

**DEPARTMENT FOR BUSINESS**  
**ENTERPRISE & REGULATORY REFORM**

**THE CONSENTING PROCESS FOR  
ONSHORE GENERATING STATIONS  
ABOVE 50MW IN ENGLAND AND  
WALES**

A guidance note on  
Section 36 of the  
Electricity Act 1989

OCTOBER 2007

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## Part 1 - Introduction

1.1 The Government's report on the Energy Review 'The Energy Challenge'<sup>1</sup> examined the UK's progress against the medium and long-term goals set out in the 2003 Energy White Paper 'Our energy future - creating a low carbon economy'. It also considered options for further steps to achieve those goals.

1.2 A number of actions on planning for energy infrastructure projects were identified in the Review, amongst them a commitment to publish generic guidance in England and Wales on Section 36 of the Electricity Act 1989, including information on co-operation between applicants and the network companies about joining up on applications.

1.3 The Government is also committed under Article 6 of the Electricity Market Directive<sup>2</sup> to publishing the criteria against which generating stations are considered.

1.4 This guidance seeks to fulfil those remits and builds on guidance already available in Circular 14/90 Electricity Generating Stations and Overhead Lines. It starts with a simplified flowchart to give an overview of the process before setting out more detail on particular aspects of it. It is intended that the guidance should be of use to prospective applicants, planning authorities, members of the public and any other interested parties.

1.5 Section 36 applies to proposals for the construction, extension or operation of an onshore electricity generating station whose capacity exceeds (or, when extended, will exceed) 50 Megawatts electrical (MW). Section 36 also applies to proposals for an offshore generating station over 50 MW, although the threshold is reduced to 1 MW for a renewable generating station within UK territorial waters.

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<sup>1</sup> 11 July 2006

<sup>2</sup> EU Directive 2003/54/EC on common rules for the internal market in electricity

1.6 For offshore consents, a FEPA<sup>3</sup> licence is also required from the Marine and Fisheries Agency, an executive agency of Defra. Under FEPA, a licence is required from the Secretary of State for Environment, Food and Rural Affairs (or, in Wales, the Welsh Assembly Government) for depositing articles or materials in the sea/tidal waters, including the placement of construction material or disposal of waste dredgings. However, separate detailed guidance on offshore wind farm consents is already available and this guidance does not seek to replicate it. The offshore guidance is available at: <http://www.berr.gov.uk/files/file22990.pdf>

1.7 This guidance focuses mainly on the onshore consents process, for which no comprehensive guidance has previously been published, and cross-refers where appropriate to the existing offshore guidance.

1.8 BERR's Electricity Developments Consents team handle various electricity consenting and onshore gas pipeline applications that fall to be determined by the Secretary of State for Business, Enterprise and Regulatory Reform. They receive objections and other letters on behalf of the Secretary of State and assess applications on his behalf. They also aim to make sure that the procedures are carried out fairly and transparently. A site visit may be carried out with the relevant planning authorities and applicant in order to familiarise the case officer with the development site and surrounding area (usually after the consultation period has closed). However, neither the Secretary of State nor officials acting on his behalf can discuss the merits of individual cases or give an indication of what the Secretary of State's decision might be.

1.9 Any queries on the Section 36 process should be addressed to the teams below (depending on whether the consent sought is onshore or offshore) who can then identify the appropriate manager to deal with that query:

The Onshore Consents Team  
Energy Group

The Offshore Consents Team  
Energy Group

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<sup>3</sup> *Food and Environment Protection Act (Part II) 1985*

Bay 2121  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000  
(switchboard)  
Fax: 020 7215 2601  
E-mail:  
[lawrence.cadman@berr.gsi.gov.uk](mailto:lawrence.cadman@berr.gsi.gov.uk)

Bay 2117  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000  
(switchboard)  
Fax: 020 7215 2601  
E-mail:  
[tony.keegan@berr.gsi.gov.uk](mailto:tony.keegan@berr.gsi.gov.uk)

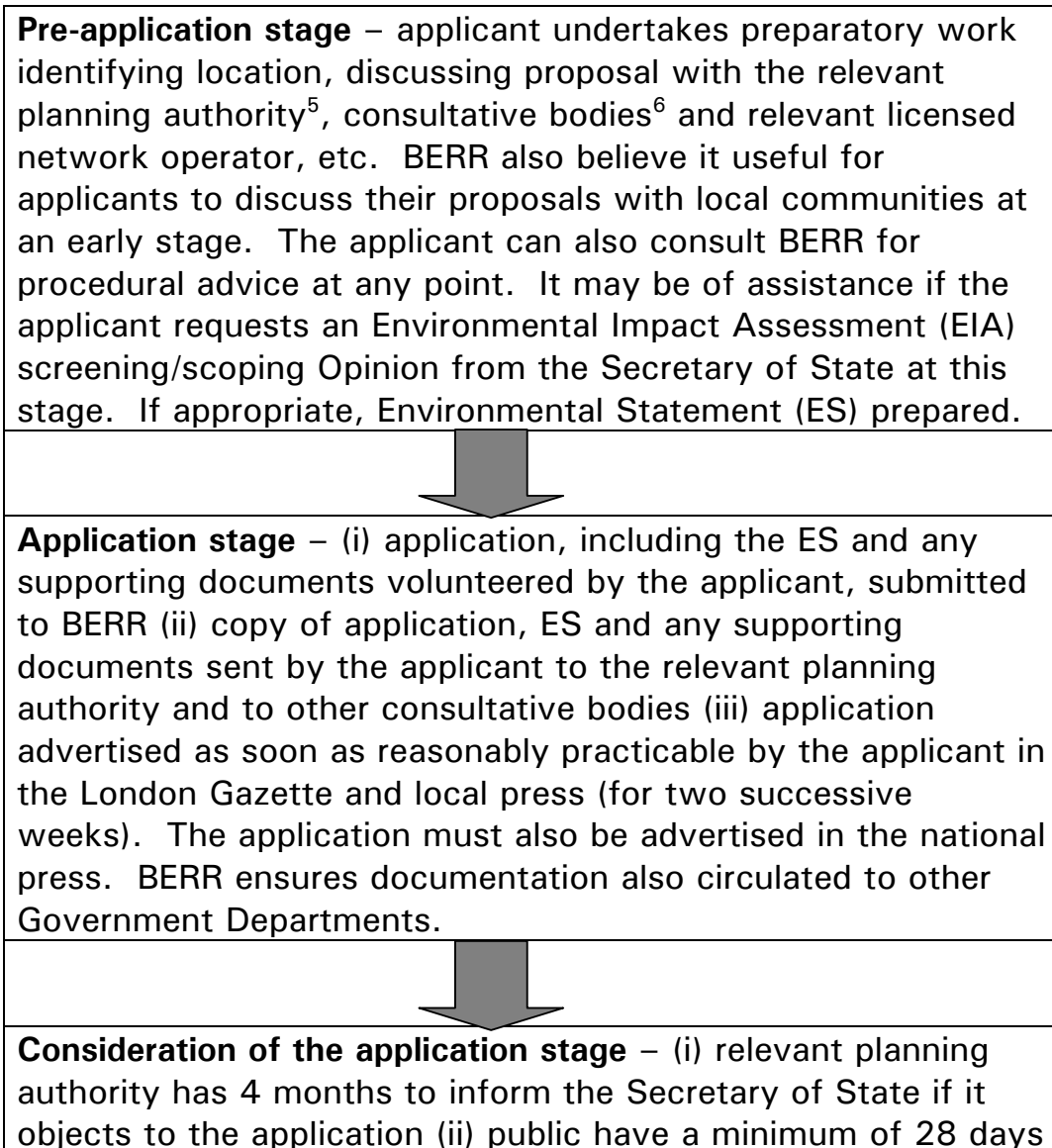
1.10 This guidance only covers the consenting process in England and Wales. Consents in Scotland under the Electricity Act 1989 are issued by Scottish Ministers. Anyone with enquiries about Section 36 consents in Scotland should contact the Scottish Executive:

Debbie McCall  
Energy Consents Unit  
Energy and Telecommunications Division  
The Scottish Government  
Meridian Court  
Glasgow G2 6AT  
Tel: 0141 242 5795  
E-mail: [debbie.mccall@scotland.gsi.gov.uk](mailto:debbie.mccall@scotland.gsi.gov.uk)

1.11 Please note that the information provided in this document is neither definitive nor exhaustive. It sets out general guidance rather than a mandatory application process to be followed in order to obtain the required consents under Section 36 of the Electricity Act 1989. It should be read in conjunction with the legislation to which it refers and other legislative guidance or advice where available. All applications made under Section 36 or any other statutory regime will be considered on their merits and nothing in this guidance will pre-judge the outcome of any such decision.

