
WELSH STATUTORY INSTRUMENTS

2019 No. 304 (W. 77)

ELECTRICITY, WALES

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

<i>Made</i>	- - - -	<i>18th February 2019</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>20 February 2019</i>
<i>Coming into force</i>	- -	<i>1 April 2019</i>

The Welsh Ministers, in exercise of the powers conferred on them by sections 36(8A), 36C(2) and (6) and 60 of the Electricity Act 1989(1), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Electricity (Offshore Generating Stations) (Inquiries Procedure) (Wales) Regulations 2019 and they come into force on 1 April 2019.

(2) These Regulations apply in relation to any inquiry caused by the Welsh Ministers to be held on or after 1 April 2019 into an application or variation application.

Interpretation

2.—(1) In these Regulations—

“the 1990 Act” (*“Deddf 1990”*) means the Town and Country Planning Act 1990(2);

“the Applications for Consent Regulations” (*“y Rheoliadau Ceisiadau am Gydsyniad”*) means the Electricity (Offshore Generating Stations) (Applications for Consent) (Wales) Regulations 2019(3);

“the Variation of Consents Regulations” (*“y Rheoliadau Amrywio Cydsyniadau”*) means the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019(4);

(1) 1989 c. 29. Section 36(8A) was inserted by paragraph 47 of Schedule 6 to the Wales Act 2017 (c. 4) (“the 2017 Act”). Section 36C was inserted by section 20(1) and (2) of the Growth and Infrastructure Act 2013 (c. 27) (“the 2013 Act”) and was amended by section 39(12) of, and paragraph 48 of Schedule 6 to, the 2017 Act. There are other amendments to section 36C and amendments to section 60 which are not relevant to these Regulations.

(2) 1990 c. 8.

(3) S.I. 2019/295 (W. 73).

(4) S.I. 2019/297 (W. 75).

“additional inspector” (“*arolygydd ychwanegol*”) means an inspector appointed by the Welsh Ministers under regulation 7(2)(a);

“applicant” (“*ceisydd*”) means the person making an application or variation application;

“application” (“*cais*”) means, except where the context requires otherwise, an application to the Welsh Ministers for consent under section 36(5) to construct, extend or operate a generating station(6), together with any application under section 36A(7) for a declaration relating to rights of navigation which is made with the application under section 36;

“assessor” (“*asesydd*”) means a person appointed by the Welsh Ministers to sit with an inspector at an inquiry or re-opened inquiry to advise the inspector on such matters arising as the Welsh Ministers may specify;

“by local advertisement” (“*drwy hysbyseb leol*”) in relation to a notice, means by publication of the notice in at least one newspaper such that the notice is likely to come to the attention of those likely to be affected by the consent applied for if given;

“document” (“*dogfen*”) includes a photograph, map or plan;

“electronic communication” (“*cyfathrebiad electronig*”) has the same meaning as in section 15(1) of the Electronic Communications Act 2000(8);

“inquiry” (“*ymchwiliad*”) means an inquiry in relation to which these Regulations apply; and where an inquiry is conducted by means of concurrent sessions, it includes any such session;

“inspector” (“*arolygydd*”) includes a lead inspector and an additional inspector;

“interested authority” (“*awdurdod â buddiant*”) means any local planning authority in Wales upon whom the applicant has served notice of the application in accordance with regulation 5 of the Applications for Consent Regulations;

“lead inspector” (“*arolygydd arweiniol*”) means a person appointed by the Welsh Ministers to hold an inquiry or a re-opened inquiry;

“local planning authority” (“*awdurdod cynllunio lleol*”) has the same meaning as in Part I of the 1990 Act;

“mediator” (“*cyfryngwr*”) means a person appointed by the Welsh Ministers under regulation 9;

“outline statement” (“*datganiad amlinellol*”) means a written statement of the principal submissions which a person proposes to put forward at an inquiry;

“person entitled to appear” (“*person sydd â hawl i ymddangos*”) means a person described in regulation 17(1), and cognate expressions are to be construed accordingly;

“place” (“*lle*”) means, unless the context otherwise requires, the place to which an inquiry relates, that is, the place where—

- (a) it is proposed to construct the generating station, where the proposed extension will be or where the station proposed to be operated is situated; and
- (b) any section 90 development will be situated;

“pre-inquiry meeting” (“*cyfarfod rhagymchwiliad*”) means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously, and where two or more such meetings are held about the same inquiry,

(5) Section 36 was amended by section 93 of the Energy Act 2004 (c. 20), paragraph 32 of Schedule 2 to the Planning Act 2008 (c. 29), section 12(7) and (8) of the Marine and Coastal Access Act 2009 (c. 23) (“the 2009 Act”), section 78 of the Energy Act 2016 (c. 20) and section 39(7)-(11) of, and paragraph 47 of Schedule 6 to, the 2017 Act. Other amendments are not relevant to these Regulations.

(6) See section 64(1) of the Electricity Act 1989 (c. 29) (“the 1989 Act”) for the interpretation of “generating station”.

(7) Section 36A was inserted into the 1989 Act by section 99(1) of the Energy Act 2004 (c. 20) and was amended by section 12(7) and (8) of the 2009 Act and section 40(1)-(5) of the 2017 Act.

