

UTILITIES ACT 2000

**Modernising the Framework for Gas and Electricity
Regulation**

**Exemptions from the Requirement for a
Licence to Generate, Distribute or
Supply Electricity**

*Responses to consultations and final proposals from the
Department of Trade and Industry*

February 2001

The Secretary of State, pursuant to the terms of section 5(2) of the Electricity Act 1989 as amended by the Utilities Act 2000 (“the Act”), hereby gives notice that he proposes to make an Order under section 5(1) of the Act granting exemption from paragraphs (a), (bb) and (c) of section 4(1) of the Act to the classes of persons specified in the Order and subject to the conditions specified therein. The reasons why the Secretary of State proposes to make such an Order are set out in the attached document entitled “Exemptions from the Requirement for a Licence to Generate, Distribute and Supply Electricity: Responses to Consultations and Proposals to Revoke the Electricity (Class Exemptions from the Requirement for a Licence) Order 1997 and to make the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001” (“the Document”). The terms of the proposed draft Order are set out in Appendix 1 to the Document.

The Secretary of State, pursuant to the terms of section 5(11) of the Act, hereby gives notice that he proposes by Order made under section 5(9) of the Act to revoke the Electricity (Class Exemptions from the Requirement for a Licence) Order 1997⁽¹⁾, for the reasons set out in the Document.

Representations may be made with respect to all proposals in the Document by 30 March 2001 to G Hatherick, Head, Consumer Policy, Energy Policy Directorate, Department of Trade and Industry, Room 2109, 1 Victoria Street, London SW1H 0ET.

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Nigel Peace
An official of the Department of Trade and Industry
authorised to act on behalf of the Secretary of State

27 February 2001

⁽¹⁾ SI 1997/989, as amended by SI 2000/2424.

**Exemptions from the Requirement for a Licence to Generate,
Distribute and Supply Electricity: Responses to Consultations
and Proposals
to Revoke The Electricity (Class Exemptions from the Requirement
for a Licence) Order 1997 ***
and
**to make The Electricity (Class Exemptions from the Requirement
for a Licence) Order 2001**

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**Exemptions from the Requirement for a Licence to Generate,
Distribute and Supply Electricity : Responses to Consultations
and
Proposals to Revoke the Electricity (Class Exemptions from the
Requirement for a Licence) Order 1997 ***
and
**to make the Electricity (Class Exemptions from the Requirement for
a Licence) Order 2001**

INTRODUCTION

1.1 Section 4(1)(a) and (c) of the Electricity Act 1989 (“the Electricity Act”) make it an offence for a person to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given or to supply electricity to any premises unless he is authorised to do so by licence or exemption. Section 5 of the Electricity Act sets out the circumstances in which generators and suppliers may be exempt from licensing at the moment. Section 28(1) and (3)(b) of the Utilities Act 2000 (“the Utilities Act”) substitutes a new definition of supply in section 4(4) of the Electricity Act but is not yet in force.

1.2 Section 4(1)(bb) of the Electricity Act inserted by Section 28(1) and (3)(a) ** of the Utilities Act makes it an offence for a person to distribute electricity for the purpose of giving a supply to any premises or enabling a supply to be given unless he is authorised to do so by licence or exemption. Section 5 of the Electricity Act as substituted by section 29 of the Utilities Act sets out the circumstances in which distributors as well as generators and suppliers may be exempt from licensing. Section 29 of the Utilities Act is not yet in force. 1.3 In November 1999, the Government published a consultation document “Electricity (Class Exemptions from the Requirement for a Licence) Proposed Amendments” in which it discussed options for relaxing the existing rules for exempting persons who undertake de minimis generation, de minimis supply and supply to qualifying consumers from the need for an electricity generation or supply licence. In a further document in July 2000 “Further Consultations on Extending the Rules to Exempt Small and

* S.I. 1997/989, as amended by S.I. 2000/2424

** The only part of section 28 of the Utilities Act in force at present is section 28(3)(a) and that is only in force for the purpose of defining a “distribution system” where that term is used in Parts I, II and III of the Utilities Act.

On-site Generators from the Need to Hold a Supply Licence”, the Government made firm proposals for changes. The Electricity (Class Exemptions from the Requirement for a Licence) Order 1997 (S.I. 1997/989) (“the Existing Order”) was subsequently amended by the Electricity (Class Exemptions from the Requirement for a Licence) (Amendment) (England and Wales) Order 2000 (S.I. 2000/2424). The latter granted exemption to certain generators from the need to hold a generation licence for a period of one year and came into force on 1 October 2000.

1.4 In March 2000, the Government published a consultation document, “Exemptions from the Requirement for a Licence to Distribute Electricity”, in which it made proposals for exempting certain persons from the need to hold an electricity distribution licence.

1.5 This document sets out the Government’s final proposals for generation, distribution and supply exemptions and for revoking the Existing Order and making The Electricity Act (Class Exemptions from the Requirement for a Licence) Order 2001 (“the New Order”). In formulating its final proposals the Government has considered the objectives and duties of the Secretary of State, as set out in section 3A of the Electricity Act inserted by section 13 of the Utilities Act, in carrying out his functions under section 5 of the Electricity Act.

TIMETABLE

1.6 The new exemption regime will take effect on the day that distribution becomes a separate licensable activity following the full entry into force of section 28 and the entry into force of section 29 of the Utilities Act, which is intended to take place in June 2001. On that day it is intended that the New Order will come into force and that the Existing Order as amended will be revoked.

1.7 Views on the issues raised in this document are invited by 30 March 2001. Further copies of this document are available from the DTI website at <http://www.dti.gov.uk>

ENFORCEMENT

1.8 Complaints may be made by the customer of an exempt generator, distributor or supplier to the Gas and Electricity Consumer Council (GECC) or the Gas and Electricity Markets Authority (Ofgem). It will be for Ofgem to determine whether the generator, distributor or supplier has

infringed the conditions of his exemption. The Secretary of State will review from time to time the operation of the exemption regime.

