EXPLANATORY MEMORANDUM TO

THE ELECTRICITY ACT 1989 (REQUIREMENT OF CONSENT FOR SOLAR GENERATING STATIONS) (ENGLAND) ORDER 2025

2025 No. 762

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero ("the Department") and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 Michael Shanks, Minister for Energy at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

2.2 Dan Cox, Deputy Director for Renewable Strategy, at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Cameron Fraser at the Department for Energy Security and Net Zero - Telephone: 07742 769308 or email: cameron.fraser@energysecurity.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order removes the requirement under the Electricity Act 1989 ("EA1989") for solar projects in England with a generating capacity of between 50 megawatts ("MW") and 100 MW to apply to the Secretary of State for planning consent. Solar projects below 100MW will instead apply to the local planning authorities under the Town and Country Planning Act 1990 ("TCPA1990").

4.2 This Order is being made alongside The Infrastructure Planning (Onshore Wind and Solar Generation Capacity Limits) Order 2025 which will increase the capacity threshold from 50MW to 100MW above which solar energy projects are consented through the Nationally Significant Infrastructure Planning ("NSIP") regime under the Planning Act 2008 ("PA2008") in England.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Due to advancements in solar panel technology, the government considered it appropriate to reconsider the threshold at which solar projects are determined to be Nationally Significant, raising it from 50MW to 100MW. This will ensure applications are processed efficiently through the appropriate planning regime and will avoid current distortionary effects on deployment.

5.2 This change is being applied under The Infrastructure Planning (Onshore Wind and Solar Generation Capacity Limits) Order 2025, which amends the PA2008. It is now the intention for projects below 100MW to be considered under the TCPA1990.

5.3 Prior to the PA2008, Secretary of State consent was required under section 36 EA1989 to construct generating stations of over 50MW. When PA2008 came into force, the requirement for consent under section 36 EA1989 was disapplied for projects defined as an NSIP. Projects that constitute an NSIP are defined in section 15 of PA2008.

5.4 If the EA1989 is left as it currently stands, solar projects with a generating capacity between 50MW and 100MW would no longer be considered as NSIP, but instead be captured by section 36 EA1989, and would continue to need Secretary of State consent under this section, rendering the main instrument ineffective in relation to solar projects.

5.5 Therefore, to ensure The Infrastructure Planning (Onshore Wind and Solar Generation Capacity Limits) Order 2025 is effective, modification of the effect of section 36 EA1989 is needed. This SI will address this disparity for solar projects, reflecting the amended position under section 15 PA2008.

What was the previous policy, how is this different?

5.6 For solar, the previous capacity threshold of 50MW set in the PA2008 has resulted in unintended consequences of constraining the market for 'mid-sized' (50-100MW) projects. The solar sector has indicated that the more expensive and lengthier NSIP process (compared to the local planning process via local authorities for projects up to 50MW) means it is not financially viable for developers to build such projects. This has resulted in developers artificially capping projects at just below 50MW; applications submitted in England between January 2020 and October 2024 saw 40% of capacity (around 10GW) proposed between 48-49.9MW[1]. The consequences of this are that the limited sites that are suitable for solar and grid connections are not being used as efficiently as they could be. In addition, NSIP thresholds were originally set in 2008 when solar sites were less efficient and more costly, meaning projects that are now captured by the NSIP regime today may not be of a 'nationally significant' scale. Raising the threshold will ensure mid-sized projects have access to a more proportionate planning route via local authorities and should incentivise those projects that would have otherwise capped themselves to develop to a more optimal and efficient capacity.

[1] Based on data from the Renewable Energy Planning Database (Q3 2024): https://www.gov.uk/government/publications/renewable-energy-planning-database-monthly-extract

6. Legislative and Legal Context

How has the law changed?

6.1 The Order, using powers contained in section 36(2) and (3) of the EA1989, has the effect of substituting the permitted capacity threshold contained in section 36(2)(a) of the EA 1989.

6.2 Section 36 of the EA 1989 requires that certain electricity generating stations may not be constructed, extended or operated without a consent granted by the Secretary of State. The provision also sets out exemptions from this requirement.

6.3 The Order has the effect of substituting the permitted capacity threshold set out in section 36(2)(a) of the EA 1989 to increase the threshold at which solar generating stations require consent from the Secretary of State. It provides that the construction or extension of solar generating stations in England with a generating capacity of 100 megawatts or more will require consent under section 36.

6.4 The effect of the Order is to align the statutory threshold for solar generating stations in England under both the EA1989 and the PA2008, with the policy intention that larger scale solar developments should be subject to national level decision-making, ensuring appropriate oversight and assessment of their impact and strategic contribution.

Why was this approach taken to change the law?

6.5 This is the most proportionate approach to make the necessary changes. Other approaches would require primary legislation.

7. Consultation

7.1 Government published a consultation on 30 July 2024 seeking views on how national planning policy might be revised to support the government's wider objectives, including on setting appropriate thresholds for solar in the NSIP regime. The consultation ran for 8 weeks, closing 24 September 2024, with the government response published 12 December 2024[2].

