

Title: The Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 IA/PIR No: BEIS023(PIR)-18-EDR Lead department or agency: Department for Business, Energy and Industrial Strategy Other departments or agencies:	Post Implementation Review
	Source of intervention: Domestic
	Type of regulation: Secondary legislation
	Type of review: Statutory - other
	Date of implementation: 31 July 2013
	Date review due (if applicable): 31 July 2018
Summary	<p>The aim of this regulation was to provide developers with a relatively streamlined way of making adjustments to existing consents for major generating stations to reflect possible advances in technology or efficiency after the consent was granted.</p> <p>The construction and operation of electricity generating stations may not begin until some years after consent is granted by the Secretary of State. 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. Therefore, it may either be impossible, uneconomic or not reflective of current best practice for a developer to build a generating station according to all the details specified in the original consent.</p> <p>Section 36 of the Electricity Act 1989 (S36) was the consenting process that preceded the current Planning Act 2008 process and there are still a number of consents granted under S36 that have not been constructed. Without the 2013 Regulations, it would not be possible to vary those consents and the only route for developers wishing to vary their consents, for instance to reflect technological innovations that improve designs and efficiencies, would be to lodge a completely new consent application under the Planning Act 2008. That process would be considerably more time consuming and expensive than varying consents under the 2013 Regulations.</p> <p>The main aim of the variation regulation was therefore, to make it possible for the designs of generating stations already consented, to be modified in ways which the relevant section 36 consents would not otherwise permit and (in the case of those projects that would otherwise require development consent under the 2008 Act) without the developer having to apply for a development consent order under the 2008 Act.</p>

1a. What were the policy objectives and the intended effects? (If policy objectives have changed, please explain how).

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

The Department's objective was to remove the expensive existing barriers to varying consents, providing developers with the possibility to seek a variation to an existing consent for a generating station and avoid the unnecessarily large costs that would be incurred if developers had to apply for a new Development Consent Order under the Planning Act 2008.

The wider objectives of the regulation were in line with the Department's core strategic framework to provide a boost to the construction industry and the likely encouragement of early commencement of construction.

1b. How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

The original Impact Assessment ("IA") modelled the number of applications received by the Department in the first 5-year cycle at 8 projects in a 'Low' scenario, 12 projects in a 'High' scenario, and 10 projects as a "Best Estimate".

The objectives delivered by the regulation, by the review date, have been significantly exceeded as the Department received 24 applications in the first 5-year cycle of the regulation; double the number of the "high" estimate of the original IA. This demonstrates that developers have welcomed the introduction of the section 36 variation process which has enabled them to introduce new technology innovation and modified designs and reduced their costs and timings for varying section 36 consents.

2. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

(The PIR guidance states that the strength of evidence sought for PIRs should be proportionate to the scale of the regulation and its expected impact).

The rationale was to establish whether the regulation achieved its objectives and met its success criteria whilst assessing whether there have been any unintended effects.

The 2013 Regulations introduced a deregulatory measure to lower barriers to Business, simplifying and reducing costs for the varying process. The process has been working smoothly, e.g. without generating complaints from applicants about how it operates, and producing decisions within expected timescales. Therefore, it was decided to take a relatively light touch approach to the review and the amount of evidence sought. It is therefore considered that the level of evidence collected is proportionate to the scope of the measure.

The PIR used three main sources of evidence to inform its assessment:

- The first is evidence gathered through dialogue with developers that have accessed the section 36 variation process in the past 5-year cycle of the regulation.
- The second is evidence obtained through analysing data available for section 36 variation applications submitted in the past 5-years cycle of the regulation.
- The third is evidence obtained by the Department through an ad hoc workshop intended to gather direct feedback from key industry stakeholders towards the end of the 5-year cycle of the regulation.

3. Describe the principal data collection approaches that have been used to gathering evidence for this PIR.

Details of section 36C applications received by the Department have been collected through a dedicated electronic Portal and information has been recorded for:

- Number of applications;
- type of energy infrastructure;
- type of variation request; and
- processing timings.

