

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

The Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020, SSI 2020/123

Purpose and intended effect

Background

1. The Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (the Regulations) contain amendments to address the implications of public health policy during the current COVID-19 outbreak. These are intended to be temporary until such times as the public health policy deems it appropriate to allow public interaction and when staffing levels and people's movements are back to normal.

Objective

2. Given the restrictions on public gatherings and requirements for social distancing now in place, the Regulations amend a number of requirements placed on developers making applications under section 36 and 37 of the Electricity Act 1989, as well as requirements placed on planning authorities, that would run contrary to those public health requirements. These requirements are: the making available of documents, including Environmental Impact Assessment (EIA) documents, and Ministerial determinations, in physical form for public inspection, either by developers or the planning authorities; and, the requirements placed on developers to supply hard copies of such documents to the Scottish Ministers.
3. The amendments align with a wider of package of planning measures, including general provisions in other legislation removing requirements for public authorities to have to provide the public physical access to information, such as public planning registers (requiring online access instead, where possible) and powers to exclude the public from local authority meetings on public health grounds.
4. The amendments made by Regulations and are in line with the UK and Scottish Government's public health policy on minimising the impact of the COVID-19 outbreak. Indeed the Regulations are, in effect, consequential amendments arising from COVID-19 and the public health policy.

Rationale for Government intervention

5. In the absence of these amendments, the requirements placed on developers and planning authorities would be at odds with public health policy, and certain Electricity Act applications would have to be delayed due to an inability to comply with statutory requirements, with potential effects on the ability of the economy to recover post outbreak.

6. National Performance Framework - These measures contribute to the following performance indicators:
 - We live in communities that are inclusive, empowered, resilient, and safe.
 - We have a globally competitive, entrepreneurial, inclusive and sustainable economy.
 - We value enjoy and protect and enhance our environment.

Consultation

Within Government

7. Energy Consents Unit have engaged closely with Planning and Architecture Division on the wider impacts the COVID-19 outbreak will have on the planning system, and are seeking to align with contingency measures to be adopted in respect of planning applications.

Public Consultation

8. Due to the urgency of these measures there has been no public consultation.

Business

9. In the current emergency there has been no time to engage in detail with business. We have engaged in the usual way with wind farm developers and developers of electricity network infrastructure since the current public health policy was adopted. These developers have highlighted concerns about the effects of the health emergency on their ability to discharge their statutory responsibilities and the effects on their development programme. Concerns have been raised about possible long term effects on the ability to maintain infrastructure essential to public electricity supply, and on investment in the continued development of renewable energy.

Options

Do nothing

10. With the current public health policy certain applications for consent would be unable legally to proceed. This would create a backlog of applications and potentially derail projects altogether at a time when the effects of the COVID-19 virus are already expected to cause serious negative impacts on the economy.

Suspend the application process

11. This would be disproportionate and likely to exacerbate the negative impact on the economy caused by the virus.

Suspend public engagement in the consents process altogether

12. This would be disproportionate when technology can provide alternatives to physical inspection of documents. The Scottish Government is committed to maintaining community engagement as far as possible.

Remove those specific requirements that are contrary to public health policy

13. This provides a proportionate response, allowing the applications for energy consents to be made and to continue to be processed where possible while providing for public participation by electronic means.
14. Those subject to the relevant provisions of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 can already utilise electronic communications for most of the statutory requirements. The temporary suspension of the need to make a hard copy available for inspection is likely to have a very limited impact on the public, while there is an overriding need for public safety. Whilst applicants will no longer be required to place environmental impact assessment reports in a physical place for public inspection, such reports will be made available online.

Sectors and groups affected

15. Whilst everyone is affected by the public health policy, the amendments would affect developers making applications and members of the public wishing to engage with the applications and EIA process and the process for making documents available and the availability of documents for public inspection would be altered.

Benefits

Do nothing

16. No benefits. Doing nothing would create uncertainty for the public and developers, and would introduce likely delay in applications processing, thereafter impacting on post COVID recovery.

Suspend the application process

17. No benefits. Whilst some members of the public may consider that applications should be suspended until such times as they can engage as before, the overall impact on holding up and derailing development could have far wider consequences.

Suspend public engagement in the consents process altogether

18. No benefits. The lack of any ability for the public to make concerns known about proposals is considered disproportionate and untenable in the circumstances.

19. Similarly for EIA, developers not having to produce hard copies of Environmental Impact Assessment Reports is likely to be a small and limited proportion of the overall cost of undertaking the actual assessment.

Remove those specific requirements that are contrary to public health policy

20. This allows the consenting process to continue to function in so far as it is possible in the circumstances and still allows public views of proposals to be considered.

Costs

Do nothing

21. Certain applications would be incapable of being processed or determined, leading to developers incurring costs for delays, and causing delays to necessary developments and infrastructure provision. The backlog of proposals and derailment of projects could add significantly to the economic dislocation caused by COVID-19.