(8) 2000 c. 7. Section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting;

“qualifying objector” (“*gwrthwynebydd cymwys*”) means—

- (a) where the Welsh Ministers have caused an inquiry to be held under regulation 9(1) or 10 of the Applications for Consent Regulations, anyone who objected to the application by the date and in the manner provided for in regulation 8(1) of those Regulations;
- (b) where the Welsh Ministers have caused an inquiry to be held under regulation 6 of the Variation of Consent Regulations, any person who made representations objecting to the variation application by the date provided for in regulation 5(6)(b)(iii) of those Regulations,

and whose objection has not been withdrawn;

“qualifying planning authority” (“*awdurdod cynllunio cymwys*”) means—

- (a) where the Welsh Ministers have caused an inquiry to be held under regulation 9(1) of the Applications for Consent Regulations, any relevant planning authority who has objected to the application in accordance with regulation 8(2) of those Regulations and whose objection has not been withdrawn;
- (b) where the Welsh Ministers have caused an inquiry to be held under regulation 6 of the Variation of Consents Regulations, any relevant planning authority, if they have made representations (which have not been withdrawn) objecting to a variation application;

“registration form” (“*ffurflen gofrestru*”) means a form for completion by persons who wish to participate in the inquiry;

“relevant notice” (“*hysbysiad perthnasol*”) means the Welsh Ministers’ written notice under regulation 4(1);

“relevant planning authority” (“*awdurdod cynllunio perthnasol*”) in the case of—

- (a) an inquiry into an application, has the same meaning as in regulation 2(1) of the Applications for Consent Regulations;
- (b) an inquiry into a variation application, has the same meaning as in regulation 2 of the Variation of Consents Regulations;

“section 90 development” (“*datblygiad adran 90*”) means any development in respect of which an applicant, on making an application or variation application, requests the Welsh Ministers to give a direction under section 90(2) or (2ZA) of the 1990 Act⁽⁹⁾ (deemed planning permission for development with government authorisation);

“statement of case” (“*datganiad achos*”) means a written statement which contains—

- (a) full particulars of the case which a person proposes to put forward at an inquiry;
- (b) a list of any documents which that person intends to refer to or put in evidence;
- (c) a list of the individuals whom that person proposes to call as witnesses; and
- (d) the subject-matter of the evidence of each such witness;

“statement of common ground” (“*datganiad tir cyffredin*”) means a written statement prepared jointly by the relevant planning authority (where it is a local planning authority in Wales) and the applicant, which contains agreed factual information about the proposal which is the subject of the application or the variation application;

“technical adviser” (“*cynghorydd technegol*”) means a person appointed by the Welsh Ministers under regulation 8;

⁽⁹⁾ Section 90(2) and (2ZA) were substituted by section 21(2) of the 2013 Act and were amended by section 39(13) of the 2017 Act.

“variation application” (“*cais i amrywio*”) has the same meaning as in regulation 2 of the Variation of Consents Regulations.

(2) Unless otherwise stated, any reference in these Regulations to a numbered section is a reference to that section of the Electricity Act 1989.

(3) Subject to paragraph (5), a requirement imposed by these Regulations on the Welsh Ministers or the inspector to circulate a document is met by sending a copy of that document to—

- (a) the relevant planning authority;
- (b) the applicant; and
- (c) each qualifying objector who has indicated in accordance with regulation 6(4)(b)(iv) that they are likely to want to be represented formally and to play a major part in the inquiry.

(4) Subject to paragraph (5), a requirement imposed by these Regulations on the Welsh Ministers or the inspector to deposit a document is met by sending a copy of it—

- (a) in the case of an inquiry into an application—
 - (i) where part of the place to which the application relates is within the area of a relevant planning authority, to the relevant planning authority; or
 - (ii) where no part of the place to which the application relates is within the area of a relevant planning authority, to the interested authority; and
- (b) in the case of an inquiry into a variation application, to any relevant planning authority which is a local planning authority in Wales.

(5) Nothing in paragraph (3) or (4) requires the Welsh Ministers or the inspector to send a copy of a document to the person from whom it was received.

(6) A requirement imposed by these Regulations on the Welsh Ministers to publish a notice on a website is met—

- (a) by publication of the notice, or of the details required to be contained in that notice, on a website maintained by the Welsh Ministers; or
- (b) by publication of a link on a website maintained by the Welsh Ministers to another website on which the notice is published or the details required to be contained in that notice are published.

Electronic communications

3.—(1) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being carried out electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where any provision of these Regulations requires any person to provide a name and address to any other person, the requirement is not fulfilled unless the person subject to the requirement provides a postal address;
- (b) references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (7) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement of these Regulations to give or send any statement, notice or other document to any other person (“the recipient”)

(3) The requirement is taken to be fulfilled where the statement, notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), “legible in all material respects” means that the information contained in the statement, notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient outside the recipient’s business hours, it will be taken to have been received on the next working day; and for this purpose “working day” means a day which is not a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(10).

(6) A requirement of these Regulations that any document must be in writing is fulfilled where that document satisfies the criteria in paragraph (3).

(7) A requirement in these Regulations to send more than one copy of a statement, notice or other document may be complied with by transmitting one copy only of the statement, notice or other document in question.

Notice by the Welsh Ministers

4.—(1) The Welsh Ministers must send the applicant and the relevant planning authority in writing—

- (a) notice that an inquiry is to be held;
- (b) notice that there will be a pre-inquiry meeting or that they have decided not to hold one in accordance with regulation 10(2); and
- (c) a statement of the matters which, in their view, are the matters to be considered at the inquiry.

(2) The Welsh Ministers may at any time modify the statement referred to in paragraph (1)(c) and if they do so they must send the modified statement to the applicant who must publish by local advertisement a notice of the modification made.

(3) Where the Welsh Ministers have modified the statement referred to in paragraph (1)(c) under paragraph (2), they must publish a notice of the modification made on a website.

Preliminary information to be supplied

5. The Welsh Ministers must as soon as practicable after the issue of a relevant notice inform the applicant and any qualifying planning authority in writing of the name and address of any qualifying objector.

Registration

6.—(1) The Welsh Ministers must as soon as practicable after the issue of a relevant notice send to each person entitled to appear or whom they know to have an interest in the proposal, a copy of the statement sent by the Welsh Ministers under regulation 4(1)(c) and a registration form in the form provided for in paragraph (4).

(2) On receipt of the relevant notice, the applicant must publish by local advertisement a notice stating—

- (a) that these Regulations apply to the inquiry;
- (b) the matters contained in the statement sent by the Welsh Ministers under regulation 4(1)(c);
- (c) the arrangements for the first pre-inquiry meeting, if any; and

(10) 1971 c. 80.

