

**DEPARTMENT FOR BUSINESS
ENTERPRISE & REGULATORY REFORM**

**THE ELECTRICITY WORKS
(ENVIRONMENTAL
IMPACT ASSESSMENT)
(ENGLAND AND WALES)
(AMENDMENT)
REGULATIONS 2007**

Supplementary guidance
note

URN 07/1569

1. This supplementary note to the existing EIA guidance on the BERR web site provides assistance on the use of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations, as amended to fulfil the Public Participation Directive, 2003/35/EC. The Regulations apply to:
 - applications under section 36 of the Electricity Act 1989 for consent to construct, extend or operate a generating station,
 - applications under section 37 of the Act to install or keep installed an electric line above ground.
2. The supplementary note provides information on:
 - i) The procedural flow of the EIA process
 - ii) The form of the initial public notice
 - iii) The form of the public notice when further information is submitted
 - iv) The form of the public notice on additional information
 - v) The form of words being inserted in decision letters on the right to challenge the decision
 - vi) Some practical information on judicial review
 - vii) The form of the public notice of the decision
3. It has been prepared for developers of power stations and installers of overhead lines, also for local planning authorities and other persons interested in the environmental consideration of a proposal.
4. The amending Regulations come into force on 20 August 2007 and apply only to developments for

which an application for consent under the Act is made on or after that date.

5. The amending Regulations recognise that additional information is generated in the process e.g. the full advice from statutory advisers, representations from the public, supporting documents from objectors and the developer and now seek to formally bring this into the public domain. Thus this material is now to be lodged with the relevant planning authority for public inspection with any queries on it directed to the Consents Teams. It seems reasonable that originators of such material should be the first port of call for any requests for copies of it, with the Department as the fall back.
6. For offshore renewables applications where there is no relevant local planning authority, local authorities closest to any proposed development are likely to receive copies of application papers and may decide to make them available for public viewing. Developers are also likely to lodge copies of their Environmental Statements in public libraries. In some cases developers may also put this material on a website for ease of reference. If members of the public and other interested parties have difficulty locating or viewing this material they should contact the Department's Offshore Consents Team.
7. A comprehensive revision of the guidance on the EIA process will be completed in due course. In the meantime developers should discuss the procedural requirements with members of the Consents Teams at BERR.

Simple overview flowchart

FLOW OF ACTIONS FOR A SECTION 36 OR SECTION 37 CASE WHICH QUALIFIES AS ENVIRONMENTAL IMPACT ASSESSMENT (EIA) DEVELOPMENT

Pre-application stage – developer undertakes preparatory work identifying location, discussing proposal with the relevant planning authority¹, statutory bodies, etc. It is usually of assistance if the developer requests an EIA Screening/Scoping Opinion at this stage Developer undertakes environmental impact assessment. The developer can also consult BERR for advice at any point.



Application stage – (i) application, including the EIA (referred to as an Environmental Statement or ES), and any supporting documents volunteered by the developer, submitted to BERR (ii) copy of application, ES, and any supporting documents, sent to the relevant planning authority and other consultation bodies by the developer
(iii) application advertised by the developer in the London Gazette and local press (for two successive weeks)
Sample initial public notice attached at Annex A
(iv) if section 36, application also advertised by the developer in national press²



Consideration of the application stage – (i) relevant planning authority has 4 months for section 36 and 2 months for section 37 to inform the Secretary of State if it objects to the application

¹ Relevant planning authority has the same meaning as defined in paragraph 2(6) of Schedule 8 to the Electricity Act 1989. The relevant planning authorities will usually be both the County and District Councils covering the proposed development site. However, if the proposed development is sited in a London Borough, a Metropolitan Borough Council or Unitary Authority, there will only be one relevant planning authority.

² For offshore renewables applications there are additional advertising requirements set out in Section 4 of the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006 (SI No. 2064)

(ii) public will have a minimum of 28 days from second date public notice appears to qualify as registered objectors for any public inquiry. Precise date set by developer.

NB The Secretary of State has no power to extend this public notice period

(iii) representations considered at any time up to moment decision made

If relevant planning authority objects Secretary of State must call a public inquiry, except in the case of offshore projects. Even if relevant planning authority does not object Secretary of State has discretionary power to call a public inquiry in the light of objections by other persons.

