



# Wales Act 2017

## 2017 CHAPTER 4

### PART 2

#### LEGISLATIVE AND EXECUTIVE COMPETENCE: FURTHER PROVISION

##### *Planning for electricity generating stations*

### **39 Development consent for generating stations with 350MW capacity or less**

- (1) Section 15 of the Planning Act 2008 (generating stations) is amended as set out in subsections (2) to (6).
- (2) In subsection (1), for “or (3)” substitute “, (3), (3A) or (3B)”.
- (3) In subsection (2)(a) omit “or Wales”.
- (4) After subsection (3) insert—
  - “(3A) A generating station is within this subsection if—
    - (a) it is in Wales,
    - (b) it does not generate electricity from wind, and
    - (c) its capacity is more than 350 megawatts.
  - (3B) A generating station is within this subsection if—
    - (a) it is in waters adjacent to Wales up to the seaward limits of the territorial sea, or in the Welsh zone, and
    - (b) its capacity is more than 350 megawatts.”
- (5) In subsection (4)—
  - (a) in paragraph (a) omit “or Wales”;
  - (b) in paragraph (b), after “except” insert “the Welsh zone or”.
- (6) After subsection (4) insert—

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- “(5) “Welsh zone” has the meaning given in section 158 of the Government of Wales Act 2006.”
- (7) Section 36 of the Electricity Act 1989 (consent required for construction etc of generating stations) is amended as set out in subsections (8) to (11).
- (8) In subsection (1), (4) and (5)(a), for “Secretary of State” substitute “appropriate authority”.
- (9) In subsection (2)—
- (a) in paragraph (a)—
    - (i) at the beginning insert “in the case of a generating station otherwise than in Wales,”;
    - (ii) at the end omit “and”;
  - (b) in paragraph (b), after “extended” insert “otherwise than in Wales”;
  - (c) after paragraph (b) insert—
    - “(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;”
- (10) In subsection (7), for “the Secretary of State” substitute—
- “(a) the Welsh Ministers, if they are the appropriate authority, or
  - (b) the Secretary of State, in all other cases.”
- (11) After subsection (9) insert—
- “(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.”
- (12) In section 36C of the Electricity Act 1989 (variation of consents under section 36), in subsection (6)—
- (a) in the definition of “appropriate authority”—

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- (i) after paragraph (a) insert—
    - “(ab) the Welsh Ministers, in a case where the section 36 consent relates to a generating station (or proposed generating station) in Welsh waters that does not or will not when constructed or extended exceed 350 megawatts;”;
    - (ii) in paragraph (b), at the end insert “and does not relate to a generating station (or proposed generating station) in Welsh waters that does not or will not when constructed or extended exceed 350 megawatts”;
  - (b) in the definition of “regulations”, after paragraph (a) insert—
    - “(aa) the Welsh Ministers, in the case of section 36 consents relating to generating stations (or proposed generating stations) in Welsh waters that do not or will not when constructed or extended exceed 350 megawatts;”;
  - (c) in the definition of “statutory provision”, after “Scottish Parliament” insert “and an Act of the Assembly”;
  - (d) at the end insert—
    - ““Welsh waters” has the meaning given in section 36.”
- (13) In section 90 of the Town and Country Planning Act 1990 (development with government authorisation), in subsections (2) and (2ZA), after “the Secretary of State” insert “or the Welsh Ministers”.

#### **40 Generating stations and public rights of navigation**

- (1) Section 36A of the Electricity Act 1989 (declarations extinguishing etc public rights of navigation) is amended as set out in subsections (2) to (5).
- (2) In subsection (1)—
  - (a) for “the Secretary of State or the Scottish Ministers” substitute “the appropriate authority”;
  - (b) for “he or (as the case may be) they” substitute “the appropriate authority”.
- (3) In subsection (2), for “The Secretary of State or the Scottish Ministers” substitute “The appropriate authority”.
- (4) In subsection (6)—
  - (a) for “the Secretary of State or the Scottish Ministers” substitute “the appropriate authority”;
  - (b) for “him or them”, in both places, substitute “the appropriate authority”.
- (5) In subsection (7), after “In this section—” insert—
  - ““appropriate authority” has the same meaning as in section 36;”.
- (6) Section 36B of that Act (duties in relation to navigation) is amended as set out in subsections (7) to (10).
- (7) In subsection (1)—
  - (a) for “Neither the Secretary of State nor the Scottish Ministers may” substitute “The appropriate authority may not”;
  - (b) for “he considers, or (as they case may be) they consider,” substitute “the appropriate authority considers”.

