

**Title:** Amendment of generating station consents under section 36 of the Electricity Act 1989

**IA No:** DECC0141

**Lead department or agency:** Department of Energy and Climate Change (DECC)

**Other departments or agencies:** Department of Communities and Local Government (DCLG)

## Validation Impact Assessment (IA)

**Date:** 05/06/13

**Stage:** Validation

**Source of intervention:** Domestic

**Type of measure:** Secondary Legislation

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### Summary: Intervention and Options

**RPC Opinion:** Fast Track Approved

#### Cost of Preferred (or more likely) Option

Net Present Value (NPV)	Business Net Present Value	Estimated annual net cost to business (EANCB)	In scope of One-In, One-Out?	Measure qualifies
£10.1m	£10.1m	- £1.8m	Yes	Deregulatory OUT

#### What is the problem under consideration? Why is government intervention necessary?

Construction on electricity generating stations may not be started until some years after consent is granted. Each consent reflects technology and industry practice at the time it was applied for, but these do not stand still, even in relatively mature sectors. It will therefore sometimes either be impossible or uneconomic to build a generating station according to all the details specified in the original consent. During the 2.5 year period it takes for large generating stations to receive consent from the Department of Energy and Climate Change (DECC), technological innovations that improve designs of such plants take place. It was previously possible to implement variations on suitably modified terms but since the introduction of the Planning Act 2008 (PA 2008) these projects have been unable to do so.

Without the power to vary initial designs consented to under Section 36 (s.36) of the Electricity Act 1989 (EA 1989) developers seeking to make changes to their original designs only have the option of fully re-applying under the PA 2008, incurring significant further expenditure and delay. This Impact Assessment (IA) seeks to make an amendment to s36 to allow for variation. The SoS will consider an application and determine whether it is acceptable, or whether the proposed variations are so significant that a new application under the Planning Act 2008 should be made. Guidelines on what are likely to be considered acceptable will be published when Section 20 of the Act comes into force. This measure is deregulatory and lowers barriers to business.

#### What are the policy objectives and the intended effects?

By amending s.36 in line with Section 20 (s.20) of the Growth and Infrastructure Act 2013 we aim to enable developers to vary their consents in order to take account of technology and design innovations.

Our objective is to remove the expensive existing barriers to varying consents.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

As a matter of law, the policy behind s.20 could only be implemented through primary legislation. As indicated above, without the ability to vary s.36 consents, viable energy infrastructure projects face considerable barriers in the form of time and costs involved in making a fresh application under PA 2008.

**Policy Option 0** – Do nothing (counterfactual)

**Policy Option 1** – Create powers to vary s. 36 consents

**Will the policy be reviewed? No If applicable, set review date: N/A**

<b>Does implementation go beyond minimum EU requirements? N/A</b>					
<b>Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.</b>	Micro <b>No</b>	< 20 <b>No</b>	Small <b>No</b>	Medium <b>No</b>	Large <b>No</b>
<b>What is the CO<sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO<sub>2</sub> equivalent)</b>	<b>Traded: N/A</b>			<b>Non-traded: N/A</b>	

*I have read the 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.*

<b>Signed by the responsible Grade 5 Economist:</b>	.....	<b>Date:</b>	
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## Summary: Analysis & Evidence Policy Option 1 (Recommended)

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Estimated Annual Net Cost to Business (EANCB) (£m)		
			Low: -1.4	High: -2.1	Best Estimate: -1.8
2013	2013	5			

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.2	-	<b>0.22</b>
High	0.4	-	<b>0.34</b>
Best Estimate	0.3		<b>0.28</b>

#### Description and scale of key monetised costs by 'main affected groups'

We include the in-house costs to firms associated with varying consent. This is very small per project (£30,000) compared to the in-house costs for *re-applying* in full (£550,000 average). To estimate this we use the cost of processing Environmental Impact Assessments as a proxy, which gives £30,000 over a 6 month period. DECC will not be charging a fee for applications or consent variations under the new scheme (discussed below).

We model the 'Low' scenario at 8 projects, the 'High' scenario as 12 projects, and our 'Best Estimate' is 10. This is based on discussions with interested parties.

#### Other key non-monetised costs by 'main affected groups'

Processing and administrating applications for varying consent will represent a cost to DECC. It is not easy to monetise this amount, but the result is likely to be very small relative to the benefits of Option 1. The alternatives to DECC incurring the cost of this fee itself offer poorer value for money.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	8.9	n/a	<b>8.3</b>
High	13.3	n/a	<b>12.4</b>
Best Estimate	11.1	n/a	<b>10.4</b>

#### Description and scale of key monetised benefits by 'main affected groups'

The benefits arise due to the avoided costs of re-applying under the PA 2008, for which developers would have incurred 2 types of cost, as below:

1. The avoided costs of fees when re-applying under PA for new consents. Avoiding this re-application fee saves a total of £557,500 per project. The composition of costs avoided by not re-applying under the PA 2008 is calculated in **Annex A**.
2. The avoided internal costs associated with re-application other than the fee itself, such as legal fees, and in-house administration. Using evidence of these costs for similar projects undertaking Environmental Impact Assessments we expect a range of £100,000-£1,000,000 per project. Taking the midpoint, we assume that the average project spends £550,000 on these fees.

