

Offshore Consents Overcoming the Hurdles

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The Hurdles

- New application Regulations
- Onshore Works
- Navigation Rights
- Safety Zones
- Navigation issues
- Habitats Regulations

Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006

- In force on 1st October 2005
- Similar to 1990 Regulations
- Don't extend to Scotland – E W & NI only
- Publication of notice : fishing trade journals
- Service of notice : JNCC/EN/CCW/CA/EA/EH/Cadw/MCA/HA/NAW and planning authorities likely to have an interest
- Fees

Onshore Works for Offshore Wind farms

- Choice of application : TCPA 1990 or EA 1989 plus deemed consent
- TCPA: refusal by LPA leads to appeal and possible public inquiry (DCLG)
- EA: objection by LPA forces public inquiry (DTI)
- DTI only involved in TCPA appeal if SU and operational land

Excluding Navigation Rights

- Risk of public nuisance claims
- Previous use of TWA Orders
- Section 36A Electricity Act 1989 (S.90 EA 2004)
- Extinguishment Suspension or use of Conditions
- Apply with S.36 application
- Parameters in application letter
- Section 100 EA 2004 : pre-Energy Act Consents

Safety Zones

- Safety of OREI, nearby installations, individuals, nearby vessels
- Notice of SZ's to be published
- Variation, prohibited activities, certain vessels, discretions
- Procedure in EA 2004 Sch. 16
- Risk Assessment needed
- Regulations still required on process, discretions etc

Navigation : Statutory duties

- Interference with ReSLEIN
- Obstruction or danger to navigation
- SoS exercise of powers : S36A/S100
- SoS exercise of powers : S95/S96

Meaning of ReSLEIN

- Norel Sub Group Report
- Represents view of Government officials in DTI/DfT
- Reslein includes
 - Certain straits and other passages
 - Traffic lanes under traffic separation schemes*
 - Deep water routes*
 - Advisory directions of traffic flow*
 - Entry/exit routes to international ports

*See 8th edition of Ship routeing (IMO)

Habitats Regulations – Offshore

- Defra consultation: Offshore Marine Conservation (Natural Habitats etc) Regulations 2006 (also amending 1994 Regs)
- Beyond UK territorial waters
- Changes to earlier draft due to ECJ decisions
- Key Points:
 - Identify SACs and SPAs – “European offshore marine sites”
 - Protect listed marine species and wild birds
 - Removal of defence of “incidental result of a lawful operation”
 - Certain activities can continue, through licensing?

Bond Pearce