



Research Briefing
**The Planning Series:
17 - Consenting energy
generation infrastructure**

Author: **Katy Orford and Elfyn Henderson**
Date: **March 2018**



National Assembly for Wales
Research Service

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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17 - Consenting energy
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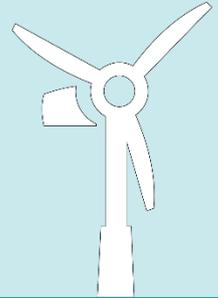
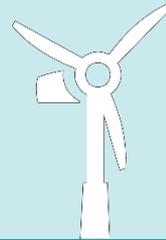
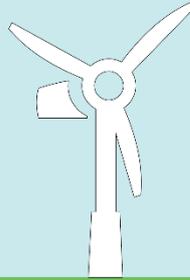
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The present and future consenting process for Wind energy generation in Wales

The **CURRENT** (March 2018) consenting process for onshore and offshore wind energy generation projects in Wales, and the **EXPECTED** consenting process following the full commencement of section 39 of the Wales Act 2017, expected after April 2019.



Onshore

Offshore

Welsh territorial waters out to 12 nautical miles

Current consenting process

Up to 10MW	Over 10MW	1-100MW	Over 100MW
<i>DECIDING AUTHORITY</i>			
Local Planning Authorities	Welsh Government	Marine Management Organisation	UK Government
<i>PLANNING REGIME</i>			
Town and Country Planning	Town and Country Planning - Developments of National Significance	Section 36 Electricity Act 1989	Nationally Significant Infrastructure Projects

Future consenting process

Up to 10MW	Over 10MW	1-350MW	Over 350MW
<i>DECIDING AUTHORITY</i>			
Local Planning Authorities	Welsh Government	Welsh Government	UK Government
<i>PLANNING REGIME</i>			
Town and Country Planning	Town and Country Planning - Developments of National Significance	Section 36 Electricity Act 1989	Nationally Significant Infrastructure Projects





The present and future consenting process for Energy generation (other than wind) in Wales

The **CURRENT** (March 2018) consenting process for onshore and offshore energy generation projects (excluding wind) in Wales, and the **EXPECTED** consenting process following the full commencement of section 39 of the Wales Act 2017, expected after April 2019.

Onshore			Offshore <i>Welsh territorial waters out to 12 nautical miles</i>	
Current consenting process				
Up to 10MW	10 - 50MW	Over 50MW	1-100MW	Over 100MW
<i>DECIDING AUTHORITY</i>				
Local Planning Authorities	Welsh Government	UK Government	Marine Management Organisation	UK Government
<i>PLANNING REGIME</i>				
Town and Country Planning	Town and Country Planning - Developments of National Significance	Nationally Significant Infrastructure Projects	Section 36 Electricity Act 1989	Nationally Significant Infrastructure Projects
Future consenting process				
Up to 10MW	10 - 350MW	Over 350MW	1-350MW	Over 350MW
<i>DECIDING AUTHORITY</i>				
Local Planning Authorities	Welsh Government	UK Government	Welsh Government	UK Government
<i>PLANNING REGIME</i>				
Town and Country Planning	Town and Country Planning - Developments of National Significance	Nationally Significant Infrastructure Projects	Section 36 Electricity Act 1989	Nationally Significant Infrastructure Projects



1. Overview

The range of different consenting processes for electricity generation projects creates a complex picture.

Different categories of development are consented under different regimes that are either devolved to Wales or the responsibility of the UK Government or UK Marine Management Organisation. The consenting process used depends on:

-
- a) whether the project is 'onshore' (on land) or 'offshore' (at sea in Welsh territorial waters i.e. out to 12 nautical miles);
 - b) whether the generating station is wind or non-wind (for onshore developments only); and
 - c) the energy generating capacity of the station, measured in megawatts (MW).
-

The devolution of powers for consenting electricity generating projects is changing as the relevant provisions of the Wales Act 2017 come into force. This briefing sets out the current situation and how this will change with commencement of the Wales Act 2017 provisions.

2. What are the current processes for energy consenting?

Onshore projects

Wind

i. Up to 10MW electricity generation: local planning authorities

Consenting small-scale (under 10MW) onshore electricity generation projects is the responsibility of the local planning authority for both wind and non-wind installations. The process follows that of the *Town and Country Planning Act 1990*. The decision is made by examining the application in the context of:

- **National planning policy** and **guidance** as prepared by the Welsh Government;
- Policies in the local planning authority's **Development Plan** for the area; and
- Any other relevant issues, known as 'material considerations'.

