EXPLANATORY MEMORANDUM TO

THE PLANNING ACT 2008 (NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS) (ELECTRIC LINES) ORDER 2013

2013 No. [XXXX]

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.

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

2. Purpose of the instrument

2.1 This instrument will amend the definition of "nationally significant infrastructure projects" (NSIPs) in the Planning Act 2008 for electric lines above ground. It will change the NSIP definition so that it only covers lines of 132kilovolt (kV) or greater nominal voltage and more than 2 kilometres in length. The amendment will also exclude from the NSIP definition works to uprate the nominal voltage of an electric line where no significant changes are made to the physical infrastructure. The effect of this amendment is that the installation of an electric line of 132kV or greater nominal voltage that is under 2km in length and some works to uprate an electric line will be subject to the consenting procedure under s37 Electricity Act 1989 rather than the procedures under the Planning Act 2008.

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

3.1 None.

4. Legislative Context

4.1 This Order is made in exercise of the powers conferred on the Secretary of State by Section 14(3)(b) and (4) and section 232(3)(b)of the Planning Act 2008.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Minister of State of Energy and Climate Change has made the following statement regarding Human Rights:

In my view the provisions of the Planning Act 2008 (Nationally Significant Infrastructure Projects) (Electric lines) Order 2013 are compatible with the Convention rights

7. Policy background

7.1 Electric lines above ground require consent from the Secretary of State before they can be constructed. Prior to the Planning Act 2008 coming into force on 1 March 2010, all electric lines above ground were consented under Section 37 of the Electricity Act 1989. Since the Planning Act 2008 came into force, electric lines above ground with a nominal voltage of 132kilovolts (kV) or more are consented under Section 114 of the Planning Act 2008, while electric lines above ground with nominal voltages of less than 132kV continue to be consented under Section 37 of the Electricity Act 1989. There are exemptions from consents requirements for minor works to electric lines, such as maintenance or minimal re-routing.

7.2 There are approximately 21 applications annually for consent of electric lines at 132kV or greater nominal voltage. Of these, around 15 are for minor works to existing electric lines with project lengths of less than 2km. Under the Planning Act 2008 as currently drafted all the applications for consent for electric lines of 132kV nominal voltage or greater have to be submitted to the Planning Inspectorate National Infrastructure Directorate, following statutory procedures for pre-application and application processes. However, Government considers that electric lines of less than 2km should not normally be considered to be NSIPs.

7.3 The statutory process for applications for development consent of NSIPs under the Planning Act 2008 is intended to provide a transparent, streamlined process for examination of major infrastructure projects. However it is disproportionate for minor works that are not nationally significant. The process requires formal consultation processes and an examination process that may last up to nine months, including public hearings on the proposed development project. For a short length of electric line, for example 500 metres with only one support (pylon or wooden pole), there are unlikely to be any contentious issues or potential adverse significant effects. Further, for minor works to existing lines, there would have been an examination and development consent for the original construction. The time and cost of complying with the Planning Act 2008 process would be much longer than the time and cost for consideration under Section 37 of the Electricity Act 1989 without providing any additional benefits.

7.4 This amendment to the Planning Act 2008 threshold will therefore provide a more proportionate regime for examination of applications for development consent of 132kV nominal voltage or greater electric lines that are less than 2km in length and applications for uprating of lines where no significant changes are made to the physical infrastructure.

8. Consultation outcome

8.1 There were 19 responses to the consultation. All the respondents agreed in principle to that the definition of an electric line NSIP in the Planning Act 2008 should be amended. A number proposed extending the amendment to works on all existing lines and also excluding any line under 15km in length. However the reasons for proposing these amendments were based on considerations of whether a project would have significant impacts; such an amendment would not address the question of whether a project was “nationally significant”.

8.2 The Government’s preferred option as set out in the consultation document included provision that uprating of a line should not be an NSIP provided that there was no change to the physical infrastructure. However one respondent pointed out that there

was an inconsistency between this approach and the Overhead Lines (Exemption) (England and Wales) Regulations 2009 (S.I. 2009/640) (as amended by the Overhead Lines (Exempt Installations) (Consequential Provisions) Order 2010 (S.I. 2010/29) for minor works. The draft Statutory Instrument therefore includes further criteria relating to uprating of high voltage electric lines to allow for minor changes to the physical infrastructure.

9. Guidance

9.1 Guidance is issued by DECC on applications for consent for electric lines under Section 37 of the Electricity Act 1989 and by the Planning Inspectorate and Department of Communities and Local Government on applications for consent under the Planning Act 2008. The guidance on applications for Section 37 applications is being reviewed alongside a review of Planning Act guidance by the Department of Communities and Local Government. These reviews will take into account this amendment to the Planning Act 2008 and other amendments to legislation that arise from recent EU legislation. DECC does not, therefore, intend to issue separate guidance on this amendment.

10. Impact

10.1 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation does apply to small business.

11.2 There are no impacts for firms employing up to 20 people as no provider of overhead electricity lines employs 20 or fewer people.

12. Monitoring & review

12.1 The amendment will be reviewed as part of the wider review of the Planning Act 2008 planned for 2014.

13. Contact

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