

2017 No. 451

ELECTRICITY

**The Electricity Works (Environmental Impact Assessment)
(Scotland) Amendment Regulations 2017**

Made - - - - - *14th December 2017*

Laid before the Scottish Parliament *15th December 2017*

Coming into force - - - *18th December 2017*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), section 36C(2) of the Electricity Act 1989(b) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2017 and come into force on 18th December 2017.

Amendment of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

2.—(1) The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017(c) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) (interpretation)—

(a) for the definition of “EIA development” substitute—

““EIA development” means—

(a) in the case of an application for Electricity Act consent, development which is either—

(i) Schedule 1 development; or

(ii) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location; and

(b) in the case of a variation application, a proposed variation which is either—

(i) Schedule 1 development; or

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), schedule 8, paragraph 15(3), (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act, and Part 1 of the schedule of the European Union (Amendment) Act 2008 (c.7). Functions relating to the assessment of the effects of certain electricity works projects on the environment are exercisable concurrently by the Scottish Ministers and Minister of the Crown by virtue of S.I. 1999/1750, article 3 and schedule 2.

(b) 1989 c.29. Section 36C was inserted by section 20(2) of the Growth and Infrastructure Act 2013 (c.27).

(c) S.S.I. 2017/101 as amended by S.S.I. 2017/168.

- (ii) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;”;
 - (b) after the definition of “multi-stage consent” insert—
 - ““proposed variation” has the meaning given in regulation 28(3);”;
 - (c) in the definition of “Schedule 1 development” for “of a description set out” substitute—
 - “, or a change to or extension of development, described”; and
 - (d) in the definition of “Schedule 2 development” for “of a description set out” substitute—
 - “, or a change to or extension of development, described”.
- (3) In regulation 28 (application of Regulations to variation applications)—
- (a) for paragraph (1) substitute—
 - “(1) The Scottish Ministers must not—
 - (a) in relation to a variation application in respect of EIA development, vary the relevant section 36 consent; or
 - (b) when varying a section 36 consent, direct that planning permission is deemed to be granted under section 57(2) or (2ZA) of the 1997 Act in respect of EIA development,
 unless an environmental impact assessment has been carried out in respect of the proposed variation and in carrying out such an assessment the Scottish Ministers must take the environmental information into account.

(1A) These Regulations, other than regulation 3, apply in relation to a variation application as they apply in relation to an application for consent under section 36 of the Electricity Act 1989 with the modifications specified in paragraph (2).”.
 - (b) in paragraph (2)—
 - (i) for sub-paragraph (a) substitute—
 - “(a) references (however worded)—
 - (i) to an application for a section 36 consent or Electricity Act consent are to be treated, other than in regulation 2, as if they are references to a variation application;
 - (ii) to an EIA application are to be treated as if they are references to a variation application for EIA development;
 - (iii) to the proposed development and to the development in respect of which the application for a section 36 consent relates are to be treated, other than in schedules 1 and 2, as references to the proposed variation to which the variation application relates; and
 - (iv) to the grant of consent are to be treated as if they are references to the variation of a section 36 consent;”;
 - (ii) in sub-paragraph (c)(i) after “proposed” insert, “varied”; and
 - (c) in paragraph (3) before the definition of “proposed varied development” insert—
 - ““proposed variation”, in relation to a variation application, means the proposed change to (including a proposed change in the manner or period of operation), or the proposed extension of, the development—
 - (a) authorised by the relevant section 36 consent; or
 - (b) in respect of which a section 57 direction has been given in connection with that relevant section 36 consent;”.
- (4) In regulation 36(2) (co-ordination of assessments)—
- (a) for “61” substitute, “63”; and
 - (b) for “2010” substitute, “2017”.

(5) In schedule 1 (descriptions of development for the purposes of the definition of “Schedule 1 development”)—

- (a) for “The carrying” substitute, “1. The carrying”;
- (b) after paragraph (2) insert, “or”;
- (c) for “kilometres; or” substitute, “kilometres.”;
- (d) for “(4) any” substitute, “2. Any”; and
- (e) for “paragraphs (1) to (3)” substitute, “paragraph 1”.

(6) In schedule 2 (descriptions of development for the purposes of the definition of “Schedule 2 development”)—

- (a) for “The carrying” substitute, “1. The carrying”;
- (b) after paragraph (1) insert, “or”;
- (c) for “1989; or” substitute, “1989.”;
- (d) for “(3) any” substitute, “2. Any”;
- (e) for “paragraphs (1) or (2)” substitute, “paragraph 1”;
- (f) for “For the purpose” substitute, “3. For the purpose”; and
- (g) in the definition of “sensitive area” for sub-paragraph (c) substitute—
 - “(c) a European site within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2017(a);”.

St Andrew’s House,
Edinburgh
14th December 2017

PAUL WHEELHOUSE
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 Regulations”) in respect of the application of the 2017 Regulations to an application under section 36C of the Electricity Act 1989 (a “variation application”). The 2017 Regulations implement Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p.1) as amended by Council Directive 2014/52/EU (OJ L 124, 25.04.2014, p.1) in relation to consents required under sections 36 and 37 of the Electricity Act 1989.

A variation application is an application to vary an existing consent granted under section 36 of the Electricity Act 1989 to construct and operate a generating station. Regulation 28 of the 2017 Regulations applies the 2017 Regulations to variation applications as the 2017 Regulations apply to section 36 consents, subject to certain modifications. The 2017 Regulations require an environmental impact assessment to be carried out for applications for EIA development. The changes made by regulation 2(2) to regulation 2(1) of the 2017 Regulations make it clear that a variation application relates to EIA development if the proposed variation is likely to have significant effects on the environment. A definition of “proposed variation” is included. Regulation 2(3) amends regulation 28 of the 2017 Regulations. New paragraph (1) makes it clear that, as for other EIA applications, Ministers may not grant a variation application (or make a related direction under section 57 of the Town and Country Planning (Scotland) Act 1997 unless an environmental impact assessment has been carried out. New paragraph (1A) operates to apply the 2017 Regulations subject to the modifications set out in regulation 28(2) (as read with regulation 28(3)) as amended by regulation 2(3)(b) and (c).

Regulation 2(5) and (6)(a) to (f) rearrange the structure of schedules 1 and 2 in consequence of changes to regulation 28.

Regulation 2(4) and (6)(g) update references following the replacement of the Conservation of Habitats and Species Regulations 2010 by the Conservation of Habitats and Species Regulations 2017.

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