

1992 No. 88

ELECTRICITY

Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 1992

Made 5th March 1992

Coming into operation 31st March 1992

The Department of Economic Development, in exercise of the powers conferred on it by Article 9 of the Electricity (Northern Ireland) Order 1992(a) and of every other power enabling it in that behalf, 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 (Northern Ireland) 1992 and shall come into operation on 31st March 1992.

Interpretation

2.—(1) In this Order—

“the Order” means the Electricity (Northern Ireland) Order 1992; and
 “road” has the same meaning as in the Roads (Northern Ireland) Order 1980(b).

(2) 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,

and “holding company” and “subsidiary” shall have the same meaning as in Article 4 of the Companies (Northern Ireland) Order 1986(c);

(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 in this sub-paragraph “75 per cent. subsidiary” shall be construed in accordance with section 838 of the Income and Corporation Taxes Act 1988(d);

(a) S.I. 1992/231 (N.I. 1)

(b) S.I. 1980/1085 (N.I. 11)

(c) S.I. 1986/1032 (N.I. 6); Article 4 was substituted by Article 62(1) of S.I. 1990/1504 (N.I. 10)

(d) 1988 c. 1

- (c) one body corporate shall be treated as wholly related to another if—
- (i) one of them is a wholly owned subsidiary of the other; or
 - (ii) both of them are wholly owned subsidiaries of a third body corporate;
- and in this sub-paragraph “wholly owned subsidiary” has the same meaning as in Article 4 of the Companies (Northern Ireland) Order 1986; and
- (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 repair or testing of the plant or equipment.

Exemptions from Article 8 of the Order

3.—(1) Subject to paragraph (3) and Article 4, exemption is granted—

- (a) from Article 8(1)(a) of the Order to persons of the class specified in Schedule 1; and
- (b) from Article 8(1)(c) of the Order to persons of the classes specified in Schedule 2.

(2) A person shall be treated as falling within any class specified in Schedule 2 notwithstanding that he supplies electricity to premises in circumstances other than those specified in the description of that class if the 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) No person shall be regarded as falling within the class specified in Schedule 1 for as long as he is the holder of a licence under Article 10(1)(a) of the Order or within any of the classes specified in Schedule 2 for as long as he is the holder of a licence under, as the case may be, Article 10(1)(c) or (2) of the Order.

Circumstances in which exemptions cease to be in force

4. The exemption granted by this Order in relation to persons falling within Class C in Schedule 2 shall cease to be in force in the circumstances specified in paragraph C.2 in Schedule 2.

Sealed with the Official Seal of the Department of Economic Development on 5th March 1992.

(L.S.)

W. D. Duncan

Assistant Secretary

Exemption from Article 8(1)(a) of the Order

Persons who do not under normal operating conditions provide more electrical power than 10 megawatts from any one generating station disregarding power provided to—

- (a) 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
- (b) 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.

In this Schedule “consumer” means a person to whom electrical power is provided (whether or not he is the same person as the person who provides the electrical power) and two or more consumers form a qualifying group if, being bodies corporate,—

- (a) each of them is wholly related to each other; or
- (b) each of them is related to each other, was related to each other on 1st April 1992 and was provided with electricity by the person in question or a body corporate associated with that person on that date.

For the purposes of this Schedule premises shall be treated as on the same site as each other if they are—

- (a) the same premises;
- (b) immediately adjoining each other; or
- (c) separated from each other only by a road, railway or watercourse or by other premises (other than a pipe-line, electric line or similar structure) occupied by the consumer in question, by the person who generates the electricity or by any other person who together with that consumer forms a qualifying group.

Exemptions from Article 8(1)(c) of the Order

Class A. Persons who 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 the holder of a licence under Article 10(1)(c) of the Order,

and who do not under normal operating conditions supply more electrical power than 500 kilowatts.

A.1—(1) For the purposes of Class A electrical power supplied by a body corporate which is associated with the supplier in question and which occupies premises on the same site as the generating station operated by that supplier shall be treated as supplied by that supplier.

(2) For the purposes of sub-paragraph (1), premises and a generating station shall be treated as being on the same site as each other if they are—

- (a) the same premises;
- (b) immediately adjoining each other; or
- (c) separated from each other only by a road, railway or watercourse or by other premises (other than a pipe-line, electric line or similar structure) occupied by the supplier or the body corporate in question or by any other person who together with that supplier or body corporate forms a qualifying group.

(3) For the purposes of sub-paragraph (2), two or more persons form a qualifying group if, being bodies corporate,—

- (a) each of them is wholly related to each other; or
- (b) each of them is related to each other and was related to each other on 1st April 1992.

Class B. Persons who do not supply any electricity except—

- (a) electricity which is supplied to their premises by the holder of a licence under Article 10(1)(c) or (2) of the Order; 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 the holder of a licence under Article 10(1)(c) or (2) of the Order 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 such a supply of electricity is being tested.