The performance of the section 36 variation process has been measured using the above data and through active engagement with developers during the application period.

In addition, feedback was sought from developers during a workshop in March 2018 where developers had the opportunity to feedback comments on each stage of the section 36C application process.

- Developers considered it was very helpful to have the opportunity to have initial discussions with the Department on the principle of a variation and an open dialogue early on in the process at the pre-application stage.
- Developers also considered that generally after consultation with the Department they are asked for a proportionate level of information to progress the application through the process at the acceptance stage and agree with the Department that introducing a maximum duration for the period between the lodging of the application and confirmation or otherwise that it is acceptable for publication, would improve the overall determination process.

4. To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?

During the first 5 years cycle of the Regulation, the Department has received 24 variation applications, double the amount of the high estimate included in the original IA. This confirms the feedback received and further demonstrates that developers have welcomed the new variation process enabling them to vary their existing consents to take account of technology and design innovations and remove the expensive existing barriers under the Planning Act 2008 process to varying consents.

It was not anticipated that Developers would use the process, in the way some have, to refine their proposals in order to improve their chances of being successful when entering the Capacity Market Auction. Use of the process in this way may help to explain why more applications have been received than were anticipated in the original IA. Although not anticipated, this has proved to be another benefit of the regulations for developers encouraging investments to update older power stations.

Feedback received from developers in the past 5-year cycle of the regulation considered that the ability to vary maximum capacity after construction of the development would be a helpful additional flexibility.

The success of the section 36 variation process has led to an intake of a considerably higher than expected number of applications which has had resourcing implications for the Department. Nevertheless, the processing timings for section 36 variation applications have been shorter than initially estimated in the original IA, at an average of 5.3 months per application compared to 6 months in the IA.

5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA).

The original IA considered that benefits to developers would arise due to the costs avoided in re-applying under the PA 2008, as they 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 fee saves a maximum total of £557,500¹ per project. The composition of costs avoided by not re-applying under the PA 2008 was calculated in Annex A of the original IA.

Therefore, on the basis of the original IA modelling of a high scenario² of 12 applications being received by the Department over a 5-year cycle this would amount to a maximum total of £6,690,000 (undiscounted) of fee costs saved.

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 the Department expected a range of £100,000-£1,000,000 per project. Taking the midpoint, the Department assumed that the average project spends £550,000 on these fees. The in-house costs to firms associated with varying consent for processing Environmental Impact Assessments as a proxy was estimated at £30,000 over a 6-month period.

Therefore, on the basis of the original IA modelling of a high scenario of 12 applications being received by the Department over a 5-year cycle this would amount to a total of £6,240,000 of in-house costs saved for developers. The total costs saved for 12 applications as estimated in the original IA amounted to a maximum of **£12,930,000**

5b. What have been the actual costs and benefits of the regulation and its effects on business?

Benefits to developers have exceeded expectations as the number of applications received by the Department has been double that of the high estimate included in the original IA, amounting to 24 applications.

However, for 7 out of the 24 applications received, developers could have opted to use the “non-material change regime”³ reducing the cost of fees and other in-house costs of re-applying under the PA 2008.

Nevertheless, even allowing for a conservative assumption that only 17 applications out of the overall 24 received by the Department would lead to applications under the PA 2008, the net benefits would still be significant and exceed those estimated in the original IA.

1. This PIR has recalculated the avoided costs of fees when re-applying under PA2008 for new consents as below:
 - For 17 applications submitted before 06 April 2017 the avoided costs of fees when re-applying under the PA 2008 for new consents has been a maximum of £302,500⁴ per project. The composition of costs avoided is calculated in Annex A, Table 1.
 - For 7 applications that had the potential of applying under the “non-material change regime”, the avoided costs of fees are £6,891⁵ per project.

Therefore, the total fee costs saved by developers over the past 5-year cycle has been a maximum of £5,190,737.