## Part 2 – Overview flowchart

### FLOW OF ACTIONS FOR SECTION 36 PROCESS<sup>4</sup> AND ENVIRONMENTAL IMPACT ASSESSMENT (EIA)



<sup>4</sup> Alongside s36 consent, applicants are required to obtain planning permission for developments. The Secretary of State can provide 'deemed' planning permission under Section 90(2) of the Town and Country Planning Act 1990.

<sup>5</sup> 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. Where the site is close to a local authority boundary the neighbouring local authority may also need to be consulted.

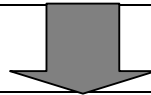
<sup>6</sup> As defined in the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000.

from date of second public notice to make representations on the Section 36 application and to qualify as registered interested parties for any public inquiry.

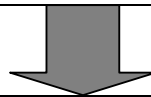
If relevant planning authority objects Secretary of State must call a public inquiry. Even if relevant planning authority does not object Secretary of State has discretionary power to call a public inquiry in light of other representations received.

Responses from relevant planning authority, statutory bodies and public assessed. Further information from applicant sought as necessary. Site visit may be undertaken by the consents team (usually after the consultation period has ended).

Public inquiry set up if required. Applicant gives notice of the public inquiry in local press (for two successive weeks). Secretary of State may require additional notification to be given.



**Determination of the application stage** – If public inquiry called Ministers await report from Inspector. Ministers will aim to give decision within three months of receipt of the Inspector's Report. If no public inquiry Ministers proceed to determine application and decision announced. The decision letter will give details of the decision. Applicant gives notice of the decision in London Gazette and local press (for two successive weeks).



**Post-decision stage** – Applicant has to comply with consent and planning conditions in order to proceed. If applicable, BERR Ministers can act as the point of arbitration on disputes on planning conditions and defence of decision against legal challenge.

## Part 3 – The process

### Introduction

3.1 Since privatisation of the electricity industry, proposals for new electricity generating stations to meet the evolving needs of the energy market have been a matter for private sector companies. Whilst Government may seek to influence the market through various incentives (e.g. renewables obligation, climate change levy exemption), it is ultimately for the market to determine what development proposals and what types of technology it puts forward.

### Planning Jurisdiction

3.2 Power stations onshore below the Section 36 threshold are considered by local planning authorities under the requirements of the Town and Country Planning Act 1990 as amended.

3.3 Section 36 covers all generating technologies including coal, gas, nuclear, energy from waste and renewable forms of energy such as wind and biomass. There is no restriction on who applies for a Section 36 consent, however any such consent will be granted to the applicant who will usually be defined as including his assigns and successors in title.

3.4 Section 36 is administered by the Secretary of State for Business, Enterprise and Regulatory Reform for proposals for England and Wales, and by Scottish Ministers for proposals in Scotland. This guidance note only considers how the Secretary of State for Business, Enterprise and Regulatory Reform administers his function.

3.5 Alongside Section 36 consent applicants will need planning permission for the development. This is usually obtained by also applying to the Secretary of State for 'deemed' planning permission. This term relates to a provision under Section 90(2) of the Town and Country Planning Act 1990 whereby the Secretary of State can provide the planning

permission for the development, rather than the applicant having to separately apply to the local planning authority for it. Planning permission provides the conditions by which the development is controlled and mitigated and is enforced by the local planning authority. Even if an applicant applies directly to the relevant planning authority for planning permission under the Town and Country Planning Act 1990, Section 36 Consent will still be required from the Secretary of State.

3.6 Conditions can also be attached to the section 36 consent itself, essentially for energy policy reasons covering what the energy development is, how much time the applicant has to start the development, and more recently (for non-CHP fossil fuelled generating stations) requiring the development to have enough land for carbon capture and storage.

3.7 Some ancillary and supporting facilities may also be included in the application for deemed planning permission, although this document does not attempt to give detailed guidance on this issue, which depends very much on the circumstances of the individual project. As a rule of thumb, ancillary facilities which are on-site or very localised may be included, for example electricity switching and transforming substations, whereas, for example, pipelines or railway lines stretching for some miles, or jetties remote from a generating station, may not be included. It is also important that any ancillary development is properly considered – i.e. acknowledged and if part of the application properly covered - in the Environmental Impact Assessment.

3.8 Applicants may seek clarification from BERR concerning the scope of the Section 36 application, including on issues such as ancillary facilities and ash disposal, at the same time as they request a 'scoping opinion' from the Secretary of State for the purposes of the Environmental Impact Assessment (see paragraph 3.20 below).

3.9 The Secretary of State for Business, Enterprise and Regulatory Reform also administers an energy policy control on new oil-fired and gas-fired power stations through Section

14(1) of the Energy Act 1976, which, as well as encompassing projects falling within the scope of Section 36, captures those oil or gas-fired projects of 10 MW or more handled by local planning authorities.<sup>7</sup>

3.10 Section 36 does not include consent for connections to the electricity grid system which are dealt with under Section 37 of the Electricity Act 1989 and which is required when the connection is to be installed above ground and is in excess of 20kV (kilovolts) or is less than 20kV but supplies more than one consumer. Underground connections and overhead lines supplying less than a single consumer with less than 20kV need to be considered through the planning regulations and may be classed as permitted development.

### **Applying for consent - pre-application stage**

3.11 Before submitting a Section 36 application, it is best practice for the applicant to have consulted widely with relevant statutory and non-statutory bodies and members of the local community in order to gauge the reaction to the proposal and to identify any particular issues. The applicant will use this information to help in preparing a detailed Environmental Statement (ES). An ES is mandatory for proposals above 300MW (thermal) but in practice is normally required for a Section 36 proposal.

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<sup>7</sup> *This control is exercised on a GB-wide basis*

### **Good practice tips for pre-application stage**

- **Consult widely and at an early stage** with the relevant planning authorities, statutory and non-statutory bodies (such as parish councils, the RSPB, and local interest groups such as wildlife trusts, conservation and archaeological groups, who will have specialist local knowledge of how the development may impact upon the area).
- In order to ensure that the potential for use of **Combined Heat and Power (CHP)** is fully explored, applicants are advised to contact regional planning authorities and the Regional Development Agencies to ensure that any existing and future heat customers are identified. Applicants are also advised to contact DEFRA and their Good Quality CHP team to ensure that they have fully explored the incentives for CHP and the economic benefits of Good Quality CHP. Details can be found in the recently updated guidance to applicants to maximise the uptake of CHP where economically feasible:  
<http://www.berr.gov.uk/files/file35728.pdf>
- Ensure that all the necessary **environmental surveys and studies** have been carried out before submitting the application. If not, the Secretary of State and consultees won't be able to consider the application properly and the applicant will be directed to carry out the assessments later, leading to delays.
- Consider the **grid connection** and the consents process for this required under Section 37 of the Electricity Act 1989 (as well as possible requirements for related Compulsory Purchase Orders and/or agreements with landowners). Discuss the grid connection with the network company at an early stage. Although it will not be possible to carry out a full Environmental Impact Assessment until the clearer route options are known, the Secretary of State considers that an applicant of a generating station will still need to demonstrate that they have given consideration to how the power will be delivered from the development site, the likely impact and whether that impact can be mitigated (e.g. where it is intended to connect to the grid, the likely route corridor, whether it will cross sensitive areas such as National Parks, SSSIs, SPAs, bridle paths, other public rights of way, etc).
- **Set a realistic timetable** for the development proposal. For example, it is worth speaking to the relevant planning authority before submitting a Section 36 application to find out how their planning committee cycle fits in with the statutory consultation period. The Onshore Consents Team (see contact details at paragraph 1.9) will also be able discuss procedural matters relating to Section 36 applications and give an indication of timings. Factor in the possibility that an inquiry might need to be held.

