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

D R A F T S T A T U T O R Y I N S T R U M E N T S

2016 No. 0000

INFRASTRUCTURE PLANNING

ELECTRICITY

The Infrastructure Planning (Onshore Wind Generating Stations) Order 2016

Made - - - - 2016

Coming into force in accordance with article 1(2)

The Secretary of State for Energy and Climate Change, in exercise of the powers conferred by sections 14(3) and (4) and 232(3) of the Planning Act 2008(**a**), makes the following Order.

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.

Citation and Commencement

1.—(1) This Order may be cited as the Infrastructure Planning (Onshore Wind Generating Stations) Order 2016.

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

Interpretation

2. In this Order—

"the Act" means the Planning Act 2008;

"onshore generating station" means a generating station(**b**) which—

(a) is situated in England or Wales; and

(b) is not situated in waters adjacent to England or Wales up to the seaward limits of the territorial sea.

Amendments to section 15 of the Planning Act 2008

3. In section 15 of the Act (generating stations), after subsection (2)(a) insert—

"(aa) it does not generate electricity from wind,".

(**a**) 2008 c. 29. There are amendments to the Act which are not relevant to this Order.

(**b**) "generating station" has the same meaning as in section 64(1) of the Electricity Act 1989 (c. 29) by virtue of section 235(1) of the Planning Act 2008.

Transitional and savings

4. Article 3 applies subject to the transitional and savings provisions provided for in Articles 5 to 8 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) but not decided before the day on which this Order comes into force; and

(b) is for the construction or extension of an onshore generating station that generates electricity from wind.

(2) In such a case—

(a) the application must continue to be considered in accordance with the provisions of the Act;

(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;

(c) 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;

(d) where any such 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 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;

(e) where any such order is amended or changed, or a new or replacement order is made, as a result of a judicial review, 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, or the new or replacement order, has effect; and

(ii) anything else authorised or required by the order as amended or changed, or the new or replacement order.

6.—(1) Paragraph (2) applies where, before the day on which this Order comes into force, a decision has been made under section 55 of the Act not to accept an application for an order granting development consent for the construction or extension of an onshore generating station that generates electricity from wind.

(2) In such a case—

(a) the provisions of the Act are to continue to apply to the decision; and

(b) if the decision is overturned on a judicial review and the application is subsequently accepted under section 55 of the Act, article 5 of this Order applies as if the application had 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 to an order granting development consent for the construction or extension of an onshore generating station that generates electricity from wind, 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;

(b) 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;

(c) 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;

(d) where the order is amended or changed, or a replacement order is made, as a result of a judicial review, 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, or the replacement order, has effect; and

(ii) anything else authorised or required by the order as amended or changed, or the replacement order.

8.—(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 an onshore generating station that generates electricity from wind has been refused.

(2) In such a case—

(a) the provisions of the Act are to continue to apply to the refusal; and

(b) if the refusal is overturned on a judicial review and an order granting development consent is made, article 7 of this Order applies as if development consent had been granted by an order made before the day on which this Order comes into force.

Name
Parliamentary Under Secretary of State
Date Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Planning Act 2008 (c. 29) (the "Act") such that no onshore generating stations which generate electricity from wind are to be consented under the regime specified in the Act, unless a specific saving provided for in this Order applies to the particular application for "development consent" made under the Act.

Article 2 defines an onshore generating station for the purposes of this Order as a generating station in England and Wales which is not located in waters out to the seaward (outer) limits of the territorial sea.

Article 3 amends section 15(2) of the Act to remove onshore generating stations which generate electricity from wind from the definition of those onshore generating stations in England and Wales that development consent under the Act.

Article 4 provides that article 3 applies subject transitional and savings provisions set out in articles 5 to 8 of the Order.

Article 5 makes provision relating to applications to develop onshore wind generating stations 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 consent, or a decision to refuse consent. If an order is made granting development consent from 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 consent order and the development itself.

Article 6 makes provision relating to any decision to refuse to accept and application under section 55 of the Act. The provisions of the Act continue to apply to the refusal. If, following a judicial review of the refusal, an application is accepted, article 5 will apply as if the application had been accepted but not decided prior to the entry into force of the Order.

Article 7 makes provision relating to development consent orders for onshore wind generating stations which have been made before this Order comes into force. The provisions of these 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 consent order and the development itself.

Article 8 makes provision relating to any decision to refuse development consent under the Act. The provisions of the Act continue to apply to the refusal. If, following a judicial review of the refusal, an application is accepted, article 7 will apply as if as order granting development consent had been made prior to the entry into force of the Order.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is annexed to the Explanatory Memorandum for this Order on www.legislation.gov.uk.

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