



Department for the  
**Economy**

## **GUIDANCE - ARTICLE 39 APPLICATIONS**

**APPLICATIONS FOR CONSENT UNDER ARTICLE 39 OF THE  
ELECTRICITY (NORTHERN IRELAND) ORDER 1992 FOR THE  
CONSTRUCTION, EXTENSION OR OPERATION OF AN  
ELECTRICITY GENERATING STATION.**

# **Guidance on applications for consent under Article 39 of the Electricity (Northern Ireland) Order 1992 for the construction, extension or operation of an electricity generating station.**

## **1. Introduction**

- 1.1 Under Article 39 of the Electricity (Northern Ireland) Order 1992 (“the Order”), the Department for the Economy (“the Department”) has responsibility for granting consent in relation to the construction, extension or operation of a generating station in Northern Ireland.
- 1.2 Any person who without reasonable excuse, contravenes the provisions of Article 39 in relation to the construction, extension or operation of a generating station, or conditions attached to any consent, commits an offence.
- 1.3 This guidance is for general use only. It does not purport to be definitive or exhaustive and should be read in conjunction with the legislation to which it refers and any other applicable legislation guidance where available. The legislation referred to in this guidance is listed at paragraph 8.

## **2. When is consent required?**

- 2.1 Article 39 consent is required to construct, extend or operate:-
  - (a) a generating station (other than an offshore generating station) whose capacity exceeds 10 megawatts;
  - (b) in the case of a generating station which is to be constructed or extended, a generating station (other than an offshore generating station) whose capacity when it is constructed or extended exceeds 10 megawatts;
  - (c) an offshore generating station whose capacity exceeds 1 megawatt<sup>1</sup>, (that is to say, a generating station which is wholly or mainly driven by wind or water and is situated in waters within or adjacent to Northern Ireland, other than waters within an area in which the development requires planning permission under the Planning Act

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<sup>1</sup> The Electricity (Offshore Wind and Water Driven Generating Stations) (Permitted Capacity) Order (Northern Ireland) 2008 S.R. 2008 No 54

(Northern Ireland) 2011, up to the seaward limits of the territorial sea)<sup>2</sup>.

### 3. Application Process

- 3.1 Development of a new onshore generating station is likely to require a grant of planning approval. An offshore generating station is also likely to require a marine licence in addition to planning approval for onshore infrastructure. The Department of Agriculture, Environment and Rural Affairs (DAERA) is responsible for issuing marine licences. Depending on the nature and scale of the proposed generating station, planning approval is granted either by the relevant Local District Council or the Department of Infrastructure (DfI). Other consents may also be required - see paragraph 6 below.
- 3.2 Before submitting any Article 39 application, marine licence application or an application for a grant of planning approval, applicants are strongly advised to contact the relevant consenting Departments for advice on how best to progress their applications correctly. See contact details below.
- 3.3 An application for an Article 39 consent must be made in writing to the Department. An application form can be downloaded at <https://www.economy-ni.gov.uk/publications/article-39-application-form> and will give further details on what precisely is required.
- 3.4 The main information needed to support an Article 39 application is:-
  - (a) information about the applicant's financial and technical capability;
  - (b) notification of grant of planning permission (if required) and any Environmental Statement submitted with the planning application;
  - (c) in the case of an offshore generating station, the grant of an Agreement of Lease from the Crown Estate;
  - (d) maps, to a suitable scale, clearly identifying the site or proposed site of the generating station;
  - (e) information about proposed grid connection; and

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<sup>2</sup> The territorial sea limit is 12 nautical miles measured from Northern Ireland (usually low tide water mark but there may be straight baselines across the mouths of bays, loughs etc. eg Belfast Lough)

(f) the application fee of £350.<sup>3</sup>

3.5 For new generating stations applicants should submit their applications at least 4 months in advance of the date they propose to commence construction.

3.6 The Department will acknowledge receipt of the application within 4 working days. It may seek further information for the purposes of clarification or substantiating any information provided.

#### **4. How does the Department assess an application for an Article 39 consent?**

##### Applications for construction or extension of a generating station.

4.1 When assessing applications to construct or extend a generating station, the Department will consider whether the proposal satisfies the requirements of this section and the criteria set out in Annex 1. These criteria are known as the “published criteria” and have been determined by the Department, in respect of its functions, in accordance with and for the purposes of Article 8(2) of Directive (EU) 2019/944 of the European Parliament and of the Council concerning common rules for the internal market in electricity.

4.2 To comply with Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora, known as ‘the Habitats Directive’, if the proposed generating station is likely to have a significant effect on a Natura 2000 site (i.e. a Special Area of conservation or a Special Protection area) the Department will undertake an appropriate assessment in accordance with the provisions of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995.