- (d) that persons interested in participating in the inquiry should obtain a registration form from the Welsh Ministers.
- (3) The Welsh Ministers must as soon as practicable after the applicant has complied with paragraph (2) publish the notice referred to in that paragraph on a website.
- (4) The registration form must—
 - (a) include the address to which completed forms must be returned and the date by which that must be done, which must be no later than eight weeks after the date of the relevant notice;
 - (b) request the following information—
 - (i) the name, address and telephone number of the person registering;
 - (ii) the name, address and telephone number of any agent, or, in the case of an organisation, of the contact person;
 - (iii) whether or not the person registering has an interest in any land to which the inquiry relates which will be affected by the proposal;
 - (iv) whether or not the person registering is likely to want to be represented formally and play a major part in the inquiry;
 - (v) if not, whether or not the person registering wishes to give oral evidence at the inquiry or wishes only to submit representations in writing; and
 - (c) request that the completed registration form is accompanied by two copies of an outline statement from the person registering.
- (5) The Welsh Ministers must, as soon as practicable after the date by which the registration form must be returned under paragraph (4)(a), circulate each outline statement received by them as mentioned in paragraph (4)(c).

Additional inspectors

- 7.—(1) At any time after appointing the lead inspector, the Welsh Ministers may direct the lead inspector—
- (a) to consider such matters relating to the conduct of the inquiry as are specified in the direction;
 - (b) to make recommendations to the Welsh Ministers about those matters.
- (2) After considering the recommendations of the lead inspector, the Welsh Ministers may—
- (a) appoint for the purposes of the inquiry such number of additional inspectors as they think appropriate; and
 - (b) direct that each additional inspector must consider such of the matters to which the inquiry relates as are allocated to that additional inspector by the lead inspector.
- (3) An additional inspector must—
- (a) comply with every direction as to procedural matters given to that additional inspector by the lead inspector; and
 - (b) report to the lead inspector on every matter allocated to that additional inspector.
- (4) The lead inspector must report to the Welsh Ministers on the consideration of—
- (a) matters which the lead inspector has considered; and
 - (b) matters the consideration of which was allocated to additional inspectors.
- (5) The Welsh Ministers may give directions to the lead inspector on one or more occasions after the appointment of the lead inspector.

(6) The recommendations that may be made by the lead inspector following a direction include, in particular, a recommendation for varying the number of additional inspectors.

(7) The power of the Welsh Ministers to appoint an additional inspector includes power to revoke an appointment.

(8) A direction by the Welsh Ministers under this regulation may be varied or revoked by a subsequent direction.

Appointment of technical adviser

8.—(1) If it appears to the Welsh Ministers that evidence to be given to the inquiry is, or is likely to be, of such technical or scientific nature that the inquiry would be conducted more efficiently and expeditiously if an expert and independent assessment of that evidence were to be made, they may at any time appoint a technical adviser for that purpose.

(2) A technical adviser is a person appearing to the Welsh Ministers to have such qualifications and experience as enable the technical adviser to conduct an expert assessment of scientific or technical evidence to be given to the inquiry.

(3) Where the Welsh Ministers appoint a technical adviser, they may in writing require the applicant to publish by local advertisement and within such period as they may specify a notice stating the name of the person so appointed and specifying the evidence to be assessed.

(4) Where the Welsh Ministers require the applicant to publish a notice under paragraph (3), as soon as reasonably practicable after the applicant has complied with that paragraph the Welsh Ministers must publish that notice on a website.

(5) The technical adviser must, in consultation with the persons entitled to appear either jointly or separately, assess the evidence so specified and must report that assessment in writing to the inspector.

(6) The technical adviser's report must include a description of any areas of disagreement between the parties and must state the technical adviser's view of the significance of each such disagreement.

(7) The inspector must circulate the technical adviser's report within seven days of receiving it.

(8) The technical adviser must give evidence on the technical adviser's report at the inquiry and is subject to cross-examination to the same extent as any other witness.

(9) The inspector may allow the technical adviser to alter or add to the technical adviser's report so far as may be necessary for the purposes of the inquiry; but the inspector must (if necessary by adjourning the inquiry) give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any such alteration or addition.

Mediation

9.—(1) If it appears to the Welsh Ministers that—

(a) there is an absence of agreement between persons entitled to appear on a matter which is relevant to the inquiry;

(b) the inquiry would be conducted more efficiently and expeditiously if agreement could be reached in relation to that matter or any disagreement in relation to it could be defined and narrowed; and

(c) such a result is capable of being achieved by mediation,

then they may at any time appoint a mediator for that purpose.

(2) A mediator must be a person appearing to the Welsh Ministers to have been trained in mediation techniques by an independent mediation organisation.

(3) Where the Welsh Ministers appoint a mediator, they may in writing require the applicant to publish by local advertisement and within such period as they may specify a notice stating the name of the person so appointed and the matter in relation to which that person is to mediate.

(4) Where the Welsh Ministers require the applicant to publish a notice under paragraph (3), as soon as reasonably practicable after the applicant has complied with that paragraph, the Welsh Ministers must publish that notice on a website.

(5) The mediator must determine the procedure for the mediation.

(6) Within seven days from the conclusion of the mediation, the mediator must give to the inspector a report describing the mediation procedure and its outcome and the inspector must, as soon as practicable after receipt, send the report to persons entitled to appear.

(7) The inspector must permit any person entitled to appear to address the inspector on the report referred to in paragraph (6), but the mediator is not to give evidence at the inquiry.

Procedure for pre-inquiry and other meetings

10.—(1) Subject to paragraph (2), the Welsh Ministers must hold one or more pre-inquiry meetings.

(2) Paragraph (1) does not apply where the Welsh Ministers consider that holding a pre-inquiry meeting would not result in the inquiry being conducted more efficiently and expeditiously, in which case paragraphs (3) to (9) do not apply.