**Other key non-monetised benefits by 'main affected groups'**

There are a number of wider benefits to amending s. 36 which we have not been able to monetise.

- (i) A simplified and shorter route to obtain approval to vary consent will follow (i.e. 6-9 months instead of 2.5 years). This will provide the ability to react quickly to meet new environmental standards and regulatory conditions (e.g. on the supply of fuel for biomass). The new process will enable the use of new technologies providing more efficient and cutting edge power generation, and improve developers' ability to plan construction timetables more accurately. Wider economic benefits might include encouraging investment in large-scale power plants to be brought forward earlier and enabling them to come on-stream up to 2 years earlier than would otherwise have been possible.
- (ii) There are additional costs avoided for developers which would have arisen with re-application under the PA:
  - (a) The opportunity cost of capital.
  - (b) The depreciation in value of new designs/changes over an additional 2.5 year period.

**Key assumptions/sensitivities/risks****Discount rate (%)**

3.5

- (i) No additional costs to be levied on business and significant costs saving resulting from the shorter approval process.
- (ii) As decided by ministers, DECC does not charge fees for considering applications to vary s.36 consents.
- (iii) Project developers in scope of this IA will consider neither building with existing consents nor cancelling the entire investment project as viable options. The options available to them are to either (a) vary consents through re-applying under the PA 2008 or to (b) vary consents through applying under an amended s. 36.
- (iv) Developers would apply for variation under s. 36 of the EA 1989 over the course of 5 years. This assumes that developers would seek to have projects finalised in a short-medium term time horizon. Development Consent Orders (DCOs) expire after 5 years if no construction is started, hence 5 years is also an upper limit which provides a conservative estimate in EANCB.
- (v) We assume that varying consents under s.36 would take 6 months. In an average 6-month period there are 125 working days.
- (vi) All figures (except the EANCB) are given in 2013 prices and use 2013 as the present value base year.

**Problem Under consideration**

- 1.1 There are currently 30 generating station projects for which consent has been given under Section 36 of the Electricity Act (EA) 1989 but have not yet been built.
- 1.2 At present, developers are in many cases holding off from construction for a variety of non-planning related commercial reasons, but there is a risk that a tipping point will come later in the decade when the market will want to start building but will find that the designs initially consented to no longer represent the most efficient and innovative technology available.
- 1.3 In particular, gas turbine manufacturers (for which there are 9 consents) are constantly finding ways to produce more power with the same size of blades and less fuel; environmental standards become stricter, forcing changes in design. Similarly, larger or more efficient wind turbines (for which there are 8 consents) are constantly introduced to the market.
- 1.4 All these developments can cause significant changes from the original designs (and therefore potentially from the terms of the original s.36 consent) when a consent comes to be implemented.

- 1.5 Of those 30, developers have indicated that they wish to vary consents for between 8-12 generating stations before beginning construction to reflect recent innovations.
- 1.6 If those 8-12 in question remained unable to vary their consent the only option for them if they were to decide to proceed with the changes sought would be to submit a full re-application under the PA 2008. This would be an unnecessarily lengthy and expensive process for the project in question, taking an average of 2.5 years for the statutory pre-application and examination processes.
- 1.7 The preferred alternative to full re-application is to amend s.36 of the EA 1989 which will allow projects to make variations which are deemed reasonable by the SoS and will represent a large cost-saving in fees.

## **2 Background**

- 2.1 Section 36 of Electricity Act requires that electricity generating stations of more than 50 megawatts capacity (50MW) are consented by the Secretary of State before construction. Under Section 36 there is no provision for varying the consent that was originally given.
- 2.2 Historically project developers have been able request minor variations to the conditions of the consent as part of the process of development consent without being required to re-submit a full application.
- 2.3 However, since the Planning Act 2008 came into force on 1<sup>st</sup> March 2010, developers must make a new application under that Act; which has superseded the Electricity Act. There are no statutory provisions to seek a variation of an existing s.36 consent. However the Planning Act 2008 recognises the benefits of allowing changes made to development consent orders and does have statutory provisions for variation of consents granted under it. Depending on the scale of change sought, the application follows a more or less abbreviated version of the Planning Act process.
- 2.4 The Growth and Infrastructure Act received Royal Assent on 25 April 2013. The Section 20 provision amends s.36 of the Electricity Act 1989 to allow reasonable variations (as defined in the 'Guidance Note' published and discussed below in the 'Risks' section) to be made to development consents made under s.36 of the EA 2008. It is deregulatory and will enable developers to construct already consented generating stations with variations to the consent without having to go through a full Planning Act application process, which would take significantly longer and cost significantly more.