## **Applying for consent - the Environmental Statement (ES)**

3.12 In most cases, an applicant wishing to develop a generating station above 50 MW will need to have carried out a detailed Environmental Impact Assessment (EIA) and provide an Environmental Statement (ES) in support of an application in accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 ('the 2000 Regulations') as amended by the Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2007. Guidance on the 2000 Regulations is available at:

<http://www.berr.gov.uk/files/file21857.pdf>

3.13 An EIA may not always be required for extensions to existing generating stations, but even in such cases the applicant will need to establish with BERR whether the proposal is "EIA development" under Schedules 1 or 2 or Section 3(4) of the 2000 Regulations. Where an EIA is required, publicity requirements apply, as set out in the 2000 Regulations as amended.

3.14 Schedule 4 of the 2000 Regulations sets out the content of an ES. The ES should include a description of the likely significant effects of the proposed development on the environment (including its cumulative impact with other proposals which are either consented, constructed or in the planning system, but not including those proposals that are only at the conception phase, including undergoing 'scoping opinions' – see paragraph 3.20 below). The ES should include a description of measures to prevent, reduce and where possible offset any significant adverse effects.

3.15 Potential applicants will also need to provide details of the connection to the electricity network and if gas-fired an indication of how the gas is to be delivered, although that might be the subject of a separate application to the Secretary of State or local planning authority. For other fuels - e.g. coal, biomass - transport arrangements ought to be covered in the EIA.

3.16 Applicants should state whether they or the Electricity or Gas Network Operator will be responsible for designing and building the connection or the gas pipeline and if this is not included in the Section 36 ES then a separate ES may be required by the network operator when they come to design and build the connection. Further comments on co-operation between generating station applicants and network companies are set out at paragraphs 3.53 to 3.60. If the applicant intends to progress the Section 37 or gas pipeline consent as part of the generating station project, they will have to provide sufficient information on the proposed route or routes (or route corridors) for the connection to enable it to be properly assessed together with an assessment of any likely environmental effects (including habitat to be traversed and proposed mitigation measures) and, if applicable, to give consideration to the sharing of electrical or gas connections with any other proposed developments in the area.

3.17 If applicants are unable to provide sufficient details of the connection at the time they submit their Section 36 application they should acknowledge that the time to prepare an ES may be affected by the time taken to agree a connection with the licensed network operator and a decision should be taken on whether the connection should require a separate EIA. In planning and developing their systems, network operators have a statutory obligation under Schedule 9 of the Electricity Act 1989 to take account of impacts upon 'amenity'<sup>8</sup> and to mitigate these impacts, balancing this requirement against the need to develop an economic and efficient design solution. Developing and assessing network designs against these requirements so as to identify a preferred solution does take time, which can be considerable for a more complex scheme.

3.18 If the proposed development, taking into account other plans or proposals, is likely to have a significant effect upon a 'European site' - a designated nature site pursuant to the Conservation (Natural Habitats, etc) Regulations 1994, which implement the Habitats Directive (92/43/EEC) - consent can

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<sup>8</sup> The natural environment, cultural heritage, landscape and visual quality.

only be granted if it can be shown that it will not have an adverse effect upon the integrity of the site, unless there are no alternative solutions and there are imperative reasons of overriding public interest to justify approval. It is therefore important that the impact of any electrical connection or gas pipeline is considered at this time. If applicants have considered alternative sites for the proposed development, the ES should provide an outline of the main alternatives studied and an indication of the main reasons for the choice made, taking into account the environmental effects.

3.19 The ES should contain information on the likely visual impact of the generating station. It is not necessary to provide detailed information on issues such as plant configuration. However, for the ES to be robust the maximum parameters (mass) of the generating station will be required to allow the EIA to adequately assess the environmental impacts of the development. The requirement for adequate provision of environmental information is referenced later in this guidance at paragraph 4.2.

3.20 Potential applicants are advised to ask the Secretary of State for a formal 'scoping opinion'<sup>9</sup> under the 2000 Regulations. This is a provision whereby an applicant may ask the Secretary of State for his formal opinion on the information to be supplied in the ES, allowing the applicant to be clear what the Secretary of State considers are likely to be the main effects of the development and what the ES should focus on.

3.21 Applicants may also seek a screening opinion from the Secretary of State if they are unsure whether the proposal may be an EIA development (an EIA will normally be required for all new generating station projects but may not be required for extensions of existing generating stations). Further detail is set out in the detailed flowchart at Annex i. Guidance on scoping opinions, is included in the Guidance on the 2000 Regulations on the BERR website.

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<sup>9</sup> *This may in practice be accompanied by a 'scoping report' setting out information helpful to the Secretary of State, although there is no statutory basis for this beyond the provision for supporting information to be submitted with the request for a scoping opinion.*

*What makes a good quality Environmental Statement (ES)?*

- *Good preparation is everything. If the ES is considered deficient, the Secretary of State will issue a direction for further information. This in turn will need to be gathered and advertised and a further opportunity will have to be given for representation to be made.*
- *Ensure that the ES and, in particular the Non-Technical Summary is easy to understand, well cross-referenced and written in plain English.*
- *If requested, don't rely on a scoping opinion from the Secretary of State to capture everything that should be included in the ES. Only a limited consultation exercise is carried out and consultees have only three weeks to make their views known. Additionally, issues may come to the fore later in the process that were unforeseeable when the scoping opinion was given.*

3.22 There is no set application form for a Section 36 consent. The 1989 Act lays down the statutory basics:

*SCHEDULE 8  
CONSENTS UNDER SECTIONS 36*

*Section 36: Paragraph 1 of Schedule 8 that it "shall be in writing and shall describe by reference to a map the land to which the application relates, that is the land (a) on which the generating station is proposed to be constructed, extended or operated; or (b) across which the electric line is proposed to be installed or kept installed."*

3.23 A non-exhaustive checklist for Section 36 applications is set out at Annex v.

### **Publicity Requirements**

3.24 At the same time as the applicant applies to the Secretary of State, they are required to notify the relevant local planning authority of the application. DoE Circular 14/90 'Electricity Generating Stations and Overhead Lines' explains in detail the procedure for an applicant to follow when serving notice of an application on the relevant local planning

authorities<sup>10</sup>. This is done by sending them a notice, a Form B (Type 1), for completion, at the same time as they are sent a copy of the application and supporting Environmental Statement. A template is shown in Appendix A of the Circular. The Circular is no longer available from the Stationery Office but can be obtained online at: <http://www.berr.gov.uk/files/file38998.pdf> Alternatively, hard copies can be obtained by contacting the Consents Team (see contact at paragraph 1.9).

3.25 There is also a requirement on the applicant to advertise both notice of the application under regulation 4 of the Electricity (Applications for Consent) Regulations 1990 and notice of the supporting Environmental Statement under regulation 9 of the 2000 Regulations (as amended). For convenience, regulation 9(3) of the 2000 Regulations makes provision for both notices to be combined. This provides an opportunity for members of the public and other interested parties not directly consulted by the Secretary of State to make representations on the application and the supporting ES.