(3) The pre-inquiry meeting (or, where there is more than one, the first pre-inquiry meeting) must be held within twelve weeks of the date of the relevant notice.

(4) The Welsh Ministers must give not less than three weeks' written notice of the pre-inquiry meeting (or, where there is more than one, the first pre-inquiry meeting) to—

- (a) any person entitled to appear; and
- (b) any other person whose presence at the pre-inquiry meeting seems to the Welsh Ministers to be desirable.

(5) The Welsh Ministers may in writing require the applicant to take one or more of the following steps—

- (a) not less than two weeks before the date fixed for the first pre-inquiry meeting, to publish by local advertisement a notice of the pre-inquiry meeting;
- (b) to send a notice of that pre-inquiry meeting to such persons or classes of persons as the Welsh Ministers may specify and within such period as they may specify;
- (c) to post a notice of that pre-inquiry meeting in such locations that it is likely to come to the attention of those likely to be affected by the consent applied for if it is given, and within such period as they may specify.

(6) A notice of the pre-inquiry meeting published, sent or posted pursuant to paragraph (5) must state—

- (a) the fact that the application or the variation application has been made and the purpose of it, together with a description of the place to which it relates;
- (b) where the inquiry relates to an application that a copy of the application and the map referred to in it, can be inspected at the same location or locations used to display the map pursuant to regulation 7(2) of the Applications for Consent Regulations or, if in relation to any such location that is not possible, at a suitable alternative location as near to it as possible;

- (c) where the inquiry relates to a variation application, a place in the locality where those likely to be affected by the proposed development live or work where a copy of the variation application and of the map referred to in it can be inspected; and
 - (d) the location, date and time of the pre-inquiry meeting.
- (7) The inspector—
- (a) must preside at each pre-inquiry meeting;
 - (b) must determine the matters to be discussed and the procedure to be followed;
 - (c) may require any person present at the pre-inquiry meeting who, in the inspector’s opinion, is behaving in a disruptive manner to leave; and
 - (d) may refuse to permit that person to return or to attend any further pre-inquiry meeting, or may permit that person to return or attend only on such conditions as the inspector may specify.
- (8) If the Welsh Ministers request any further information from the applicant, any qualifying planning authority, any qualifying objector or any other person at the pre-inquiry meeting, that person must ensure that two copies of the information (in the case of the applicant or any qualifying planning authority) or three copies (in the case of any other person) are received by the Welsh Ministers within such period as the Welsh Ministers may specify.
- (9) The Welsh Ministers must, as soon as practicable after receipt, circulate all information received by them under paragraph (8).
- (10) The inspector may at any time and for any purpose connected with the inquiry hold such other meetings as the inspector considers necessary.
- (11) The inspector must arrange for such notice to be given of those meetings held in accordance with paragraph (10) as the inspector considers necessary.
- (12) Paragraph (7) applies to any meetings held in accordance with paragraph (10).

Publicity for inspector’s notes of pre-inquiry meetings and recommendations

- 11.—(1) As soon as practicable after the end of each pre-inquiry meeting the inspector must prepare a note of the proceedings at that meeting and send a copy of that note to the Welsh Ministers.
- (2) As soon as practicable after sending the copy of the note to the Welsh Ministers, the inspector must circulate it.
- (3) As soon as practicable after making recommendations to the Welsh Ministers on the matters which the inspector is directed to consider under regulation 7(1)(a) the inspector must circulate a copy of those recommendations.

Receipt of statements of case etc.

- 12.—(1) The applicant must—
- (a) ensure that within the period specified in paragraph (3), two copies of the applicant’s statement of case are received by the Welsh Ministers; and
 - (b) as soon as reasonably practicable after sending the statement of case to the Welsh Ministers, send a copy of it to every other person whom the applicant knows to be entitled to appear.
- (2) The persons to whom this paragraph applies must—
- (a) ensure that within the period specified in paragraph (3) two copies of their statement of case are received by the Welsh Ministers; and

- (b) as soon as reasonably practicable after sending the statement of case to the Welsh Ministers, send a copy of it to every other person whom they know to be entitled to appear.
- (3) Unless the Welsh Ministers specify another period by notice in writing, the periods within which statements of case must be received by the Welsh Ministers are—
- (a) in the case of an applicant—
 - (i) where a pre-inquiry meeting is held, four weeks from its conclusion;
 - (ii) otherwise twelve weeks from the date of the relevant notice;
 - (b) in the case of any person to whom paragraph (2) applies—
 - (i) where a pre-inquiry meeting is held, six weeks from its conclusion;
 - (ii) otherwise fourteen weeks from the date of the relevant notice.
- (4) The persons to whom paragraph (2) applies are—
- (a) any qualifying planning authority;
 - (b) any qualifying objector who indicated in accordance with regulation 6(4)(b)(iv) that they were likely to want to be represented formally and to play a major part in the inquiry; and
 - (c) any other person required to send a statement of case in accordance with paragraph (5).
- (5) The Welsh Ministers may in writing require any other person who has notified them of an intention or wish to appear at the inquiry, to send to the Welsh Ministers two copies of their statement of case and in this case the Welsh Ministers must—
- (a) send to that person a statement of the matters referred to in regulation 4(1)(c); and
 - (b) as soon as practicable inform that person of the name and address of every person to whom that person's statement of case is required to be sent.
- (6) Where a relevant planning authority which is a local planning authority in Wales is required to send a statement of case under this regulation, that statement of case must include details of the time and location where the opportunity to inspect and take copies described in paragraph (13) is to be afforded.
- (7) Any person referred to in paragraph (4)(a) or (b) must in their statement of case identify each part of the applicant's statement of case with which they agree and each part with which they do not agree, and must state the reasons for each disagreement.
- (8) The Welsh Ministers must deposit each statement of case and copies of any documents or relevant part of any documents as soon as practicable after receipt.
- (9) The applicant and any person referred to in paragraph (4)(a) or (b), may in writing request from any other person who is required to provide a statement of case, a copy of any document, or of the relevant part of any document, referred to in the list of documents contained in that person's statement of case; and any such document, or relevant part, must be sent, as soon as practicable, to the person who requested it.
- (10) The Welsh Ministers or the inspector may in writing require any person, who has sent a statement of case in accordance with this regulation, to provide—
- (a) a specified number of additional copies of the statement; or
 - (b) such further information about the matters contained in the statement as they may specify,
- and must specify the time within which the copies or information must be received by them.
- (11) Any person required to provide additional copies or further information must—
- (a) ensure that the additional copies have been received by the Welsh Ministers or the inspector, within the specified time;

