

1990 No. 193

ELECTRICITY

**The Electricity (Class Exemptions from the Requirement
for a Licence) Order 1990**

Made - - - - 8th February 1990

Laid before Parliament 12th February 1990

Coming into force 31st March 1990

The Secretary of State for Energy (as respects England and Wales) and the Secretary of State for Scotland (as respects Scotland), in exercise of the powers conferred by sections 5 and 111(2) of the Electricity Act 1989(a) and of all other enabling powers, hereby make the following Order:-

Citation and commencement

1. This Order may be cited as the Electricity (Class Exemptions from the Requirement for a Licence) Order 1990 and shall come into force on 31st March 1990.

Interpretation

2.—(1) In this Order—

“the Act” means the Electricity Act 1989;

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

“offshore installation” has the same meaning as in the Mineral Workings (Offshore Installations) Act 1971(b);

“road” has the same meaning as in section 192(1) and (2) of the Road Traffic Act 1988(c); and

“successor company” has the same meaning as in Part II of the Act.

(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 section 736 of the Companies Act 1985(d) as substituted by section 144(1) of the Companies Act 1989(e), whether or not that subsection is in force on 31st March 1990;

(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(f);

(a) 1989 c.29.

(b) 1971 c.61; section 1 was substituted by section 24 of the Oil and Gas (Enterprise) Act 1982 (c.23).

(c) 1988 c.52.

(d) 1985 c.6.

(e) 1989 c.40.

(f) 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 and no other body corporate is a parent undertaking in relation to either of them; or
 - (ii) both of them are wholly owned subsidiaries of a third body corporate and no body corporate, other than that third body, is a parent undertaking in relation to either of them;
- and in this sub-paragraph—
- “wholly owned subsidiary” has the same meaning as in section 736 of the Companies Act 1985 as substituted by section 144(1) of the Companies Act 1989, whether or not that subsection is in force on 31st March 1990; and
- “parent undertaking” has the same meaning as in section 258 of the Companies Act 1985 as inserted by section 21 of the Companies Act 1989, whether or not that section is in force on 31st March 1990; 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 section 4 of the Act

3.—(1) Subject to the provisions of paragraph (3) and articles 4 and 5 below, exemption is granted—

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

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

- (a) that person would fall within another class in Schedule 2 or, as the case may be, Schedule 3; and
- (b) the exemption granted to persons of that other class had not ceased to be in force.

(3) No person shall be regarded as falling within any of the classes specified in Schedule 2 for as long as he is the holder of a licence under section 6(1)(a) of the Act, or within any of the classes specified in Schedule 3 for as long as he is the holder of a licence under, as the case may be, section 6(1)(c) or (2) of the Act.

Conditions on exemptions

4.—(1) The exemptions granted by this Order are subject to compliance with the conditions specified in paragraphs (2) to (5) below.

(2) Any person who falls within any of the classes specified in Schedule 2 and who generates electricity at a qualifying generating station shall notify the Secretary of State before the relevant date of his name and address.

(3) Any person who falls within Class C in Schedule 2 shall notify the Director before 1st July 1990 of—

- (a) his name and address;
- (b) the location of each generating station at which he generated electricity on 31st March 1990; and
- (c) the declared net capacity of each such generating station;

and if the declared net capacity of any generating station notified to the Director is increased, or if any such person generates electricity at a generating station at which he was not generating electricity on 31st March 1990, he shall notify the Director forthwith of the increase in the declared net capacity or, as the case may be, the location of that generating station and its declared net capacity.

(4) Any person who falls within Class E in Schedule 3 shall notify the Director before 1st July 1990 of—

- (a) his name and address;
- (b) the address of each of the premises to which he was supplying electricity or making the supply of electricity available on 31st March 1990; and
- (c) the aggregate of the maximum power which he could have made available on 31st March 1990 to the premises to which he was supplying electricity or making the supply of electricity available on that date (whether or not that amount of power was consumed on that date).

(5) If a name or address notified to the Secretary of State or the Director pursuant to paragraph 2, (3)(a) or (4)(a) above ceases to be correct the person in question shall notify the Secretary of State or, as the case may be, the Director forthwith of the change of name or address.