3.26 The notice is required to describe the application in question and state that it is accompanied by an Environmental Statement. It should also describe by reference to a map the land to which the application relates. It must be published in two successive weeks in one or more local newspapers circulating the locality of the development land and also in the London Gazette (two weeks). The notice also needs to state where the application and supporting Environmental Statement may be inspected (which is normally at the offices of the relevant planning authorities or at public libraries) during reasonable working hours and to give the address to which any representations should be made and the closing date for such representations (which under the 1990 Regulations shall not be less than 28 days from the date or latest date of publication of the notice, or less than 28 days from the date of service of the notice and under the 2000 Regulations not less than four

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<sup>10</sup> It is understood that local planning authorities generally apply the provisions of Article 10 of the Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419) (as amended) as successor to Article 18 of the now revoked SI 1988/1813 referenced in DOE Circular 14/90.

weeks after the date on which the notice is to be last published). The notice should also describe the procedures for public participation and the nature of possible decisions to be taken in relation to the application. Notice of the application must also be given in one or more national newspapers (one week). BERR will ask as a matter of best practice to see copies of the original newspapers and of the London Gazette containing the advertisements before certifying that the publicity requirements have been fulfilled.

3.27 In the case of applications for extensions or changes of operation of an existing generating station, the applicant should consult BERR before initiating the publicity procedure as the Secretary of State may dispense with the requirement for the publicity in the national press where the proposal is of a minor nature.

3.28 The notice should also specify where copies of a Non-Technical Summary of the Environmental Statement can be obtained free of charge and also specify the amount payable for the full Environmental Statement.

3.29 Although not a statutory requirement, the Secretary of State will also ask for notices to be displayed at prominent locations near the proposed development site. BERR will ask as a matter of best practice for photographs of each notice displayed around the site, *in situ*, and also for a plan showing the locations where the notices have been posted.

3.30 Although applicants should always seek their own legal and professional advice, the Secretary of State is willing to look at a draft notice in advance and recommends that applicants send them to the Onshore Consents Team prior to placing them in the Press. A model form of notice is attached at Annex vi.

### **Consultation During the Consents Process**

3.31 A thorough consultation process is carried out by the Secretary of State for each application, gathering the views of

the relevant local planning authorities and other statutory and non-statutory bodies (e.g. including the relevant nature, environment, countryside, aviation, heritage and health and safety bodies). Statutory consultees should be urged to respond in a timely fashion to avoid unnecessary delay.

3.32 Through the public notice, members of the public also have the opportunity to have their say. This is particularly important, as those local to the development are the community most likely to be impacted upon by the development.

3.33 The advertised notice of the application will give the name and postal and e-mail address to where representations should be sent (i.e. a member of the Consents Team who will handle the application on behalf of the Secretary of State). All representations, including e-mails, should include an address to which correspondence should be sent, i.e. home or work postal address. Any representations received will be copied to the applicant and relevant planning authority unless the correspondent indicates otherwise.

3.34 Any further environmental information submitted following a formal request by the Secretary of State should be advertised by the applicant (Regulation 14 of the 2000 Regulations as amended). During the process other additional information may arise. On receipt of materially relevant additional information the Secretary of State will forward it to the relevant planning authority, which will make it available for public inspection. The applicant should advertise the fact that additional information is starting to be received on the application (Regulation 14A of the 2000 Regulations as amended). The notices must provide a minimum of four weeks for representations to be made.

3.35 The Secretary of State has to take account of all representations and information he receives within the time limits mentioned above. Those interested parties who respond within the specified period have an automatic right to appear at a public inquiry that may be held provided they have registered

(i.e. they are considered 'qualifying objectors' under the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007). It is therefore advised that any representation should be made within the specified period. For further information on public inquiries see Annex ii.

*Who is consulted, and how?*

- *The relevant planning authorities are sent a copy of the application and supporting Environmental Statement direct and are required to make their formal views known to both the applicant and Secretary of State.*
- *The Secretary of State also consults direct other statutory and non-statutory bodies including the Environment Agency (or Environment Agency Wales), Natural England (or the Countryside Council for Wales), Civil Aviation Authority, National Air Traffic Services, Health and Safety Executive, Ministry of Defence, Welsh Assembly Government (if applicable), Greater London Authority (if applicable) and other government departments and the relevant Government Office.*
- *Consultees may also have their own internal and external network of contacts (for example, Parish Councils, RSPB, local nature trusts, local archaeological societies, and local conservation organisations etc).*
- *All the responses received by the Secretary of State are copied to the applicant and relevant planning authorities. These will appear on the planning register of the relevant planning authority and be available for inspection locally.*

3.36 It is obviously important that generating station proposals, as part of the nation's energy delivery systems, are handled in a timely manner. For that reason the process seeks to capture, early on, the views and issues identified by the various participants in the process.

*Timescales for views to be made known.*

- *The relevant planning authority must serve notice of any objection to a generating station application within 4 months unless a longer period is agreed in writing with the applicant and Secretary of State (regulation 8 of Application for Consents Regulations 1990 refers).*
- *The Secretary of State's consultees are normally given 2 months to make their views known.*
- *Members of the public and other interested parties must be given a minimum of 28 days from the date of the last published notice of the application and supporting environmental statement.*

3.37 Typically an application for a Section 36 consent will take 9-12 months to process (depending on a number of factors, such as the quality of the ES) with any public inquiry adding to that timescale. Where a public inquiry takes place the timescale has been more of the order of 36 months.

3.38 Relevant planning authorities have a key role to play in the process since they represent the local community and are familiar with the planning requirements of the locality. Thus they are the only participants given the statutory power to trigger a public inquiry. Should a relevant planning authority wish to object to an application they should give clear and specific reasons for objecting in their Form B. The objection should be focused on and clearly set out the areas of concern rather than just setting out an objection in general terms.

3.39 Again, given their key role in the process, relevant planning authorities are the only participants given the right to seek more time to make their views known. However, such extensions of time have to be agreed with the applicant and the Secretary of State first and need to be justified with genuine reasons as to why it has not been possible to reach a

view in time. Given that the Act provides for relevant planning authorities to object and then subsequently to withdraw their objection, extensions in time should not be used where the relevant planning authority quite clearly objects to the development.

3.40 A list of all those parties consulted by BERR is sent to the applicant. When responses are received these are copied to the applicant as soon as possible in order for any points to be addressed in a timely manner.

3.41 The relevant planning authority will often carry out its own consultation and copies of all responses together with a list of those consulted should be provided to BERR and the applicant as soon as they are received, in order that the applicant can be fully informed.

3.42 If the application is not going to inquiry, it is best practice for the relevant planning authority and the applicant to agree a set of conditions to submit to BERR for their consideration before any decision is made. If an agreement is required under separate legislation, for example section 106 of the Town and Country Act 1990 as amended, it is recommended that these are entered into as soon as possible and preferably in a sufficiently timely fashion so as not to delay the making of the section 36 decision.

### **Public Participation**

3.43 In order for participants to be able to participate in the process it is essential that they are able to access information on the proposed development. The Department for Business, Enterprise and Regulatory Reform has no public inspection facility of its own and is not required to make information available where the information requested is reasonably accessible by other means<sup>11</sup>. Information is therefore delivered in a number of ways.

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<sup>11</sup> *Section 21 of the Fol Act 2000*

*How information is made public in the process*

- *The application and supporting environmental statement are advertised in the local and national press and are available for inspection or to purchase from the applicant (except the Non-Technical Summary of the ES, which is available free of charge). Copies are normally placed in the local public library.*
- *The application and supporting documentation are notified to the relevant planning authority and will be placed in the Planning Register.*
- *Any further information requested by the Secretary of State under regulation 13 of the 2000 Regulations is also advertised in the local press and London Gazette and is available for inspection or to purchase from the applicant.*
- *All representations received by the Secretary of State are copied to the applicant and relevant planning authority. These should appear on the Planning Register and be available for inspection locally.*

3.44 The length of time taken to determine a consent will be influenced by the adequacy of the ES and any particular sensitivities with the chosen location. Views and issues are identified early on and in the light of that information the Secretary of State may issue a formal direction for information.<sup>12</sup> Even if a formal direction is not issued inevitably there will be questioning in relation to the environmental information by parties as they seek to satisfy themselves over the impact.