- (b) ensure that two copies of the further information have been received by the Welsh Ministers or the inspector, within the specified time; and the Welsh Ministers or the inspector must, as soon as practicable after receipt, deposit that further information; and
- (c) as soon as reasonably practicable after sending the further information to the Welsh Ministers or the inspector, send a copy of it to every other person whom the person providing the information knows to be entitled to appear.

(12) Any person who sends a statement of case to the Welsh Ministers must send with it a copy of—

- (a) any document; or
- (b) the relevant part of any document,

referred to in the list contained in that statement of case, unless a copy of the document or part of the document in question is already available for inspection pursuant to paragraph (13).

(13) Where the relevant planning authority is a local planning authority in Wales, they must afford to any person who so requests, a reasonable opportunity to inspect and, where practicable, take copies of—

- (a) any statement of case, written comments, information or other document a copy of which has been deposited in accordance with this regulation; and
- (b) the statement of case, if any, of the relevant planning authority and any written comments, information or other documents sent by the relevant planning authority pursuant to this regulation,

subject to the payment by that person of a reasonable charge.

(14) Where no part of the place to which an application relates is within the area of a relevant planning authority—

- (a) paragraph (6) applies as if for “Where a relevant planning authority which is a local planning authority in Wales” there were substituted “Where an interested authority”;
- (b) paragraph (13) applies as if for “Where the relevant planning authority is a local planning authority in Wales, they” there were substituted “The interested authority”.

(15) If any person who sends a statement of case under this regulation wishes to comment on another person’s statement of case they must—

- (a) ensure that within four weeks of its receipt two copies of their written comments are received by the Welsh Ministers; and the Welsh Ministers must, as soon as practicable after receipt, deposit such comments; and
- (b) as soon as practicable after sending their comments to the Welsh Ministers, send a copy of them to every other person whom they know to be entitled to appear.

(16) The Welsh Ministers must, as soon as practicable after receipt, send to the inspector any statement of case, document, or further information or written comments received by them in accordance with this regulation.

Inquiry timetable

13.—(1) The inspector must at a pre-inquiry meeting held in accordance with regulation 10—

- (a) arrange a timetable for the proceedings at, or at part of, an inquiry; and
- (b) specify the date by which any proof of evidence and summary sent in accordance with regulation 18 and any statement of common ground sent in accordance with regulation 19, must be received by the Welsh Ministers,

and must give written notice of the date so specified to every person entitled to appear.

(2) The inspector must no later than four weeks before the start of the inquiry send to every person entitled to appear a copy of the timetable.

(3) Where no pre-inquiry meeting is held, the inspector—

- (a) may arrange a timetable for the proceedings at, or at part of, an inquiry; and
- (b) must specify the date by which any proof of evidence and summary sent in accordance with regulation 18, and any statement of common ground sent in accordance with regulation 19, must be received by the Welsh Ministers,

and must give written notice of the timetable, if any, and date so specified to every person entitled to appear within ten weeks of the date of the relevant notice.

(4) The inspector may at any time vary any timetable arranged under this regulation and any changes to the timetable must be notified to every person entitled to appear.

Notification of appointment of assessor

14. Where the Welsh Ministers appoint an assessor, they must notify in writing every person entitled to appear of—

- (a) the name of the assessor; and
- (b) the matters on which the assessor is to advise the inspector.

Date and notification of inquiry

15.—(1) Subject to paragraph (2), the date fixed by the Welsh Ministers for the holding of an inquiry must be no later than—

- (a) ten weeks after conclusion of the pre-inquiry meeting, if held;
- (b) otherwise eighteen weeks from the date of the relevant notice.

(2) Where the Welsh Ministers consider it impracticable to fix a date in accordance with paragraph (1), the date fixed must be the earliest date which they consider is practicable.

(3) Unless the Welsh Ministers agree a shorter period of notice with the applicant and any qualifying planning authority, they must give not less than four weeks' written notice of the date, time and location fixed for the inquiry to every person entitled to appear.

(4) The Welsh Ministers may vary the date fixed for the inquiry, whether or not the date as varied is within the period applicable under paragraph (1).

(5) Paragraph (3) applies to a variation of a date as it applied to the date originally fixed.

(6) The Welsh Ministers may vary the time or location for the holding of an inquiry and must give such notice of any variation as appears to them to be reasonable.

(7) A written notice is to be taken to have been given by the Welsh Ministers for the purposes of paragraph (3) where they and any person entitled to appear have agreed that notice of the matters mentioned in that paragraph may instead be accessed by that person via a website, and—

- (a) the Welsh Ministers have published that notice on the website; and
- (b) not less than four weeks before the date fixed by the Welsh Ministers for the holding of the inquiry, the person is notified of—
 - (i) the publication of the notice on the website;
 - (ii) the address of the website; and
 - (iii) where on the website the notice may be accessed, and how it may be accessed.

Notice of inquiry

16.—(1) The applicant must in two successive weeks publish a notice stating—

- (a) the fact that the application or the variation application has been made, and the purpose of it, together with a description of the place to which it relates;
- (b) where the inquiry relates to an application, that a copy of the application and the map referred to in it, can be inspected at the same location or locations used to display the map pursuant to regulation 7(2) of the Applications for Consent Regulations or, if in relation to any such location that is not possible, at a suitable alternative location as near to it as possible;
- (c) where the inquiry relates to a variation application, a place in the locality where those likely to be affected by the proposed development live or work where a copy of the variation application and of the map referred to in it, can be inspected; and
- (d) the location, date and time of the inquiry.