7.2 Government received views from a broad range of respondents on the NSIP threshold, including developers, local planning authorities, neighbourhood planning groups/town or parish councils, private individuals, private sector organisations, interest/voluntary organisations and professional bodies.

7.3 The government asked for views on raising the solar threshold to 150MW. Around 25% more respondents supported an increase in the threshold than those who opposed. There was support across most groups of stakeholders. Local authorities had a particularly high proportion of respondents that supported the proposal rather than opposed. However, across most other stakeholder groups there was a more even split.

7.4 Some respondents considered that the existing 50MW threshold should remain, suggesting an increased threshold would lead to delays or inconsistent decisions, impacted by local politics or opposition. Others supported an increased threshold but questioned the evidence for raising to 150MW, suggesting 100MW as a more appropriate threshold, aligning with onshore wind and other renewables.

[2] The consultation and government response can be found on gov.uk: https://www.gov.uk/government/consultations/proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system/outcome/government-response-to-the-proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system-consultation#introduction

7.5 The government considers that it is appropriate to raise the threshold to better reflect the technological advances in solar technology since 2008, when the original 50MW threshold was set. Solar projects at the current threshold of 50MW are unlikely to be of a scale, impact or complexity that is proportionate to using the NSIP regime. However, after further assessment, the government considers that a 100MW threshold would better reflect modern technology and is appropriate to enter the NSIP regime.

8. Applicable Guidance

8.1 This Order does not implement or require guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment was carried out as part of The Infrastructure Planning (Onshore Wind and Solar Generation Capacity Limits) 2025 and is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

9.2 The main monetised impacts highlighted in the impact assessment are expected to be felt by businesses. Limited evidence is available to provide a clear net present social value (NPSV) or Equivalent Annual Net Direct Cost to Business (EANDCB). We have elected to present a negative impact of an NPSV of –£0.3 million (2024 prices, 2025 present value) based on the familiarisation costs associated with businesses understanding how the changes may impact their future projects. It is important to note this analysis also accounts for reintroducing onshore wind into the NSIP regime at 100MW. Despite the negative monetised impact, analysis suggests that there is likely to be an overall positive impact on total welfare, namely driven by the non-monetised benefits of improved efficiency in site sizing and reduced system emissions.

Impact on businesses, charities and voluntary bodies

9.3 As per the impact assessment highlighted above, we expect to see no significant impact on business, charities or voluntary bodies, with a small negative cost to business based on the familiarisation costs noted in section 9.2.

9.4 We do not expect there to be significant disproportionate impacts on small and micro businesses. However, identifying impacts by business size is highly complicated within the energy industry with a variety of different operating models. These include large vertically integrated energy companies, global renewable players, special purpose vehicles as well as small and micro businesses. Many of these businesses contract out pre-development, planning, and construction work to consultancies and engineering, procurement and construction (EPC) companies. These specialist organisations will be familiar with both the NSIP and local planning routes, so will be well placed to adjust to changes in the policy.

9.5 The government is also mindful that large scale solar projects are preparing to enter, or are already in, the planning system and changes to the NSIP threshold may impact these. There will be projects that have invested and undertaken steps with the intention of entering the NSIP regime or local planning process, or projects that are seeking a decision on their planning consent. Changing the thresholds may mean that projects fall out of a particular regime or are required to enter a different one than intended, with the potential to increase costs or cause delays. Therefore, the SI introduces a

transitional window until the end of 2025 when the changes formally come into effect. The transitional window will also support businesses by allowing time to familiarise themselves with the changes.

9.6 We do not expect there to be significant disproportionate impacts on the public sector. Our assessment of the expected impacts on local government and central government focus on two key impacts: administrative burdens of dealing with applications, and potential local and environmental impacts associated with changing the thresholds. Both impacts are highly dependent on the number of applications which come through local planning and NSIP routes as a result of changes to the legislation, which is uncertain. As such, we have not sought to quantify the impacts.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation follows The Infrastructure Planning (Onshore Wind and Solar Generation Capacity Limits) Order 2025, which includes a post-implementation review within five years, aligning with the government's mission for clean power by 2030. However, the post-implementation review will be informed by monitoring and evaluation activity across this five-year period including baseline evidence gathering, monitoring of the pipeline, and process and impact evaluation.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Michael Shanks has made the following statement:

"In my view, given there are no significant impacts on business, charities or voluntary bodies, it is appropriate that The Infrastructure Planning (Onshore Wind and Solar Generation Capacity Limits) Order 2025 does not contain a statutory review clause."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 There has been a delay between the making of this instrument and it being laid, for which the Department apologises.

11.2 This was due to an oversight which meant the signed version of the instrument was missed for laying because it had been scanned at the end of another instrument made by the Minister on the same day.

12. European Convention on Human Rights

12.1 The Minister for Energy has made the following statement regarding Human Rights:

"In my view the provisions of The Infrastructure Planning (Onshore Wind and Solar Generation Capacity Limits) Order 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").