

EXPLANATORY MEMORANDUM TO
ONSHORE WIND GENERATING STATIONS (EXEMPTION) (ENGLAND AND
WALES) (AMENDMENT) ORDER 2016

2016 No. 450

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 Onshore Wind Generating Stations (Exemption) (England and Wales) Order 2016 (S.I. 2016 No. 21) (“the Exemption Order”). This Order ensures that where a decision before 1st March 2016 under section 36 of the Electricity Act 1989 to refuse consent for an onshore wind farm in England and Wales is subsequently quashed by order of a court, that decision shall be redetermined under section 36 of the Electricity Act 1989. This Order, in effect, ensures that, for such redeterminations, the situation prior to the Exemption Order continues in place.

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 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Generating stations with a capacity over 50MW in England and Wales used to require consent under section 36 of the Electricity Act 1989. Section 36 of the Electricity Act 1989 has been superseded by the Planning Act 2008. However, some applications remain in the earlier regime, as do consents granted by that regime. The Exemption Order removes the consenting of new onshore wind farms from section 36 of the Electricity Act, and together with the Infrastructure Planning (Onshore Wind Generating Stations) Order 2016 (S.I. 2016 No. 306) ensures that new wind farms in England and Wales will be consented under the Town and Country Planning Act 1990.
- 4.2 This Order ensures that applications already refused under the Electricity Act 1989, but where that decision has been quashed by order of a court, are redetermined under the Electricity Act 1989 and that the redetermination is not transferred to the Town and County Planning Act 1990.

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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Whilst the Policy objective of the suite of legislation referred to in paragraph 4.1 above is to ensure the future consenting process for onshore windfarms is handled primarily at the local planning level, as a matter of fairness, transitional arrangements are that any application already lodged under either the Electricity Act 1989 or the Planning Act 2008, should continue to be determined under that legislation.

7.2 Where applications require redetermination following the quashing of a decision to refuse, they would expect to be redetermined under the legislation which applied to the original application. However, there is uncertainty whether the Exemption Order would mean that these applications could be redetermined under the Electricity Act 1989.

7.3 To ensure that applications made under the Electricity Act 1989 can be redetermined under that Act it is considered necessary to remove any possible ambiguity in respect of the intention of the Exemption Order. This Order therefore has the effect of confirming that such redeterminations will be undertaken under the Electricity Act 1989 and that the Secretary of State will be the decision maker.

8. Consultation outcome

8.1 No consultation was undertaken in respect of this Order as it merely removes possible ambiguity in respect of the policy intention from the Onshore Wind Generating Stations (Exemption) (England and Wales) Order.

9. Guidance

9.1 No formal guidance will be issued, as this Order simply leaves the current regime in place for redeterminations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. In the absence of this Order, there would have been a significant adverse impact on the developers of the two wind farms.

10.2 There is no impact on the public sector.

10.3 There is no change to the conclusions of the Impact Assessment submitted with the Onshore Wind Generating Stations (Exemption) (England and Wales) Order 2016 (2016 No. 21) as this Order will merely confirm the original policy intention.

11. Regulating small business

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

12. Monitoring & review

- 12.1 This Order and the Exemption Order will be replaced when the relevant provisions of the Energy Bill 2015-16 come into force, putting these provisions on a statutory footing. As a result of this, we do not consider there to be need for a review provision.

13. Contact

- 13.1 Gareth Leigh at the Department of Energy and Climate Change Telephone: 0300 068 5677 or email: gareth.leigh@decc.gsi.gov.uk can answer any queries regarding the instrument.