REGULATORY IMPACT

1.9 The Government produced an updated Regulatory Impact Assessment (RIA) of the costs and benefits of the Utilities Bill when the Bill was introduced in the House of Lords. Paragraph 32 of the RIA referred to the impact of the exemptions on certain electricity distributors, and undertook to provide a separate assessment of where the boundary between licensed and exempt operators should lie and the decision to attach conditions to proposed exemptions. A copy of the Regulatory Impact Assessment in respect of the changes to the exemption regime is at Appendix 2.

FINAL PROPOSALS FOR GENERATION EXEMPTIONS

2.1 The Electricity (Class Exemptions from the Requirement for A Licence)(Amendment)(England and Wales) Order 2000 (SI 2000/2424) amended the Existing Order by exempting from the need to hold a generation licence for a period of one year, persons operating generating stations with existing energised connections on 30 September 2000:

- which did not provide more than 100 MW of power to the total system; or
- which were not subject to central despatch on that date.

2.2 The Government now proposes to extend these exemptions indefinitely. Generators without existing energised connections whose plant will not provide more than 100 MW of power to the total system may apply for an individual exemption. In deciding whether and, if so when, to grant such an exemption the Secretary of State will consult Ofgem, the transmission licence holder and also the distribution licence holder to whose network the generator proposes to connect.

2.3 The Government understands that the National Grid Company Plc, the transmission licence holder in England and Wales, and the distribution network operators are currently discussing means whereby the transmission licence holder can better prepare for new connections of plant in the above category. Once suitable binding commercial arrangements have been put in place for this, the Department proposes to amend the New Order to remove the need for new generators to apply for an individual exemption.

2.4 It is intended that the above proposals will apply to England and Wales only.

CONCLUSIONS ON THE CONSULTATION AND FINAL PROPOSALS FOR DISTRIBUTION EXEMPTIONS

3.1 In its consultation, the Government proposed three categories of distributors: (i) licensed distributors; (ii) exempt distributors subject to certain conditions; and (iii) other smaller exempt distributors subject to minimum conditions. The Government received twenty-nine responses.

3.2 In considering the categories of exempt distributor and their parameters, the Government has had particular regard to achieving the right balance between the protection of domestic consumers on private networks and the need to avoid placing an undue regulatory burden on private network operators.

3.3 The Government notes that, for non-domestic consumers on private networks, it is likely that the provision of energy will be only one element covered in the negotiations of a lease with the site-owner. In the light of this, the Government considers that the cost of requiring private network operators to permit third party access and publish charging statements for the use of the system would be out of proportion to the benefits to be derived by consumers. However, the Government also wishes to limit the number of domestic consumers served by exempt distributors. It proposes a limit of 2.5MW on the amount of electricity that can be supplied to domestic consumers on an exempt distribution network, which equates with the limits proposed for exempt suppliers. As a broad guide, 2.5MW of electricity would equate to supplying around 2,500 domestic consumers at maximum demand.

3.4 Following its consultation, the Government considers it desirable to establish a third class of exempt distributor. This would consist of private network operators other than licensed distributors that do not at any time distribute more electrical power than 1MW to domestic consumers who receive that power directly over the operator's distribution network from a generating station that is also located on that network. This would assist private network operators, especially local authorities, with combined heat and power facilities linked to individual developments.

3.5 The Government's final proposals for exempt distributors which it wishes to implement in the New Order are:

(i) distributors, including associated, related or connected undertakings, operating networks that cumulatively supply no more than 2.5MW of electricity to domestic consumers. These distributors would keep annual accounts and, for integrated electricity undertakings would, in their internal accounting, keep separate accounts for their distribution activities. They would also allow the GECC to investigate complaints by consumers (under the powers granted to it in section 46 of the Electricity Act substituted by Section 22 of the Utilities Act) and Ofgem to collect information and investigate whether the terms of the exemption had been infringed. Those distributors operating networks over which no more than 500kW of electricity is cumulatively distributed to domestic consumers would only have to allow the GECC to investigate complaints by consumers and Ofgem to collect information and investigate whether the terms of the exemption had been infringed.

(ii) distributors, including associated, related or connected undertakings, operating networks on which a generating station is located and that distribute no more than 1MW of electrical power to domestic consumers who receive that power directly from that generating station. These distributors would keep annual accounts and, for integrated electricity undertakings would, in their internal accounting, keep separate accounts for their distribution activities. They would also allow the GECC to investigate complaints by consumers and Ofgem to collect information and investigate whether the terms of the exemption had been infringed.

(iii) distributors operating networks that do not supply electricity to domestic consumers. These distributors would be subject to the conditions in article 4(4) of the Order.

Distributors may qualify for exemption under one or more of the above provisions.

3.6 The Government notes that licences carry benefits, as well as costs, duties and responsibilities. Operators of private networks that meet the terms of the exemption regime will need to consider whether it is more appropriate for their business to be exempt or licensed.

3.7 The Secretary of State will seek advice from Ofgem and the GECC on the operation of the exemption arrangements.

3.8 It is intended that these proposals will apply throughout Great Britain.

CONCLUSIONS ON THE CONSULTATION AND FINAL PROPOSALS FOR SUPPLY EXEMPTIONS

4.1 In its document :‘Further Consultation On Extending The Rules To Exempt Small And On-Site Generators From The Need To Hold A Supply Licence’ in July 2000, the Department proposed to relax the rules for exempting suppliers from the need to hold a licence so as to exempt :

- persons who supplied no more than 5 MW of electrical power which they generated themselves or which they received from a licensed supplier - of which no more than 2.5 MW could be supplied to domestic consumers. (The previous limit was 500 KW)
- persons who made supplies of electrical power which they generated themselves either to a single consumer or to a qualifying group of consumers (as defined in the Existing Order) - provided that at least one third of the power so supplied was taken by the single consumer or by members of the qualifying group in premises which were located on the same site as the power station from which the supply was made, or which took that supply directly from the power station over private wires.

Suppliers may qualify for exemption under one or more of the above provisions.

4.2 Suppliers who supply more than 500KW will be subject to two conditions in respect of supplies made to domestic consumers:

- (i) to safeguard consumers who do not have the right to switch supplier, suppliers must not charge prices that exceed the maximum amount set out in the Order (OFGEM will be consulting on maximum resale prices); and
- (ii) they must give notice to new customers that they are supplying them under an exemption, rather than a licence.

