
STATUTORY RULES OF NORTHERN IRELAND

1999 No. 352

ELECTRICITY

**Electricity (Class Exemptions from the Requirement
for a Licence) Order (Northern Ireland) 1999**

Made - - - - 10th August 1999

Coming into operation 30th September 1999

The Department of Economic Development, in exercise of the powers conferred on it by Article 9 of the Electricity (Northern Ireland) Order 1992⁽¹⁾ and of every other power enabling it in that behalf, after consultation with the Director General of Electricity Supply for Northern Ireland, 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) 1999 and shall come into operation on 30th September 1999.

Interpretation

2.—(1) In this Order—

“the Order” means the Electricity (Northern Ireland) Order 1992;

“ordinary share capital” has the same meaning as in section 832(1) of the Income and Corporation Taxes Act 1988⁽²⁾;

“parent undertaking” shall be construed in accordance with Article 266 of the Companies (Northern Ireland) Order 1986⁽³⁾.

(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

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

(2) 1988 c. 1

(3) S.I. 1986/1032 (N.I. 6); Article 266 was inserted, in place of an existing Article of that number, by Article 23(1) of the Companies (Northern Ireland) Order 1990, S.I. 1990/593 (N.I. 5)

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

- (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 repair or testing of the plant or equipment.

Exemptions from Article 8 of the Order

3.—(1) Subject to paragraph (3) 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) A person shall not 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.

Revocation

4. The Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 1992(5) is hereby revoked.

(4) Article 4 was substituted by Article 62(1) of the Companies (No. 2) (Northern Ireland) Order 1990, S.I. 1990/1504 (N.I. 10)
(5) S.R. 1992 No. 88

Sealed with the Official Seal of the Department of Economic Development on

L.S.

10th August 1999.

J. E. Wolstencroft
Assistant Secretary

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SCHEDULE 1

Article 3(1)(a)

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

Small generators

Persons who do not at any time 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 supplies all or some of such power in circumstances specified in the description of Class B in Schedule 2 and consumes at those premises any of such power not so supplied by him; 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 or supplies all or some of such power in circumstances specified in the description of Class B in Schedule 2 and consumes at those premises any of such power not so supplied by him.

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 connected to each other provided that no body corporate which is not connected to, or a parent undertaking in relation to, all of them is a parent undertaking in relation to any of them; 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 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.

SCHEDULE 2

Article 3(1)(b)

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

Class A: Small supply

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) or (2) of the Order,

and who do not at any time supply more electrical power than—

- (i) 500 kilowatts disregarding in the case only of electrical power generated solely by CHP generating sets, not being non-fossil fuel generating sets, power provided to any consumer of the type specified in paragraph (b)(i) or (b)(ii) of Class C; or
- (ii) in the case of electrical power generated solely by non-fossil fuel generating sets, one megawatt, disregarding power provided to any consumer of the type specified in paragraph (b)(i) or (b)(ii) of Class C.

For the purposes of (i) and (ii) above—

“CHP generating set” means a generating set used for the simultaneous generation of usable heat and power in a single process at high efficiency;

“coal products” means any substances produced directly or indirectly from coal;

“fossil fuel” means coal, coal products, peat, lignite, crude liquid petroleum or petroleum products;

“high efficiency” means achieving a year round total energy efficiency which would normally be in excess of 70% calculated on the basis of net calorific value;

“natural gas” has the same meaning as in the Energy Act 1976(6);

“non-fossil fuel generating set” means a generating set which is fuelled or driven principally otherwise than by a fossil fuel or by natural gas;

“petroleum products” has the same meaning as in the Energy Act 1976.

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 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 connected to each other provided that no body corporate which is not connected to, or a parent undertaking in relation to, all of them is a parent undertaking in relation to any of them; or
- (b) each of them is related to each other and was related to each other on 1st April 1992.

Class B: Resale

Persons who—

- (a) do not supply any electricity except—
 - (i) electricity which is supplied to their premises by the holder of a licence under Article 10(1)(c) or (2) of the Order 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 whether a person is supplying electricity in such circumstances paragraphs

(6) 1976 c. 76

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- (b)(i) and (ii) of Class C in this Schedule shall have effect as if the words from “and” to “Schedule” in each case, were omitted; or
- (ii) electricity which they generate themselves or which is supplied to them by a person authorised by an exemption to supply electricity when—
 - (aa) 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 or a Class C supplier (their “normal supply”) is interrupted temporarily due to circumstances outside their control; or
 - (bb) the plant or equipment which is used to generate electricity for the purpose of giving their normal supply is being tested; and
- (b) to the extent that they supply Class C electricity—
 - (i) supply such electricity only to premises which are on the same site as the relevant premises; and
 - (ii) comply with all the conditions set out at B.2.

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 October to 30th September.

B.2 The conditions referred to in sub-paragraph (b) of Class B are as follows:

- (a) 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 the lower of—
 - (i) 10 per cent of the Class C electricity supplied in that year to those relevant premises; or
 - (ii) subject to sub-paragraph (c), 250 megawatt hours of electricity.
- (b) 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 the lower of—
 - (i) 10 per cent of the Class C electricity supplied in that year to those relevant premises; or
 - (ii) the amount obtained by multiplying 250 megawatt hours by a percentage equal to the percentage of the year remaining.
- (c) If during the previous year the supplier started to supply Class C electricity from any particular relevant premises for the first time, the amount set out in sub-paragraph (a)(ii) shall be reduced to the amount which is obtained by multiplying 250 megawatt hours by a percentage equal to the percentage of the year remaining at the time he started to make such supplies.

