

**EXPLANATORY MEMORANDUM TO
THE ELECTRICITY ACT 1989 (EXEMPTION FROM THE REQUIREMENT FOR
AN INTERCONNECTOR LICENCE) ORDER 2006**

2006 No. 2002

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

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

2. **Description**

2.1 This Order grants exemption from section 4(1)(d) of the Electricity Act 1989 (“the 1989 Act”) (which prohibits participation in the operation of an electricity interconnector without a licence) to five bodies, each of which participates in the operation of one of three electricity interconnectors. The interconnectors in question convey electricity between Great Britain and either the Isle of Man, France or Northern Ireland.

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

3.1 Section 4(1)(d) of the 1989 Act is inserted by section 145(2) of the Energy Act 2004 (“the 2004 Act”). Section 145(2) commences on the date on which this Order comes into force.

3.2 The power to grant exemption from section 4(1)(d) of the 1989 Act is to be found in section 5 of the 1989 Act as amended by section 145(4) of the 2004 Act. Section 145(4), like section 145(2), commences on the date on which this Order comes into force.

3.3 Subsections (2) and (4) of section 145 of the 2004 Act are two sides of the same coin. To have a comprehensive legislative code dealing with electricity interconnector operators, both are required. The amendment made by subsection (2) ensures that electricity interconnector operators require a licence; the amendment made by subsection (4) ensures that, in appropriate cases, an operator can be exempted from that requirement. Plainly, it makes sense for both amendments to be commenced at the same time; and any interconnector operator who does not require to be licensed at the point at which they are commenced clearly requires the benefit of an exemption at that time. In other words, the power conferred by virtue of the amendment to be made by subsection (4) needs to be exercised in relation to such an operator before subsection (4) commences: see, further, paragraphs 3.4 to 3.7 below. This is permitted by section 13 of the Interpretation Act 1978.

Exemption in respect of the Isle of Man Electricity Interconnector

3.4 Exemption is granted from section 4(1)(d) of the 1989 Act to both companies involved in the operation of the Isle of Man Electricity Interconnector. The interconnector licensing arrangements provided for in the 1989 Act are intended to facilitate the development of properly functioning markets in electricity within the UK and between the UK and other Member States. However, the Electricity Interconnector between the Isle of Man and Great Britain is too small to have any impact on the electricity market in Great Britain; accordingly, it is not considered necessary to license those involved in its operation.

Exemption in respect of the Interconnexion France Angleterre

3.5 Two bodies jointly own and operate the Interconnexion France Angleterre (“the IFA”) – RTE, the state-owned operator of the French electricity grid, and National Grid Interconnectors Limited (“NGIL”). NGIL will be licensed; RTE is granted exemption from section 4(1)(d).

3.6 Amendment of French law would be required to enable Ofgem, the regulator in Great Britain, to regulate RTE effectively through a licence. This is because, at present, RTE can only disclose confidential information to the French Government and the French regulator (the CRE). Moreover, the French transmission network would need to be redefined to separate the IFA from the rest of the network so that RTE could set up a subsidiary to operate it under a licence. Although there is no immediate prospect of French law being changed, the French Government and the CRE have given assurances to the DTI that, first, the CRE will ensure that RTE operates the IFA in full compliance with EU law; and, secondly, the CRE will co-operate with Ofgem to ensure that the IFA is properly regulated, for example through the sharing of information. In any event, Ofgem will have a significant degree of oversight of the operation of the IFA through the licence which will be issued to NGIL. In all the circumstances, therefore, it was considered appropriate to grant RTE an exemption.

Exemption in respect of the Moyle Interconnector

3.7 The body with primary responsibility for the Moyle Interconnector – Moyle Interconnector Limited (“MIL”) – will be licensed. Two other bodies – Northern Ireland Electricity plc and System Operator Northern Ireland – also participate in the operation of the interconnector, but since their role is very much subordinate to MIL’s role, there is no need for them to be licensed.

4. Legislative Background

4.1 Until now, the operation of electricity interconnectors has not been regulated under the 1989 Act. In order to comply with the requirements of the 2003 Electricity Directive (2003/54/EC) (“the Electricity Directive”), however, the 2004 Act amends the 1989 Act to require operators of interconnectors to do so under the terms of either a licence or an exemption order. Further details of the amendments being made by the 2004 Act are given in the preceding section.

5. Extent

5.1 This Order extends to Great Britain.

6. European Convention on Human Rights

6.1 Not applicable (as this Order is subject to the negative resolution procedure and does not amend primary legislation).

7. Policy background

7.1 Electricity interconnectors are the cables linking the electricity network in Great Britain with electricity networks in other countries and territories. By virtue of the Electricity Directive, those operating interconnectors are now required to do so under the terms of either a licence or an exemption order.

7.2 The effect of this Order is to grant an exemption from the requirement to hold a licence to various persons involved in the operation of certain existing interconnectors. The Government, following public consultation and discussion with relevant parties, has concluded that it is not necessary to require the persons to whom an exemption is granted by this Order to hold a licence instead. A fuller explanation of the position is set out above at paragraphs 3.4 to 3.7.

7.3 In considering the proposal to grant these exemptions, the Secretary of State gave notice of the proposal to the Gas and Electricity Markets Authority and the Gas and Electricity Consumer Council, as well as bringing the proposal to the notice of other affected parties. Notice of the proposal was published in June 2005. Views were also sought from the Scottish Executive (as one of the interconnectors concerned runs between Scotland and Northern Ireland). No objections were received.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this Order as it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

Sue Harrison at the Department of Trade and Industry - telephone: 020 7215 2778 or e-mail: sue.harrison@dti.gov.uk - can answer any queries regarding the Order.

19 July 2006