Exempt suppliers who supply less than 500 KW to domestic consumers do not currently have any conditions imposed. We are not proposing to change this position.

4.2 There were 16 responses to the Government's Supply Exemption Consultation. Relaxing the rules for exemption was welcomed by the majority of respondents. Some argued for higher limits. In particular it was argued that the 2.5MW limit for domestic consumers should be higher bearing in mind, for example, the duty on local councils to tackle fuel poverty. On the other hand concerns were expressed that consumers might be disadvantaged by a widening of exemptions as unlicensed suppliers were not subject to the same obligations as licensed suppliers. One respondent argued that it would be better to have lighter grades of regulation - stripped down licences - rather than to extend exemptions. Finally, some argued that wider exemption should be targeted explicitly on the requirement to source power from CHP and renewables stations. The Government now wishes to implement these proposals in the New Order.

4.3 In addition to the above, the Government now plans to make one further relaxation of the provisions exempting suppliers from the need to hold a licence. At present a person may resell electricity which has been supplied to him by an exempt on-site supplier subject to a maximum restriction of the lesser of 250 MWh or 10% of the power supplied. The Government now proposes that the restrictions should be that resale of that electricity is limited to 10% of the power supplied of which only 250 megawatt hours a year may be supplied to domestic consumers. This will remove a, now unnecessary, regulatory burden on companies with large on site consumption, some of which is taken by contractors and others non domestic consumers on the same site, while retaining the fundamental requirements of on-site supply.

4.4 The Government proposes that OFGEM should issue a direction to exempt suppliers setting out the standard form of a notice apprising domestic consumers of the effects of their supplier being exempt from the licensing regime.

4.5 It is intended that these proposals will apply throughout Great Britain.

S T A T U T O R Y I N S T R U M E N T S

2001 No.

ELECTRICITY

The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001

<i>Made - - - - -</i>	<i>2001</i>
<i>Laid before Parliament</i>	<i>2001</i>
<i>Coming into force</i>	<i>2001</i>

The Secretary of State, in exercise of the powers conferred on him by sections 5 and 111(2) of the Electricity Act 1989⁽²⁾ and after giving notice under and considering any representations in accordance with section 5(2) and (11) of that Act and after consultation with the Gas and Electricity Markets Authority⁽³⁾ and the Scottish Ministers⁽⁴⁾, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 and shall come into force on [...] 2001.

Interpretation

2.—(1) In this Order—

“the Act” means the Electricity Act 1989;

“accounting records” means such accounting records as would be required by section 221 of the Companies Act 1985⁽⁵⁾ in respect of the distribution business of a

⁽²⁾ 1989 c.29; section 5 was inserted by section 29 of the Utilities Act 2000 (c.27).

⁽³⁾ The Authority was established under section 1(1) of the Utilities Act 2000.

⁽⁴⁾ S.I. 1999/1750; article 4 and Schedule 3 provide that functions under section 5(1) of the Act are, in so far as they are exercisable in or as regards Scotland, only exercisable after consultation with the Scottish Ministers.

⁽⁵⁾ 1985 c.6; section 221 was inserted by section 2 of the Companies Act 1989 (c.40).

person who distributes⁽⁶⁾ electricity if that business were the only business undertaken by such a person and that person were a company to which the section applied;

“additional group consumers within the 100 megawatt limit” has the meaning given to that expression in paragraph C.2 in Schedule 4;

“the Authority” means the Gas and Electricity Markets Authority;

“consumer” means a person to whom electricity is supplied⁽⁷⁾ (whether or not he is the same person as the person who supplies the electricity);

“declared net capacity” in relation to a generating station has the meaning given to that expression in Schedule 1;

“domestic consumer” means a consumer supplied with electricity at domestic premises (but excluding such consumer in so far as he is supplied at premises other than domestic premises);

“domestic premises” means premises at which a supply is taken wholly or mainly for domestic purposes;

“licensed distributor” means a holder of a licence under section 6(1)(c) of the Act;

“licensed generator” means the holder of a licence under section 6(1)(a) of the Act;

“licensed supplier” means the holder of a licence under section 6(1)(d) of the Act;

“licensed transmitter” means the holder of a licence under section 6(1)(b) of the Act;

⁽⁶⁾ The definition of “distribute” was inserted into section 4(4) of the Electricity Act 1989 by section 28(1) and (3)(a) of the Utilities Act 2000.

⁽⁷⁾ The definition of “supply” was substituted in section 4(4) of the Electricity Act 1989 by section 28(1) and (3)(b) of the Utilities Act 2000.

“offshore installation” has the same meaning as in regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995⁽⁸⁾;

“ordinary share capital” has the same meaning as in section 832(1) of the Income and Corporation Taxes Act 1988⁽⁹⁾;

“parent undertaking” shall be construed in accordance with section 258 of the Companies Act 1985⁽¹⁰⁾;

“qualifying group” means a group of two or more consumers which are all bodies corporate, and which either—

- (a) are each connected to each other, provided that any body corporate which is connected to, or a parent undertaking in relation to, any of them is a parent undertaking in relation to all of them; or
- (b) are each related to each other, were related to each other on 31st March 1990 and were supplied with electricity on 31st March 1990 by the person seeking to fall within the class in question specified in Schedule 2 or 4; and

“total system” means the transmission system in England and Wales of the licensed transmitter and all distribution systems in England and Wales.

(2) The following provisions shall have effect for the purposes of this Order.

- (a) One body corporate shall be treated as associated with another if—
 - (i) one of them is a subsidiary of the other; or
 - (ii) both of them are subsidiaries of the same holding company;

⁽⁸⁾ S.I. 1995/738.

⁽⁹⁾ 1988 c.1.

⁽¹⁰⁾ Section 258 was inserted by section 21 of the Companies Act 1989.

and “holding company” and “subsidiary” shall have the same meaning as in section 736 of the Companies Act 1985⁽¹¹⁾.