4.3 The Department will only grant an Article 39 consent when, by means of an appropriate assessment, they have ascertained that it will not adversely affect the integrity of the Natura 2000 site. In the event of a negative assessment, the Department will only grant Article 39 consent if, in the absence of any alternative solution, the generating station is imperative for reasons of overriding public interest.

4.4 Under paragraph 1(2) and 1(3) of Schedule 9 of the Order, the Department will have regard to:-

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<sup>3</sup>The Electricity (Applications for Consent) (Fees) Regulations (Northern Ireland) 1992 (as amended).

- (a) in relation to the applicant's proposal, the need to conserve the natural beauty and amenity of the countryside and the need to protect (so far as is reasonably practicable) flora, fauna and geological and physiographical features of the countryside and the need to protect sites, buildings and objects of architectural, historic or archaeological interest, from any harmful effects, which might result from such a proposal;
- (b) the extent to which the applicant has done or will do what he reasonably can to mitigate any effect, which the proposal would have on the natural beauty of the countryside, or any such flora, fauna, features, sites buildings or objects; and
- (c) how the applicant's proposal avoids, so far as possible, causing injury to fisheries or the stock of fish in any waters.

Application for Article 39 consent to operate only.

- 4.5 When considering applications to operate a generating station for which a valid Article 39 consent exists, the Department will consider the applicant's technical, economic and financial capabilities.

**5. Decision to grant or refuse consent**

- 5.1 The Department will only grant Article 39 consent in relation to the construction, extension or operation of a generating station if it is satisfied the station meets the criteria relevant to the proposal set out in paragraph 4.
- 5.2. If the Department decides to grant consent it may include such conditions as appear to the Department to be appropriate. The consent may continue in force for such a period specified in, or determined by, the consent.
- 5.3 If the Department is minded to refuse consent, it will set out its reasons in writing to the applicant. The applicant will be invited to comment or make further representations within 30 days.
- 5.4 The Department will consider the applicant's comments and if it decides to refuse consent it will write to the applicant giving its reasons and informing him of his right to challenge the refusal by way of a judicial review in the High Court.

5.5 In all cases, the Department will inform the applicant of its decision in writing.

## 6. Other consents

6.1 This guidance is for Article 39 applications only. Other authorisations, licences, permits or consents may be required to enable construction or extension to proceed. Applicants are encouraged to make early contact with other regulators to ensure all other relevant consents are obtained. It will not necessarily follow that the granting of a consent under one regime will ensure consent under another regime.

6.2 If an applicant proposes to connect a generating station to the electricity grid system using overhead electric lines, a separate application for consent under Article 40 of the Order may be required.

## 7. Contact information

Utility Regulator: [www.uregni.gov.uk/](http://www.uregni.gov.uk/)  
Planning Portal: [www.infrastructure-ni.gov.uk/topics/planning](http://www.infrastructure-ni.gov.uk/topics/planning)  
Crown Estate: [www.thecrownestate.co.uk](http://www.thecrownestate.co.uk)  
DAERA: [www.daera-ni.gov.uk](http://www.daera-ni.gov.uk)

## 8. Legislation referred to in this guidance.

<u>Legislation referred to in this guidance:</u>	
The Electricity (Northern Ireland) Order 1992	1992 No.231 (N.I. 1)
Planning Act (Northern Ireland ) 2011	2011 c25
Electricity (Offshore Wind and Water Driven Generating Stations)(Permitted Capacity) Order (Northern Ireland) 2008.	2008 No.54
Marine and Coastal Access Act 2009	2009 c23
Electricity (Applications for Consent) (Fees) Regulations (Northern Ireland) 1992 (as amended)	1992 No 178
The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995	1995 No 380

## **ANNEX 1**

### **Published Criteria for Generating Stations**

The Department for the Economy hereby gives notice that it shall only grant a consent under Article 39(1) of the Electricity (Northern Ireland) Order 1992 in relation to the proposal for the construction or extension of a generating station if it is satisfied that, where required:

- (a) The applicant has provided sufficient information to demonstrate their technical, economic and financial capabilities.
- (b) Where appropriate, it provides for, is consistent with, or contributes to:-
  - I. The protection of public health;
  - II. The safety and physical security of the electricity system, installations and associated equipment;
  - III. Security of electricity supply for electricity users;
  - IV. The Department's objective of ensuring diverse, clean, energy efficient and sustainable supplies of energy at competitive prices;
  - V. The Department's objective of generating electricity using renewable sources; and
  - VI. The Northern Ireland Executive's 2011 Programme for Government objective, to reduce greenhouse emissions.

The foregoing are the criteria referred to as "the published criteria" in Article 39(9) of the Electricity (Northern Ireland) Order 1992, as amended by regulation 9(2) of the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005, regulation 3 of the Electricity (Published Criteria for Generating Station) Regulations (Northern Ireland) 2011 and regulation 13 of The Electricity (Internal Markets) Regulations (Northern Ireland) 2020.