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- (8) In subsection (2), for “both of the Secretary of State and of the Scottish Ministers” substitute “of the appropriate authority”.
- (9) In subsection (3), for “the Secretary of State or (as the case may be) the Scottish Ministers” substitute “the appropriate authority”.
- (10) In subsection (4)(a), for “the Secretary of State and the Scottish Minister have exercised or will exercise their powers” substitute “the appropriate authority has exercised or will exercise its powers”.
- (11) Section 100 of the Energy Act 2004 (further provision relating to public rights of navigation) is amended as set out in subsections (12) to (14).
- (12) In subsection (1) omit “the consenting authority”.
- (13) In subsections (3), (6) and (7), for “the consenting authority” substitute “the appropriate authority”.
- (14) In subsection (8), after “In this section—” insert—  
     ““appropriate authority” has the same meaning as in section 36 of the Electricity Act 1989;”.

#### **41 Safety zones around renewable energy installations**

- (1) Section 95 of the Energy Act 2004 (safety zones around renewable energy installations) is amended as set out in subsections (2) to (5).
- (2) In subsection (1A)—
  - (a) for “means the Scottish Ministers” substitute “means—
    - (a) the Scottish Ministers”;
  - (b) paragraphs (a) to (c) are renumbered sub-paragraphs (i) to (iii);
  - (c) in sub-paragraphs (ii) and (iii) (as renumbered), for “paragraph (a)” substitute “sub-paragraph (i)”;
  - (d) before “and otherwise” insert—
    - “(b) the Welsh Ministers, in relation to a renewable energy installation which has, or will have, a capacity of 350 megawatts or less and—
      - (i) which is to be or is in an area of Welsh waters, and is not being proposed to be extended outside those areas,
      - (ii) to which sub-paragraph (i) has ceased to apply because of an extension or proposed extension, if subsection (1D) applies, or
      - (iii) to the extent that it is to be or is in an area of Welsh waters, if sub-paragraph (i) has ceased to apply because of an extension or proposed extension, and subsection (1D) does not apply.”.
- (3) After subsection (1C) insert—
  - “(1D) This subsection applies if there is an agreement in force between the Secretary of State and the Welsh Ministers providing for the Welsh Ministers to be the appropriate Minister in relation to the whole of the installation.

- (1E) Where subsection (1D) applies, the Welsh Ministers must consult the Secretary of State about the exercise of their functions as the appropriate Minister.”
- (4) After subsection (4A) insert—
- “(4B) Before issuing a notice under this section which relates, wholly or partly, to Welsh waters, the Secretary of State must consult the Welsh Ministers.
- (4C) Before issuing a notice under this section which relates, wholly or partly, to an area outside Welsh waters, the Welsh Ministers must consult the Secretary of State.”
- (5) In section 96 of that Act (prohibited activities in safety zones), in subsection (8)(a), after “the Secretary of State” insert “or the Welsh Ministers”.
- (6) In section 104 of that Act (interpretation of Chapter 2 of Part 2), at the end of subsection (1) insert—
- ““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.”

## **42 Overhead lines associated with devolved Welsh generating stations**

- (1) Section 37 of the Electricity Act 1989 (consent required for overhead lines) is amended as set out in subsection (2) and (3).
- (2) In subsection (1), for “(2)” substitute “(2A)”.
- (3) After subsection (2) insert—
- “(2A) Subsection (1) above shall not apply in relation to an electric line that—
- (a) has a nominal voltage of 132 kilovolts or less, and
- (b) is associated with the construction or extension of a devolved Welsh generating station granted planning permission or consented to on or after the day on which section 39 of the Wales Act 2017 comes into force.
- (2B) “Devolved Welsh generating station” means a generating station that—
- (a) is in Wales and—
- (i) generates electricity from wind, or
- (ii) has a maximum capacity of 350 megawatts or less; or
- (b) is in Welsh waters and has a maximum capacity of 350 megawatts or less.
- (2C) “Welsh waters” has the meaning given in section 36 above.”
- (4) In section 16 of the Planning Act 2008 (electric lines), after subsection (3A) insert—
- “(3B) The installation of an electric line above ground is not within section 14(1) (b) if the line is associated with the construction or extension of a devolved Welsh generating station granted planning permission or consented to on or after the day on which section 39 of the Wales Act 2017 comes into force and the nominal voltage of the line is expected to be no greater than 132 kilovolts.

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- (3C) “Devolved Welsh generating station” means a generating station that—
- (a) is in Wales and—
    - (i) generates electricity from wind, or
    - (ii) has a capacity of 350 megawatts or less; or
  - (b) is in waters adjacent to Wales up to the seaward limits of the territorial sea or in the Welsh zone and has a capacity of 350 megawatts or less.
- (3D) “Welsh zone” has the meaning given in section 158 of the Government of Wales Act 2006.”

### **43 Alignment of associated development consent**

- (1) Section 115 of the Planning Act 2008 (development for which development consent may be granted) is amended as follows.
- (2) In subsection (2)(c), for “or (4)” substitute “, (4) or (4A)”.
- (3) After subsection (4) insert—
- “(4A) Development is within this subsection if the development within subsection (1)(a) with which it is associated is—
- (a) the construction or extension of a generating station that is or (when constructed or extended) is expected to be within section 15(3A) or (3B), or
  - (b) the installation of an electric line that is or (when installed) is expected to be within section 14(1)(b).”