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

2018 No. 000

INFRASTRUCTURE PLANNING, ENGLAND

WATER RESOURCES, ENGLAND

The Infrastructure Planning (Water Resources) (England) Order 2018

Made - - - - ***

Coming into force in accordance with article 1(1)

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(**a**).

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(**b**).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Infrastructure Planning (Water Resources) (England) Order 2018 and comes into force on the day after the day on which it is made.

(2) In this Order, "the Act" means the Planning Act 2008.

Amendments to the Act

2.—(1) The Act is amended as follows.

(2) After section 14(1)(n) (nationally significant infrastructure projects: general)(**c**), insert—

"(na) the construction or alteration of a desalination plant;".

(3) In section 27 (dams and reservoirs)—

(a) for subsection (1)(c), substitute—

"(c) it is expected that—

(i) the volume of water to be held back by the dam or stored in the reservoir will exceed 30 million cubic metres, or

(ii) the deployable output of the dam or reservoir will exceed 80 million litres per day.";

(**a**) 2008 c. 29.
(**b**) Section 232(6) was amended by the Localism Act 2011 (c. 29), section 131(3)(b).
(**c**) Section 14(1) was amended by S.I. 2012/1645 and 2015/949.

(b) for subsection (2)(c), substitute—

"(c) it is expected that—

(i) the additional volume of water to be held back by the dam or stored in the reservoir as a result of the alteration will exceed 30 million cubic metres, or

(ii) the additional deployable output of the dam or reservoir as a result of the alteration will exceed 80 million litres per day.".

(4) For section 28(1)(b) (transfer of water resources), substitute—

"(b) it is expected that—

(i) the deployable output of the facility to be constructed as a result of the development will exceed 80 million litres per day, or

(ii) the additional deployable output of the facility to be altered as a result of the development will exceed 80 million litres per day,".

(5) After section 28 insert—

"**28A Desalination plants**

(1) The construction of a desalination plant is within section 14(1)(na) only if—

(a) the desalination plant (when constructed) will be in England or in waters adjacent to England up to the seaward limits of the territorial sea,

(b) the construction will be carried out by one or more water undertakers, and

(c) the deployable output of the desalination plant is expected to exceed 80 million litres per day.

(2) The alteration of a desalination plant is within section 14(1)(na) only if—

(a) the desalination plant is in England or in waters adjacent to England up to the seaward limits of the territorial sea,

(b) the alteration will be carried out by one or more water undertakers, and

(c) the additional deployable output of the desalination plant as a result of the alteration is expected to exceed 80 million litres per day.

(3) "Water undertaker" means a company appointed as a water undertaker under the Water Industry Act 1991.".

(6) In section 235(1) (interpretation)(**a**) insert in the appropriate place—

""deployable output" means, in relation to a given facility, the annual average volume of water that can be produced per day from that facility under drought conditions, having regard in particular (where applicable) to—

(a) the hydrological yield of the facility;

(b) the quantity of water licensed for abstraction;

(c) the state of the local environment;

(d) the properties of any—

(i) pumping plant;

(ii) well;

(iii) aquifer;

(iv) raw water main;

(v) aqueduct;

(vi) transfer main;

(vii) output main;

(**a**) Section 235(1) was amended by the Localism Act 2011, Schedule 13, Part 1, paragraph 69.

(e) any water treatment processes;

(f) any requirements relating to water quality;

"desalination plant" means a facility for the extraction of mineral components from saline water;

"drought conditions" means conditions resulting from a shortage of precipitation that has a 0.5% chance of occurring within a 12 month period;".

Transitional and savings provisions: accepted applications for an order granting development consent

3.—(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)(**a**) but has not been decided before the day on which this Order comes into force, and

(b) is for—

(i) the construction or alteration of a dam or reservoir, or

(ii) a development relating to the transfer of water resources.