### **Appropriate Assessments**

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<sup>12</sup> *Regulation 13 of the Electricity Work (Environmental Impact Assessment) (England and Wales) Regulations 2000*

3.45 One important issue to consider is whether the proposed development, either alone or in combination with other plans or projects, would be likely to have a 'significant effect' on a 'European site' (see 3.18 above). If it is likely to have such an effect, a competent authority (in this case the Secretary of State) must undertake an 'appropriate assessment', consulting as appropriate. Consent can only be granted if it can be shown that the development will not have an adverse effect upon the integrity of a European site, unless there are no alternative solutions and imperative reasons of overriding public interest to justify approval (further information and a link to the 1994 Regulations is set out in Annex iii).

### **Public Inquiries**

3.46 In certain circumstances a public inquiry can be called under the 1989 Act in relation to a proposed development before any decision is made on it, as set out below:

**SCHEDULE 8**  
**OBJECTION BY RELEVANT PLANNING AUTHORITY**

*Paragraph 2(2) - Under Paragraph 2(2) of Schedule 8 to the Electricity Act 1989, where the relevant planning authority notify the Secretary of State that they object to the application and their objection is not withdrawn, the Secretary of State – (a) shall cause a public inquiry to be held; and (b) before determining whether to give his consent, shall consider the objection and the report of the person who held the inquiry.*

*Paragraph 2(4) – Paragraph 2(4) states that sub-paragraph (2) above shall not apply where the Secretary of State proposes to accede to the application subject to such modifications or conditions as will give effect to the objection of the relevant planning authority.*

**SCHEDULE 8**  
**OBJECTION BY OTHER PERSONS**

*3(2) - Paragraph 3(2) of Schedule 8 to the Electricity Act states that where in the case of an application for consent under section 36 or 37 of this Act – (a) the Secretary of State is not required by virtue of paragraph 2(2) above to cause a public inquiry to be held; but (b) objections or copies of objections have been sent to the Secretary of State in pursuance of regulations made under this paragraph, the Secretary of State shall consider these objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the application and, if he thinks it appropriate to do so, shall cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the application.*

3.47 Further information on public inquiries is provided in Annex ii.

3.48 As part of the package of measures designed to make the energy planning system more streamlined and efficient, the Government introduced new inquiry rules for public inquiries into applications for generating stations and overhead lines under the Electricity Act 1989 in April 2007. The improved new rules should make inquiries more streamlined, with more certainty of process and timeline, whilst continuing to ensure that the inquiry is a forum in which all appropriate interests have a voice and all the relevant issues are fully and fairly considered. More information can be found at:  
<http://www.berr.gov.uk/files/file38845.pdf>

### **Planning Conditions**

3.49 Often, rather than object, a relevant planning authority will make their agreement conditional, i.e. subject to a number of planning conditions being imposed. They may well also insist on the applicant entering an agreement to deal with offsite matters. Such agreements are dealt with under separate legislation, for example section 106 of the Town and Country Planning Act 1990 as amended and section 59 of the Highways Act 1980. The Secretary of State is not party to

any such agreements, but the Consents Team will want to see a copy of the signed and sealed agreements before any decision is taken on the application.

3.50 Planning conditions will therefore arise from the views of the relevant planning authority, the advice of statutory advisers and the experience of the Consents Team. They will take account of the particulars of the locality and the type of generation. Planning Circular 11/95: The Use of Conditions in Planning Permission provides general advice on planning conditions and includes suggested models of acceptable conditions for use in appropriate circumstances. Whatever conditions are proposed they have to meet the six tests specified in the Circular. The Circular can be found at: <http://www.communities.gov.uk/publications/planningandbuilding/circularuse>

*Planning conditions should be:*

- *necessary;*
- *relevant to planning;*
- *relevant to the development to be permitted;*
- *enforceable;*
- *precise; and*
- *reasonable in all other aspects.*

3.51 Any Section 36 consent granted will contain a condition that the commencement of the development shall not be later than three years from the date of the consent, or such longer period as the Secretary of State may direct in writing. Similarly the deemed planning permission will contain a three year duration within which development must start, but that can only be extended by the relevant planning authority. Where any matter is required to be agreed or approved by the Council under any of the conditions attached to the 'deemed' planning permission, it is standard practice to include a default provision whereby the Secretary of State can determine the matter in the event of dispute.

## **Associated Works**

3.52 Section 36 applications will contain ancillary works such as an electricity sub-station, civil engineering works and the necessary buildings and administrative offices to undertake the works. Provided any such works are within the Section 36 area the Secretary of State for Business, Enterprise and Regulatory Reform will include them in his deemed planning permission. If the works are outside the Section 36 area then an applicant will have to apply for planning permission direct to the local authority under section 57 of the TCPA 1990.

## **Co-operation between power station applicants and network companies on overhead power station 'feeder' lines**

3.53 The Secretary of State's consent under Section 37 of the Electricity Act 1989 may also be required if the proposed generating station is connected to the transmission or distribution system via an overhead line.

3.54 Development consent is not normally required for underground cables. Such development is carried out under permitted development rights (the Town and Country Planning (General Permitted Development) Order 1995). Specific planning permission is not therefore necessary. However, in certain circumstances, e.g. where the proposed development has an impact on a European designated site, permitted development rights can be removed. In addition, above ground facilities for cabling such as sealing end compounds (at the point of transition between overhead lines and underground cables) and cable bridges may well require planning permission from the local planning authority.

3.55 It is best practice for applicants and distribution / transmission companies to engage with one another early in the development of a project, to ensure that applications for Section 36 take account of any connection consequences. Ideally Section 37 connection applications should be submitted

to the Secretary of State within the time frame for decisions on the Section 36 application (in practice, although they may be submitted in very close succession, the Section 36 application is generally submitted ahead of the Section 37 application as the latter depends on there being a need argument established by the Section 36 development and this is in practice recognised by the generation development being at a more advanced stage).

3.56 It is also helpful to engage with local planning authorities early on, since they may also find it beneficial to consider Section 36 and Section 37 applications together.

3.57 Applicants should note that network operators will often require a formal connection agreement to be in place before submitting statutory consent applications to ensure that a demonstrable need case exists for the connection works.

3.58 Within the Section 36 process applicants are likely to be required to produce an Environmental Impact Assessment which should describe the indirect, secondary and cumulative effects of the development. As such it will need to include some information on how the power station is to be connected and whether there are any particular environmental issues likely with that connection.

3.59 Co-ordination is important because, although separate applications must be made for consents for generating capacity and for new overhead lines to connect generating capacity to the grid, it helps to ensure that generating capacity is not delayed or frustrated because the necessary Section 37 consent is not in place or has to be refused on environmental grounds. It also means that where a public inquiry is required for a Section 36 consent its remit can be extended to the associated overhead line application, if that is appropriate.

3.60 Government intends to provide some general guidance on the section 37 consenting process which will be published on the BERR web site. The consultation document from which it will be drawn can be found at:

<http://www.berr.gov.uk/consultations/page36107.html>

### **Wayleaves and compulsory purchase orders**

3.61 Before any section 37 consent is granted the Secretary of State will need to be reassured that voluntary agreements have been concluded with land owners. These arrangements secure the right of the electricity licence holder to access land for the purpose of installing and maintaining their power lines, can take the form of either a contractual licence known as a wayleave, or a permanent right known as an easement. Where a voluntary wayleave or permanent easement cannot be agreed with a landowner, compulsory powers can be sought for a 'necessary' wayleave under Schedule 4 of the Electricity Act 1989. Further information on electricity development consents, including necessary wayleaves, is available on the BERR website at:

<http://www.berr.gov.uk/files/file23024.pdf>

3.62 Compulsory Purchase Orders may also be sought by electricity licence holders using compulsory powers under Schedule 3 of the Electricity Act 1989. These may be sought for purposes connected with the carrying out of their licensed activities, namely construction and operation of generating stations or overhead lines. The BERR guidance on wayleaves listed above touches briefly on compulsory purchase orders, but more detailed generic guidance can be found at:

<http://www.communities.gov.uk/publications/planningandbuilding/circularcompulsorypurchase2>

### **Fees for consents**

3.63 There is a scale of fees payable on application for consent and these are set out in The Electricity (Application for Consent) Regulations 1990. No application will be processed without payment.