(b) One body corporate shall be treated as related to another if—

- (i) one of them is a 75 per cent subsidiary of the other; or
- (ii) both of them are 75 per cent subsidiaries of a third body corporate;

and “75 per cent subsidiary” shall be construed in accordance with section 838 of the Income and Corporation Taxes Act 1988.

(c) One body corporate shall be treated as connected to another if—

- (i) 50 per cent or more of the ordinary share capital of one of them is owned directly or indirectly by the other; or
- (ii) 50 per cent or more of the ordinary share capital of each of them is owned directly or indirectly by a third body corporate;

and for the purpose of determining whether 50 per cent or more of the ordinary share capital of a body corporate is owned directly or indirectly by another body corporate the provisions of subsections (2) to (10) of section 838 of the Income and Corporation Taxes Act 1988 shall apply in relation to this sub-paragraph as they apply in relation to subsection (1) of that section.

(d) A person shall be treated as generating electricity at any time if he is the operator of plant or equipment which at that time—

- (i) is generating or capable of generating electricity; or
- (ii) is not capable of generating electricity only by reason of the maintenance, repair or testing of the plant or equipment.

⁽¹¹⁾ Section 736 was substituted by section 144(1) of the Companies Act 1989.

- (e) Premises shall be treated as on the same site as each other if they are—
- (i) the same premises;
 - (ii) immediately adjoining each other; or
 - (iii) separated from each other only by a road, railway or watercourse or by other premises occupied by the consumer in question, by any other person who together with that consumer forms a qualifying group, or by the person seeking to fall within the class in question specified in Schedule 2 or 4.

Exemptions from section 4 of the Act

3.—(1) Exemption is granted—

- (a) from section 4(1)(a) of the Act to persons of the classes specified in Schedule 2;
- (b) from section 4(1)(bb) of the Act to persons of the classes specified in Schedule 3;
and
- (c) from section 4(1)(c) of the Act to persons of the classes specified in Schedule 4.

(2) A person shall be treated as falling within any class specified in Schedule 2, 3 or 4 notwithstanding that he generates, distributes or supplies electricity, as the case may be, in circumstances other than those specified in the description of that class if the generation, distribution or supply of electricity in those circumstances would, if taken on its own, be such that that person would fall within another class in Schedule 2, 3 or 4, as the case may be.

Conditions on exemptions

4.—(1) The exemption granted by article 3(1)(a) to persons of Class D in Schedule 2 is subject to compliance with the condition specified in paragraph (2) below.

(2) The highest generation of electricity from any generating station of such a person (at the main alternator terminals) which can be maintained indefinitely without causing damage

to the plant (the “maximum capacity”) shall not at any time exceed the maximum capacity of that generating station on 30th September 2000.

(3) The exemption granted by article 3(1)(b) to persons of the classes specified in Schedule 3 is subject to compliance with the conditions specified in paragraph (4) below.

(4)(a) Persons referred to in paragraph (3) above shall furnish to the Authority, in such manner and at such times as the Authority may require, such information as the Authority may consider necessary for the purpose of performing its functions under the Act.

(b) Persons referred to in paragraph (3) above who at any time distribute more electrical power than 500 kilowatts to domestic consumers shall keep accounting records.

(5) The exemption granted by article 3(1)(c) to persons of Class A in Schedule 4 is subject to compliance with the conditions specified in paragraph (6) below.

(6) A person who at any time supplies more electrical power than 500 kilowatts—

(a) shall not supply electricity to domestic consumers at a price which exceeds the maximum price specified in Schedule 5; and

(b) shall give at least seven days’ notice in writing to a domestic consumer before entering into a contract to supply the same. The notice shall be in such form as the Authority may direct and shall, in particular, specify that the person is authorised to supply electricity by exemption under article 3(1)(c) of this Order and therefore not subject to the conditions and domestic supply obligations that he would be subject to if he were a licensed supplier.

(7) The exemption granted by article 3(1)(c) to persons of Class C in Schedule 4 is subject to compliance with the condition specified in paragraph (8) below.

(8) A person shall not supply electricity to domestic consumers who are additional group consumers within the 100 megawatt limit at a price which exceeds the maximum price specified in Schedule 5.

Revocation

5. The Electricity (Class Exemptions from the Requirement for a Licence)
Order 1997(12) is revoked.

2001

Minister for Energy and Competitiveness in Europe,
Department of Trade and Industry

MEANING OF “DECLARED NET CAPACITY”

1. The declared net capacity of a generating station which is driven by any means other than water, wind or solar power is the highest generation of electricity (at the main alternator terminals) which can be maintained indefinitely without causing damage to the plant less so much of that capacity as is consumed by the plant.

2. The declared net capacity of a generating station which is driven by water, wind or solar power shall be ascertained by the application of the formula $A \times B$ where—

A is the highest generation of electricity (at the main alternator terminals or, in the case of direct current generation, at the output terminals of the direct current to alternating current converter) which, on the assumption that the source of power is available uninterruptedly, can be maintained indefinitely without causing damage to the plant less so much of that electricity as is consumed by the plant; and

B has the value set out in the table as applicable to the particular description of station.

TABLE

(1) <i>Description of station</i>	(2) <i>Value of B</i>
1. Station driven by tidal or wave power	0.33
2. Station driven by any form of water power other than tidal or wave power	1
3. Station driven by wind power	0.43
4. Station driven by solar power	0.17

EXEMPTIONS FROM SECTION 4(1)(a) OF THE ACT
(GENERATION EXEMPTIONS)

Class A: Small generators

Persons (other than licensed generators) who do not at any time provide more electrical power from any one generating station than—

- (1) 10 megawatts; or
- (2) 50 megawatts in the case of a generating station with a declared net capacity of less than 100 megawatts;

disregarding—

- (a) power supplied to—
 - (i) a single consumer who occupies premises which are on the same site as the premises where the generating station is situated and who consumes all the power provided to him from that generating station at those premises or supplies all or some of such power in circumstances specified in the description of Class B in Schedule 4 and consumes at those premises any of such power not so supplied by him; or
 - (ii) two or more consumers who form a qualifying group each of whom occupies premises which are on the same site as the premises where the generating station is situated and consumes all the power provided to him from that generating station at those premises or supplies all or some of such power in circumstances specified in the description of Class B in Schedule 4 and consumes at those premises any of such power not so supplied by him; and

- (b) for the purposes of paragraph (2) above power temporarily provided in excess of 50 megawatts due to technical circumstances outside the reasonable control of the person providing that power.

