 of S.I. 2012/1903.

F21 The Joint Nature Conservation Committee was re-constituted in accordance with Schedule 4 of the Natural Environment and Rural Communities Act 2006: see section 31(b) of that Act.

F22 "Principal council" is defined by reference to "principal area". The definition of "principal area" in section 270(1) has been amended by paragraph 8 of Schedule 16 to the Local Government Act 1985 (c.51) and section 1(8) of the Local Government (Wales) Act 1994 (c.19).

Meaning of EIA development

5. In these Regulations, "EIA development" means any of the following—

(a) development of a description set out in Schedule 1;

(b) development of a description set out in Schedule 2 if—

(i) an EIA report is provided to the relevant authority in connection with an application for a section 36 or 37 consent, or a section 36 variation, for the development; or

(ii) the relevant authority makes a screening decision that the development is EIA development;

(c) development of any other description for which an application for a section 36 or 37 consent, or a section 36 variation, is made (or may be made) if the relevant authority makes a screening decision that the development is EIA development.

PART 2

Environmental impact assessment

CHAPTER 1

General

Environmental impact assessment required for EIA development

6. Where an application is made for a section 36 or 37 consent, or a section 36 variation, for EIA development, the relevant authority must not grant the application unless an environmental impact assessment has been undertaken in respect of the development.

Environmental impact assessment

7.—(1) An environmental impact assessment means a process consisting of—

(a) the preparation of an EIA report in accordance with regulation 17 by a person (the "developer") applying for a section 36 or 37 consent, or a section 36 variation, for EIA development and the provision by the developer to the relevant authority of the EIA report and any further environmental information;

(b) the compliance with the obligations under regulations 22 to 31 that apply in each individual case by the developer and the other persons on whom those obligations are imposed;

(c) the examination by the relevant authority of—

(i) the EIA report;

(ii) any further environmental information; and

(iii) any additional environmental information;.

(d) the reasoned conclusion by the relevant authority on the significant effects of the development on the environment, taking into account the results of—

(i) the examination referred to in sub-paragraph (c); and

(ii) where appropriate, the relevant authority's own supplementary examination; and