[http://www.opsi.gov.uk/si/si1990/Uksi\\_19900455\\_en\\_1.htm](http://www.opsi.gov.uk/si/si1990/Uksi_19900455_en_1.htm)

3.64 It should be noted that, if an application goes to public inquiry, the applicant will, in addition to his own costs, bear the Secretary of State's costs of running the inquiry (e.g. the inquiry venue, costs of inspector, programme officer, cost of office equipment like photocopier, computer). The costs of a public inquiry can vary considerably and can reach a significant amount.

### **Other consents**

3.65 It is a matter for applicants to ensure they have all the relevant consents/permissions/licences, etc, they require in order to construct and operate a generating station. It is worth noting that for fossil fuel stations the Secretary of State's approval is also required under Section 14 of the Energy Act 1976 if they propose to use oil or gas as the fuel and applicants often apply for that simultaneously with the section 36 application. Again with fossil fuel generating stations, there may be a need for a gas pipeline which may or may not need the Secretary of State's approval depending on factors such as distance and pipeline provider.

3.66 Other consents and approval may also need to be obtained from other statutory bodies. For example, an integrated pollution prevention and control (PPC) permit under the Pollution Prevention and Control Act 1999 has to be obtained from the Environment Agency for all Section 36 generating stations. BERR will look for confirmation from the Environment Agency that the information provided would indicate that there would be no impediment to PPC authorisation being given.

3.67 Details of the requirements relating to integrated pollution prevention and control can be found on the Environment Agency website at:

<http://www.netregs.gov.uk/netregs/275207/276364/1465814/>

## Part 4 – The decision

4.1 In reaching his decision, the Secretary of State must take account of relevant factors. These factors can vary from case to case but include Government Policy (both energy and other Government policies); planning considerations (including national, regional and local plans and guidance); environmental issues; local issues and the views of the relevant planning authorities and local people; Government statutory advisers; the applicant's arguments in favour of the proposal; and any other relevant representations received on the proposal. Each case is considered on its individual merits.

4.2 He will also consider the proposal against the following criteria laid down in response to Article 6 of EU Directive 2003/54/EC:

- (a) the proposal must be consistent with the Government's energy policy and its goals of reducing carbon emission, maintaining the reliability of our energy supplies, promoting competitive markets, and ensuring that every home is adequately and affordably heated;
- (b) that the proposer must have provided adequate environmental information for the Secretary of State to judge its impact;
- (c) that the proposer has identified what he can do to mitigate the impact of his proposed development;
- (d) that the Secretary of State judges that the environmental impact is acceptable;
- (e) that the procedures for considering the power station proposal have been properly followed;
- (f) that the proposer of a fossil fuel power station has provided evidence of what he has done to explore the use of combined heat and power technology for his development;
- (g) that the Secretary of State is satisfied that the power can be delivered to the electricity supply network;
- (h) that the proposer of an offshore power station has to the Secretary of State's satisfaction, adequately addressed navigation and fisheries issues.

4.3 On criterion (f) the Department has recently published updated guidance for applicants which is available on the BERR website:

<http://www.berr.gov.uk/energy/environment/efficiency/chp/index.html>

4.4 Compliance with that criterion is assessed jointly by BERR and DEFRA who lead in Government on CHP matters. For criteria (b) and (e) the EIA Regulations require that the Secretary of State in taking his decision must be satisfied that Environmental Impact Assessment procedures have been properly followed and that adequate environmental information has been provided to assess the impact.

4.5 The Secretary of State will also consider the Inspector's report from any public inquiry held into the proposal.

4.6 Having considered all relevant matters the Secretary of State will make his decision. That decision will be promulgated by a decision letter issued by the Consents Team, on behalf of the Secretary of State, setting out the reason for the decision. Where the Secretary of State has consented to the development, the decision letter will be accompanied by the Section 36 consent and 'deemed' planning permission.

4.7 Chapter 8 of The Energy Review document 'The Energy Challenge' (May 2007) made a commitment that the Secretary of State would make decisions on Section 36 applications within 3 months of the public inquiry report being received, unless there were exceptional circumstances in the case

## **Appeals**

4.8 There is no statutory appeals mechanism under 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 expeditiously 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. Annex iv provides further information.

# Detailed flowchart – onshore EIA development

## The Pre-Application Stage

Applicant identifies location, discusses proposal with relevant planning authority, statutory and non-statutory consultative bodies, interest groups, relevant licensed network operator and local people (e.g. by holding public meetings and exhibitions etc) and starts to undertake an environmental impact assessment (EIA). Applicants may also wish to meet with the Onshore Consents Team of BERR to discuss Section 36 procedures

## Preparation of an Environmental Statement for an EIA Development

### EIA Screening Opinions

The applicant can seek a screening opinion from SoS if unsure whether the proposal may be an EIA development (an EIA will be required for all new generating station projects but may not be required for extensions of existing generating stations). **In reality, a potential applicant will contact the Consents Team and discuss informally if in doubt whether an EIA needs to be carried out.**



SoS may within 3 weeks of receiving a request ask for further information if he considers he does not have sufficient information to give an opinion



Where he consider he has sufficient information, the SoS consults relevant planning authorities (RPAs) to gain their views on whether the proposal is an EIA development unless the applicant has already conveyed their views. RPAs have 3 weeks to respond unless a longer period is determined by the SoS



When the SoS considers he has sufficient information, unless a longer period is agreed in writing with the applicant, he will give his views with 3 weeks of whichever is the latest- the date of receipt of the request; the date further information has been provided; and the date by which the RPA is required to give its views (or earlier if received before then)

### EIA Scoping Opinions

Applicant can seek a scoping opinion on scope of EIA from Secretary of State (SoS)



SoS may within 3 weeks of receiving a request ask for further information if he considers he does not have sufficient information to give an opinion