2. The avoided internal costs associated with re-application other than the fee itself and the in-house costs to firms associated with varying consent for processing Environmental Impact Assessments, has remained unchanged from that estimated in the original IA. However, for the 7 applications that had the potential of applying under the “non-material change regime”, the in-house costs for processing Environmental Impact Assessments has been estimated at a minimum of £30,000, as per that contained in the original IA and associated with varying consent under the section 36 regime.

Therefore, the total in-house costs saved by developers amount to a maximum of £9,560,000.

The total costs saved for 24 applications amount to a maximum of **£14,750,737.**

Developers have also benefitted from a shorter timeframe as included in the original IA with an average processing time of 5.3 months per application compared to the 2.5 years period it would take for large generating stations to receive a consent under the PA2008⁶.

6. Assessment of risks or uncertainties in evidence base / Other issues to note

- Following the stakeholder event in April 2018 with industry stakeholders, the PIR assessed that there was scope to review the existing variation guidance published in 2013 as clarification in certain areas could be beneficial for developers and improve the overall section 36 variation process.
- There are no additional costs to be levied on business and significant costs saving resulting from the shorter approval process.
- The Department does not charge fees for processing applications to vary section 36 consents, but this is something that might be considered in future.
- The PIR assumes that varying consents under section 36 would take 6 months and that in an average 6-month period there are 125 working days.

7. Lessons for future Impact Assessments

The regulation does not require the Department to undertake future Impact Assessments, however the Department will maintain a close dialogue with key industry stakeholders and seek feedback on a periodic basis to ensure that the section 36 variation process continues to be fit for purpose.

The Department will consider whether, in the light of the experience gained through operating the variation process and developer feedback from this review, any changes are necessary to guidance document which accompanies the regulations.

Whilst it was not the intention that the regulations should allow increases in capacity to stations which had been constructed to their maximum capacity, the Government recognises that, as technologies, for instance in respect of electricity storage, continue to advance, it may be necessary to revisit the regulations to ensure that they continue to produce optimal outcomes.

¹ The figure in the original impact assessment was overestimated as the “final payment in respect of the handling of an application” was not reduced by the corresponding amount of the “initial payment in respect of the handling of an application”.

² Using the high scenario from the original IA, ensures the use of conservative and more realistic approach when assessing the benefits to developers that would arise due to the costs avoided in re-applying under the PA 2008.

³ The “non- material change regime” of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011, could be accessed by Developers for the same project when an application for that project has already been decided under the PA 2008 previously. Our assumption for the purposes of this review is that, in the absence of the 2013 Regulations, the first application for variations to a S36 consent would be made by way of a new application for consent under the PA2008 but subsequent applications for variations to the project would be made as non-material changes under the PA2008.

⁴ This figure is reduced by the corresponding amount of the “initial payment in respect of the handling of an application”

⁵ Part 1, Regulation 5 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011.

⁶ The 7 applications that could have been made as non-material change applications, had the 2103 Regulations not been made, would have benefitted from a shorter timescale than full applications under the PA2008.

8. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

The PIR assessed that, overall, The Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 has met its intended objectives to remove the expensive barriers to varying existing consents and has been highly effective in reducing costs for developers, shortening the timeframe for varying consents to facilitate new innovation and technology, therefore concluding that the regulation should remain in force with no amendments to be made at present time. The Department will consider whether any changes are necessary to the guidance document which accompanies the regulations.

Sign-off For Post Implementation Review:

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the policy.

Signed: Claire Perry

Date: 31/07/2018

Evidence Base

Please provide additional evidence in subsequent sheets, as required.

Annex A

The following table shows the fee⁷ to accompany applications for authorisation under the Planning Act 2008. Panel of inspectors can vary in a range of 1 to 5. Taking the midpoint, the Department assumed, as done in the original IA, that the average project would require examination by a panel of 3 inspectors.