The Welsh Government has the power to assume responsibility from a local planning authority on planning applications using powers under the *Town and Country Planning Act 1990*. This '[call-in](#)' process (PDF 158KB) only affects a small number of applications, for example, large-scale developments and planning issues of more than local importance.

ii. Over 10MW electricity generation: Welsh Government (Developments of National Significance)

The *Planning (Wales) Act 2015* introduced a new category of planning application called **Developments of National Significance** (DNS) in 2016. The DNS regime covers larger-scale infrastructure projects including onshore wind electricity generating stations of over 10MW (there is no upper limit). The DNS full categories are set out in *The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016*.

Planning applications for DNS are submitted to the Planning Inspectorate and decided by the Welsh Government. There is a statutory requirement for decisions on accepted DNS applications to be made

within 36 weeks. As with applications to local planning authorities, the decision is made by examining the application in the context of:

- National planning policy and guidance as prepared by the Welsh Government;
- Policies in the local planning authority's Development Plan for the area; and
- Any other relevant issues, known as 'material considerations'.

The DNS application process is designed to be 'front loaded', with a pre-application consultation stage, which occurs before notification and the formal consultation process begins. This early engagement with stakeholders is considered essential in making the DNS process effective so that as many issues as possible are resolved before the application is submitted to the Planning Inspectorate. This pre-notification requirement provides the greatest opportunity for stakeholders and the public to influence a DNS project.

Non-wind

iii. Up to 10MW electricity generation: Local planning authorities

As with onshore wind projects, consenting small-scale (up to 10MW) onshore non-wind electricity generation projects is the responsibility of the local planning authority. The process follows that of the *Town and Country Planning Act 1990* (section i above).

iv. 10-50MW electricity generation: Welsh Government (Developments of National Significance)

Non-wind onshore electricity generating stations with a capacity of 10-50MW are the responsibility of the Welsh Government under the DNS regime. Unlike wind projects, which have no upper limit under the DNS categorisation (section ii), the upper threshold for onshore non-wind projects is 50MW.

v. Over 50MW electricity generation: UK Government (Nationally Significant Infrastructure Projects)

Large-scale onshore non-wind projects exceeding the DNS categorisation of 10-50MW electricity generating capacity are dealt with by the UK Government through the **Nationally Significant Infrastructure Projects (NSIP)** process. The *Planning Act 2008* introduced the NSIP consenting process (subsequently amended by the *Localism Act 2011*). The **National Infrastructure Planning website** provides a number of guidance documents.

NSIPs require a type of consent known as 'development consent' and a **Development Consent Order (DCO)** is granted. Under the NSIP process, decisions are made on the basis of the twelve UK **National Policy Statements**, six of which cover energy policy. The final decision on granting a DCO rests with the UK Secretary of State. The process is front-loaded with a number of pre-application consultation requirements, which, depending on the complexity of the project, can take a number of years for the applicant to carry out. From the point of submission of an NSIP application, the process has fixed time periods totalling at around 12-15 months. This is longer than the timescale for accepted DNS applications of up to 36 weeks.

Onshore wind projects are an exception to this arrangement – the consenting of all onshore wind projects, no matter the mega wattage, is devolved. Onshore wind projects were removed from the NSIP regime by the *Energy Act 2016*. As previously stated, projects over a 10MW generating capacity are currently decided by the Welsh Government through the DNS process and those under 10MW by local planning authorities (section i and ii).

Offshore

vi. 1-100MW electricity generation: UK Marine Management Organisation

For offshore projects, the UK Marine Management Organisation (MMO) (an executive non-departmental public body, sponsored by Defra) is responsible for determining applications for electricity generating stations with a capacity of 1-100MW. This is set out under section 36 of the *Electricity Act 1989*. This function was transferred from the UK Secretary of State to the MMO in April 2010. The Welsh Government's DNS regime does not apply to off-shore projects. For all types of project, a marine license under section 65 of the *Marine and Coastal Access Act 2009* is required alongside the main consent. These are issued by Natural Resources Wales (NRW).

vii. Over 100MW electricity generation: UK Government (Nationally Significant Infrastructure Projects)

Offshore stations with a generating capacity of more than 100MW are classed as NSIPs and require a Development Consent Order granted by the UK Secretary of State (section v). Again, a marine license, issued by NRW, is required alongside the main consent.

