

Draft Order laid before Parliament under section 232(6) of the Planning Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No.

**INFRASTRUCTURE PLANNING
ELECTRICITY**

**The Infrastructure Planning (Electricity
Storage Facilities) Order 2020**

Made - - - -

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 14(3) and (4) and 232(3) of the Planning Act 2008(1).

A draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament, in accordance with section 232(6) of that Act(2).

Citation and commencement

1.—(1) This Order may be cited as the Infrastructure Planning (Electricity Storage Facilities) Order 2020.

(2) This Order comes into force on the twenty-eighth day after the day on which it is made.

Interpretation

2. In this Order—

“the Act” means the Planning Act 2008;

“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;

(1) 2008 c. 29.

(2) Section 232(6) was amended by the Localism Act 2011 (c. 20), section 131(3)(b).

“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.

Amendments to the Act

3.—(1) Section 15 of the Act (generating stations) is amended as follows⁽³⁾.

(2) After subsection (3B), insert—

“(3C) To the extent that an exempt electricity storage facility forms part of a generating station (or is expected to do so, when the generating station is constructed or extended), any capacity provided by the facility is to be disregarded for the purposes of determining whether the generating station is within subsection (2), (3), (3A) or (3B).

(3D) The construction or extension of a generating station is not within section 14(1) (a) to the extent that the generating station comprises or (when constructed or extended) is expected to comprise an exempt electricity storage facility.”

(3) At the end of the section insert—

“(6) In this section—

“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.”

Transitional and savings provisions

4. Article 3 applies subject to the transitional and savings provisions provided for in articles 5 to 7 below.

5.—(1) Paragraph (2) applies where an application for an order granting development consent—

- (a) has been accepted in accordance with section 55 of the Act (acceptance of applications)⁽⁴⁾ but not decided before the day on which this Order comes into force; and
- (b) is for the construction or extension of a generating station which comprises, in whole or in part, an exempt electricity storage facility.

(2) In such a case—

- (a) the application must continue to be considered in accordance with the provisions of the Act as if the amendments in article 3 had not been made;
- (b) the provisions of the Act are to continue to apply to any order granting development consent that is made as a result of the application or to any refusal of development consent resulting from the application as if the amendments in article 3 had not been made;

⁽³⁾ Section 15 was amended by the Wales Act 2017 (c. 4), section 39(1) to (6), and by S.I. 2016/306.

⁽⁴⁾ Section 55 was amended by the Marine and Coastal Access Act 2009 (c. 23), section 23(4) and the Localism Act 2011 (c. 20), section 137(2), (3) and (4), Schedule 13 Part 1 paragraph 13, and Schedule 25 Part 21 paragraph 1.

- (c) subject to paragraph (3), any such order is to have effect, and the provisions of the Act are to continue to apply, in relation to—
 - (i) the development in respect of which the order is made; and
 - (ii) anything else authorised or required by the order;as if the amendments in article 3 had not been made;
 - (d) subject to paragraph (3), where any such order is amended or changed under the provisions of Schedule 4 or 6 to the Act⁽⁵⁾, the order is to have effect, and the provisions of the Act are to continue to apply, in relation to—
 - (i) the development in respect of which the order as amended or changed has effect; and
 - (ii) anything else authorised or required by the order as amended or changed;as if the amendments in article 3 had not been made;
 - (e) subject to paragraph (3), where a new or replacement order is made as a result of a judicial review, that order is to have effect, and the provisions of the Act are to continue to apply, in relation to—
 - (i) the development in respect of which the new or replacement order has effect; and
 - (ii) anything else authorised or required by the new or replacement order;as if the amendments in article 3 had not been made.
- (3) Nothing in subparagraphs (2)(c) to (e) shall be construed as requiring an application for an order granting development consent to be made for the extension of a generating station where—
- (a) the extension comprises or (when constructed or extended) is expected to comprise an exempt electricity storage facility; and
 - (b) no application for an order granting development consent for the extension has been accepted in accordance with section 55 of the Act before the day on which this Order comes into force.
- 6.—**(1) Paragraph (2) applies to an order granting development consent for the construction or extension of a generating station which comprises, in whole or in part, an exempt electricity storage facility, where the order has been made before the day on which this Order comes into force.
- (2) In such a case—
- (a) the provisions of the Act are to continue to apply to the order as if the amendments in article 3 had not been made;
 - (b) subject to paragraph (3), the order is to have effect, and the provisions of the Act are to continue to apply, in relation to—
 - (i) the development in respect of which the order has been made; and
 - (ii) anything else authorised or required by the order;as if the amendments in article 3 had not been made;
 - (c) subject to paragraph (3), where the order is amended or changed under the provisions of Schedule 4 or 6 to the Act, the order is to have effect and the provisions of the Act are to continue to apply, in relation to—
 - (i) the development authorised by the order as amended or changed; and
 - (ii) anything else authorised or required by the order as amended or changed;