(6) For the purposes of paragraph (2) above—

- (a) a person shall notify the Secretary of State of the matters mentioned by delivering or sending by post to him particulars of the matters mentioned to—
 - (i) 1 Palace Street, London SW1E 5HE if the registered office or, as the case may be, the principal office of the person in question is situated in England or Wales; or
 - (ii) New St. Andrews House, Edinburgh EH1 3TA if the registered office or, as the case may be, the principal office of the person in question is situated in Scotland;
- (b) “qualifying generating station” means a generating station which has a declared net capacity which exceeds 200 kilowatts except a generating station which is used solely for the purpose of providing periodic or intermittent electrical power to make good any shortfall in the availability of electrical power which is normally available from some other source; and
- (c) “the relevant date” in relation to any person means whichever is the later of—
 - (i) 1st July 1990; or
 - (ii) the date on which the person in question begins to generate electricity at a qualifying generating station.

(7) For the purposes of this article the address of a company shall be the address of its registered office and the address of any other person shall be the address of his principal office.

Circumstances in which exemptions cease to be in force

5. The exemptions granted by this Order shall cease to be in force—

- (a) in relation to any person falling within any of the classes specified in Schedule 2 if that person—
 - (i) is granted a licence under section 6(1)(a) of the Act; or
 - (ii) does not comply with such of the conditions specified in article 4 above as are applicable to the class within which that person falls;
- (b) in relation to any person falling within any of the classes specified in Schedule 3 if that person—
 - (i) is granted a licence under, as the case may be, section 6(1)(c) or (2) of the Act; or
 - (ii) does not comply with such of the conditions specified in article 4 above as are applicable to the class within which that person falls; and
- (c) in relation to persons falling within Class C in Schedule 2 or Classes B, C or E in Schedule 3, in the circumstances specified in paragraphs C.1 in Schedule 2 and B.1, C.2 and E.1 in Schedule 3 respectively.

8th February 1990

John Wakeham
Secretary of State for Energy

8th February 1990

Malcolm Rifkind
Secretary of State for Scotland

SCHEDULE 1

Article 2(1)

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) Description of station	(2) Value of B
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

SCHEDULE 2

Article 3(1)(a)

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

Class A. 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
- (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.

A.1.—(1) In Class A “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 31st March 1990 and was provided with electricity by the person in question on 31st March 1990.

(2) For the purposes of Class A 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.

Class B. Persons 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. Persons other than successor companies who are generating electricity on 31st March 1990 and who have been generating electricity for a period of three months ending on 31st March 1990.

C.1. The exemption granted by this Order to persons falling within Class C shall cease to be in force in relation to any person—

- (a) on 31st March 1995; or
- (b) before that date if the aggregate of the declared net capacities of all the generating stations at which that person generates electricity becomes greater than the aggregate of the declared net capacities of the generating stations at which he was generating electricity on 31st March 1990.

SCHEDULE 3

Article 3(1)(b)

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

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 section 6(1)(c) of the Act;

and who do not at any time supply more electrical power than 500 kilowatts.

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. Persons who do not supply any electricity except—

- (a) electricity which is supplied to their premises by the holder of a licence under section 6(1)(c) or (2) of the Act; 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 section 6(1)(c) or (2) of the Act 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.

B.1.—(1) The exemption granted by this Order to persons falling within Class B (in this paragraph referred to as “exempt suppliers”) shall cease to be in force in relation to any exempt supplier if he supplies section 6(2) electricity to any premises before 1st April 1998 in either of the circumstances specified in sub-paragraph (2) below.