## **3 Policy objective**

- 3.1 The objective of the measure, which this Impact Assessment accompanies, is to bring the amendment to the Electricity Act 1989 into force.
- 3.2 Providing developers with the possibility to seek a variation to an existing consent for a generating station that has not yet been built will avoid the unnecessarily large costs to the developers that would be incurred if they had to apply for a new Development Consent Order under the Planning Act 2008.
- 3.3 Wider objectives in line with DECC's core strategic framework include providing a boost to the construction industry and the likely encouragement of early commencement of construction. This

should help to counter concerns about the lack of new UK electricity generation capacity being built to replace older technologies, for example coal-fired generating stations.

## 4 Option appraisal

- 4.1 Scenario-building for the 8-12 project developers in scope, we consider there to be three options available in Option 0 (counterfactual): (a) build to a sub-optimal or outmoded specification, (b) build to their preferred design, but only after incurring significant further expenditure and delay by applying for development consent under the PA 2008, (c) abandon the project and write off their development costs to date.
- 4.2 As a result of discussions with industry we discount options (a) and (c). These discussions indicate that it would not be in the economic interests of such developers to follow option (a) because of the opportunity cost of investing in large and outdated power plant designs.
- 4.3 We also discount (c) as a likely option for developers because of the very significant sunk costs involved in the planning stages. Were (c) to be entertained as an option for a proportion of those projects in scope we expect the relative merits of amending s. 36 to be far higher for business when taking into account this sunk cost. The net effect of this on social welfare is also likely to be very high, but since we lack evidence to model that scenario we are only able to present a conservative assumption of the costs in the counterfactual scenario.
- 4.4 We expect that in the 18-22 out-of-scope cases the reasoning for not constructing with the current consents will be due to (i) the current economic climate, or (ii) an investment decision (unrelated to varying designs) not to go ahead with the project for internal financial reasons.
- 4.5 With (a) and (c) discounted we are in a position to compare the relative economic merits of pursuing Option 0 compared with Option 1.

### Summary table of costs and benefits (before discounting and re-basing)

	Cost avoided under <b>Policy 1</b>		Costs incurred under <b>Policy 1</b>	
	Average fee per full re-application (avoided cost) (£)	Average internal processing cost per full re-application (avoided cost) (£)	Average internal processing cost per application for varying consent (£)	
Per project	£557,500	£550,000	£30,000	
Per 10 projects (Central estimate)	£5,575,000	£550,000	£300,000	
Total	<b>Benefits: £11,075,000</b>		<b>Costs: £300,000</b>	<b>Net benefit: £10,775,000</b>

### Option 0 costs and benefits

- 4.6 In the counterfactual scenario there is no change to the current policy trajectory. For the 8-12 developers seeking variation for their projects, each one will need to re-apply in full under the PA 2008 as is currently the case. Businesses incur the fee costs of re-applying in full as well as in-house staff costs associated with the application process.
- 4.7 By definition therefore there are no costs or benefits associated with pursuing Option 0, the 'do nothing' scenario.

### Option 1 benefits

- 4.8 Since the creation of powers that enable developers to vary s. 36 consents will remove the necessity to re-apply under the PA 2008 we argue that there are no costs to business, only savings.
- 4.9 There are two main monetised benefits to intervention:
- (1) The avoided costs of fees when re-applying under PA for new consents. Avoiding this re-application fee saves a total of £557,500 per project. The composition of costs avoided by not re-applying under the PA 2008 is calculated in **Annex A**.
  - (2) The avoided internal costs associated with re-application other than the fee itself, such as legal fees, and in-house administration. Using evidence of these costs for similar projects undertaking Environmental Impact Assessments we expect a range of £100,000-£1,000,000 per project. Taking the midpoint, we assume that the average project spends £550,000 on these fees.
- 4.10 We assume that the 8-12 projects in scope would have re-applied within 5 years in the counterfactual (Option 0) scenario, and that re-application would occur at a consistent rate for the 5 year period. (In the Central scenario which assumes 10 projects will vary consents, 2 would re-apply under the PA 2008 annually in Option 0). This 5 year period represents the latest that the in scope 8-12 project could re-apply without lapsing. This assumption is based on industry insights. With this assumption we are able to calculate the net benefits to business for Option 1, as in **Annex B**.
- 4.11 Monetised benefits that have not been calculated due to difficulty in obtaining accurate information include:
- (i) Cost-effective electrical capacity from new power plant technology coming on stream 2 years earlier than would otherwise be the case.
- 4.12 There also exist wider economic impacts to Option 1:
- (i) Simplifying and reducing costs for the varying process will encourage investment in large-scale power plants to be brought forward earlier and enable them to come on-stream up to 2 years earlier than would otherwise have been possible.
  - (ii) Projects consented under s.36 typically have significant implications for energy security and energy policy more widely, and can contribute significantly to economic growth in multiple ways.



