



# Electricity Act 1989

## 1989 CHAPTER 29

### PART I

#### ELECTRICITY SUPPLY

##### *Protection of public interest*

#### **36 Consent required for construction etc. of generating stations.**

(1) Subject to subsections [<sup>F1</sup>(1A) to] (2) and (4) below, a generating station shall not be constructed [<sup>F2</sup>at a relevant place (within the meaning of section 4), and a generating station at such a place shall not be], extended or operated except in accordance with a consent granted by the [<sup>F3</sup>appropriate authority].

[<sup>F4</sup>(1A) So far as relating to the construction or extension of a generating station, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).

(1B) So far as relating to the operation of a generating station, subsection (1) does not apply if the operation is authorised by an order granting development consent under the Planning Act 2008.]

[<sup>F5</sup>(1C) This section is subject to section 12 of the Marine and Coastal Access Act 2009 (which transfers certain functions of the Secretary of State to the Marine Management Organisation).]

[<sup>F6</sup>(1D) Subsection (1) does not apply to an English or Welsh onshore wind generating station.

(1E) “English or Welsh onshore wind generating station” means a generating station that—  
(a) generates electricity from wind, and  
(b) is situated in England or Wales, but not in waters in or adjacent to England or Wales up to the seaward limits of the territorial sea.]

(2) Subsection (1) above shall not apply to a generating station whose capacity—

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- (a) [<sup>F7</sup>in the case of a generating station otherwise than in Wales,] does not exceed the permitted capacity, that is to say, 50 megawatts; <sup>F8</sup>...
  - (b) in the case of a generating station which is to be constructed or extended, will not exceed the permitted capacity when it is constructed or extended [<sup>F9</sup>otherwise than in Wales];
  - <sup>F10</sup>(c) in the case of a generating station in Wales, does not exceed the devolved capacity, that is to say, 350 megawatts; and
  - (d) in the case of a generating station which is to be constructed or extended in Wales, will not exceed the devolved capacity when it is constructed or extended;]
- and an order under this subsection may make different provision for generating stations of different classes or descriptions.
- (3) The Secretary of State may by order provide that subsection (2) above shall have effect as if for the permitted capacity mentioned in paragraph (a) there were substituted such other capacity as may be specified in the order.
  - (4) The [<sup>F11</sup>appropriate authority] may by order direct that subsection (1) above shall not apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order.
  - (5) [<sup>F12</sup>Subject to subsections (5A) and (5B),] A consent under this section—
    - (a) may include such conditions (including conditions as to the ownership or operation of the station) as appear to the [<sup>F13</sup>appropriate authority] to be appropriate; and
    - (b) shall continue in force for such period as may be specified in or determined by or under the consent.
  - <sup>F14</sup>(5A) In the case of a generating station in respect of which a controlled activity, within the meaning of the Water Environment (Controlled Activities) (Scotland) Regulations 2005, will be carried on, the Secretary of State shall, before granting a consent under subsection (1), obtain and have regard to the advice of the Scottish Environment Protection Agency on matters relating to the protection of the water environment and have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.
  - (5B) In the event that the conditions of a consent granted under subsection (1) on matters relating to the protection of the water environment, and the conditions of an authorisation granted under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 differ, and cannot reasonably be reconciled, the relevant conditions of that consent shall be treated as modified to the extent necessary to be consistent with the conditions of that authorisation.]
  - (6) Any person who without reasonable excuse contravenes the provisions of this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
  - (7) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of
    - <sup>F15</sup>(a) the Welsh Ministers, if they are the appropriate authority, or
    - (b) the Secretary of State, in all other cases.]
  - (8) The provisions of Schedule 8 to this Act (which relate to consents under this section and section 37 below) shall have effect.

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[<sup>F16</sup>(8A) The Welsh Ministers may by regulations make provision about the grant of consents under section 36 in relation to generating stations in respect of which they are the appropriate authority, including in particular provision about—

- (a) the making and withdrawal of applications;
- (b) fees;
- (c) publicity and consultation requirements;
- (d) rights to make representations;
- (e) public inquiries;
- (f) consideration of applications.

(8B) The Welsh Ministers may by regulations make provision for applications in respect of which they are the appropriate authority to be determined by a person appointed by them for that purpose.]

