

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

**2016 No. 21**

**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 makes provision under the Electricity Act 1989 to remove the requirement for onshore wind generating stations to apply to the Secretary of State for planning 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 As this instrument is subject to 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 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 provisions within the Electricity Act 1989, removing the requirement for the Secretary of State's consent for onshore wind projects. Provisions in the Energy Bill (currently clause 79) will place the Electricity Act 1989 on a statutory footing by amending section 36 of the Electricity Act 1989.
- 4.3 Together with this Order, the Department intends to make an Order under section 15 of the Planning Act 2008, providing an additional exclusion to the need for development consent for a generating station.
- 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.

## **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 The Policy objective is to ensure the consenting process for onshore windfarms is primarily handled at the local planning 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 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. This means that such large projects do not have to apply to local planning authorities.
- 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 this 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, 1st March 2016 has been selected. The Order needs to come into force before The Infrastructure Planning (Onshore Wind Generating Stations) Order 2016, otherwise it will be possible for applications to be made for onshore wind generating stations greater than 50MW not under the Planning Act 2008 (which the Infrastructure Planning (Onshore Wind Generating Stations) Order 2016 will remove from the consenting functions of the Planning act 2008) but under the Electricity Act 1989. In allowing both Orders to enter into force at an early date, the Department is putting in place measures that have been widely trailed.

## **8. Consultation outcome**

- 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 applications for a generating station with capacity greater than 50MW. Further information about the consultation can be found on the website of the Department of Energy and Climate Change.

## **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](http://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 The powers within the Electricity Act 1989 for onshore wind generating stations in England and Wales will be replaced by the Energy Bill 2015 upon Royal Assent where upon those provisions are put 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 Ruth Letourneur at the Department of Energy and Climate Change Telephone: 0300 068 8470 or email: [ruth.letourneur@decc.gsi.gov.uk](mailto:ruth.letourneur@decc.gsi.gov.uk) can answer any queries regarding the instrument.