

**EXPLANATORY MEMORANDUM TO
THE OVERHEAD LINES (EXEMPT INSTALLATIONS) (CONSEQUENTIAL
PROVISIONS) ORDER 2010**

2010 No. 29

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) and is laid before Parliament for approval by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Purpose of the instrument**

- 2.1 The purpose of the instrument is to amend the Overhead Lines (Exemption)(England and Wales) Regulations 2009 so as to take account of the coming into force, on 1 March 2010, of provisions of the Planning Act 2008 which relate to the granting of development consent for the installation of overhead electric lines.

- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

- 4. Legislative Context**

- 4.1 The Overhead Lines (Exemption) (England and Wales) Regulations 2009 provide that in certain cases, the requirement for the Secretary of State's consent to the installation of an electric line (under section 37 of the Electricity Act 1989), does not apply. As a result, such consent is not required where minor works are carried out on existing electric lines to replace worn or damaged components with new generation ones, or in the case of urgent and emergency works. For these purposes, the category of "existing lines" includes those for which consent has previously been granted under section 37 of the Electricity Act 1989.
 - 4.2 From 1 March 2010, a sub-set of the electric line installations which currently require consent under section 37 of the Electricity Act 1989 will be defined as nationally significant infrastructure projects, or NSIPs. NSIPs will require development consent under the 2008 Act rather than the various forms of consent or authorisation to which they have previously been subject.

- 4.3 A separate instrument (the Overhead Lines (Exempt Installations) Order 2010, to be made under the affirmative procedure under section 14 of the Planning Act 2008) has been laid before Parliament in draft for approval by both Houses, with a view to excluding from the category of NSIPs the categories of minor works referred to in the 2009 Regulations, so that the coming into force of the Planning Act does not result in development consent being required in cases where section 37 consent is not required now. This instrument is intended to achieve the complementary purpose of amending the 2009 Regulations so as to ensure that the range of minor works which are exempt from the requirement of Planning Act or Electricity Act consent when they are to be carried out in respect of an existing line in respect of which consent has previously been given under the Electricity Act will also be exempt when they are to be carried out in respect of an existing line in respect of which consent has previously been given under the 2008 Act.

5. Territorial Extent and Application

- 5.1 These regulations apply to England and Wales.

6. European Convention on Human Rights

- 6.1 As this 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 From 1 March 2010, except as provided in the Planning Act 2008 and the proposed Overhead Lines (Exempt Installations) Order 2010, installations of electric lines of 132kV and above will be NSIPs and will be required to be the subject of applications for development consent under the 2008 Act submitted to the Infrastructure Planning Commission (for further general policy background, see the explanatory memorandum to that Order).
- 7.2 The 2009 Regulations make reference to “existing lines”: it is minor works to these lines which are exempted from the requirement for consent under the Electricity Act (and, as proposed in the draft Overhead Lines (Exempt Installations) Order 2010, the also the Planning Act 2008) regime. However, at present, the concept of “existing

lines” covers only those lines which have been the subject of consents under the Electricity Act 1989 or earlier statutes. In order for the exemption provisions to retain their utility once the Planning Act 2008 regime is in force for lines of 132kV and above, the definition of “an existing line” in regulation 2 and the reference to existing lines in regulation 4(1)(b) of the 2009 Regulations need to reflect the possibility that exempt minor works may in future be carried out on lines which were first consented under the Planning Act 2008. This Order makes changes to the 2009 Regulations to ensure that this is the case.

8. Consultation outcome

8.1 DECC conducted a four week consultation from 10 November 2009 until 8 December 2009 that sought views on proposals to apply all the current exemptions set out in the Overhead Lines (Exemption)(England and Wales) Regulations 2009 to the new Planning Act regime. The proposals included a draft statutory instrument which included the provision which appears as Article 2 of this Order. The shortened consultation period reflected the technical nature of the consultation and the fact that Government had previously consulted in detail on the exemptions to the current Electricity Act 1989 regime (which are being carried across to the new Planning Act regime with no changes of substance).

8.2 The consultation document was sent to key stakeholders such as energy companies, Non Government Organisations and the Local Government Association. It was also placed on DECC’s website and distributed through the Department for Communities and Local Government “info4local” alert service that distributes central Government information to local government. As this is largely a technical area of interest, only a limited number of stakeholders responded. These responses were from electricity network operators and their licensed electricity distributors and the IPC. All respondents welcomed the proposal to transfer the existing exemptions to apply to the new Planning Act regime, believing it was a very workable solution. Many indicated that the proposal would prevent delays being introduced to essential works for existing lines of 132kV and above and in the case of emergency works would not prolong the period customers are off-supply. The consultation response is published on the DECC website at:

<http://www.decc.gov.uk/en/content/cms/consultations/consultations.aspx>

9. Guidance

- 9.1 A comprehensive guidance note explaining the 2009 exemption regulations and the section 37 process were produced by DECC in April 2009. This guidance can be found at:

<https://www.og.decc.gov.uk/EIP/pages/Downloads/guidanceoverheadlines.pdf>

This guidance document will be amended to reflect the changes to be implemented by the Planning Act 2008 and this instrument and re-issued on DECC's website.

10. Impact

- 10.1 The impact on charities or voluntary bodies is none. The impact on electricity network operators and local planning authorities will remain the same as compared with the current (Electricity Act 1989) regime, as they will continue to benefit from the more streamlined processes which exist under the current legislation. However, as compared with the situation which they would otherwise face if the relevant provisions of the Planning Act 2008 were to come into force unmodified by this instrument, burdens for network operators, local authorities and the IPC will be reduced, in particular where emergency works are required to be undertaken urgently, as noted above.
- 10.2 The overall impact on the public sector as a result of this instrument is negligible as responsibility for handling applications in respect of non-exempted works involving electric lines of 132kV and above will simply transfer from the Department for Energy and Climate Change to the IPC, with the Department retaining responsibility for handling non-NSIP applications for development consent in respect of electric lines under section 37 of Electricity Act 1989 and the categories of minor works which are currently exempt under section 37 continuing to be exempt whether they fall above or below the 132kV threshold.
- 10.3 An Impact Assessment was not prepared for this Order as Government has already consulted on any impacts of the exemption regulations in the 2006 Energy Review consultation into the resilience of the overhead line network, which informed the drafting of the 2009 Regulations.

11. Regulating small business

- 11.1 This legislation does not apply to small business.

12. Monitoring & review

- 12.1 This instrument and other instruments applying to the Infrastructure Planning Commission (IPC) under the Planning Act 2008 will be reviewed alongside an evaluation of the IPC itself two years after commencement as set out in the Planning Act 2008.

13. Contact

- 13.1 Denise Libretto at the Department of Energy and Climate Change Tel: 0300 068 5678 or email: denise.libretto@decc.gsi.gov.uk or Ian Grimley Tel: 0300 068 5675 or email: ian.grimley@decc.gsi.gov.uk can answer any queries regarding the instrument.