(9) In this Part “extension”, in relation to a generating station, includes the use by the person operating the station of any land [<sup>F17</sup>or area of waters] (wherever situated) for a purpose directly related to the generation of electricity by that station and “extend” shall be construed accordingly.

[<sup>F18</sup>(10) In this section “appropriate authority” means—

- (a) the Scottish Ministers, in relation to a generating station in or to be constructed in Scotland;
- (b) the Welsh Ministers, in relation to a generating station in or to be constructed in Welsh waters that—
  - (i) does not exceed the devolved capacity, that is to say, 350 megawatts;
  - (ii) in the case of a generating station which is to be constructed or extended, will not exceed the devolved capacity when constructed or extended;
- (c) the Secretary of State, in all other cases.

(11) In this section—

“Scotland” has the same meaning as in section 32(2) (see section 32(3));  
“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.]

#### Textual Amendments

- F1** Words in s. 36(1) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), [Sch. 2 para. 32\(2\)](#) (with s. 226); S.I. 2010/101, art. 2 (with art. 6)
- F2** Words in s. 36(1) inserted (1.3.2005) by [Energy Act 2004 \(c. 20\)](#), s. 93(1)(4), 198(2); S.I. 2005/442, art. 2(1), Sch. 1
- F3** Words in s. 36(1) substituted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by [Wales Act 2017 \(c. 4\)](#), ss. 39(8), 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F4** S. 36(1A)(1B) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), [Sch. 2 para. 32\(3\)](#) (with s. 226); S.I. 2010/101, art. 2 (with art. 6)
- F5** S. 36(1C) inserted (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 12(7)(a)(8), 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

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- F6** S. 36(1D)(1E) inserted (12.7.2016) by Energy Act 2016 (c. 20), **ss. 78**, 84(3); S.I. 2016/602, reg. 3(g) (with reg. 4) (as substituted by S.I. 2016/710, reg. 2)
- F7** Words in s. 36(2)(a) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(9)(a)(i)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F8** Word in s. 36(2)(a) omitted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by virtue of Wales Act 2017 (c. 4), **ss. 39(9)(a)(ii)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F9** Words in s. 36(2)(b) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(9)(b)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F10** S. 36(2)(c)(d) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(9)(c)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F11** Words in s. 36(4) substituted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(8)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F12** Words in s. 36(5) inserted (S.) (1.4.2006) by The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054), art. 1(1), **Sch. 1 para. 1(2)(a)**
- F13** Words in s. 36(5)(a) substituted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(8)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F14** S. 36(5A)(5B) inserted (1.4.2006) by The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054), art. 1(1), **Sch. 1 para. 1(2)(b)**
- F15** Words in s. 36(7) substituted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(10)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F16** S. 36(8A)(8B) inserted (1.4.2019) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 47** (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, reg. 5(b)
- F17** Words in s. 36(9) inserted (1.3.2005) by Energy Act 2004 (c. 20), **s. 93(3)(4)**, 198(2); S.I. 2005/442, art. 2(1), Sch. 1
- F18** S. 36(10)(11) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(11)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)

#### Modifications etc. (not altering text)

- C1** S. 36 restricted by S.I. 1990/442, **art. 3(1)(a)**
- C2** S. 36 modified (S.) (27.5.1997) by 1997 c. 8, **ss. 57(2)**, 278(2) (with ss. 64, 219)  
S. 36 modified (S.) (27.5.1997) by 1997 c. 10, **ss. 10(2)**, 31, 40(2) (with ss. 9(3), 10(5), 38(6))
- C3** S. 36: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, art. 2, **Sch. 1** (with art. 7)
- C4** S. 36 restricted (21.11.2003) by The Norfolk Offshore Wind Farm Order 2003 (S.I. 2003/2830), arts. 1, **16** (with art. 23)
- C5** S. 36 excluded (16.4.2004) by The Gunfleet Sands Offshore Wind Farm Order 2004 (S.I. 2004/933), arts. 1, **16**
- C6** S. 36 excluded (19.11.2004) by The Scarweather Sands Offshore Wind Farm Order 2004 (S.I. 2004/3054), arts. 1, **26** (with art. 38)
- C7** S. 36 functions modified (12.4.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 (S.I. 2006/1040), arts. 1(2), **2** (with art. 6)
- C8** S. 36: transfer of functions (13.4.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 (S.I. 2006/1040), arts. 1(1), **3** (with art. 6)
- C9** S. 36 excluded (E.W.) (22.12.2021) by The Morlais Demonstration Zone Order 2021 (S.I. 2021/1478), arts. 1, **37(1)** (with arts. 15, 50, Sch. 11 para. 29)