3. What changes does the *Wales Act 2017* make?

Onshore

The *Wales Act 2017* devolves further energy consenting powers to Wales. Section 39 extends the current 50MW limit for onshore non-wind electricity generating projects to 350MW. Once these powers are transferred (**commencement is expected** in April 2019¹), the Welsh Government may then decide to bring these larger energy schemes of up to 350MW within the DNS definition. Such a move is explored in the Welsh Government's consultation paper (the new *Planning (Wales) Act 2015* gives powers to vary the DNS definition). Projects above 350MW will remain subject to the NSIP regime, with approval by the UK Secretary of State.

The *Wales Act 2017* does not alter the situation for onshore wind electricity generating projects. These projects are already completely devolved to Wales due to their removal from the NSIP regime via the *Energy Act 2016*.

Offshore

Section 39 of the *Wales Act 2017* devolves offshore projects up to a generating capacity of 350MW. This will extend the current 1MW limit.

Currently, the MMO gives consent for projects between 1-100MW under section 36 of the *Electricity Act 1989*. When section 39 of the *Wales Act 2017* is fully commenced, projects between 1-350MW will instead be consented by the Welsh Government under the same Act. Again, projects above 350MW will remain subject to the NSIP regime and will be decided by the UK Secretary of State.

¹ Regulation 5 of the *Wales Act 2017* (Commencement No. 4) Regulations (S.I. 2017/1179) will commence sections 39-42 of the *Wales Act 2017* from 1 April 2019 (to the extent that those sections are not already in force at that date).

4. How does the *Wales Act 2017* affect consenting for associated development?

An 'associated development' is a development that is associated with the principal development and supports either the construction or operation of the principal development, or helps address its impacts. Examples include overhead/underground lines, substations and waste storage facilities.

The *Wales Act 2017* contains a provision, under section 43, to resolve a previous anomaly in the consenting process around associated developments. The anomaly resulted from the *Planning Act 2008* regime excluding approval for associated development for projects in Wales. This meant that, previously, for large energy projects in Wales where the consenting process for the main project was via the NSIP process, the associated development was decided by the relevant Welsh local planning authority. This has now changed with the commencement of section 43 of the *Wales Act 2017* on 31 March 2017, aligning the responsibility for granting consent for associated development for energy projects with the responsibility for granting consent for the main project.

This alignment has been the case in England since the introduction of the NSIP process by the *Planning Act 2008*. The change of approach in Wales implements a recommendation made by the Silk Commission and the **St David's Day agreement** aimed at reducing complexity, cost, delay and uncertainty in the process for consenting large energy projects.

5. The legislation

Wales Act 2017: Devolves the responsibility for consenting electricity generation projects up to 350MW onshore and offshore to Wales. It also aligns the responsibility for granting consent for associated development for energy projects with the responsibility for granting consent for the main project;

Planning Act 2008 (amended by the Localism Act 2011): Introduces the UK Government Nationally Significant Infrastructure Projects (NSIPs) process;

Energy Act 2016: Removes onshore wind electricity generating projects from the Nationally Significant Infrastructure Projects process, devolving responsibility to Wales;

Planning (Wales) Act 2015: Introduces the Welsh Government Developments of National Significance (DNS) process;

The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016: Sets out the criteria for Developments of National Significance;

Town and Country Planning Act 1990: The planning process used for deciding onshore, non-wind projects with a generating capacity of 50MW and less and for all onshore wind projects; and

Electricity Act 1989: Provisions for offshore generating stations with a generating capacity of more than 1MW but less than or equal to 100MW (considered by the MMO). Provisions for Welsh Government to consider offshore projects under 1MW.

6. Key sources

Welsh Government

The [planning section](#) of the Welsh Government's website provides information including

[Planning Policy Wales \(Edition 9\)](#)

UK Government

Guidance: [Apply to generate energy offshore](#)

Planning Inspectorate

Guidance: [National Infrastructure Planning](#)

UK Parliament

House of Commons Library: [Planning for Nationally Significant Infrastructure Projects](#)

Planning Aid Wales

[Planning Aid Wales](#) is a charitable organisation helping **eligible** individuals and communities to participate more effectively in the planning system. It provides advisory services, including a helpline.

Planning Portal

The [Planning Portal](#) is the UK Government's planning and building regulations resource. It includes information on the planning system in Wales, although some of the content only applies to England.

Research Service

Other planning briefings produced by the Research Service are available on our website: [Research Service](#). This includes briefings on [Developments of National Significance](#) and [Low Carbon Energy in Wales](#).