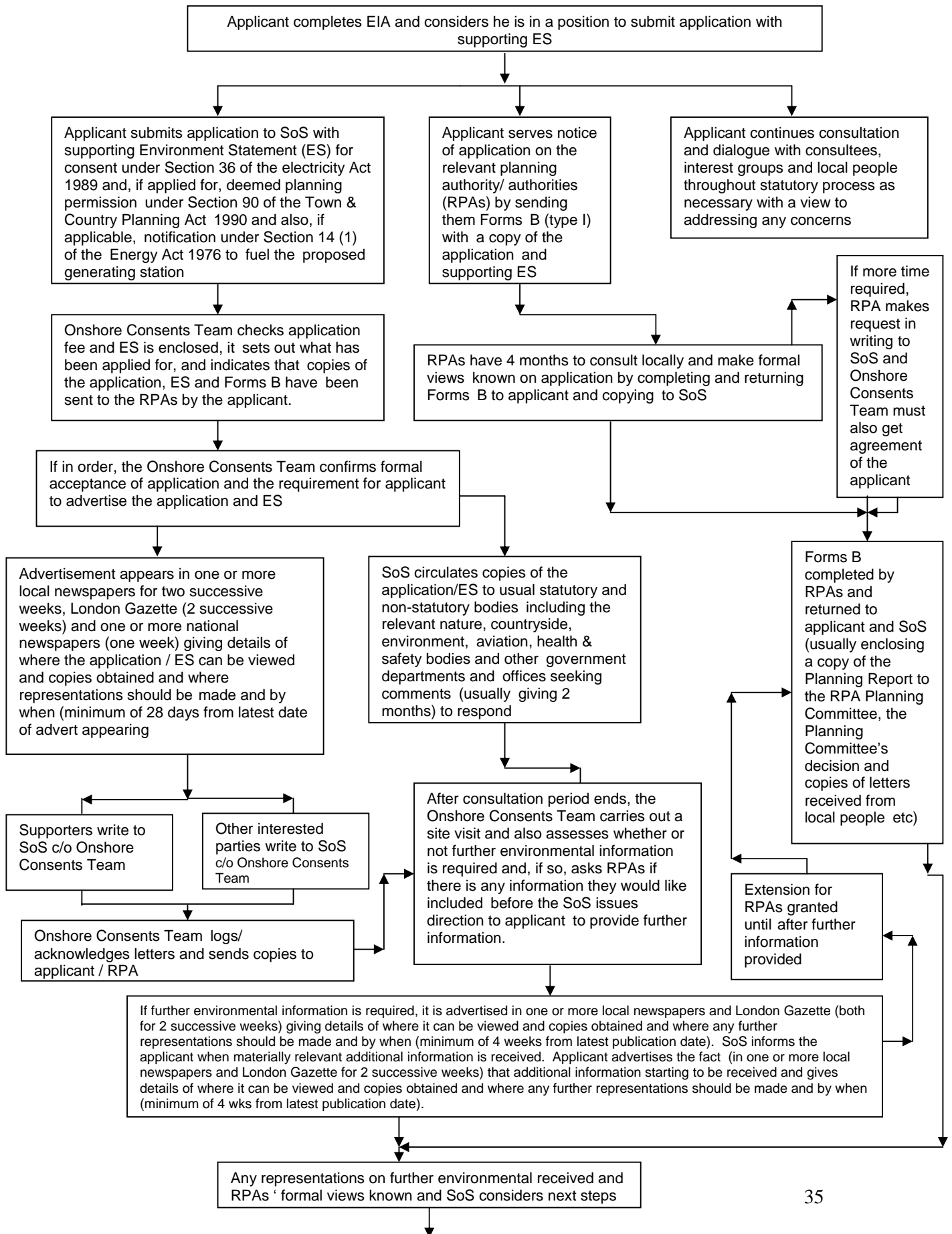


Where he considers he has sufficient information, the SoS consults relevant planning authorities (RPAs) and statutory consultative bodies, unless a longer period is agreed with SoS, gives them 3 weeks to make representations

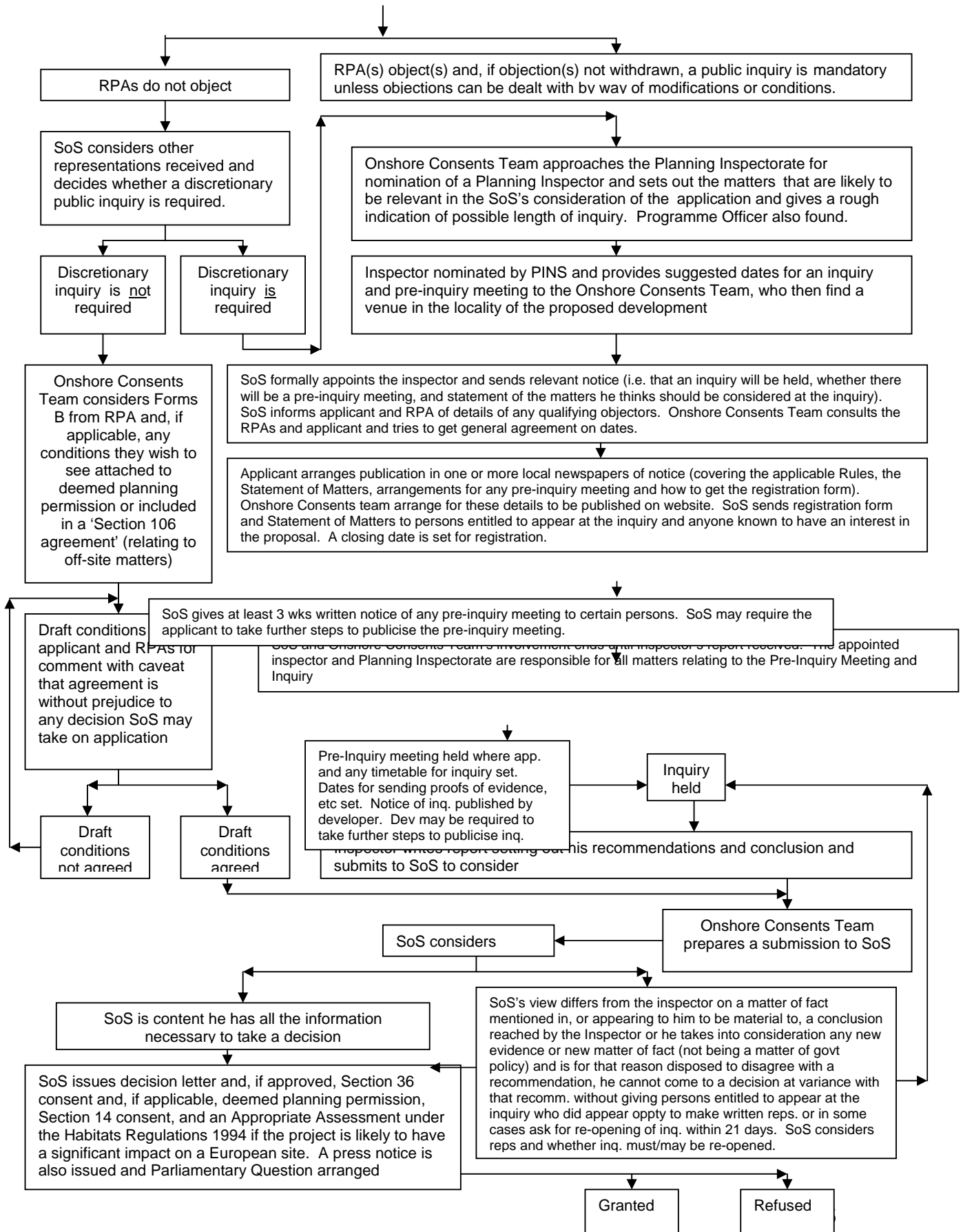


SoS considers representations made and, unless longer period agreed with the applicant, issues a formal scoping opinion with 3 weeks of whichever is the latest - the date of receipt of the request; the date further information has been provided; and the last date by which consultees are required to make their representations (or earlier if received before then).

## The Application and Consultation Process



## Public Inquiry (if applicable) and Decision Stage



## Public Inquiries

### Q1. What is a public inquiry?

A public inquiry, before an inspector, is a way of allowing everyone involved to present their cases, and to test the arguments of other people, within a structured framework.

Some people, like the applicant and a planning authority that objected to the proposal, are generally entitled to give evidence and to cross-examine other people. But anyone else can only do so at the inspector's discretion. It is normal practice for inspectors to allow anyone to speak who has something relevant to say. People with similar interests and views may wish to work together to present a joint case.

The pre-inquiry procedures (which will often include a pre-inquiry meeting) are designed to make sure that everybody can exchange as much information as possible before the inquiry opens and to facilitate its timetabling. This allows the inquiry to focus on the main issues in dispute.

### Q2. Are public inquiries ever called into Section 36 proposals?

Since 1990 the following cases involved a public inquiry before a decision was made<sup>13</sup>:

Hinkley C	Nuclear
Ryedale	60 MW OFT
Staythorpe C	1500 MW CCGT
Didcot B	1360 MW CCGT
Belvedere (twice)	103 MW Energy from waste 70 MW Energy from waste
Little Cheyne	78 MW onshore wind farm
Scout Moor	65 MW onshore wind farm
Whinash	67.5 MW onshore wind farm

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<sup>13</sup> List correct as at date of publication

**Q3. Does the Secretary of State always have to hold a public inquiry?**

No. Although the Secretary of State has the discretionary power to hold a public inquiry in light of the comments and information received on an application, he is only obliged to hold one if a relevant planning authority objects.