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- C10** S. 36(1): transfer of functions (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12, 324(3)**; S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))
- C11** S. 36(1) excluded (E.W.) (1.3.2016) by The Onshore Wind Generating Stations (Exemption) (England and Wales) Order 2016 (S.I. 2016/21), arts. 1(1), **3** (with art. 4)
- C12** S. 36(1) excluded (2.12.2020) by The Electricity Storage Facilities (Exemption) (England and Wales) Order 2020 (S.I. 2020/1217), arts. 1(1), **4(2)** (with arts. 4(3), 5)
- C13** S. 36(1) excluded (2.12.2020) by The Electricity Storage Facilities (Exemption) (England and Wales) Order 2020 (S.I. 2020/1217), arts. 1(1), **3(2)** (with arts. 3(3), 5)
- C14** S. 36(2) modified (S.) by S.I. 1990/392, **art. 2**
- C15** S. 36(2) modified (E.W.) (1.12.2001) by S.I. 2001/3642, **art. 2**
- C16** S. 36(2) modified (S.) (26.9.2002) by The Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations) (Scotland) Order 2002 (S.S.I. 2002/407), **art. 3**
- C17** S. 36(5): transfer of functions (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12, 324(3)**; S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))
- C18** S. 36(7): transfer of functions (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12, 324(3)**; S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(1)(f) and word inserted by [2023 c. 52 s. 186\(3\)\(b\)](#)
- s. 4(1)(ca) inserted by [2023 c. 52 s. 166\(2\)](#)
- s. 4(1)(da) inserted by [2023 c. 52 s. 205\(2\)\(b\)](#)
- s. 4(3H)(3I) inserted by [2023 c. 52 s. 186\(4\)](#)
- s. 4(3CA) inserted by [2023 c. 52 s. 205\(3\)](#)
- s. 4(3EA) inserted by [2023 c. 52 s. 205\(5\)](#)
- s. 6(1)(g) and word inserted by [2023 c. 52 s. 186\(7\)\(b\)](#)
- s. 6(1)(ea) inserted by [2023 c. 52 s. 205\(8\)\(b\)](#)
- s. 6(2C) inserted by [2023 c. 52 s. 186\(8\)](#)
- s. 6(2AA) inserted by [2023 c. 52 s. 205\(9\)](#)
- s. 6(6E) inserted by [2023 c. 52 s. 205\(10\)](#)
- s. 7(3GA) inserted by [2023 c. 52 s. 186\(17\)](#)
- s. 7A(11B) inserted by [2023 c. 52 s. 186\(18\)](#)
- s. 8A(1C) inserted by [2023 c. 52 s. 206\(6\)](#)
- s. 10NA inserted by [2023 c. 52 s. 207\(2\)](#)
- s. 11E(2)(d) and word inserted by [2013 c. 32 s. 138\(5\)\(b\)\(iii\)](#)
- s. 11AA inserted by [2018 c. 14 s. 13\(3\)](#)
- s. 15(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 3(2)(b) (as substituted) by [S.I. 2019/1245 reg. 19](#) (This amendment not applied to [legislation.gov.uk](#). The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 25(8A) inserted by [2023 c. 52 Sch. 14 para. 7\(3\)](#)
- s. 44A inserted by [1992 c. 43 s. 23](#)
- s. 44A(6)(b)(i) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 44B(1)(a)(iiia) inserted by [2023 c. 52 Sch. 17 para. 8](#)
- s. 56C(6)(d) and word inserted by [2013 c. 32 s. 138\(5\)\(d\)\(ii\)](#)
- Sch. 5A para. 2(1A) inserted by [2018 c. 14 s. 13\(4\)](#)
- Sch. 6A para. 9ZA and cross-heading inserted by [2023 c. 52 Sch. 14 para. 8](#)