Class B: Offshore generators

Persons (other than licensed generators) who—

- (1) do not generate electricity except at a generating station which is situated on an offshore installation; and
- (2) do not supply such electricity except to premises which constitute or are comprised in an offshore installation.

Class C: Generators not exceeding 100 megawatts

Persons (other than licensed generators) who do not provide any electrical power except from generating stations which were connected to the total system on 30th September 2000 and which are not normally capable of exporting more than 100 megawatts to the total system, disregarding power temporarily provided in excess of 100 megawatts due to technical circumstances outside the reasonable control of the person providing that power.

Class D: Generators never subject to central despatch

Persons (other than licensed generators) who do not provide electrical power except from generating stations which were connected to the total system on 30th September 2000 provided that under the terms and conditions of their licences under section 6(1)(a) of the Act they were not on that date required to submit those stations to central despatch by the licensed transmitter (central despatch being the process by which the licensed transmitter scheduled and issued direct instructions to licensed generators for the despatch of electrical power prior to 27th March 2001).

**EXEMPTIONS FROM SECTION 4(1)(bb) OF THE ACT
(DISTRIBUTION EXEMPTIONS)**

Class A: Small distributors

Persons (other than licensed distributors) who do not at any time distribute more electrical power than 2.5 megawatts for the purpose of giving a supply to domestic consumers or enabling a supply to be so given.

A.1. For the purposes of Class A electrical power distributed by a body corporate which is associated with, connected to or related to any distributor shall be treated as distributed by that distributor.

Class B: On-site distribution

Persons (other than licensed distributors) who do not at any time distribute more electrical power than one megawatt for the purpose of giving a supply to domestic consumers or enabling a supply to be so given provided that each domestic consumer receives the electrical power from a generating station located on the same distribution system as himself.

Class C: Distribution to non-domestic consumers

Persons (other than licensed distributors) who do not at any time distribute electrical power for the purpose of giving a supply to domestic consumers or enabling a supply to be so given.

EXEMPTIONS FROM SECTION 4(1)(c) OF THE ACT
(SUPPLY EXEMPTIONS)

Class A: Small suppliers

Persons (other than licensed suppliers) who do not supply any electricity except—

- (1) electricity which they generate themselves; or
- (2) electricity which they generate themselves together with electricity which is supplied to them by a licensed supplier;

and who do not at any time supply more electrical power than 5 megawatts of which not more than 2.5 megawatts is supplied to domestic consumers.

A.1. For the purposes of Class A electrical power supplied by a body corporate which is associated with any supplier shall be treated as supplied by that supplier.

Class B: Resale

Persons (other than licensed suppliers) who—

- (1) do not supply any electricity except—
 - (a) electricity which is supplied to their premises by a licensed supplier or by a person in circumstances such that he falls within Class C in this Schedule (in this Class referred to as a “Class C supplier”) provided that for the purpose of determining for the purpose of this Class and paragraphs B.1 and B.2 below whether a person is supplying electricity in such circumstances paragraph (2)(a), (b), (c), (d) and (e) in Class C in this Schedule shall have effect as if sub-paragraph (ii) and the preceding “and”, in each case, were omitted; or

- (b) electricity which they generate themselves or which is supplied to them by a person authorised by an exemption to supply electricity when—
 - (i) the supply of electricity which is normally available to them from a licensed supplier or a Class C supplier (their “normal supply”) is interrupted temporarily due to circumstances outside their control; or
 - (ii) the plant or equipment which is used to generate electricity for the purpose of giving their normal supply is being tested; and
- (2) to the extent that they supply Class C electricity—
 - (a) supply such electricity only to premises, which are on the same site as the relevant premises; and
 - (b) comply with all the conditions set out in paragraph B.2 below.

B.1. For the purposes of Class B—

“Class C electricity” means electricity which is supplied by a person in circumstances such that he falls within Class C in this Schedule;

“relevant premises”, in relation to any reference to a supplier falling or seeking to fall within Class B, means the premises from which he supplies that electricity; and

“year” means a period of twelve months running from 1st April to 31st March.

B.2. The conditions referred to in paragraph (2) in Class B are as follows.

- (1) In respect of each relevant premises the supplier must not in the previous year have supplied from those relevant premises an amount of Class C electricity which is more than 10 per cent of the Class C electricity supplied in that year to those relevant premises.
- (2) If during a year the supplier starts to supply Class C electricity from any particular relevant premises for the first time, at the time he starts to make such supplies he must reasonably expect that the total amount of Class C electricity supplied by him

during the remainder of that year from those premises will be no more than 10 per cent of the Class C electricity supplied in that year to those relevant premises.

- (3) In respect of each relevant premises the supplier must not in any year supply more than 250 megawatt hours of such Class C electricity to domestic consumers.

B.3. A supplier shall not, if and to the extent that it would lead to his falling outside Class B, be treated as supplying Class C electricity to any premises during a year in which the relevant premises are being supplied with electricity by licensed suppliers, unless he supplies more electricity in that year than the amount of electricity which is supplied to those relevant premises by licensed suppliers in that year.

