STATUTORY INSTRUMENTS

2020 No. 1217

ELECTRICITY

The Electricity Storage Facilities (Exemption) (England and Wales) Order 2020

Made - - - -	*4th November 2020*
Laid before Parliament	*5th November 2020*
Coming into force - -	*2nd December 2020*

The Secretary of State, in exercise of the powers conferred by sections 36(2), (4) and 111(2) of the Electricity Act 1989(**a**), makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Electricity Storage Facilities (Exemption) (England and Wales) Order 2020 and comes into force on 2nd December 2020.

(2) This Order extends to England and Wales only.

Interpretation

2. In this Order—

"the 1989 Act" means the Electricity Act 1989;

"electricity storage facility" means a facility which generates electricity from energy that—

(a) was converted from electricity by that facility, and

(b) is stored within that facility for the purpose of its future reconversion into electricity;

"exempt electricity storage facility" means an electricity storage facility which is not a pumped hydroelectric storage facility;

"pumped hydroelectric storage facility" means an electricity storage facility that stores the gravitational potential energy of water that has been pumped to a higher level so that its return to a lower level can be used to generate electricity.

Application of section 36 of the 1989 Act to electricity storage facilities: England

3.—(1) This article applies in the case of generating stations otherwise than in Wales or in Welsh waters which—

(**a**) 1989 c. 29. Relevant amendments to section 36 were made by: the Energy Act 2004 (c.20) (section 93(1) and (3); the Planning Act 2008 (c. 29) (section 36 and Schedule 2, paragraphs 31, 32(1) to (3)); the Marine and Coastal Access Act 2009 (c. 23) (section 12(7)(a) and (8));; the Energy Act 2016 (c. 20) (section 78) and the Wales Act 2017 (c. 4) (section 39(7) to (11) and Schedule 6, paragraph 47). Functions under section 36, in so far as exercisable in or as regards Scotland, transferred to the Scottish Ministers, by S.I. 2006/1040 (articles 2, 3 and 6).

(a) comprise, or (when constructed or extended) are expected to comprise, in whole or in part, an exempt electricity storage facility; and

(b) exceed, or (when constructed or extended) are expected to exceed, the permitted capacity referred to in section 36(2)(a) and (b) of the 1989 Act or any capacity substituted for it which would otherwise apply.

(2) Subject to paragraph (3), section 36(1) of the 1989 Act shall not apply to the generating station.

(3) Where the condition in paragraph (1)(b) is met regardless of any capacity provided by an exempt electricity storage facility, paragraph (2) applies only to the extent of the exempt electricity storage facility.

Application of section 36 of the 1989 Act to electricity storage facilities: Wales

4.—(1) This article applies in the case of generating stations in Wales or in Welsh waters which—

(a) comprise, or (when constructed or extended) are expected to comprise, in whole or in part, an exempt electricity storage facility; and

(b) exceed, or (when constructed or extended) are expected to exceed, the devolved capacity referred to in section 36(2)(c) and (d) of the 1989 Act.

(2) Subject to paragraph (3), section 36(1) of the 1989 Act shall not apply to the generating station.

(3) Where the condition in paragraph (1)(b) is met regardless of any capacity provided from an exempt electricity storage facility, paragraph (2) applies only to the extent of the exempt electricity storage facility.

Saving provision

5. Nothing in articles 3 and 4 affects the continuing validity of any consent under section 36(1) of the 1989 Act, or any direction under section 90(2) of the Town and Country Planning Act 1990(**a**), granted or varied before the day on which this Order comes into force.

Kwasi Kwarteng
Minister of State
Department for Business, Energy and Industrial Strategy

4th November 2020

(**a**) 1990 c. 8. Section 90(2) was substituted by section 21(2) of the Growth and Infrastructure Act 2013 (c. 27) and amended by section 39(13) of the Wales Act 2017 (c. 4).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for exemptions from the requirement in section 36(1) of the Electricity Act 1989 (c. 29) (the "1989 Act") to obtain consent for the construction, extension, or operation of generating stations where they comprise certain kinds of electricity storage facility (an "exempt electricity storage facility").

Article 2 defines an exempt electricity storage facility as a facility which generates electricity from energy that was converted from electricity by that facility, and is stored within that facility for the purpose of its future reconversion into electricity, but which is not a pumped hydroelectric storage facility.

Articles 3 and 4 provide for the exemption and the circumstances in which it applies for England and Wales respectively. Article 5 provides that the exemptions created by the Order do not affect the continuing validity of existing consents under section 36(1) of the 1989 Act and directions under section 90(2) of the Town and Country Planning Act 1990.

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