

EXPLANATORY MEMORANDUM TO
THE INFRASTRUCTURE PLANNING (ELECTRICITY STORAGE FACILITIES)
ORDER 2020

2020 No. XXXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy ('the Department') and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument removes electricity storage, except pumped hydro storage, from the need to seek planning consent in accordance with the national planning regime (Nationally Significant Infrastructure Projects (NSIP) regime) under the Planning Act 2008 in England and Wales. Instead, planning consent for these types of development may be sought from the relevant Local Planning Authority under the Town and Country Planning Act 1990 (TCPA).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This entire instrument applies to England and Wales only.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would be within the devolved legislative competence of the Northern Ireland Assembly as a transferred matter, if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

- 5.1 The Rt. Hon. Kwasi Kwarteng has made the following statement regarding Human Rights:

"In my view the provisions of The Infrastructure Planning (Electricity Storage Facilities) Order 2020 are compatible with the Convention rights."

6. Legislative Context

- 6.1 This instrument amends the Planning Act 2008.
- 6.2 The Planning Act 2008 sets out criteria for when infrastructure projects need to seek planning consent from the Secretary of State under the NSIP regime as opposed to consent from the Local Planning Authority under the Town and Country Planning Act 1990. The NSIP regime for electricity storage purposes superseded consents required under Section 36 of the Electricity Act 1989 and this is no longer used except for variations to existing Section 36 consents.
- 6.3 The Order achieves its aim by amending the provisions within the Planning Act 2008 to remove electricity storage facilities (except for pumped hydro storage facilities) from the category of generating stations whose construction or extension requires development consent as an NSIP under the Act.
- 6.4 Together with this Order the Department intends to make a separate Order amending the Electricity Act 1989 which will remove the need for planning consent to be granted by the Secretary of State under s36 of the Electricity Act and result in these facilities being consented by local authorities. Without a further Order amending the Electricity Act 1989, storage facilities over 50MW would fall to be consented under s.36 of the Electricity Act rather than by local authorities as is intended.

7. Policy background

What is being done and why?

- 7.1 Electricity storage is a key technology in the transition to a smarter and more flexible energy system and will play an important role in helping to reduce emissions to net-zero by 2050. Technologies such as storage, demand side response and interconnectors can provide flexibility to the system, by shifting when electricity is generated and shifting demand from peak times. Flexibility in our energy system is essential to the integration of high volumes of low carbon power, heat and transport. A study carried out for the Government estimated that the benefits to the UK of a smart and flexible energy system could be £17-40 billion to 2050.¹
- 7.2 In July 2017 the Government and Ofgem published the [Smart Systems and Flexibility Plan](#),² this was followed by a [Progress Update to the Plan](#)³ in 2018. These documents set out 38 actions for the Government, Ofgem and Industry to take forward to support the transition to a smarter and more flexible system, including removing barriers to electricity storage. One of the commitments in the Plan was to review how storage is treated in the planning system.
- 7.3 In the planning regime electricity storage facilities are treated as a form of generating station and prior to this legislation coming into force were subject to the 50MW capacity threshold for the Nationally Significant Infrastructure Projects (NSIP) regime. Where facilities exceeded this threshold, they required a Development Consent Order from the Secretary of State rather than planning permission from the Local Planning Authority.

¹ [An analysis of electricity system flexibility for Great Britain](#), November 2016

² [The Smart Systems and Flexibility Plan](#), July 2017

³ [Progress Update to the Smart Systems and Flexibility Plan](#), October 2018

- 7.4 Evidence collected through consultation showed that the NSIP threshold is distorting sizing and investment decisions for electricity storage. For example, there is a clustering of facilities sized just below the 50MW threshold, with no standalone facilities sized above this. There is also evidence of projects which have been split into multiple 49.9MW projects to avoid having to seek consent through the NSIP regime. In addition, evidence shows that the planning impacts of storage (except pumped hydro), in particular battery storage, are much lower than other forms of generation.
- 7.5 The NSIP regime is partly in place for projects where the benefits of infrastructure are national whilst the impacts are more local in nature. For these projects it may be more difficult for a Local Planning Authority to clearly weigh up the benefits and impacts. For generation, it has been the generating capacity (megawatts) that has determined national significance. Considering the significantly lower planning impacts of storage (except pumped hydro storage), we do not consider it appropriate that these types of projects should be consented through the NSIP regime, unless directed in through s.35 of the Planning Act 2008.
- 7.6 This SI is therefore necessary to amend the Planning Act 2008 to remove electricity storage facilities (except pumped hydro) from the NSIP regime in England and Wales. This would mean that all standalone storage (except pumped hydro) projects in England will be consented by the Local Planning Authority under the Town and Country Planning Act 1990, unless directed into the NSIP regime by the Secretary of State (e.g. following a request by the developer, Local Planning Authority, an objector etc.) under s.35 of the Planning Act 2008. In Wales, planning decisions for electricity storage (except pumped hydro) of any size will also generally fall to be consented by the relevant Local Planning Authority under the TCPA regime, whereas currently this is only the case for electricity storage (except pumped hydro) below 350MW.
- 7.7 Where storage is co-located alongside another form of generation, the storage element of such a project will no longer trigger the MW capacity thresholds set out in the NSIP regime (currently 50MW in England and 350MW in Wales). However, developers may be able to include storage within a Development Consent Order as associated development if, in a composite scenario, the other form of generation has fallen into the NSIP regime.
- 7.8 In England, Section 35 of the Planning Act 2008 will continue to apply, allowing requests to be made by local authorities, developers, local objectors or any other party to the Secretary of State to direct projects into the NSIP regime, where he considers it appropriate.
- 7.9 We are retaining the 50MW NSIP threshold in the case of pumped hydro storage due to the larger planning impacts of this technology. Whilst stakeholders suggested a threshold of 200MW could be appropriate for pumped hydro storage, there was little evidence provided to support that figure. These projects are large and complex and can take several years to obtain the necessary planning approvals before construction begins. They often require several other consents which can be provided through a Development Consent Order, which may make the NSIP regime a more appropriate consenting route for this type of project. Retaining the 50MW threshold means that the planning regime for pumped hydro storage across Great Britain will largely align. Due to the locational requirements for pumped hydro, we do not expect to see many (if any) facilities deployed in England, where we have legislative competence for the relevant part of the planning regime.