Suspend the application process

22. As above, but this would have even more significant implications for the whole economy and provision of housing, public services etc.

Suspend public engagement in the consents process altogether

23. As well as general public discontent about being shut out of the various planning processes, this could lead to bad decision making where the public were unable to highlight considerations material to the proposals.

Remove those specific requirements that are contrary to public health policy

24. The impact on the public being unable to inspect a hard copy is likely to be limited. The trend for a number of years has been for more information and reports to be made publically available electronically.

Scottish Firms Impact Test

25. There has been no time for such engagement in the current crisis. We are however responding to the concerns of businesses as regard the requirement for physical availability of application documents in public places, which is untenable in the face of public health policy. It is the latter policy and related crisis which will drive any impacts on Scottish firms, beyond the ability of these regulations to help allow applications to continue to be made and determined.

Competition Assessment

26. There are no obvious impacts on competition of these procedural amendments as regards obtaining Electricity Act consent. They are designed to allow the continued making and processing of energy consent applications with the minimum of disruption in the circumstances, i.e. to avoid preventing businesses from applying for the consents that they may require, and having those applications processed and determined.

- Will the measure directly or indirectly limit the number or range of suppliers?

27. No. It is designed to allow applications to be made and determined given the constraints in the current crisis.

- Will the measure limit the ability of suppliers to compete?

28. No. As above. These are consequential changes driven by public health policy.

- Will the measure limit suppliers' incentives to compete vigorously?

29. No. As above

- Will the measure limit the choices and information available to consumers?

30. No. As above.

Consumer Assessment

31. The Regulations are essentially about allowing developers to continue to have their applications processed so that they can, in so far as that is the purpose of their development, provide/distribute electricity to their consumers.

- Does the policy affect the quality, availability or price of any goods or services in a market?

32. No. Any such changes will be driven by the health crisis and related public health policy in relation to which these changes to regulations are consequential.

- Does the policy affect the essential services market, such as energy or water?

33. No. Any such changes will be driven by the health crisis and related public health policy in relation to which these changes to regulations are consequential.

- Does the policy involve storage or increased use of consumer data?

34. No.

- Does the policy increase opportunities for unscrupulous suppliers to target consumers?

35. No.

- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

36. In so far as the consenting process is a service and the public are its consumers, yes. However, any such changes will be driven by the health crisis and related public health policy in relation to which these changes to regulations are consequential.

- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

37. No.

Test run of business forms

38. No new forms.

Digital Impact Test

39. The intention of these changes is to take advantage, where possible, of the option of using digital technologies as opposed to encouraging attendance of the public at public places for the inspection of documents, which is against the current public health policy.

- Does the measure take account of changing digital technologies and markets?

40. Yes

- Will the measure be applicable in a digital/online context?

41. Yes – the intention is to allow such flexibility where possible.

- Is there a possibility the measures could be circumvented by digital / online transactions?

42. No

- Alternatively will the measure **only** be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?

43. This is a consequential amendment driven by public health policy, which itself may drive any such impact.

- If the measure can be applied in an offline **and** online environment will this in

itself have any adverse impact on incumbent operators?

44. This is a temporary measure where attendance at public places unless essential is banned, and online options may provide alternative forms of engagement.

Legal Aid Impact Test

45. These consequential changes are to ensure the legal requirements of the consenting process can be met in the current crisis and thus avoid questions of legal challenge.

Enforcement, sanctions and monitoring

46. These measures remove certain statutory requirements temporarily during the COVID 19 outbreak. We will monitor compliance with requirements to make information available to the public electronically as we currently do where information requires to be made available in physical form.

Implementation and delivery plan

47. These measures will be implemented at the earliest opportunity and the legislative changes conveyed to developers and stakeholders by email and the wider public sphere through the Scottish Government's web site.

Post-implementation review

48. Scottish Government measures will be subject to review through the course of the crisis to judge when it is appropriate to return to normal arrangements.

Summary and recommendation

The option to remove only those requirements which would be contrary to the current ban on public gatherings and requirements for social distancing is the recommended one.

Doing nothing is simply not a realistic option. Similarly, suspending the application process or public engagement in that process are considered wholly disproportionate and untenable in the circumstances. The potential economic, social and environmental costs of the other options, in terms of preventing decision making or shutting the public out of the process, far outweigh the temporary limitations on public engagement which are in any event necessitated by the current crisis and related health advice.

Declaration and publication

• Sign-off for Final BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of relevant representative organisations in Scotland. Wider consultation with businesses has not been possible in the current circumstances.

Signed: Paul Wheelhouse

Date: 14th April 2020

Paul Wheelhouse, Minister for Energy, Connectivity and the Islands

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