(2) A notice under paragraph (1) must be published in one or more local newspapers such that the notice is likely to come to the attention of those likely to be affected by the proposed development.

(3) If it appears to the Welsh Ministers that, in addition to the publication of a notice in accordance with paragraphs (1) and (2), further notification of the inquiry should be given (either by the service of notices, or by advertisement, or in any other way) in order to secure that the information specified in paragraph (1) is sufficiently made known to persons who are likely to be affected by the consent applied for if it is given, the Welsh Ministers may direct the applicant to take such further steps for that purpose as may be specified in the direction.

Appearances at inquiry

17.—(1) The persons entitled to appear at an inquiry are—

- (a) the applicant;
- (b) a qualifying planning authority;
- (c) any of the following bodies if land to which the inquiry relates is situated in their area and they are not the relevant planning authority—
 - (i) a joint planning board constituted under section 2(1B) of the 1990 Act⁽¹¹⁾ (joint planning boards);
 - (ii) an urban development corporation established by the Welsh Ministers by order under section 135(1) of the Local Government, Planning and Land Act 1980⁽¹²⁾ (urban development corporations);
- (d) a qualifying objector who has returned a registration form in accordance with regulation 6(4)(a);
- (e) any other person who has sent a statement of case in accordance with regulation 12(2).

(2) Nothing in paragraph (1) prevents the inspector from permitting any other person to appear at an inquiry, and such permission must not be unreasonably withheld.

(3) Any person entitled or permitted to appear may do so on their own behalf or be represented by any other person.

(4) An inspector may allow one or more persons to appear for the benefit of some or all of any persons having a similar interest in the matter under inquiry.

⁽¹¹⁾ Subsection (1) was amended by paragraph 1 of Schedule 18 to the Local Government (Wales) Act 1994 (c. 19) and subsection (1B) was inserted into section 2 by section 19(1) of that Act.

⁽¹²⁾ 1980 c. 65.

Proofs of evidence

18.—(1) Any person entitled to appear, who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence, must send two copies of the proof of evidence (in the case of a qualifying planning authority and the applicant) or three copies (in any other case) to the Welsh Ministers.

(2) Where a copy of a proof of evidence sent under paragraph (1) contains more than 1,500 words, it must be accompanied by a written summary, which, unless the inspector permits otherwise, must not contain more than 1,500 words.

(3) Where a person sends copies of a proof of evidence and summary (if any), that person must at the same time send a copy to every other person whom that person knows to be entitled to appear unless such person has indicated in writing that they do not require to be sent a copy.

(4) The proof of evidence and any summary must be received by the Welsh Ministers no later than the date specified by the inspector pursuant to regulation 13(1)(b) or regulation 13(3)(b) and as soon as practicable after receipt, the Welsh Ministers must deposit each such proof of evidence and each such summary.

(5) The Welsh Ministers must send to the inspector, as soon as practicable after receipt, any proof of evidence together with any summary sent to them in accordance with this regulation.

(6) Any person required by paragraph (1) to send copies of a proof of evidence to the Welsh Ministers, must send with them the same number of copies of the whole, or the relevant part, of any document referred to in the proof of evidence, unless a copy of the document or part of the document in question is already available for inspection pursuant to regulation 12(13).

(7) The Welsh Ministers or the inspector may in writing require any person who has sent a copy of a proof of evidence or summary in accordance with this regulation to provide such additional copies of the proof or summary as they may specify and must specify the time within which the copy of the proof or summary must be received by them.

(8) Any person required to provide additional copies must ensure that the copies are received by the Welsh Ministers or the inspector within the specified time.

Statement of common ground

19.—(1) The Welsh Ministers may in writing require the relevant planning authority (where it is a local planning authority in Wales) and the applicant to prepare together an agreed statement of common ground.

(2) Where an agreed statement of common ground is prepared in accordance with paragraph (1), the applicant must—

- (a) ensure that, by the date specified by the inspector under regulation 13(1)(b) or 13(3)(b), two copies of the statement have been received by the Welsh Ministers; and the Welsh Ministers must, as soon as practicable after receipt, deposit that statement;
- (b) at the same time as the applicant sends the statement to the Welsh Ministers, send a copy of it to every other person whom the applicant knows to be entitled to appear, except the relevant planning authority (where it is a local planning authority in Wales); and
- (c) afford to any other person who so requests, a reasonable opportunity to inspect and, where practicable and on payment of a reasonable charge, take copies of the statement.

Procedure at inquiry

20.—(1) Except as otherwise provided, the inspector must determine the procedure at an inquiry.

(2) At the start of the inquiry the inspector—

- (a) must identify—
 - (i) the matters to be considered at the inquiry; and
 - (ii) any matters on which the inspector requires further explanation from the persons entitled or permitted to appear;
- (b) may direct that in relation to such matters as the inspector may specify, either or both of the following are to apply—
 - (i) evidence is not to be read out at the inquiry (or where a summary of evidence is sent in accordance with regulation 18(4), that only the summary is to be read out); and
 - (ii) persons giving evidence are not to be subject to cross-examination on those matters.
- (3) Nothing in paragraph (2) precludes any person entitled or permitted to appear from—
 - (a) referring to matters which they consider relevant to the consideration of the application or the variation application but which were not matters identified by the inspector pursuant to paragraph (2)(a); and
 - (b) making oral submissions on any matters which are the subject of a direction under paragraph (2)(b).
- (4) Unless in any particular case the inspector otherwise determines—
 - (a) the applicant begins and has the right of final reply; and
 - (b) other persons entitled or permitted to appear are heard in such order as the inspector may determine.
- (5) Subject to any direction under paragraph (2)(b), a person entitled to appear is entitled to call evidence and the applicant and a qualifying planning authority are entitled to cross-examine persons giving evidence.
- (6) The inspector may refuse to permit the—
 - (a) giving or production of evidence;
 - (b) cross-examination of persons giving evidence; or
 - (c) presentation of any other matter,which the inspector considers to be irrelevant or repetitious; but where the inspector refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to the inspector any evidence or other matter in writing before the close of the inquiry.
- (7) The inspector may refuse to permit the cross-examination of persons giving evidence, or may require such cross-examination to cease, if it appears to the inspector that permitting such cross-examination or allowing it to continue would have the effect that the timetable arranged by the inspector under regulation 13 could not be met.
- (8) The inspector must not require or permit the giving or production of any evidence, whether written or oral, which the inspector considers would be contrary to the public interest; but otherwise, the inspector may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the inquiry.
- (9) Where a person gives evidence at an inquiry by reading a summary of their proof of evidence received by the Welsh Ministers under regulation 18—
 - (a) the proof of evidence is to be treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that they now wish to rely on the contents of that summary alone; and
 - (b) subject to any direction under paragraph (2)(b)(ii), the person whose evidence the proof of evidence contains is then to be subject to cross-examination on it to the same extent as if it were evidence they had given orally.