(5) Schedules 4 and 6 were amended by the Marine and Coastal Access Act 2009 (c.29), Schedule 8(1) paragraph 4; the Localism Act 2011 (c.20), Schedule 13(1) paragraphs 1 and 70 and Schedule 25(20); the Infrastructure Act 2015 (c.7), Part 5 section 28 and S.I. 2011/1043.

as if the amendments in article 3 had not been made;

(d) subject to paragraph (3), where a new or replacement order is made as a result of a judicial review, that order is to have effect, and the provisions of the Act are to continue to apply, in relation to—

(i) the development in respect of which the new or replacement order has effect; and

(ii) anything else authorised or required by the new or replacement order;

as if the amendments in article 3 had not been made.

(3) Nothing in subparagraphs (2)(b) to (d) shall be construed as requiring an application for an order granting development consent to be made for the extension of a generating station where—

(a) the extension comprises or (when constructed or extended) is expected to comprise an exempt electricity storage facility; and

(b) no application for an order granting development consent for the extension has been accepted in accordance with section 55 of the Act before the day on which this Order comes into force.

7.—(1) Paragraph (2) applies where, before the day on which this Order comes into force, an application for an order granting development consent for the construction or extension of a generating station which comprises, in whole or in part, an exempt electricity storage facility has been refused.

(2) In such a case—

(a) the provisions of the Act are to continue to apply to the refusal as if the amendments in article 3 had not been made; and

(b) if the refusal is quashed on a judicial review, article 5(2) of this Order applies to any redetermination of the application.

Date

Name
Minister of State
Department for Business, Energy and Industrial
Strategy

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Planning Act 2008 (c. 29) (the “Act”) to remove electricity storage facilities (except for pumped hydroelectric storage facilities) from the category of generating stations whose construction or extension requires development consent as a Nationally Significant Infrastructure Project (“NSIP”) under the Act.

Article 3 of this Order amends section 15 of the Act, which sets out the circumstances in which the construction or extension of a generating station will constitute an NSIP, to exclude an exempt storage facility, that is, an electricity storage facility which is not a pumped hydroelectric storage facility. An electricity storage facility is 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.

Article 4 provides that article 3 applies subject to transitional and savings provisions set out in articles 5 to 7 of the Order.

Article 5 makes provision relating to applications to develop generating stations which comprise, in whole or in part, an exempt electricity storage facility and which have been submitted and accepted by the Secretary of State in accordance with the procedure set out in the Act (but not decided) before this Order comes into force. For these applications the process continues to go forward under the Act as it would have done if the Order had not been made. The options for challenge provided under the Act will continue to apply to any order made granting development consent, or a decision to refuse consent. If an order is made granting development consent following such an application, its provisions will continue to have effect and any provisions in the Act that would have applied had this Order not been made will continue to have effect in respect of the development consent order and the development itself save that further extensions to the generating station which comprise an exempt electricity storage facility will not require a new application for development consent.

Article 6 makes provision relating to development consent orders for generating stations which comprise, in whole or in part, an exempt electricity storage facility and which have been made before this Order comes into force. The provisions of these development consent orders will continue to have effect and any provisions in the Act that would have applied had this Order not been made will continue to have effect, in respect of the development consent order and the development itself save that further extensions to the generating station which comprise an exempt electricity storage facility will not require a new application for development consent.

Article 7 makes provision relating to applications to develop generating stations which comprise, in whole or in part, an exempt electricity storage facility and which have been refused by the Secretary of State before this Order comes into force. The options for challenge provided under the Act will continue to apply to the decision to refuse consent and, if the refusal is quashed, article 5(2) will apply to any redetermination of the application.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.