

EXPLANATORY MEMORANDUM TO
THE ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS)
(ENGLAND AND WALES) REGULATIONS 2013

2013 No. 1570

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Regulations make procedural rules about applications for the variation of consents, granted under section 36 of the Electricity Act 1989 (“the 1989 Act”), to construct, extend or operate electricity generating stations of a specified capacity.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Context**

- 4.1 The Regulations are the first to be made under section 36C of the 1989 Act (“section 36C”). Section 36C is inserted by section 20 of the Growth and Infrastructure Act 2013. Provision for the commencement of section 20 (and thus section 36C) is made in the Growth and Infrastructure Act 2013 (Commencement No. 2 and Transitional and Saving Provisions) Order 2013 (S.I. 2013/1488).

- 4.2 Prior to the insertion of section 36C, no provision was made in the 1989 Act for consents granted under section 36 of the 1989 Act (“section 36 consents”) to be varied. For the reasons explained in section 7 below, it is considered desirable that the variation of section 36 consents should be possible in some cases. Accordingly, section 36C(4) confers a power on “the appropriate authority” (see paragraph 4.3 below) to make such variations to a section 36 consent as it considers appropriate on the application (under section 36C(1)) of the person for the time being entitled to the benefit of the consent. The Regulations make further provision about such applications.

- 4.3 The appropriate authority is defined (in section 36C(6)) as meaning the Scottish Ministers (where the consent relates to a generating station or proposed generating station in Scotland); the Marine Management Organisation (where the consent was granted by it); and the Secretary of State in any other case. For the purposes of the Regulations (which extend only to England and Wales), “the appropriate authority” will always be either the Secretary of State or the Marine Management Organisation.

5. **Territorial Extent and Application**

5.1 This instrument extends to England and Wales. It applies to section 36 consents granted in respect of generating stations, or proposed generating stations, in England or Wales; waters adjacent to England or Wales up to the limits of the territorial sea; or in a Renewable Energy Zone (as defined in the 1989 Act), except any part of such a zone in relation to which the Scottish Ministers have functions.

6. European Convention on Human Rights

6.1 The Minister of State of Energy and Climate Change has made the following statement regarding Human Rights:

In my view, the provisions of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 Certain electricity generating stations cannot be constructed, extended or operated without a section 36 consent. As noted above, section 36 does not provide for section 36 consents to be varied. However, it is not unusual for circumstances to arise in which the ability to vary a section 36 consent would be very useful.

7.2 For example, power station development consents are often not implemented until some years after they are granted. Each consent reflects technology and industry practice at the time it was applied for, but such practices do not stand still, even in relatively mature sectors. This means that when a developer comes to construct a generating station, it will sometimes be uneconomic or cause avoidable detriment of the environment to do so according to all of the details specified in the consent. In practice, changes to the original section 36 consent may be necessary to convert the proposal into a feasible project. In the absence of a power to vary the section 36 consent, the developer's only option would be to apply for a fresh consent for the whole project (both modified and unmodified elements). Except in the case of offshore projects of between 1 and 100MW, the application for a new consent would have to be made under completely different legislation (the Planning Act 2008) and it would take a minimum of two years before the new consent was available.

7.3 Accordingly, section 36C provides for the making of variations to section 36 consents.

7.4 The purpose of the Regulations is to provide a predictable, consistent and transparent process for making, publicising and considering applications to vary section 36 consents. In particular, they provide for consultation on variation applications to take place in a way that follows closely the existing rules for applications for section 36 consents, and which ensures that the relevant provisions of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (commonly known as the "Environmental Impact Assessment" or "EIA" Directive) will be implemented as necessary in relation to applications to vary a section 36 consent in the same way as they are in relation to an application for a section 36 consent.

- *Consolidation*

7.5 None.

8. Consultation outcome

8.1 None.

9. Guidance

9.1 A guidance note has been prepared to explain the process to vary consents for electricity generating stations which have been granted under section 36 of the Electricity Act 1989. The guidance note will be made available on-line when the Regulations are published. It will be of interest to developers and operators of generating stations (or proposed generating stations) which are the subject of section 36 consents and local authorities, statutory consultees and other interested parties who are given an opportunity to comment on applications from developers or operators to vary section 36 consents.

10. Impact

10.1 An Impact Assessment is attached to this memorandum. It has been prepared on the basis that the Regulations have a positive impact on business.

11. Regulating small business

11.1 The legislation does not regulate the conduct small businesses as the projects likely to benefit from the revised variation process are large (on average valued at £500m - £700m). However, there may be small businesses employed as subcontractors.

12. Monitoring & review

12.1 Before 31st July 2018, the Secretary of State must:

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

13. Contact

Gareth Leigh
National Infrastructure Consents Team
3rd Floor Area A
DECC
3 Whitehall Place
London
SW1A 2AW

0300 068 5677

Gareth.leigh@decc.gsi.gov.uk