

Explanatory Memorandum to the Electricity (Offshore Generating Stations) (Miscellaneous Amendments) (Wales) Regulations 2019.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Electricity (Offshore Generating Stations) (Miscellaneous Amendments) (Wales) Regulations 2019.

Julie James AM

Minister for Housing and Local Government

13 June 2019

1. Description

- 1.1 The Electricity (Offshore Generating Stations) (Miscellaneous Amendments) (Wales) Regulations 2019 make amendments to the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019, the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019 and the Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 in particular.
- 1.2 The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations and the Electricity (Offshore Generating Stations) (Variations of Consent) Regulations 2019 are amended to:
 - Replace the term ‘national newspaper’ with ‘a newspaper circulating in Wales, England and Northern Ireland’; and
 - Remove reference to the Department of the Environment (“DoE”) and replace it with district council in Northern Ireland, where applicable.
- 1.3 The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 are amended to:
 - Specify a period in which publication of the notice of inquiry must take place; and
 - Provide for the publication of the notice of inquiry by local advertisement.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 Regulation 2 addresses the technical reporting point raised by the Constitutional and Legislative Affairs Committee (“CLAC”) in the report dated 14 March 2019. Regulation 3 addresses the technical reporting point raised by the CLAC in the report dated 13 March 2019. Regulation 4 addresses technical points 2 and 3 raised by the CLAC in the report dated 12 March 2019.

3. Legislative Background

- 3.1 These Regulations are made under sections 36(8A) and 36C(2) and (6) of the Electricity Act 1989 (“the 1989 Act”).
- 3.2 Section 36(8A) gives the Welsh Ministers power to make provision about the grant of consents under section 36 of the 1989 Act in relation to generating

stations in respect of which they are the appropriate authority. The Welsh Ministers are the appropriate authority in relation to generating stations (or proposed generating stations) in Welsh waters which do not or will not when constructed or extended exceed 350MW (section 36(10)).

3.3 Section 36C(2) and (6) give the Welsh Ministers power to make provision about the variation of a consent under section 36 of the 1989 Act relating to generating stations in relation to which they are the appropriate authority.

3.4 The Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 The overall policy aim is to provide a workable process in which offshore generating stations within the competence of the Welsh Ministers can be consented under s.36 of the 1989 Act. These Regulations clarify certain details. Were this legislation not made interpretation of certain terms and aspects of procedure, may be open to debate.

4.2 In addition, alterations to legislation are made for the purpose of accuracy and to reflect the transfer of certain planning functions from the DoE in Northern Ireland to district councils in Northern Ireland.

The Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019; and
The Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019

4.3 Specifically, the intended effect of this legislation is to amend the term 'national newspaper' to refer to 'a newspaper circulating in Wales, England and Northern Ireland'. The purpose of this is to provide clarity for the applicant.

4.4 Scotland has been omitted from the definition as no offshore generating station in Welsh waters would be of material interest to bodies and individuals in Scotland due to the lack of any bordering waters between Wales and Scotland. There are bordering waters between Wales and both England and Northern Ireland.

4.5 The purpose of these Regulations is also to provide accuracy. Certain planning functions in Northern Ireland have been transferred from the DoE to district councils in Northern Ireland. The effect is that notice, where applicable, shall be given to those relevant district councils in Northern Ireland rather than the DoE.

The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019

- 4.6 The purpose of these regulations is to provide certainty and consistency in respect of when the publication of the notice of inquiry must take place and the definition of 'local advertisement'. The effect of the legislation is to specify a period in which the notice of inquiry must take place and to provide for the publication of a notice of inquiry by 'local advertisement', as already defined in the Regulations.

5. Consultation

- 5.1 Due to the minor and technical nature of these Regulations, no specific consultation was held.

6. Regulatory Impact Assessment

- 6.1 The requirement for a Regulatory Impact Assessment ("RIA") has been assessed against the RIA code for subordinate legislation. In this instance, an RIA was not considered necessary.
- 6.2 This statutory instrument is made as a consequence of comments made by CLAC and is intended to clarify how the law is stated. It comprises minor amendments to the existing procedures under the 1989 Act which have no policy impact.