Class C: On-site supply

Persons (other than licensed suppliers) who—

- (1) do not supply any electricity except—
 - (a) electricity which they generate themselves; or
 - (b) electricity which they generate themselves together with electricity which is supplied to them by a licensed supplier; and
 - (2) provide the output of each generating station at which they generate electricity only to—
 - (a) one consumer who—
 - (i) occupies premises which are on the same site as the premises where the generating station is situated; and
 - (ii) consumes all the electricity provided to him by the supplier in question at those premises other than any of that electricity supplied by that consumer in circumstances such that he falls within Class B in this Schedule;
- (in this Class referred to as a “single consumer”) or

- (b) two or more consumers who form a qualifying group each of whom—
 - (i) occupies premises which are on the same site as the premises where the generating station is situated; and
 - (ii) consumes all the electricity provided to him by the supplier in question at those premises other than any of that electricity supplied by that consumer in circumstances such that he falls within Class B in this Schedule;

(in this Class referred to as an “on-site qualifying group”) or

- (c) one or more consumers who—
 - (i) each occupy premises which are—
 - (aa) on the same site as the premises where the generating station is situated; or
 - (bb) not on the same site but which receive the electricity supply from that generating station over private wires; and
 - (ii) each consume all the electricity provided to them by the supplier in question at those premises other than any of that electricity supplied by that consumer in circumstances such that he falls within Class B in this Schedule;

(each in this Class referred to as an “additional group consumer”)

where the total maximum amount of electrical power supplied to those additional group consumers at any time is 100 megawatts of which not more than one megawatt is supplied to domestic consumers; or

- (d) one consumer who—
 - (i) receives at least a third of the output of that generating station at premises he occupies which are—

- (aa) on the same site as the premises where the generating station is situated; or
 - (bb) not on the same site, but which receive the electricity supply from that generating station over private wires; and
 - (ii) consumes all the electricity provided to him by the supplier in question at premises he occupies other than any of that electricity supplied by that consumer in circumstances such that he falls within Class B in this Schedule;
- (in this Class referred to as a “remote consumer”) or
- (e) two or more consumers who form a qualifying group—
 - (i) who between them receive at least a third of the output of that generating station at premises they occupy which are—
 - (aa) on the same site as the premises where the generating station is situated; or
 - (bb) not on the same site but which receive the electricity supply from that generating station over private wires; and
 - (ii) each of whom consumes all the electricity provided to him by the supplier in question at premises he occupies other than any of that electricity supplied by that consumer in circumstances such that he falls within Class B in this Schedule;
- (in this Class referred to as a “remote qualifying group”) or
- (f) additional group consumers within the 100 megawatt limit and one of the following—
 - (i) a single consumer;
 - (ii) an on-site qualifying group;

(iii) a remote consumer; or

(iv) a remote qualifying group; or

(g) (i) a single consumer, or an on-site qualifying group, or additional group consumers within the 100 megawatt limit, or a remote consumer, or a remote qualifying group, or a mixed group of consumers of a type described in sub-paragraph (f) above; and

(ii) any other person in circumstances where the provision of the output of the generating station in question does not amount to the supply of electricity.

C.1. The following provisions have effect for the purposes of Class C.

(1) Where at any time the supplier in question and some other person generate electricity at the same generating station or provide the output of the same generating station, the generation of electricity by that other person or the provision of the output of that generating station by that other person shall be treated as the generation of electricity and the provision of the output of that generating station respectively by that supplier if that other person, being a body corporate, is associated with that supplier.

(2) Two or more generating sets which are operated by the same person or by bodies corporate which are associated with each other shall be treated as a single generating station if they are on the same site as each other (whether or not there is an electrical interconnection between any of them) but otherwise shall be treated as separate generating stations, and in this sub-paragraph—

(a) “generating set” means a combination of the plant and equipment that produces electricity and any other plant or equipment by which that plant or equipment is driven; and

(b) generating sets shall be treated as being on the same site as each other if they are—

(i) situated on the same premises as each other;

- (ii) situated on premises which are immediately adjoining each other; or
- (iii) situated on premises which are separated from each other only by a road, railway or watercourse or by other premises occupied by the supplier in question or by a body corporate which is an associate of that supplier.

C.2. In Class C—

“additional group consumers within the 100 megawatt limit” means consumers described in paragraph (2)(c) in Class C;

“output” in relation to a generating station means the electricity generated at that generating station other than electricity consumed by the plant; and

“private wires” in relation to a generating station means electric lines owned by—

- (a) the supplier in question;
- (b) a consumer who receives a supply from the supplier in question from the generating station;
- (c) the owner, lessor or lessee of the generating station or of one of the premises to which a supply is made by the supplier in question; or
- (d) any of the persons described in paragraphs (a) to (c) above jointly with any other of the persons described in those paragraphs;

provided that the owner of those wires is not a licensed distributor.

Class D: Offshore supply

Persons (other than licensed suppliers) who—

- (1) do not supply electricity except electricity which has been generated at a generating station which is situated on an offshore installation; and

- (2) do not supply such electricity to any premises except premises which constitute or are comprised in an offshore installation.

MAXIMUM PRICE

1. The maximum price specified for the purposes of article 4(6)(a) and (8) shall consist of two elements.

2. The elements referred to in paragraph 1 are, in respect of electricity supplied to a domestic consumer who takes supply from a distribution system of a licensed distributor specified in column (1) below or from a distribution system, of a person authorised by exemption granted under article 3(1)(b) of this Order, which is connected to a distribution system of a licensed distributor specified in column (1) below—

(a) for each unit sold the unit charge specified in column (2) below; and

(b) for each day on which electricity is available the daily availability charge specified in column (3) below,

in each case, inclusive of value added tax.

(1)	(2)	(3)
Licensed distributors	<i>Unit charge (pence)</i>	<i>Daily availability charge (pence)</i>
East Midlands Electricity plc	6.08	9.70
Eastern Electricity plc	6.15	7.33
London Electricity plc	6.38	9.87
Manweb plc	6.58	12.56
Midlands Electricity plc	6.72	5.91
Northern Electric plc	6.90	8.65

(1)	(2)	(3)
Licensed distributors	<i>Unit charge (pence)</i>	<i>Daily availability charge (pence)</i>
NORWEB plc	6.24	9.86
Scottish and Southern Energy plc	6.78	12.39
Scottish Power plc	7.02	11.55
SEEBOARD plc	6.41	6.40
Southern Electric plc	6.49	10.94
South Wales Electricity plc	7.28	12.66
South Western Electricity plc	7.22	8.37
Yorkshire Electricity plc	6.33	11.44

EXPLANATORY NOTE

(This note is not part of the Order)

This Order re-enacts the Electricity (Class Exemptions from the Requirement for a Licence) Order 1997 with amendments. It grants exemption from the requirements of section 4(1)(a) of the Electricity Act 1989 (the “Act”) (which prohibits the generation of electricity without a licence), section 4(1)(bb) of the Act (which prohibits the distribution of electricity without a licence) and section 4(1)(c) of the Act (which prohibits the supply of electricity to premises without a licence) to persons of various classes. The classes of persons who are exempt from the requirement to hold a licence to generate electricity are set out in Schedule 2, the classes of persons who are exempt from the requirement to hold a licence to distribute electricity are set out in Schedule 3 and the classes of persons who are exempt from the requirement to hold a licence to supply electricity to premises are set out in Schedule 4.

