

**2016 No. 602 (C. 43)**

**ENERGY**

**The Energy Act 2016 (Commencement No. 1 and Savings Provisions) Regulations 2016**

*Made* - - - -

*23rd May 2016*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 84(3) and 84(4) of the Energy Act 2016(a).

**Citation**

1. These Regulations may be cited as the Energy Act 2016 (Commencement No. 1 and Savings Provisions) Regulations 2016.

**Provisions coming into force on the day after the day on which this instrument is made**

2. The following provisions of the Energy Act 2016 come into force on the day after the day on which this instrument is made —

- (a) subsection (4) of section 1 (the OGA),
- (b) subsections (2) to (6) of section 2 (transfer of functions to the OGA), and
- (c) subsections (3) and (4) of section 66 (disclosure after specified period).

**Provisions coming into force on 12 July 2016**

3. The following provisions of the Energy Act 2016 come into force on 12 July 2016 —

- (a) subsections (1) to (3) of section 1 (the OGA),
- (b) section 3 (transfer of property, rights and liabilities to the OGA),
- (c) section 4 (transfer of staff to the OGA),
- (d) section 5 (transfer schemes: supplementary),
- (e) section 13 (levy on licence holders),
- (f) section 14 (the licensing levy: regulations),
- (g) section 78 (onshore wind generating stations in England and Wales), and
- (h) section 83 (regulations and orders: disapplication of requirements to consult the OGA).

## Savings

- 4.—(1) The coming into force of section 78 does not affect the continuing application of—
- (a) section 36(1) of the Electricity Act 1989 (“the 1989 Act”)(a),
  - (b) section 36C of the 1989 Act (variation of consents under section 36)(b), and
  - (c) section 90 of the Town and Country Planning Act 1990(c) (deemed planning permission),
- in the case of an onshore wind generating station in respect of which Condition 1 or Condition 2 is satisfied.
- (2) Condition 1 is that consent under section 36(1) of the 1989 Act was granted before 1st March 2016.
- (3) Condition 2 is that—
- (a) an application for consent under section 36(1) of the 1989 Act was refused before 1st March 2016; and
  - (b) that decision is quashed by order of a court.

23rd May 2016

*Andrea Leadsom*  
Minister of State  
Department of Energy and Climate Change

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations bring into force specified provisions of the Energy Act 2016 (c. 20) (“the Act”). These are the first commencement regulations made under the Act. The dates of commencement of certain other provisions are set out in section 84 of the Act.

Regulation 2 brings into force, on the day after the day on which this instrument is made, subsections (2) to (6) of section 2, in order that regulations can be made to transfer functions to the OGA. Subsections (3) and (4) of section 66 are also commenced, so that the requirement to consult before making regulations under subsection (1) of section 66 can be fulfilled. The regulation making power itself will be brought into force in a later set of commencement regulations. Regulation 2 also brings into force subsection (4) of section 1, which explains that “the OGA” is the abbreviation for the Oil and Gas Authority.

Regulation 3 brings into force on 12 July 2016 subsections (1) to (3) of section 1, and sections 3, 4, 5, 13, 14, 78 and 83 of the Act.

Commencing sections 3, 4, 5, 13, 14 and 83 of the Act will enable the relevant schemes and regulations to be made to prepare for the transfer of functions to the OGA. This covers a scheme to transfer property, rights and liabilities to the OGA, a scheme to transfer staff to the OGA and regulations to provide for a levy to be imposed on licence holders. Section 1 is commenced in preparation for the transfer of staff and functions to the OGA. Section 83 is commenced so that the obligation to consult the OGA under section 13(8) before making regulations providing for a levy is disapplied.

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- (a) 1989 c. 29. Relevant amendments to section 36 were made by: the Planning Act 2008 (c. 29) (Schedule 2, paragraphs 31, 32(1) to (3)); the Marine and Coastal Access Act 2009 (c. 23) (section 12(7)(a), (8)); and the Energy Act 2004 (c. 20) (sections 93(1) and (3)).
  - (b) Section 36C was inserted into the Electricity Act 1989 (c. 29) by the Growth and Infrastructure Act 2013 (c. 27) (section 20).
  - (c) 1990 c. 8. Relevant amendments to section 90 were made by: the Growth and Infrastructure Act 2013 (c. 27) (section 21); the Environment Act 1995 (c. 25) (Schedule 10, paragraph 32(4)).

Section 78 of the Act, brought into force by regulation 3, removes a class of generating stations from the requirement to obtain consent under section 36 of the Electricity Act 1989 (c. 29). Section 36 of the Electricity Act 1989 provides that generating stations may not be constructed, extended or operated without the Secretary of State's consent under section 36(1). Onshore wind generating stations in England and Wales have already been exempted from this requirement since 1st March 2016 by S.I. 2006/21, as amended by S.I. 2016/450, Orders under section 36(4) of the Electricity Act 1989. Those Orders are revoked, as the provisions put in place by those Orders are replaced by section 78 of the Act and the savings provisions in these Regulations.

Regulation 4 ensures that the provisions of section 36 of the Electricity Act 1989 will continue to apply so far as consents granted before 1st March 2016 (the date of the original Order, S.I. 2016/21, being replaced by section 78 of the Act and the savings provisions of these Regulation) are concerned, including where those consents are varied. Regulation 4 also provides for section 36 to continue to apply where a refusal to grant consent before 1st March 2016 is subsequently quashed by order of a court, so as to allow those applications to be redetermined under section 36 of the Electricity Act 1989.

An impact assessment of the effect that the Act will have on the costs of business and the voluntary sector has been produced, and a copy is available at [www.legislation.gov.uk](http://www.legislation.gov.uk). No separate impact assessment has been produced for this instrument.

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