

Mitchell ID (Ian)

From: Mitchell ID (Ian)
Sent: 03 June 2005 10:24
To: Maguire BJ (Ben); Forsyth CC (Colin)
Cc: Cullen F (Felicity); Gray E (Elizabeth); Stewart NA (Neil)
Subject: RE: ORAL PQ : Reserved/devolved on Nuclear : Consents under Electricity Act and Planning legislation

Colin

It is my understanding of the situation too. The procedures to be followed would be the same as those used regularly to deal with applications for wind farms above 50 megawatts. These require consultation with planning authorities before a Section 36 consent, and deemed planning consent, is issued by Energy Division.

If Section 36 was not Executively devolved then my understanding is that an application for a new power station would have to come through the planning system although there are provisions in Section 57 of the Planning Act relating to "deemed planning permission" that would need to be examined more closely to see if the Scottish Ministers could direct, if they so wish, that planning permission "shall be deemed to be granted" rather than have two separate consent systems.

Ian

-----Original Message-----

From: Maguire BJ (Ben)
Sent: 03 June 2005 09:37
To: Forsyth CC (Colin); Mitchell ID (Ian)
Cc: Cullen F (Felicity); Gray E (Elizabeth); Stewart NA (Neil)
Subject: RE: ORAL PQ : Reserved/devolved on Nuclear : Consents under Electricity Act and Planning legislation

Colin

I think that is the situation.

Ben

-----Original Message-----

From: Forsyth CC (Colin)
Sent: 03 June 2005 09:33
To: Maguire BJ (Ben); Mitchell ID (Ian)
Cc: Cullen F (Felicity); Gray E (Elizabeth); Stewart NA (Neil)
Subject: FW: ORAL PQ : Reserved/devolved on Nuclear : Consents under Electricity Act and Planning legislation

Ben Maguire ETLLED
Ian Mitchell DD: Planning

Copy to Felicity Cullen OSAG
Elizabeth Gray SEERAD
Neil Stewart ETLLED

**NEW POWER PLANTS IN SCOTLAND
CONSENT ARRANGEMENTS**

Prompted by questions from colleagues here I have been looking further at the interaction of the powers held by the devolved administration under the Electricity Act and generally in terms of land-use planning, both of which apply in the case of any proposal for a major new power plant in Scotland. My understanding based on recent contribution in relation to the PQ is as follows. Grateful to know whether this adequately represents the position as you understand it.

The lines provided the Executive indicate that consideration of a proposed new power plant in Scotland would proceed under their (executively devolved) Electricity Act powers; on completion of that process whatever may be consented under s.36 of the Electricity Act 1989 would automatically also be consented by Executive Ministers under their (fully devolved) planning powers (T&CP(S) Act 1997). As legislation stands at present therefore the effective consent power for Scottish Ministers is that in the Electricity Act.

There was somewhere a suggestion that major power plants "did not require" Planning Act consent, but my reading of the lines offered from Planning Division is that this is not the case, rather such consent is granted automatically each time in line with the decision reached by Scottish Ministers under s.36 of the Electricity Act ?

If s.36 consents had not been executively devolved there would be separate consent processes to be followed; by DTI under the Electricity Act, and by the Executive under Planning legislation. That this would involve considerable duplication of effort and the potential for the two processes reaching different decisions on a proposal in Scotland was no doubt a major reason why s.36 consent powers were executively devolved in the first place.

This of course offered in terms of the devolution settlement as it stands. We are not in the business of speculating about what could be hugely controversial changes to existing legislation.

Colin Forsyth

3 June 2005

Scotland Office

Extn 4-9029

Tracking:

Recipient	Read
Maguire BJ (Ben)	Read: 03/06/2005 11:55
Forsyth CC (Colin)	Read: 03/06/2005 11:36
Cullen F (Felicity)	Read: 03/06/2005 10:33
Gray E (Elizabeth)	Read: 03/06/2005 10:25
Stewart NA (Neil)	
Rafferty ND (Neal)	Read: 03/06/2005 13:01