- (2) The circumstances referred to in sub-paragraph (1) above are—
- (a) in a case where the exempt supplier in question supplies section 6(2) electricity to existing premises, that during the previous period of twelve consecutive months the annual maximum power made available to those premises (whether by that exempt supplier or by anyone else) was the specified amount or less, unless during some other period of twelve consecutive months the annual maximum power made available to those premises (whether by that exempt supplier or by anyone else) was more than the specified amount;
 - (b) in a case where the exempt supplier in question supplies section 6(2) electricity to new premises, that the exempt supplier at the time when he supplies section 6(2) electricity to those premises does not reasonably expect that the annual maximum power which would be made available to those premises (whether by that exempt supplier or by anyone else) would be more than the specified amount during the period of twelve consecutive months starting with the date on which those premises were first supplied with electricity (whether those premises were first supplied by the exempt supplier in question or by anyone else).
- (3) (a) In this paragraph—
- “annual maximum power” means the average of the three highest monthly amounts of electrical power provided in any period of twelve months;
- “existing premises” means premises which have been previously supplied with electricity (whether by the exempt supplier in question or by anyone else) for a period of at least twelve months except premises which were supplied by that exempt supplier on 31st March 1990 pursuant to an agreement to supply those premises which was subsisting on that date;
- “monthly amount of electrical power” means the highest amount of electrical power provided in any month;
- “new premises” means premises which have not been previously supplied with electricity by anyone or which have been previously supplied with electricity (whether by the exempt supplier in question or by anyone else) for a period of less than twelve months except premises which were supplied by that exempt supplier on 31st March 1990 pursuant to an agreement to supply those premises which was subsisting on that date;
- “the previous period of twelve consecutive months” means the period of twelve consecutive months ending at the end of the month before the month in which the exempt supplier in question supplies section 6(2) electricity to the premises in question; and
- “the specified amount” means—
- (i) where an exempt supplier supplies section 6(2) electricity to any premises before 31st March 1994, 1 megawatt; and
 - (ii) where an exempt supplier supplies section 6(2) electricity to any premises on or after 31st March 1994, 100 kilowatts;
- (b) For the purposes of this paragraph an exempt supplier shall be treated as supplying section 6(2) electricity to premises if electricity is supplied to any of his premises by the holder of a licence under section 6(2) of the Act and he supplies electricity from those premises; and
 - (c) In determining whether the circumstances specified in sub-paragraph (2)(a) above apply, no account shall be taken of any period of twelve months beginning before 1st April 1989.

Class C. Persons 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 the holder of a licence under section 6(1)(c) or (2) of the Act; and
- (2) provide the output of each generating station at which they generate electricity only 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 electricity provided to him by the supplier in question 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 electricity provided to him by the supplier in question at those premises; or
 - (c) (i) consumers of the type specified in sub-paragraphs (a) or (b) 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 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 31st March 1990) 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 2(a) or (b) above 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 below 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 which that person provides electricity which consists of the provision of electricity to consumers of the type specified in paragraph (2)(a) or (b) 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) above 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 that generating station, associated with that supplier.

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

“consumer” means a person other than—

- (a) the holder of a licence under section 6(1)(c) or (2) of the Act, 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) an Electricity Board,

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 31st March 1990 and was supplied with electricity by the exempt supplier in question on 31st March 1990;

“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 1989) except that when a relevant person provides electricity from any generating station for the first time after 1st January 1989 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; and

“year” means a period of twelve months beginning with 1st January.

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

- (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. Persons 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.

Class E. Persons other than successor companies who are supplying electricity or making the supply of electricity available to premises on 31st March 1990 and who have been supplying electricity or making the supplies of electricity available to those premises for a period of three months ending on 31st March 1990.

E.1. The exemption granted by this Order to persons falling with Class E shall cease to be in force in relation to any person—

(a) on 31st March 1995; or

(b) before that date if—

- (i) that person supplies electricity or makes the supply of electricity available to premises other than premises to which he was supplying electricity or making the supply of electricity available on 31st March 1990; or
- (ii) the aggregate of the maximum power which that person makes available at any time to the premises to which he was supplying electricity or making the supply of electricity available on 31st March 1990 exceeds the aggregate of the maximum power which he could have made available to those premises on that date (whether that amount of power was consumed on that date or not).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants exemption from the requirements of section 4(1)(a) of the Electricity Act 1989 (which prohibits the generation of electricity without a licence) and section 4(1)(c) of that 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 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 3.

Article 4 provides for conditions which are attached to the exemptions set out in Schedules 2 and 3, and article 5, together with certain paragraphs in Schedules 2 and 3, provide for the circumstances in which the exemptions cease to have effect.

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