### Option 1 Costs

- 4.13 DECC has decided not to charge a fee for applying for future submissions to vary consents, hence this will represent a cost to exchequer. The reasoning for wavering this is due to the expense involved in deciding upon an appropriate fee and implementing a fee recovery scheme. In any case such a fee if charged would be relatively small compared to the overall savings to business and would not affect the overall merits of this proposal.
- 4.14 There are no other expected disadvantages to allowing a faster route for developers to vary initial designs.

### Risks

- 4.15 With the formal inclusion of a provision to vary s.36 consents we seek to ensure that there is no opportunity for 'gaming'. That is, DECC consent managers will use the same judgements as previously used to decide whether a request for variation qualifies for variation under s.36 or requires a full re-application for consent.
- 4.16 The terms for varying consents under the new Statutory Instrument have already been set out in a Guidance Note published for industry consumption.
- 4.17 We have no reason to believe that our Central estimate of 10 projects that will benefit from the s.36 amendment is optimistic.

### **EANCB**

- 4.18 Two benefits of the policy have been monetised:
- a) An effective "scrapping" of the fees associated with applying for consents. This is a reduction in the scope of regulatory activity for which we charge a fee and is in scope of OITO
  - b) Removal of costs associated with the "do nothing" option of the existing consents regime. This is a direct saving to business and is in scope of OITO.
- 4.19 One cost of the policy has been monetised:
- a) Costs associated with the preferred policy option – applying for a variation under the new regime. This is a direct cost to business and is in scope of OITO.
- 4.20 Using the Equivalent Annual Net Cost to Business (EANCB) Calculator, the EANCB of this deregulatory measure is estimated as a saving of £1.78m in 2009 prices with 2010 as the present value base year. Annex B provides detail of this calculation.



## Annex A

<b>Fee to accompany application</b>		<b>Cumulative Fees relevant for s. 36 power plant</b>
The IPC must charge the developer a fee in respect of the decision by the IPC under section 55 (acceptance of application) whether or not to accept the application.	£4,500	£4,500
<b>Fee in respect of the initial decision</b>		
Following a decision under section 61 (initial choice of panel or single commissioner) the IPC must notify the developer in writing of the pre examination fee. The pre examination fee is:-		
Single Commissioner	£13,000	
Panel of Commissioners	£30,000	
Panel of more than three Commissioners	£43,000	£43,000
<b>Fee in respect of the handling of an application</b>		
<b>*Initial payment in respect of the handling of an application</b> <b>The fee payable is dependent upon the number days required for examining the application and number of Commissioners handling the application.</b>		
Where an examination is handled by a single Commissioner	£615 per estimated relevant day	
Where an examination is by a panel of three Commissioners	£1,340 per estimated relevant day	
Where an examination is handled by a panel of more than three Commissioners	£2,040 per estimated relevant day	
<b>Final payment in respect of the handling of an application</b>		
Where a single Commissioner has examined the application	£1,230 per relevant day	
Where a panel of three Commissioners has examined the application	£2,680 per relevant day	
Where a panel of more than three Commissioners has examined the application	£4,080 per relevant day	£4,080
Number of working days in average 6 month period		125
Total Cost per application		<b><u>£557,500</u></b>

## Annex B

### Costs and Benefits per project\*

Year	Cost avoided under Policy 1		Costs incurred under Policy 1	Discounted total	Social Discount Rate (Fraction)
	Average annual fee per application (£)	Average internal processing cost under Policy 0 (£)	Average internal processing cost under Policy 1 (£)		
2013	£111,500	£110,000	£6,000	£215,500	1.00000
2014	£111,500	£110,000	£6,000	£208,213	1.03500
2015	£111,500	£110,000	£6,000	£201,172	1.07123
2016	£111,500	£110,000	£6,000	£194,369	1.10872
2017	£111,500	£110,000	£6,000	£187,796	1.14752
Total	£557,500	£550,000	£30,000		
Sub total	£557,500	£1,107,500	£1,077,500	£1,007,049	
	EANCB per project				£178,000.00
	EANCB for 8 projects				£1,424,000.00
	EANCB for 12 projects				£2,136,000.00
	<b>EANCB for 10 projects (best estimate)</b>				<b>£1,780,000.00</b>
	NPV for 10 projects (best estimate)				£10,070,000

\*Figures given in 2013 (real) prices. NPV and EANCB given for a 5 year period.