Class C. Persons who—

- (a) do not supply any electricity except—
 - (i) electricity which they generate themselves; or
 - (ii) electricity which they generate themselves together with electricity which is supplied to them by the holder of a licence under Article 10(1)(c) or (2) of the Order; and
- (b) provide the output of each generating station at which they generate electricity only 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 electricity provided to him by the supplier in question at those premises; 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 electricity provided to him by the supplier in question at those premises; or
- (iii) (aa) consumers of the type specified in sub-paragraph (i) or (ii); and
(bb) 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 to any premises;

Provided that a person shall not fall within this class between the date on which he starts to provide electricity from a generating station at which he had not previously generated electricity (if that date is after 30th March 1992) and the next following 31st December unless, at the time when he starts to provide electricity from that generating station, he reasonably expects that the output of the generating station which consists of the provision of electricity to consumers of the type specified in paragraph (b)(i) or (ii) will be 51% or more of the total output of the generating station during the period between the dates mentioned above.

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

C.2—(1) The exemption granted by this Order to persons falling within Class C shall cease to be in force in relation to any person (in this paragraph and paragraph C.3 referred to as an “exempt supplier”) on 1st April in any year if during the preceding relevant period the output of any generating station from that which that person provides electricity which consists of the provision of electricity to consumers of a type specified in paragraph (b)(i) or (ii) of Class C is less than 51% of the total output of the generating station.

(2) Where during any relevant period the exempt supplier and some other person have both been generating electricity at the same generating station at the same time, then for the purposes of determining whether sub-paragraph (1) has effect in relation to that generating station, the provision of electricity from that generating station by that other person shall be treated as the provision of electricity by the exempt supplier if that other person, being a body corporate, was, at the time when he provided electricity from the generating station, associated with that supplier.

C.3—(1) In Class C and paragraphs C.1 and 2—

“consumer” means a person other than—

- (a) the holder of a licence under Article 10(1)(c) or (2) of the Order except where the holder of such a licence is acting otherwise than for purposes connected with the supply of electricity to premises in his authorised area or, as the case may be, to premises specified or of a description specified in his licence; or

(b) Northern Ireland Electricity,

to whom electricity is supplied (whether or not he is the same person as the person who supplies the electricity) and two or more consumers form a qualifying group if, being bodies corporate—

(a) each of them is wholly related to each other; or

(b) each of them is related to each other, was related to each other on 1st April 1992 and was supplied with electricity by the exempt supplier in question or a body corporate associated with that exempt supplier on 1st April 1992;

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

“relevant period” means the period of a year (including the year 1991) except that when a relevant person provides electricity from any generating station for the first time after 1st January 1991 the first relevant period in relation to the generating station shall be the period beginning when he starts to provide electricity and ending on 31st December in the year in which he starts to provide electricity;

“year” means the period of 12 months beginning with 31st December.

(2) For the purposes of Class C and paragraphs C.1 and 2—

(a) 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—

(i) “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

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

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

(bb) situated on premises which are immediately adjoining each other; or

(cc) situated on premises which are separated from each other only by a road, railway or watercourse or by other premises occupied by the exempt supplier in question or by a body corporate which is an associate of that supplier; and

(b) 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 (other than a pipe-line, electric line or similar structure) occupied by the exempt supplier or consumer in question or by any other person who together with that consumer forms a qualifying group.

Class D — Relevant exempt self suppliers.

D.1 In Class D “relevant exempt self supplier” means a person (other than the holder of a licence under Article 10(1)(c) or (2) of the Order)—

(a) who is a party to an agreement with the power procurement manager which provides for the giving of a supply of electricity to the premises occupied by that person; and

- (b) whose average maximum monthly demands in the three months of highest maximum demand in any period of 12 consecutive months commencing on or after 1st January 1992 exceed or might reasonably be expected to exceed one megawatt or one equivalent megawatt; and
- (c) who satisfies the relevant condition.

D.2 For the purposes of Class D and paragraph D.1—

- (a) “the relevant condition” is that the person in question makes a supply only to himself at the premises which he occupies and at which the supply is given to him, or to himself and any other consumers who, with the supplier, form a qualifying group, each of whom occupies premises which are on the same site as the premises occupied by the supplier, and all the electricity so supplied is consumed by the persons to whom the supply is given at that site;
- (b) “power procurement manager” means Northern Ireland Electricity plc when it is performing or required to perform its obligations as power procurement manager under the licence granted to it under Article 10(1)(b) of the Order; and
- (c) “equivalent megawatt” in circumstances where demand is only measured in megawatt amperes means megavolt amperes converted into megawatts using for this purpose a power factor of 0.9 megawatts per megavolt ampere or such other factor as may with the approval of the Director be taken as being appropriate having regard to electrical characteristics of the supply.

D.3. For the purposes of Class D and paragraphs D.1 and D.2—

- (a) “consumer” means a person to whom electrical power is provided and two or more consumers form a qualifying group if, being bodies corporate,—
 - (i) each of them is wholly related to each other; or
 - (ii) each of them is related to each other, was related to each other on 1st April 1992 and was provided with electricity by the person in question or a body corporate associated with that person on that date; and
- (b) 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 (other than a pipe-line, electric line or similar structure) occupied by the consumer in question or by any other person who, together with that consumer, forms a qualifying group.

(This note is not part of the Order.)

This Order grants exemption from the requirements of Article 8(1)(a) of the Electricity (Northern Ireland) Order 1992 (which prohibits the generation of electricity without a licence) and Article 8(1)(c) of that Order (which prohibits the supply of electricity to premises without a licence) to persons of particular classes. The class of persons who are exempt from the requirement to hold a licence to generate electricity is set out in Schedule 1 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 2.

Article 4 of the Order provides for the circumstances in which the exemption in relation to persons falling within Class C of Schedule 2 shall cease to have effect.