(10) Where the inspector gives a direction under paragraph (2)(b)(i), any proof of evidence received by the Welsh Ministers under regulation 18 which covers matters which are the subject of that direction must, to the extent that it covers those matters, be treated as tendered in evidence, unless—

- (a) the person has provided a summary in accordance with regulation 18 and that person has notified the inspector that they now wish to rely on the contents of that summary alone, in which case the summary is to be treated as tendered in evidence to the extent that it covers the matters which are the subject of the direction;
- (b) the person alters or adds to the proof of evidence under paragraph (13), in which case the proof of evidence, as altered or added to, is to be treated as tendered in evidence to the extent that it covers the matters which are the subject of the direction; or
- (c) the person who has sent the proof of evidence notifies the inspector that they no longer wish to give or call that evidence.

(11) The inspector may direct that facilities are afforded to any person appearing at an inquiry to take or obtain copies of documentary evidence open to public inspection.

(12) The inspector may—

- (a) require any person appearing or present at an inquiry who, in the inspector's opinion, is behaving in a disruptive manner, to leave; and
- (b) refuse to permit that person to return; or
- (c) permit them to return only on such conditions as the inspector may specify,

but any such person may submit to the inspector any evidence or other matter in writing before the close of the inquiry.

(13) The inspector may allow any person to alter or add to a statement of case received by the Welsh Ministers under regulation 12 or a proof of evidence received by the Welsh Ministers under regulation 18 so far as may be necessary for the purposes of the inquiry; but the inspector must (if necessary by adjourning the inquiry) give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any such alteration or addition.

(14) The inspector may proceed with an inquiry in the absence of any person entitled to appear at it.

(15) The inspector may take into account any written representation or evidence or any other document received by the inspector from any person before an inquiry opens or during the inquiry provided that the inspector discloses it at the inquiry.

(16) The inspector may from time to time adjourn an inquiry and, if the date, time and location of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice is required.

(17) Any person who appears at an inquiry and makes closing submissions must by the close of the inquiry provide the inspector with a copy of their closing submission in writing.

Site inspections

21.—(1) The inspector may make an unaccompanied inspection of the place before or during an inquiry without giving notice of the inspector's intention to the persons entitled to appear.

(2) During an inquiry or after its close, the inspector may inspect the place in the company of the applicant, any qualifying planning authority, and, subject to paragraph (3), any qualifying objector who has returned a registration form in accordance with regulation 6(4)(a).

(3) Where the inspector inspects the place after the close of an inquiry, a qualifying objector is only entitled to accompany the inspector on that inspection if that objector appeared at the inquiry.

(4) In all cases where the inspector intends to make an accompanied site inspection the inspector must announce during the inquiry the date and time at which the inspector proposes to make it.

(5) The inspector is not bound to defer an inspection of the kind referred to in paragraph (2) where any person mentioned in that paragraph is not present at the time appointed.

Procedure after inquiry

22.—(1) After the close of an inquiry, the lead inspector must make a report in writing to the Welsh Ministers which must include—

- (a) the lead inspector’s consideration of the application or the variation application;
- (b) the consideration by any additional inspector of the matters relating to the application or the variation application which that additional inspector has been directed to consider;
- (c) the lead inspector’s conclusions; and
- (d) the lead inspector’s recommendations or reasons for not making any recommendation.

(2) Where an assessor has been appointed, the assessor may, after the close of the inquiry, make a report in writing to the inspector in respect of the matters on which the assessor was appointed to advise.

(3) Where an assessor makes a report in accordance with paragraph (2), the inspector must append it to the inspector’s own report and must state in that report how far the inspector agrees or disagrees with the assessor’s report and, where the inspector disagrees with the assessor, the reasons for that disagreement.

(4) When making their decision the Welsh Ministers may disregard any written representations, evidence or any other document received after the close of the inquiry.

(5) If, after the close of an inquiry, the Welsh Ministers—

- (a) differ from an inspector on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by the inspector; or
- (b) take into consideration any new evidence or new matter of fact (not being a matter of Welsh Ministers’ policy),

and for that reason are disposed to disagree with a recommendation made by the lead inspector, they must not come to a decision which is at variance with that recommendation without first notifying in writing the persons entitled to appear who appeared at the inquiry of their disagreement and the reasons for it; and affording them an opportunity of making written representations to them or (if the Welsh Ministers have taken into consideration any new evidence or new matter of fact, not being a matter of Welsh Ministers’ policy) of asking for the re-opening of the inquiry.

(6) Those persons making written representations or requesting the inquiry to be re-opened under paragraph (5) must ensure that such representations or requests are received by the Welsh Ministers within three weeks of the date of the Welsh Ministers’ notification under that paragraph.

(7) The Welsh Ministers may, as they think fit, cause an inquiry to be re-opened, and they must do so if asked by the applicant or a qualifying planning authority in the circumstances mentioned in paragraph (5) and within the period mentioned in paragraph (6).