7.10 The objective of this SI is to ensure an appropriate treatment of storage within the planning system and remove a barrier to its deployment. This SI will remove the current distortion that the NSIP threshold is creating, making it simpler for larger scale storage facilities to get planning permission.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans for consolidation at this time.

10. Consultation outcome

10.1 Government has published two consultations on the planning regime for electricity storage. On 14 January 2019, the Department for Business, Energy and Industrial Strategy published a ten-week public consultation⁴ on proposals to amend the planning regime to make it simpler to seek permission to co-locate storage with other forms of generation. The consultation closed on 25 March 2019 and the Department received 31 responses, including from storage developers, trade associations, a local authority and manufacturer. Whilst most respondents agreed with the principle of making it simpler to co-locate storage with other forms of generation, 76% disagreed with the proposal to retain the 50MW NSIP threshold for standalone storage facilities and presented evidence that the current 50MW threshold was distorting sizing and investment decisions.

10.2 Following consideration of this evidence, on 15 October 2019 the Department published an eight week follow up consultation⁵ on a new proposal to carve out electricity storage, except pumped hydro, from the NSIP regime in England and Wales. The consultation closed on 10 December 2019 and the Department received 28 responses to this, including from storage developers, trade associations (including those representing planning bodies), and a charity.

10.3 All consultees broadly supported the consultation proposals, although a small number of respondents, whilst agreeing with the carve out, argued that the NSIP threshold which applies to pumped hydro storage should be increased to 200MW (from 50MW). We have considered these arguments, however there was limited evidence submitted in support of a 200MW threshold and internal analysis shows that the planning impacts of pumped hydro storage will be an order of magnitude higher than other forms of storage. The final proposals, therefore, carve out electricity storage, except pumped hydro from the NSIP regime.

10.4 A summary of the consultation responses and the Government's response is available on the gov.uk website.⁶

⁴ [Consultation on proposals regarding the planning system for electricity storage](#), January 2019

⁵ [Follow up consultation on proposals regarding the planning system for electricity storage](#), October 2019

⁶ [Government response to October 2019 consultation on proposals regarding the planning system for electricity storage](#), July 2020

10.5 We have consulted with the Welsh and Scottish Government throughout the policy development. Both devolved administrations are content and supportive of this instrument.

11. Guidance

11.1 We are not publishing guidance that is explicitly linked to this instrument. However, we are working with the Ministry of Housing, Communities and Local Government to update the renewable and low carbon energy planning practice guidance to refer specifically to electricity storage. The planning practice guidance supports the National Planning Policy Framework which sets out the Government's planning policies for England and how these are expected to be applied.

12. Impact

12.1 The impact on business, charities or voluntary bodies is estimated to be £1.5 million equivalent annual net direct savings. The changes made by this instrument will apply to all businesses who intend to apply for planning permission for an electricity storage project. The quantified expected cost to business is around £80,000 in the first year only, associated with reading and understanding the legislation. The quantified expected benefits to business are around £2 million per year from reduced planning costs (which are made up of planning fees, legal/project management resource, surveys, ground investigations, consultations) and/or infrastructure costs (which are made up of electrical connections).

12.2 Removing the NSIP threshold for energy storage is likely to lead to more storage projects being deployed at larger sizes. This additional flexibility will allow for more efficient grid balancing and management of intermittent renewable generation. This will reduce the cost to the power sector of achieving its net zero CO2 targets. This benefit has not been quantified.

12.3 There is no, or no significant, impact on the public sector. This instrument may mean local planning authorities perform more assessments; however, planning fees will cover the additional resources needed to assess these projects.

12.4 An Impact Assessment has not been prepared for this instrument because the proportionate analysis set out in section 12.1 and 12.2 suggests it meets the exclusion test of under £5 million total impact.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The basis for the final decision on what action to take to assist small business is: this measure has a net beneficial impact on businesses of all sizes who apply for planning permission for electricity storage projects; this measure imposes no ongoing costs to businesses of any size; this measure does not disproportionately benefit large businesses. Therefore, no action is proposed for small businesses.

14. Monitoring & review

14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Rt. Hon. Kwasi Kwarteng has made the following statement.

14.2 “This instrument’s annualised net impact on business is an estimated net £1.5 million equivalent annualised direct savings, below the indicative £5 million threshold for significant impacts. Further, a review is disproportionate given the transition costs are minor in comparison to the ongoing benefits. This, absent any factors making a review desirable, makes a statutory review clause inappropriate.”

15. Contact

15.1 Hannah Clapham at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 5685 or email: hannah.clapham@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Teresa Camey, Deputy Director for Electricity Systems, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt. Hon. Kwasi Kwarteng, Minister of State for Business, Energy and Clean Growth, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.