

**Response of the Law Society to the Department for
Business, Energy and Industrial Strategy on
proposals regarding the planning system for
electricity storage**

25/03/19



Preface

1. The Law Society of England and Wales ('the Society') is the independent professional body that works globally to support and represent 180,000 solicitors, promoting the highest professional standards and the rule of law. The Society represents the profession to Parliament, government and regulatory bodies, and in the public interest undertakes work in areas such as the improvement of practice standards, pro bono work, law reform, promotion of human rights, and development of practice rights internationally.
2. The Society represents a wide range of planning practitioners, including members acting for local authorities and developers.
3. Smart, flexible energy can help the transition towards a low carbon energy system, whilst bringing significant benefits for consumers, the energy networks and the wider economy. The [Progress Update to the Smart Systems and Flexibility Plan](#), published in October 2018, stated that the Department for Business, Energy and Industrial Strategy (BEIS) would consult on the treatment of electricity storage within the planning system.
4. The Society welcomes the opportunity to respond to this [consultation](#)¹. This response has been prepared by the Society's Planning and Environmental Law Committee. Its members engage with keeping under review, and actively promoting improvements in planning and environmental law. Our response is confined to questions 1 to 4.

Response

Q1. The analytical assessment in Annex A that supports this consultation explores the costs and benefits of the preferred policy option. Do you agree with the analytical assessment and the assumptions that underpin it?

Please provide evidence and analysis to support your answer where appropriate.

5. Annex A states that the threshold 'is not significantly distorting sizing and investment decision relative to other forms of generation', but that is presumably based on an assumption that storage is well-known to be within the existing 50MW threshold already, which is far from clear. It is stated to be an ambiguity as to whether composite projects trigger the threshold, but there is also an ambiguity as to whether storage projects on their own can trigger the threshold. The threshold in section 15 of the Planning Act 2008 applies to 'generating stations', but it is arguable that a battery that receives electricity, stores it and then retransmits it is not 'generating' electricity. Merely declaring in a Call for Evidence that the government considers storage to be a form of generation does not settle the matter legally. The analytical assessment is therefore somewhat incomplete on that point.

Q2. Do you agree with our conclusion that it would be disproportionate to amend the threshold for triggering the NSIP regime?

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770703/electricity-storage-planning-consultation.pdf

If not please provide evidence to support your argument, including to support what an alternative threshold should be in terms of level and/or unit.

6. If the risk is acceptable of including smaller projects consisting of batteries that can produce 50MW but only for a very short time, then the preferred option is the best one. If that would bring in a large number of very small projects, then an MWh threshold should be added.
7. Using a 50MW threshold has the benefit of simplicity as it is the same as the existing threshold for non-storage generation. The only additional factor that might affect a decision on the threshold is that storage projects can vary considerably in how long they can operate from full storage, from a matter of seconds to hours.

Q3. Do you agree with our approach to amending the Planning Act 2008 to allow a more appropriate approach to the NSIP threshold for composite projects involving electricity storage and another form of onshore non-wind generation?

Please provide evidence and analysis to support your answer where appropriate.

8. It does seem appropriate that a storage element and more traditional generation element should not be added together when considering the threshold as this is likely to bring smaller projects within the ambit of the Planning Act 2008 for which the regime is out of proportion in terms of time and cost.

Q4. Do you agree that the current carve out from the NSIP regime for onshore wind generating stations is sufficiently clear to cover composite projects involving storage and onshore wind?

Please provide reasons to support your answer including, where relevant, details of any particular projects which are expected to come forward in future.

9. Yes. Section 15(2) (aa) of the Planning Act 2008, as amended, includes any onshore project that 'does not generate electricity from wind' and so would exclude a composite storage and wind project.

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