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 the holders of licences under Article 10(1)(c) or (2) of the Order, unless he supplies more electricity in that year than the amount of electricity which is supplied to those relevant premises by the holders of licences under Article 10(1)(c) or (2) of the Order in that year.

Class C: On-site supply

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 other than electricity supplied to premises in the circumstances specified in the description of Class A only to—
 - (i) one consumer who occupies premises which are on the same site as the premises where the generating station is situated and consumes all the electricity provided to those premises 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; 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 those premises 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; 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; or
 - (iv) in the case of electrical power generated solely by CHP generating sets—
 - (aa) consumers of the type specified in sub-paragraph (i) or (ii); and
 - (bb) any consumer who occupies premises which are not on the same site as, but receive the electricity supply from, the CHP generating set and consumes all the power provided to those premises from the CHP generating set 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), where that consumer is either a consumer specified in paragraph (aa) or together with the consumers specified in paragraph (aa) forms a qualifying group and where the total maximum amount of electrical power supplied to all such premises at any one time does not exceed one megawatt, which one megawatt limit shall be reduced by any amount of electricity supplied to premises in the circumstances specified in the description of Class A of this Schedule.

C.1.—(1) In Class C—

“consumer” means a person to whom electricity is provided (whether or not he is the same person as the person who provides the electricity) and, subject to paragraph C.2, two or more consumers form a qualifying group if, being bodies corporate—

- (a) each of them is connected to each other provided that no body corporate which is not connected to, or a parent undertaking in relation to, all of them is a parent undertaking in relation to any of them; or
- (b) each of them is related to each other, was related to each other on 1st April 1992 and was supplied electricity by the person in question or a body corporate associated with that person on that date;

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

- (2) For the purposes of Class C and paragraph C.1(1)—
- (a) 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;
 - (b) 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 supplier in question or by a body corporate which is an associate of that supplier; and
 - (c) 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 supplier or consumer in question, or by any other person who together with that consumer forms a qualifying group;
 - (d) “CHP generating set” means a generating set used for the simultaneous generation of usable heat and power in a single process at high efficiency;
 - (e) “high efficiency” means achieving a year round total energy efficiency which would normally be in excess of 70% calculated on the basis of net calorific value.

C.2 In addition to the circumstances prescribed in paragraph C.1

C.2.—(1) two or more consumers shall also form a qualifying group for the purposes of paragraph (b)(iv) of Class C if one of those consumers controls the management or funding of each of the other consumers or the management or funding of each of those consumers is controlled by the same person.

Class D: Relevant exempt self suppliers

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

1999 exceed or might reasonably be expected to exceed one megawatt or one equivalent megawatt; and

- (c) who satisfies the relevant condition.

D.1 For the purposes of Class D—

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

- (a) “consumer” means a person to whom electricity is provided and two or more consumers form a qualifying group if, being bodies corporate—
- (i) each of them is connected to each other provided that no body corporate which is not connected to, or a parent undertaking in relation to, all of them is a holding company in relation to any of them; or
- (ii) each of them is related to each other, was related to each other on 1st April 1992 and was supplied 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 occupied by the consumer in question or by any other person who, together with that consumer, forms a qualifying group.

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order re-enacts the Electricity (Class Exemptions from the Requirements for a Licence) Order (Northern Ireland) 1992, with amendments. It 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

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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.

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

- the power disregarded for purposes of the 10 megawatt limit for the exemption of persons falling within Schedule 1 is extended to include power provided to a relevant single consumer or qualifying group who supplies all or some of such power in the circumstances specified in the description of Class B in Schedule 2;
- the generation and supply limits for the purposes of Schedule 1 and Class A in Schedule 2, respectively, are now determined “at any time” rather than “under normal operating conditions”;
- the exemption granted to persons falling into Class A in Schedule 2 is extended to—
 - (a) cover electricity supplied to them by the holder of a licence under Article 10(2) of the Electricity (Northern Ireland) Order 1992;
 - (b) allow, in the case of electrical power generated solely by non-fossil fuel generating sets, the supply of up to one megawatt; and
 - (c) disregard, for the purposes of the supply limits, any electrical power provided on-site to any consumer of the type specified in paragraph (b)(i) or (b)(ii) of Class C in Schedule 2 with the exception of power generated from a fossil fuel or natural gas generating set which is not a CHP generating set;
- the exemption granted to persons falling within Class B in Schedule 2 is extended to allow the re-supply of electricity supplied by a Class C supplier within certain circumstances and subject to certain limits;
- the exemption granted to persons falling within Class C in Schedule 2 is amended to—
 - (a) allow the output of each generating station which they operate to be supplied to a single consumer or qualifying group who re-supplies part of that electricity in circumstances such as they fall within the provisions of Class B of Schedule 2;
 - (b) remove the requirement for at least 51% of the output of each generating station to be provided to on-site consumers; and
 - (c) allow the supply of electricity generated solely by a CHP generating set to consumers who occupy premises which are not on the same site as the CHP generating set where those consumers are on-site consumers or form a qualifying group (as defined for the purposes of Class C) with the on-site consumer(s), subject, to the total amount of electricity supplied to the off-site premises not exceeding one megawatt (less any electricity supplied under Class A in Schedule 2).

The Department of Economic Development has prepared a Regulatory Impact Assessment in relation to this Order and a copy is held at Netherleigh, Massey Avenue, Belfast BT4 2JP, from where copies may be obtained, on request.