This Order applies to Great Britain. However, the exemptions granted to persons falling within Class C and Class D in Schedule 2 only apply to persons whose generating stations were connected to the total system in England and Wales on 30th September 2000.

In addition to minor and drafting amendments, this Order makes the following changes of substance:

- a domestic consumer now means a consumer supplied with electricity at premises at which a supply is taken wholly or mainly for domestic purposes;
- the exemptions granted to persons falling within Class C (Generators not exceeding 100 megawatts) and Class D (Generators never subject to central despatch) in Schedule 2 whose generating stations were connected to the total system in England and Wales on 30th September 2000 are no longer subject to a time-limit;
- exemption is granted to persons falling within the Class A in Schedule 3 who do not at any time distribute more electrical power than 2.5 megawatts for the purpose of giving a supply to domestic consumers;
- exemption is granted to persons falling within Class B in Schedule 3 who do not distribute more than one megawatt of electrical power for the purpose of giving a

supply to domestic consumers who each receive the electrical power from a generating station located on the same distribution system as himself;

- exemption is granted to persons falling within Class C in Schedule 3 to persons who distribute electricity for the purpose of supplying non-domestic consumers. The exemptions in Schedule 3 are subject to the conditions set out in article 4(4);
- exemption is granted to persons falling within Class A in Schedule 4 who do not at any time supply more electrical power than 5 megawatts of which not more than 2.5 megawatts can be supplied to domestic consumers. The exemption is subject to the conditions set out in article 4(6);
- the conditions relating to the limit on the amount of Class C electricity which may be resold have been amended in paragraph B.2 in Class B in Schedule 4. A person who is authorised by an exemption to supply electricity, who resells electricity supplied by a person falling within Class C in Schedule 4, must not supply from the premises from which he supplies electricity more than 10 per cent of the Class C electricity supplied to those premises and must also not in any year supply more than 250 megawatt hours of such Class C electricity to domestic consumers;
- the exemption granted to persons falling within Class C in Schedule 4 is extended to allow supply to one consumer or two or more consumers who form a qualifying group provided at least a third of the output of each generating station is supplied to either the one consumer or the qualifying group on-site or off-site over private wires;

Article 4(4)(b) partially implements Article 14.3 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 [O.J. No. L27/20 30.1.97].

A regulatory impact assessment is available and can be obtained from the Energy Utilities Directorate, Department of Trade and Industry, 1 Victoria Street, London, SW1H 0ET. Copies have been placed in the libraries of both Houses of Parliament. A copy of any direction issued under article 4(6)(b) may be obtained from the Gas and Electricity Markets Authority, 9 Millbank, London, SW1P 3GE.

**PROPOSED REVOCATION OF THE EXISTING ELECTRICITY
(CLASS EXEMPTIONS FROM THE REQUIREMENT FOR A
LICENCE) ORDER 1997 (AS AMENDED) AND MAKING OF A
NEW ELECTRICITY (CLASS EXEMPTIONS FROM THE
REQUIREMENT FOR A LICENCE) ORDER ---2001**

REGULATORY IMPACT ASSESSMENT

In respect of generation and supply exemptions, this assessment follows the regulatory impact assessment on the issue of a consultation document on proposed amendments to the above order issued on 5 July 2000, which in turn follows consultation in November 1999. In respect of distribution exemptions, the Government produced an updated Regulatory Impact Assessment (RIA) of the costs and benefits of the Utilities Bill when the Bill was introduced in the House of Lords. Paragraph 32 of the RIA referred to the impact of the exemptions on certain electricity distributors, and undertook to provide a separate assessment of where the boundary between licensed and exempt operators should lie and the decision to attach conditions to proposed exemptions.

1. Purpose and intended effect of the measure

Issue

1.1 How to set the point at which generators, suppliers and distributors of electricity should be exempt from the need to hold a licence.

Objectives :

1.2 Overall Objectives: to minimise the burden of regulation on persons operating in a limited manner in the generation, supply and distribution of electricity.

To relax the Electricity Class Exemptions from the Requirement for a Licence Order 1997(1997 No 989) so as :

- to allow more operators of small power stations, in particular those based on CHP and renewables, to generate electricity without a generation licence and so to facilitate trading under the new trading arrangements with the minimum of administrative overhead.
- to allow more operators of small power stations , in particular those based on CHP and renewables, to supply electricity without a supply licence

To create a distribution exemption regime that permits persons:

- whose distribution networks primarily serve industrial and commercial consumers;
 - who distribute very small volumes of electricity; and
 - who distribute electricity from on-site generating plant, in particular those based on CHP
- to distribute electricity without a distribution licence.

Specific Objectives

1.3 Generation: to make permanent (subject to periodic review) the exemptions established by the existing temporary Order SI 1990/2424, which exempts persons:

- currently providing up to 100 MW of electricity from generating plant,
- operating those plant which have never been subject to central despatch.

(Before SI 2000/2424 came into force, exemptions were limited to those who had plants with capacity not exceeding 100 MW that did not provide more than 50 MW - or - who had larger plants that did not provide more than 10 MW)

1.4 Supply: to exempt those persons who supply electricity from their industrial or local embedded plant, in particular CHP and renewables, so that:

- (i) they may supply customers up to a maximum of 5 MW of power- of which up to 2.5 MW may be to domestic customers (at present the aggregate limit is 500KW).
- (ii) they may supply a single consumer or a qualifying group at a remote location subject to a requirement that one third of that consumption is supplied on-site or over private wires. (at present there is no such provision apart from the aggregate limit of 500 KW)
- (iii) customers of such suppliers may resell up to 10% of the power bought of which no more than 250 MW hours per annum may be supplied to domestic customers.