Responses from relevant planning authority, consultation bodies and public assessed. Further information on the proposal may arise. Site visit may be undertaken.

If further information is formally required to supplement the ES, Consents Teams issue a regulatory direction on behalf of the Secretary of State. When that further information is submitted to the Secretary of State the developer gives notice in the London Gazette and local press (for two successive weeks) and serves the information on consultation bodies and relevant planning authority.

Sample notice for further information attached at Annex B



During the process additional information may arise, such as the full advice of consultation bodies, representations from the public, additional material volunteered by the developer, and this will now be formally brought into the process. On receipt of materially relevant additional information the Secretary of State will forward it to the relevant planning authority, who will make it available for public inspection. BERR will handle any queries on additional information. The developer will issue a notice in the London Gazette and local press (for two successive weeks)

alerting the public to the fact additional information is starting to be received on his proposal. But no subsequent notices will need to be issued on additional information.

Sample notice for additional information is attached at Annex C



Public inquiry set up if required.



Determination of the application stage – If public inquiry called Ministers await report from Inspector. If no public inquiry Ministers proceed to determine application and decision announced.

Decision letters now required to identify right to challenge (see Annex D) and some practical information on that is attached at Annex E

Developer gives notice of the decision in London Gazette and local press (for two successive weeks)

Sample notice of decision attached at Annex F



Post-decision stage – Developer has to comply with consent conditions in order to proceed. If applicable, Secretary of State arbitrates on disputes on planning conditions and defends his decision against legal challenge.

A

SAMPLE – INITIAL PUBLIC NOTICE

Acme Power Limited

Notice of an application for consent to construct and operate a Combined Cycle Gas Turbine Generating station at...

Notice is hereby given thatLtd (“the Company”) has applied under section 36 of the Electricity Act 1989, for consent of the Secretary of State for Business, Enterprise and Regulatory Reform to construct and operate a.....power station at, and for a direction, under section 90(2) of the Town & Planning Act 1990, that planning permission for the development be deemed to be granted.

A copy of the application, with a plan showing the land to which it relates, together with a copy of the Environmental Statement, explaining the company’s proposals in more detail and presenting an analysis of the environmental implications, and a non-technical summary thereof, may be inspected, during normal office hours, at the following addresses: Acme County Council, library, etc.

Copies of the Environmental Statement, at a price of £....for the printed document and £....for a CD-Rom, and of the Non-Technical Summary, which is free of charge, may be obtained, while stocks last, from (company address & website)

Any objections to the proposal, stating the name of the power station and the grounds of the objection, should be made in writing to the Secretary of State for Business, Enterprise and Regulatory Reform c/o Bay 2121, 1 Victoria Street, London SW1H 0ET, or by email to:-@berr.gov.gsi.uk for onshore projects Or Bay 2117 1 Victoria Street, London SW1H 0ET, or by email to:- offshore.renewables@berr.gsi.gov.uk for offshore projects

not later than [fix date – minimum 28 days from date of 2nd ad – so all ads show same closing date]. Other representations are also welcome. Unless otherwise indicated, copies of any objections, and other representations received, will be regarded as public documents.

During the consideration of the proposal the Secretary of State may formally request further information from the developer to supplement the Environmental Statement, and materially relevant additional information may also be generated. If that happens further public notices will give advice on how representations may be made to the Secretary of State on this material.

Following receipt of all views and representations the Secretary of State will either grant or refuse consent for the proposal (with or without conditions). This may involve holding a public inquiry first, depending on whether there is a statutory objection from the relevant planning authority, or the Secretary of State decides to exercise his discretion to call a public inquiry in the light of objection by other persons

Annex B

SAMPLE – FURTHER INFORMATION SUBMITTED

Acme Power Limited

Further to the Notice of an application for consent to construct a Combined Cycle Gas Turbine Generating station at of.....

Notice is hereby given thatLtd (“the Company”) has submitted further information supplementing the Environmental Statement previously submitted in relation to this application.

A copy of the further information has been made available to [name of the relevant planning authority] for public inspection.