(2) In such a case—

(a) the application must continue to be considered and such an order must be made or development consent refused in accordance with the provisions of the Act,

(b) the provisions of the Act are to continue to apply to any such order that is made or to any refusal of development consent, and

(c) any such order that is made is to have effect and the provisions of the Act are to apply in relation to the nationally significant infrastructure project in respect of which the order is made,

as if the amendments made by article 2 had not been made.

Transitional and savings provisions: decided applications for an order granting development consent

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

(a) has, before the day on which this Order comes into force, either—

(i) been granted and such an order made, or

(ii) been refused, and

(b) is for—

(i) the construction or alteration of a dam or reservoir, or

(ii) a development relating to the transfer of water resources.

(2) In such a case—

(a) the provisions of the Act are to continue to apply to any such order or to any refusal of development consent, and

(b) any such order is to have effect and the provisions of the Act are to apply in relation to the nationally significant infrastructure project in respect of which the order is made,

as if the amendments made by article 2 had not been made.

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

Transitional and savings provisions: applications etc. made under other consent regimes

5.—(1) Paragraph (5) applies where conditions A, B and C are met.

(2) Condition A is that there is a project for—

(a) the construction or alteration of a dam or reservoir,

(b) development relating to the transfer of water resources, or

(c) the construction or alteration of a desalination plant.

(3) Condition B is that the project—

(a) would not have been a nationally significant infrastructure project as defined by section 14(1) of the Act before this Order comes into force, and

(b) would be a nationally significant infrastructure project as defined by section 14(1) of the Act after this Order comes into force.

(4) Condition C is that, before the date on which this Order comes into force, an application has been made, notice served or proposals submitted under one or more of the statutory regimes listed in section 33(1) of the Act (effect of requirement for development consent on other consent regimes)(**a**) in relation to the project.

(5) In such a case—

(a) the provisions of the Act are to apply to the project,

(b) each application or proposal under a regime listed in section 33(1) of the Act is to be determined, and

(c) each determination made under such a regime is to have effect in relation to the project,

as if the amendments made by article 2 had not been made.

Name
Parliamentary Under Secretary of State
Date Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order amends the Planning Act 2008 (c. 29) ("the Act") in respect of nationally significant infrastructure projects ("NSIP") in the field of water to introduce a new category of NSIP and amend the thresholds of the existing categories of NSIP.

Paragraphs (2) and (6) introduce a new category of NSIP in respect of the construction or alteration of desalination plants. A desalination plant is defined in paragraph (7) as a facility for the extraction of mineral components from saline water.

Paragraph (3) amends section 27. It increases the threshold for when the construction or alteration of a dam or reservoir will be an NSIP from holding back 10 million cubic metres to holding back 30 million cubic metres. The amendments also introduce a new qualifying characteristic of "deployable output", which is defined by paragraph (7) as the annual average volume of water that can be produced per day from a facility under drought conditions, having regard in particular to certain relevant constraints. The construction of dams or reservoirs with a deployable output of at least 80 million litres per day, or the alteration of dams or reservoirs which create an additional deployable output of at least 80 million litres a day, will be an NSIP.

(**a**) Section 33(1) was amended by the Growth and Infrastructure Act 2013 (c. 27), section 18(3)(a).

Paragraph (5) substitutes the existing threshold in section 28 for when a development relating to the transfer of water resources will be an NSIP for a deployable output of at least 80 million litres per day.

The amendments made by article 2 apply subject to transitional and savings provisions set out in articles 3 to 5 of the Order (which in general apply the Act as it was before the amendments made by article 2).

Article 3 makes provision relating to applications 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.

Article 4 makes provision for where an order for development consent has already been made or development consent has been refused before this Order comes into force.

Article 5 makes provision for projects which, prior to the coming into force of this Order, had already progressed through other statutory regimes and would not have qualified as an NSIP, but would so qualify after this Order comes into force.

An impact assessment has not been produced for this instrument because no, or no significant, impact on the private or voluntary sector is foreseen.

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