EXPLANATORY MEMORANDUM TO

THE OVERHEAD LINES (EXEMPT INSTALLATIONS) ORDER 2010

2010 No. xxxx

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 ensure that when the installation of certain electric lines becomes subject to the new development consent regime set out in the Planning Act 2008, rather than as at present, the regime set out in section 37 of the Electricity Act 1989, certain minor works, which are currently exempted from the requirement for consent under section 37, will not require consent under the 2008 Act.

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

3.1 None.

4. **Legislative Context**

4.1 Under the Planning Act 2008, a sub-set of the electric lines whose installation currently requires consent under section 37 of the Electricity Act 1989 will be defined as "nationally significant infrastructure projects" ("NSIPs"). From 1 March 2010, NSIPs will require development consent under the 2008 Act rather than various other forms of consent or authorisation to which they have previously been subject.

4.2 It was never intended that the commencement of the relevant provisions of the 2008 Act should impose a requirement for consent where none exists at present. Accordingly it is necessary to disapply the 2008 Act consenting regime in respect of those electric lines whose installation is currently exempt from the requirement of consent under section 37 by virtue of the Overhead Lines (Exemption) (England and Wales) Regulations 2009. The draft Order achieves this by exempting the range of projects currently covered by the 2009 Regulations from being NSIPs under the 2008 Act. In addition, a consequential amendment is to be made to the 2009 Regulations so that, for example, where currently repairs to existing lines which have been the subject of consent under section 37 are exempted from the requirement for further section 37, so in the future repairs to existing lines which have been the subject of a

development consent order under the 2008 Act will be similarly exempted from the requirement for further 2008 Act consent (see the Overhead Lines (Exempt Installations) (Consequential Provisions) Order 2010).

5. Territorial Extent and Application

5.1 These regulations apply to England and Wales.

6. European Convention on Human Rights

6.1 Lord Hunt of Kings Heath, OBE, Minister of State for the Department of Energy and Climate Change has made the following statement regarding Human Rights:

In my view the provisions of the Overhead Lines (Exempt Installations) Order 2010 are compatible with the Convention rights.

7. Policy Background

What is being done and why?

7.1 From 1 March 2010, except as provided in the Planning Act 2008 and this instrument, 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 ("IPC").

7.2 This instrument provides for the benefits of the 2009 exemption regulations to be transferred to the IPC regime. Without it, works such as the repair, reinforcement or maintenance of existing electric lines which have already been through a statutory development consent process would need to go through that process under the 2008 Act rather than being exempt from the requirement for a further development consent application as is the case under the Electricity Act 1989 by virtue of the 2009 Regulations. The exemptions in the 2009 regulations are qualified. The works covered are minor for instance replacing worn or damaged components with new generation ones to improve resilience, installing additional supports to improve line safety, or slightly repositioning lines for operational reasons. For most works, the local authority has to be notified and if it has concerns (for instance on environmental grounds) it can insist that the network operator applies for a full fresh consent.

7.3 The only exception to this is in the case of emergency works where network operators can commence essential and urgent work as soon as possible rather than wait weeks for the section 37 process to be completed. Network operators are required to notify the local authority as soon as practically possible following commencement of such works but they can instigate corrective measures urgently e.g. to reconnect power supply to homes, schools and businesses cut off by severe weather conditions.

7.4 Without this instrument it would be illegal under the 2008 Act for any electricity network operator to commence emergency repair and necessary minor works to existing lines which fall into the NSIP category until an application had been submitted to the IPC and the IPC had determined it. The result would be to impose a substantial new burden on network operators (including the payment of application fees to the IPC) and potentially to inundate the IPC, which has been set up to consider the largest and most significant projects, with a multitude of unnecessary applications in respect of minor works.

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 shortened consultation period reflected the technical nature of the proposals 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. 100% of the 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 There is no tailored guidance for this instrument. 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

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