

# SL(5)343 – The Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019

## Background and Purpose

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These Regulations make provision about inquiries caused to be held by the Welsh Ministers in relation to applications:

- for consent under section 36 of the Electricity Act 1989 to construct, extend or operate an offshore generating station in Welsh waters which has or will have a capacity not exceeding 350 megawatts.
- Under section 36C of the Electricity Act 1989 to vary a section 36 consent.

## Procedure

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Negative

## Technical Scrutiny

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Three points are identified for reporting under Standing Order 21.2 in respect of this instrument:-

- 1. Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

The Regulations contain a number of typographical errors. Regulation 2(4)(a)(ii) (b) (ii) should start with a 'where' rather than 'were'. In Regulation 3 (3) there is a superfluous 'be' after 'requirement is'. In regulation 16 (3), there appears to be a superfluous 'to be'. Whilst we accept these are minor errors which are unlikely to cause confusion, they are however drafting errors.

- 2. Standing Order 21.2 (v) that for any particular reason its form or meaning needs further explanation. Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 16 (1) states that "the applicant must in two successive weeks publish a notice stating..." – It is not clear when publication is to take place. Regulation 16 (1) (d) provides that the notice must include the location, date and time of the inquiry. This means publication would have to take place after the applicant has received notice of the inquiry under regulation 15. There would appear however to be nothing to stop an applicant giving notice either immediately before or during the inquiry. As a purpose of the notice is to make the location, date and time of the inquiry known to persons who are likely to be affected by any consent applied for, (presumably so that they can attend) serving the notice immediately before or during the inquiry may mean that such persons are unable to attend having received insufficient notice.



**3. Standing Order 21.2 (v) that for any particular reason its form or meaning needs further explanation. Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.**

In regulation 16 (2) it isn't clear why the definition of "by local advertisement" which is used else- where in the regulations and is defined in regulation 2 isn't used. It is not clear therefore whether regulation 16 (2) requires the applicant to do something different than to publish "by local advertisement."

### Merits Scrutiny

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No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### Implications arising from exiting the European Union

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No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### Government Response

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The technical scrutiny element of the draft report refers to three drafting errors, all of which are accepted.

#### Point 1 – typographical errors

The reporting point is noted and accepted. The government will look to correct this point by way of correction slip.

#### Point 2 – Regulation 16(1) - is not clear when publication is to take place

The wording in regulation 16 (1) is derived from paragraph 4 of Schedule 8 to the Electricity Act 1989 ("Schedule 8") and has operated for a significant period of time without apparent problem. It is, however, accepted that providing a timeframe for when publication is to take place would provide clarity. An amending instrument will be made and laid as soon as reasonably practicable.

#### Point 3 – Regulation 16 (2) it is not clear why the definition of "by local advertisement" which is used else- where in the regulations and is defined in regulation 2 isn't used.

This provision is derived from paragraph 4 of Schedule 8. The wording is broadly the same as the definition of "by local advertisement". However it is accepted that, for consistency, it would be helpful if regulation 16(1) referred to publication "by local advertisement" with 16(2) being omitted. An amending instrument will be made and laid as soon as reasonably practicable.

### Legal Advisers

### Constitutional and Legislative Affairs Committee

**12<sup>th</sup> March 2019**