(8) Where an inquiry is re-opened (whether by the same or a different lead inspector)—

- (a) the Welsh Ministers must send to the persons entitled to appear who appeared at the inquiry a written statement of the matters with respect to which further evidence is invited;
- (b) paragraphs (3) to (7) of regulation 15 apply in relation to the re-opened inquiry as if references in those paragraphs to an inquiry were references to the re-opened inquiry; and

- (c) paragraphs (5) and (6) of regulation 10 apply in relation to the re-opened inquiry as if references in those paragraphs to the pre-inquiry meeting were references to the re-opened inquiry.

Notification of decision

23.—(1) The Welsh Ministers must, as soon as practicable, notify their decision on an application or variation application, and their reasons for it, in writing to—

- (a) the applicant;
- (b) all persons entitled to appear who did appear; and
- (c) any other person who, having appeared at the inquiry, has asked to be notified of the decision.

(2) Notification in writing of a decision and reasons are taken to have been given to a person for the purposes of this regulation where—

- (a) the Welsh Ministers and the person have agreed that decisions and reasons required under this regulation to be given in writing may instead be accessed by that person via a website;
- (b) the decision and reasons are a decision and reasons to which that agreement applies;
- (c) the Welsh Ministers have published the decision and reasons on a website; and
- (d) the person is notified, in the manner for the time being agreed between that person and the Welsh Ministers, of—
 - (i) the publication of the decision and reasons on a website;
 - (ii) the address of the website; and
 - (iii) where on the website the decision and reasons may be accessed, and how they may be accessed.

(3) Where a copy of the lead inspector’s report is not sent with the notification of the decision, the notification must be accompanied by a statement of the lead inspector’s conclusions and of any recommendations made by the lead inspector, and if a person entitled to be notified of the decision has not received a copy of that report, that person must be supplied with a copy of it on written application to the Welsh Ministers.

(4) In this regulation “report” includes any assessor’s report appended to an inspector’s report and an additional inspector’s report appended to the lead inspector’s report but does not include any other documents so appended; but any person who has received a copy of the report may apply to the Welsh Ministers in writing, within six weeks of the date of the Welsh Ministers’ decision, for an opportunity of inspecting any such documents and the Welsh Ministers must afford that person that opportunity.

(5) Any person applying to the Welsh Ministers under paragraph (3) must ensure that their application is received by the Welsh Ministers within four weeks of the Welsh Ministers’ decision.

Procedure following quashing of decision

24.—(1) Where a decision of the Welsh Ministers on an application or a variation application in respect of which an inquiry has been held, is quashed in proceedings before any court, the Welsh Ministers—

- (a) must send to the persons entitled to appear who appeared at the inquiry a written statement of the matters with respect to which further representations are invited for the purposes of their further consideration of the application or the variation application;
- (b) must afford to those persons the opportunity of making written representations to them in respect of those matters or of asking for the re-opening of the inquiry; and

- (c) may, as they think fit, cause the inquiry to be re-opened (whether by the same or a different lead inspector).
- (2) Where the Welsh Ministers cause an inquiry to be re-opened—
 - (a) paragraphs (3) to (7) of regulation 15 apply in relation to the re-opened inquiry as if references in those paragraphs to an inquiry were references to the re-opened inquiry; and
 - (b) paragraphs (5) and (6) of regulation 10 apply in relation to the re-opened inquiry as if references in those paragraphs to the pre-inquiry meeting were references to the re-opened inquiry.
- (3) Those persons making representations or asking for the inquiry to be re-opened under paragraph (1)(b) must ensure that such representations or requests are received by the Welsh Ministers within three weeks of the date of the written statement sent under paragraph (1)(a).

Allowing further time

25. The Welsh Ministers may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of these Regulations and references in these Regulations to a day by which, or a period within which, any step is required or enabled to be taken are to be construed accordingly.

Additional copies

- 26.—**(1) The Welsh Ministers may at any time before the close of an inquiry request from any person entitled or permitted to appear additional copies of the following—
- (a) an outline statement (as mentioned in regulation 6(4)(c)) sent in accordance with regulation 6(4)(a);
 - (b) a statement of case or comments sent in accordance with regulation 12;
 - (c) a proof of evidence sent in accordance with regulation 18; or
 - (d) any other document or information sent to the Welsh Ministers before or during an inquiry, and must specify the time within which such documents should be received by them.
- (2) Any person so requested must ensure that the copies are received by the Welsh Ministers within the period specified.

Sending of notices and inspection of documents

- 27.—**(1) Notices or documents required or authorised to be sent under these Regulations may be sent—
- (a) by post; or
 - (b) by using electronic communications to send or supply the notice or document to a person at such address as may for the time being be specified by the person for that purpose.
- (2) Where the relevant planning authority, or as the case may be, an interested authority, is under an obligation to afford to any person who so requests an opportunity to inspect and take copies of any document, an opportunity is to be taken to have been afforded to a person where the person is notified of—
- (a) publication of the relevant document on a website;
 - (b) the address of the website; and
 - (c) where on the website the document may be accessed, and how it may be accessed.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

18 February 2019

Julie James
Minister for Housing and Local Government,
one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

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 (“the 1989 Act” and such consent a “section 36 consent”) to construct, extend or operate an offshore generating station;
- under section 36C of the 1989 Act, to vary a section 36 consent.

For the purposes of these Regulations reference to an application for a section 36 consent includes any application under section 36A of 1989 Act for a declaration relating to public rights of navigation, which is made with an application for a section 36 consent.

The Welsh Ministers are the appropriate authority in relation to applications made after 1 April 2019 under sections 36 and 36C of the 1989 Act relating to generating stations (or proposed generating stations) in Welsh waters which have or will have a capacity not exceeding 350 megawatts.

“Welsh waters” means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Wales, and the Welsh zone. “Welsh zone” has the meaning given in section 158 of the Government of Wales Act 2006.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.