Copies of the further information, at a price of £.. for the printed document and £.. for a CD-Rom, may be obtained, while stocks last, from...(company address & website)

Any representations about the further information should be made in writing to the Secretary of State for Business Enterprise and Regulatory Reform, c/o Bay 2121, 1 Victoria Street, London SW1H 0ET, or by email to:- ...@berr.gsi.gov.uk for onshore projects
Or Bay 2117 1 Victoria Street, London SW1H 0ET, or by email to:- offshore.renewables@berr.gsi.gov.uk for offshore projects

not later than [fix date- minimum 28 days from date of 2nd ad – so all ads show same closing date]. Unless otherwise indicated, copies of any representations received will be regarded as public documents.

Annex C

SAMPLE – ADDITIONAL INFORMATION RECEIVED

Acme Power Limited

Further to the Notice of an application for consent to construct a Combined Gas Turbine Generating station at of.....

Notice is hereby given that additional information has been received by the Secretary of State for Business, Enterprise and Regulatory Reform on this application. Copies of this information have been forwarded to [name of relevant planning authority] to be made available for public inspection by being placed on the planning register.

Any queries about this additional information should be directed to the Department at the address that follows.

Any representations about this additional information should be made in writing to the Secretary of State for Business Enterprise and Regulatory Reform, c/o Bay 2121, 1 Victoria Street, London SW1H 0ET, or by email to:- ...@berr.gsi.gov.uk for onshore projects
Or Bay 2117 1 Victoria Street, London SW1H 0ET, or by email to:- offshore.renewables@berr.gsi.gov.uk for offshore project

not later than [fix date- minimum 28 days from date of 2nd ad – so all ads show same closing date]. Unless otherwise indicated, copies of any representations received will be regarded as public documents.

Any subsequent additional information received by the Secretary of State before determination of the application, if considered to be materially relevant, will be similarly forwarded to [name of relevant planning authority] to be placed on the planning register and made available for public inspection, with any queries about this information dealt with by the Department.

Annex D

Proposed insertion in decision letters

Appeals

There is no statutory appeals mechanism for applications under s.36 or s.37 of the Electricity Act 1989 and the Secretary of State's decision is final unless it is successfully challenged in the High Court. That challenge would be by the way of the process known as judicial review and involves making an application to the High Court promptly and in any event no later than 3 months after a decision. The Court will not consider the merits of the potential development; only whether the Secretary of State has properly exercised his powers and the procedures have been properly followed. Further information on judicial review is contained in the supplementary note to the existing guidance on the Electricity Works EIA Regulations, available on BERR's website.

Judicial review

1. Judicial Review is the mechanism by which the High Court in England and Wales supervises the proper exercise of administrative functions, including how this Department carries out its statutory function to grant or refuse consents.

2. The procedure is concerned with the improper exercise of power and is not a process to re-evaluate the merits of the development. Thus the court will not impose its own view on the development but in a successful judicial review the decision will usually be quashed and the Secretary of State will be required to remedy the in most cases essentially 'procedural' deficiency found by the Court, and then retake the decision. As long as it is taken in a lawful way, that decision could, of course, be the same decision, for example to grant or to refuse consent.

3. There is a procedure to follow, whereby an application is made to the High Court for permission to proceed with a claim for judicial review. The Court will only grant permission if it considers that there is an arguable case. Such applications have to be made promptly and in any event not later than three months after the decision complained of. Judicial review cases could take 6 months to a year (or longer) to be concluded.

4. You should, though, seek your own legal advice before considering a judicial review challenge. There

are cost implications and legal requirements to be understood.

Annex F

SAMPLE – NOTICE OF DECISION

Acme Power Limited

Further to the Notice of an application for consent to construct a Combined Cycle Gas Turbine Generating station at of.....

Notice is hereby given thatLtd (“the Company”) has been granted consent by the Secretary of State to construct and operate apower station...., together with planning permission under section 90(2) of the Town & Country Planning Act 1990.

Copies of the decision statement and consent documentation can be obtained from the Secretary of State for Business, Enterprise and Regulatory Reform, c/o Bay 2121, 1 Victoria Street, London SW1H 0ET, or by email to:- ...@berr.gsi.gov.uk. for onshore projects Or Bay 2117 1 Victoria Street, London SW1H 0ET, or by email to:- offshore.renewables@berr.gsi.gov.uk for offshore projects

Copies of the decision statement and consent documentation have been made available to [name of

relevant planning authority] to be made available for public inspection.