

EXPLANATORY MEMORANDUM TO
THE INFRASTRUCTURE PLANNING (ONSHORE WIND GENERATING STATIONS) ORDER 2016

2016 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order amends the Planning Act 2008 to remove the provision for onshore wind generating stations to apply to the Secretary of State for development consent. Onshore wind generating stations over 50 megawatts (MW) will apply to the local planning authorities under the Town and Country Planning Act 1990.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England and Wales.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter.

4. Legislative Context

- 4.1 For present purposes, all development in England and Wales (which is not permitted development) needs planning permission under the Town and Country Planning Act 1990, authorised under that Act by either the local planning authority or the Secretary of State, unless one of two exceptions apply. First, there can be an exception to the need for planning permission, as is the case with a generating station authorised under the Planning Act 2008. Second, planning permission can be deemed under section 90 of that Act, as is the case where consent for a generating station is granted under section 36 of the Electricity Act 1989.
- 4.2 This Order achieves its aim by amending the provisions within the Planning Act 2008, specifically by providing an additional exclusion to the need for development consent for a generating station, in section 15 of that Act.
- 4.3 Together with this Order, the Department intends to make an order under section 36 of the Electricity Act 1989 removing the requirement for the Secretary of State's consent for onshore wind projects.

- 4.4 The need for both Orders is because (under current law) if "development consent" for a generating station over 50MW under the Planning Act 2008 is not needed, then consent under section 36 of the Electricity Act 1989 is needed (the Planning Act 2008 regime is an exception to the need for consent under section 36 of the Electricity Act 1989). Onshore generating stations up to 50MW are within the Town and Country Planning Act 1990, and planning permission would be needed.
- 4.5 The Electricity Act 1989 Order will make provision so that consent under that Act is not needed for an onshore wind farm. Provisions in the Energy Bill (currently clause 79) will place the Electricity Act 1989 Order on a statutory footing by amending section 36 of the Electricity Act 1989.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 The Minister of State for the Department of Energy and Climate Change, Andrea Leadsom, has made the following statement regarding Human Rights:
- “In my view the provisions of the Infrastructure Planning (Generating Stations) Order 2016 are compatible with the Convention rights”.

7. Policy background

What is being done and why

- 7.1 The policy objective is to ensure the consenting process for onshore windfarms is primarily handled at the local level. Local communities are often opposed to onshore wind farm development, arguing that they have direct noise and detrimental impacts on their communities. Consenting decisions for large onshore wind farms, with an electricity generating capacity of more than 50 MW are currently determined by the Secretary of State for Energy and Climate Change under the Planning Act 2008, through Development Consent Orders (or previously the Electricity Act 1989). This means that such large projects do not have to apply to local planning authorities for permission.
- 7.2 Applications for planning permission for onshore wind farms of less than 50MW are currently determined principally by local planning authorities under the Town and Country Planning Act 1990, though they can be determined by the Secretary of State if referred (“called in”) under section 77 of that Act. This Order will standardise the planning consents process for onshore wind farms in England and Wales, regardless of their size, allowing them all to be determined within the Town and Country Planning Act 1990.
- 7.3 In 2011 the Government published National Policy Statements that set out the “need” case at the strategic level for renewable technologies. As progress is made towards the renewable power targets, and as these technologies mature, it is appropriate to review these regulatory and support arrangements for specific technologies. Such reviews help to strike the right balance between keeping consumers’ bills as low as possible, while reducing emissions in the most cost effective way and ensuring public acceptability of particular technologies.

- 7.4 The common commencement date has not been used in relation to this instrument; rather 1 March 2016 has been selected. The Order needs to come into force alongside the Onshore Wind Generating Stations (Exemption) Order 2016 in order to ensure that planning applications for onshore wind farms must be made under the Town and Country Planning Act 1990. By bringing both these Orders into force at an early date, the Department is putting into place measures that have been widely trailed.

8. Consultation

- 8.1 A light touch consultation was carried out, contacting the three parties currently in the pre-application stages under the Planning Act 2008, which is the current regime for a generating station with capacity greater than 50MW.
- 8.2 Details of the Governments proposals around onshore wind planning changes are published here: <https://www.gov.uk/guidance/consents-and-planning-applications-for-national-energy-infrastructure-projects>.

9. Guidance

- 9.1 These changes to legislation are being made alongside the new procedures for the Local Planning Authorities to consider when determining planning applications for onshore wind farms. These considerations are set out in the Written Ministerial Statement made by the Secretary of State for the Department for Communities and Local Government on 18 June 2015.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 There is no requirement to impose a review under the Small Business, Enterprise and Employment Act 2015.

13. Contact

- 13.1 Afriqnmun Lovejoy at the Department of Energy and Climate Change Telephone: 0300 068 8403 or email: Afriqnmun.lovejoy@decc.gsi.gov.uk can answer any queries regarding the instrument.