Table 1		
Fee to accompany application submitted before 06 April 2017		Cumulative Fees relevant for s. 36 power plant
The Planning Inspectorate must charge the Applicant a fee in respect of the decision by the Secretary of State under section 55 (Acceptance of applications) whether or not to accept the application. The fee must accompany the application.	£4,500	£4,500
Pre-examination fee		
Single Inspector	£13,000	
Panel of three Inspectors	£30,000	
Panel of more than three Inspectors	£43,000	£43,000
Fee in respect of the handling of an application		
*Initial payment in respect of the handling of an application		
The fee payable is dependent upon the number of days estimated to be required for examining the application and the number of Inspectors handling the application.		
Where an examination is handled by a single Inspector	£615 per estimated relevant day	
Where an examination is handled by a panel of three Inspectors	£1,340 per estimated relevant day	
Where an examination is handled by a panel of more than three Inspectors	£2,040 per estimated relevant day	
Final payment in respect of the handling of an application		
Where a single Inspector has examined the application	£1,230 per relevant day*	
Where a panel of three Inspectors has examined the application	£2,680 per relevant day*	
Where a panel of more than three Inspectors has examined the application	£4,080 per relevant day*	£2,040
	*Less the initial payment	
Number of working days in average 6 month period		125

⁷ <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

Total Cost per application		<u>£302,500</u>
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Table 2		
Fee to accompany application between 06 April 2017 and 05 April 2018		Cumulative Fees relevant for s. 36 power plant
The Planning Inspectorate must charge the Applicant a fee in respect of the decision by the Secretary of State under section 55 (Acceptance of applications) whether or not to accept the application. The fee must accompany the application.	£6,750	£6,750
Pre-examination fee		
Single Inspector	£19,500	
Panel of two Inspectors	£32,250	
Panel of three Inspectors	£45,000	
Panel of more than three Inspectors	£64,500	£64,500
Fee in respect of the handling of an application		
*Initial payment in respect of the handling of an application		
The fee payable is dependent upon the number of days estimated to be required for examining the application and the number of Inspectors handling the application.		
Where an examination is handled by a single Inspector	£923 per estimated relevant day	
Where an examination is handled by a panel of two Inspectors	£1,467 per estimated relevant day	
Where an examination is handled by a panel of three Inspectors	£2,010 per estimated relevant day	
Where an examination is handled by a panel of more than three Inspectors	£3,060 per estimated relevant day	
Final payment in respect of the handling of an application		
Where a single Inspector has examined the application	£1,845 per relevant day*	
Where a panel of two Inspectors has examined the application	£2,933 per relevant day*	
Where a panel of three Inspectors has examined the application	£4,020 per relevant day*	
Where a panel of more than three Inspectors has examined the application	£6,120 per relevant day*	£3,060
	*Less the initial payment	
Number of working days in average 6 month period		125

Total Cost per application		<u>£453,750</u>

Table 3		
Fee to accompany application submitted from 06 April 2018		Cumulative Fees relevant for s. 36 power plant
The Planning Inspectorate must charge the Applicant a fee in respect of the decision by the Secretary of State under section 55 (Acceptance of applications) whether or not to accept the application. The fee must accompany the application.	£6,939	£6,939
Pre-examination fee		
Single Inspector	£20,085	
Panel of two Inspectors	£33,218	
Panel of three Inspectors	£46,350	
Panel of more than three Inspectors	£66,435	£66,435
Fee in respect of the handling of an application		
*Initial payment in respect of the handling of an application		
The fee payable is dependent upon the number of days estimated to be required for examining the application and the number of Inspectors handling the application.		
Where an examination is handled by a single Inspector	£950 per estimated relevant day	
Where an examination is handled by a panel of two Inspectors	£1,510 per estimated relevant day	
Where an examination is handled by a panel of three Inspectors	£2,070 per estimated relevant day	
Where an examination is handled by a panel of more than three Inspectors	£3,152 per estimated relevant day	
Final payment in respect of the handling of an application		
Where a single Inspector has examined the application	£1,900 per relevant day*	
Where a panel of two Inspectors has examined the application	£3,021 per relevant day*	
Where a panel of three Inspectors has examined the application	£4,141 per relevant day*	
Where a panel of more than three Inspectors has examined the application	£6,304 per relevant day*	£3,152
	*Less the initial payment	
Number of working days in average 6 month		125

period		
Total Cost per application		<u>£467,374</u>