1.5 Distribution: to exempt those persons who distribute electricity over networks that:

- serve industrial and commercial customers,
- do not distribute more than 2.5 MW of power to domestic customers, except when they

- distribute electricity from generating plant , in particular those based on CHP, located on their network provided they distribute no more than 1 MW of power from any such station to domestic customers located on the same network.

2. The benefits

2.1 This consultation proposes changes which are deregulatory. It is proposed that, following this final consultation, a final Order would come into force in parallel with the introduction of new standard licence conditions for the generation, distribution and supply of electricity. This is expected to take place in June 2001.

2.2 The reference case, for the purpose of assessing benefits, is the case where the Orders are not made and generators, suppliers and distributors who would otherwise be exempt would require licences - thus making them subject to the range of duties and responsibilities under the licensing regime. Consequently the compliance costs are largely negative.

- The requirement to hold a generation licence restricts the level of flexibility in terms of how to operate under the new electricity trading arrangements. Licensees have to sign and be directly subject to the Balancing and Settlement Code (BSC). Without the proposed measure, the ways in which such generators and suppliers are able to aggregate their output and so benefit from such aggregation would be limited. In particular it would prevent small generators simply selling their output to local suppliers and so minimise the commercial and trading arrangements into which otherwise they would have to enter directly.
- The requirement to hold a supply licence means, for example, that, beyond the current de minimis limit of 500 KW, local authorities who operate CHP plants at one location - say a swimming pool - are not able to supply without a licence other premises such as libraries, hospitals or community housing. It also means that industrial suppliers who have a generation plant at one site may not use public wires to supply excess electricity for consumption at another of their own sites.
- The requirement to hold a distribution licence means, for example, that operators of networks based on industrial estates would have to establish a range of administrative services which are appropriate for

the national network - such as a meter point administration service, provide an infrastructure capable of supporting competition in electricity supply and adhere to a range of accounting requirements from the regulatory regime. Alternatively the person would have to arrange for the network to be taken over by another licensee - if that was possible.

The measure would permit those affected to avoid the above compliance costs of licensing.

2.3 Customers will benefit from the facilitation of a wider range of options for taking energy supply and an infrastructure subject to minimal regulatory overhead. Since more CHP and renewable plant should be encouraged as a result of the measure it is anticipated that the environment will benefit accordingly. The drawback for domestic consumers on private networks is that they would not have access to the competitive market. This is why - as a counterbalance - certain conditions are attached to the proposed exemptions - see next paragraph.

2.4 To the extent that there are compliance costs, these will lie in operators ensuring that they do not breach the limits of or conditions of the exemption. It is not proposed that, in practice, any conditions attached to exemptions would be more onerous than those attached to existing licences - although, in the case of supply to domestic customers, two conditions are proposed to prevent exploitation. These would be:

- a maximum price at which electricity could be sold to domestic customers - broadly similar to the provision in the existing (Order SI 1997/989) for exempt supplies made under Class C to domestic customers and to the maximum resale price applied to landlords or caravan sites; and
- a new requirement (a direction by OFGEM would designate the form this should take) to include in contracts with such customers a statement alerting customers to the effects of the exempt status of the supplier - such that for example customers may be locked into longer term contracts (necessary in the case of CHP) than would be the case with licensed suppliers.

2.5 OFGEM would also retain the power to require information from exempt distributors, and the GECC would be able to investigate any complaints about their performance. It is expected that other conditions included in licences would not be applied to exempt suppliers.

2.6 The Government believes that the policy gives improved flexibility for existing and future on-site generators and suppliers and to small generators. It provides certainty to existing and future private network operators. While provision exists for revisiting these exemptions, if operators behave responsibly, we do not presently envisage any need to adjust the limits or apply new conditions.

3. Business sectors affected

3.1 In the case of generation and supply the main sectors are small and medium sized generators - mainly Combined Heat and Power and renewables plants together with the main industrial, commercial and public sectors which such plant serve. These focus on energy intensive industries such as Steel, Metals, Paper, Cement and Chemical industries and the public sector such as local authorities but also potentially central Government. In the case of distribution the main sector comprises operators of small and medium sized private networks serving industrial and commercial consumers, usually on industrial sites, including ports. Local authorities and others serving housing developments.

4. Quantify and Value the Benefits

4.1 OFGEM is currently considering how costs should be applied under the new licensing arrangements, and it is not, therefore, possible to quantify the benefits of exemptions in financial terms at this stage. However, under the current regime, a generator or supplier who constantly generated or supplied 100 MW of power would pay £21,000 per annum (distribution is not separately licensed under the current regime). This excludes of course the significant administrative overhead which also results from the holding of any of the above licences.

4.2 In the case of generation and supply, the benefit of not participating directly in the new balancing and settlement mechanism is not yet set but by comparison a 100 MW generator with a 50% load factor must pay £38,000 per annum in Pool membership fees.

4.3 The benefit of having a broader range of being able to aggregate output is difficult to judge as it will depend on the degree to which variations in output may be hedged, but it could easily outweigh significantly the above figures.

5. Comments from Previous Consultation

5.1 The Government received a range of views as a result of the previous consultation, and has also discussed the issues raised with interested parties, including the regulator. It has taken account of these views in making its final proposals.

6. Proposed consultation

6.1 There will be a twenty-eight day period for final consultation on the proposed Order, ending on 30 March 2001. All of those who responded to the previous consultation will be consulted.

7. Summary and recommendations

7.1 The Department has concluded that, subject to any final comments, it is timely and appropriate to establish an exemption regime for distribution and to modify that for generation and supply.

Regulatory Quality Declaration

I have read the Regulatory Impact assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by the responsible Minister:.....

Date:.....

Contact point: Geoff Hatherick, Head, Consumer Policy, Energy Policy Directorate, Department of Trade & Industry, Room 2109, 1-19 Victoria Street, London SW1H 0ET. Tele: 020-7215 5047; facsimile: 020-7630 9570; e-mail: Geoff.Hatherick@dti.gov.uk