**Q4. Who will conduct the public inquiry?**

The Secretary of State will normally appoint a Planning Inspector from the Planning Inspectorate to hold the Inquiry. The inspector will need to have the required background to consider the matters that appear to the Secretary of State to be relevant in his consideration of the application and it may well be, therefore, that there can be a delay of several months before such an inspector is nominated. The Inspector can also ask for an Assessor to be appointed to advise him if, for example, he considers he does not have the required depth of knowledge in a particular specialist area.

**Q5. Does the Secretary of State have the power to hold joint or concurrent inquiries into applications if there are a number of applications for generating stations in the same area?**

The Secretary of State may consider that it would be expedient to hold concurrent or joint inquiries with other Section 36 applications, for example, if they are likely to have cumulative impacts.

The Secretary of State, has no locus in applications for generating stations at 50 Megawatts or below that may also be located nearby and which are subject to appeal or have been called-in under the Town and Country Planning Act 1990 (TCPA). These fall to the Secretary of State for Communities and Local Government to determine and can only be considered alongside Section 36 applications at the same inquiry with the agreement of both Secretaries of State, who must agree that the matters are so far "cognate" that they should be considered together.

**Q6. Can the Secretary of State hold a public inquiry to consider both the Section 36 application and application for any related overhead line consent under Section 37 of the Electricity Act 1989?**

Yes, there is provision under Sections 61 and 62 of the Electricity Act 1989 to hold a concurrent public inquiry in such circumstances. Wherever possible the Secretary of State will seek to consider related applications together.

**Q7. Where and when will the inquiry be held?**

The inquiry and also the pre-inquiry meeting will be held at a suitable venue in the locality of the proposed development site. Possible venues in the location are identified, viewed and agreed by the Onshore Consents Team with the applicant. The applicant meets the cost of the venue for both the inquiry and pre-inquiry meeting.

Subject to the availability of the Inspector, the Onshore Consents Team will make every effort to comply with the wishes of parties involved on dates for the inquiry. However, this is not always possible, particularly where there is a number of parties who wish to be involved, and it may be necessary to set a date in advance with the expectation that sufficient time has been given for parties to rearrange any prior commitments they may have.

**Q8. Where can I find out more about public inquiries?**

Further information on public inquiries, including on current inquiries, is available from the Planning Inspectorate:

<http://www.planning-inspectorate.gov.uk/pins/inquiries/index.htm>

There is also specific guidance on the amendments made to the inquiry procedures for electricity projects in 2007:

<http://www.berr.gov.uk/energy/review/implementation/electricity-act-inquiry/final-rules/page38850.html>

## 'Appropriate Assessments' under the Habitats Regulations

1. The Habitats Directive (92/43/EEC) is European Law which provides for the creation of a network of protected areas for the conservation of the most endangered habitats and species across the European Union known as "Natura 2000". The Natura 2000 network of protected sites consists of Special Areas of Conservation (SACs) designated under the Habitats Directive to conserve natural habitats and wild fauna and flora and Special Protection Areas (SPAs) designated under the earlier European Birds Directive (79/409/EEC) to conserve rare and migratory wild bird species. The Habitats Directive also required all Member States to set up an effective system to prevent the capture, killing, injuring or damaging disturbance of certain endangered species.

2. Regulation 48 of The Conservation (Natural Habitats, etc.) Regulations 1994 (which implements Article 6 (3) of the Habitats Directive) requires a 'competent authority' (i.e. in the case of Section 36 applications, the Secretary of State) to undertake an 'appropriate assessment' in respect of any plan or project which:

- either or alone or in combination with other plans or projects would likely to have a 'significant effect' on a 'European Site'; and
- is not directly connected with the management of the site for nature conservation.

3. If the proposed development is likely to have an adverse effect upon a European site, consent can only be granted if it can be shown that it will not have an adverse effect upon the integrity of the site, unless there are no alternative solutions and there are imperative reasons of overriding public interest to justify approval.

4. A European Site is classified as an SPA and any SAC from the point where the Commission and the Government agree the site as a Site of Community Importance. An appropriate assessment is also required, as a matter of Government policy, for potential SPAs, candidate SACs and listed RAMSAR Sites (i.e. wetland sites of international importance designated under the Ramsar Convention).

5. Natural England, or the Countryside Council for Wales for projects in Wales, who are consulted on Section 36 applications, will advise on whether a proposal is likely to have a significant effect on any of the above sites and if so, must also be consulted during the course of the assessment under the 1994 Regulations. The Secretary of State must have regard to any representations made by them within such a reasonable time as he may specify. The Secretary of State may also take the opinion of the general public.

6. The 1994 Regulations are available at [http://www.opsi.gov.uk/SI/si1994/Uksi\\_19942716\\_en\\_1.htm](http://www.opsi.gov.uk/SI/si1994/Uksi_19942716_en_1.htm)

## 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.

## **NON-EXHAUSTIVE CHECKLIST FOR APPLICANTS UNDER SECTION 36 ELECTRICITY ACT 1989**

1. The information and level of detail provided by applicants vary from application to application. However, a typical application would usually include a brief covering letter including the following information:

- Who is applying to the Secretary of State and what they are applying for (e.g. along the lines of "the Company is applying for consent from the Secretary of State to construct and operate a [ $>50$ ] Megawatt (electrical output) energy from waste/wind farm/CCGT etc, generating station at \*\*\*\*\* in [relevant planning area] \*\*\*\*\* under Section 36 of the Electricity Act 1989 at the site identified in the accompanying map/plan and (if applicable) also wishes to apply for a direction that planning permission for the development be deemed to granted under Section 90(2) of the Town and Country Planning Act 1990".
- What the proposed development comprises of (e.g. number and type of turbine (e.g. wind, gas etc), cooling tower, stack, ancillary plant, underground cabling, substation/transformer, monitoring masts, borrow pits etc, as applicable)
- Maximum number and approximate leading dimensions of main buildings and structures
- Copies of the Forms B (Type 1) and confirmation that they have been served on the relevant planning authorities (see Appendix A of the attached Circular 14/90) in accordance with paragraph 2(1) of Schedule 8 to the 1989 Act
- The required number of Environmental Statements and Non-Technical Summaries (BERR usually requires 11 copies for applications in England and 9 for applications in Wales for circulation to our consultees) in compliance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulation 2000

- Application Cheque (see The Electricity (Application for Consents) Regulations 1990) - Government fees are zero rated and so there is no need to add VAT
- A draft public notice (see attachment) and in what papers the applicant intends publishing it (i.e. two successive weeks in one or more local papers of the applicant's choice and in the London Gazette (2 weeks) for clearance (if not cleared prior to making the application)
- An identifiable map/plan showing the application boundary (i.e. the red line area) etc (suggested scale 1:5,000 or 1:10,000)
- Any other additional information the applicant considers may be relevant to flag up (e.g. how the applicant proposes to connect to the Grid, any related applications such as an application to the Environment Agency for a PPC Permit or to the local planning authority under the TCPA etc).

**SAMPLE – PUBLIC ADVERT**

**Acme Power Limited**

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

Notice is hereby given that.....Ltd (“the Company”) has applied under section 36 of the Electricity Act 1989, for consent of the Secretary of State to construct and operate a..... power station at....., and for a direction, under section 90(2) of the Town & Country 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 with 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 (price £...) and the Non-Technical Summary (free of charge) may be obtained, while stocks last, from ...(company address & website)

Any objections to the proposals, 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 2123, 1 Victoria Street, London SW1H 0ET, or by email to:- [walter.gusmag@berr.gov.uk](mailto:walter.gusmag@berr.gov.uk) not later than [fix date – minimum 28 days from date of 2<sup>nd</sup> 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.

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***1 x only in a National paper***

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