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STATUTORY INSTRUMENTS

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**1997 No. 989**

**ELECTRICITY**

The Electricity (Class Exemptions from  
the Requirement for a Licence) Order 1997

<i>Made</i>	- - - -	<i>20th March 1997</i>
<i>Laid before Parliament</i>		<i>20th March 1997</i>
<i>Coming into force</i>	- -	<i>31st March 1998</i>

The Secretary of State for Trade and Industry (as respects England and Wales) and the Secretary of State for Scotland (as respects Scotland), in exercise of the powers conferred on them by sections 5 and 111(2) of the Electricity Act 1989<sup>(1)</sup> and after consultation with the Director General of Electricity Supply, 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 1997 and shall come into force on 31st March 1998.

**Interpretation**

2.—(1) In this Order—

“the Act” means the Electricity Act 1989;

“additional group consumers within the 100 megawatt limit” has the meaning set out in paragraph C.2 in Schedule 3;

“consumer” means a person to whom electricity is supplied (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”, in relation to any supply of electricity, means a consumer who uses not more than 20,000 kilowatt hours per annum;

“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)(c) or section 6(2) of the Act;

“offshore installation” has the same meaning as in regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995(2);

“ordinary share capital” has the same meaning as in section 832(1) of the Income and Corporation Taxes Act 1988(3);

“parent undertaking” shall be construed in accordance with section 258 of the Companies Act 1985(4);

“pooling and settlement agreement” means the pooling and settlement agreement to which a person generating or supplying electricity may be required to become party by the licence granted to him under section 6 of the Act; and

“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 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) 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 3.

(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;

and “holding company” and “subsidiary” shall have the same meaning as in section 736 of the Companies Act 1985(5).

(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

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(2) S.I.1995/738.

(3) 1988 c. 1.

(4) 1985 c. 6; section 258 was inserted by section 21 of the Companies Act 1989 (c. 40).

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

- (ii) is not capable of generating electricity only by reason of the repair or testing of the plant or equipment.
- (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 3.

### **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; 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 that person would fall within another class in Schedule 2 or, as the case may be, Schedule 3.

### **Conditions on exemptions**

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

(2) Any person who supplies electricity to domestic consumers who are additional group consumers within the 100 megawatt limit shall do so at a price which does not exceed the maximum price specified in Schedule 4 to this Order.

### **Revocation**

**5.** The Electricity (Class Exemptions from the Requirement for a Licence) (No. 2) Order 1995(6) is revoked.

17th March 1997

*Fraser of Carmyllie,*  
Minister for Energy,  
Department of Trade and Industry

20th March 1997

*George Kynoch,*  
Parliamentary Under Secretary of State, The  
Scottish Office

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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) <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

SCHEDULE 2

Article 3(1)(a)

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

**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 3 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 3 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.

SCHEDULE 3

Article 3(1)(b)

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

**Class A: Small supply**

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 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: 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 paragraphs (2)(a), (b) and (c) of 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—

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- (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 at 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) of 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 the lower of—

- (a) 10 per cent of the Class C electricity supplied in that year to those relevant premises; or
- (b) subject to paragraph (3) below, 250 megawatt hours of electricity.

(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 the lower of—

- (a) 10 per cent of the Class C electricity supplied in that year to those relevant premises; or
- (b) the amount obtained by multiplying 250 megawatt hours by a percentage equal to the percentage of the year then remaining.

(3) 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 (1)(b) above 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 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—

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- (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) additional group consumers within the 100 megawatt limit and either—
  - (i) a single consumer; or
  - (ii) an on-site qualifying group; or
- (e) (i) a single consumer, or an on-site qualifying group, or additional group consumers within the 100 megawatt limit, or a mixed group of consumers of a type described in sub-paragraph (d) 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) Electricity provided by a person in any half hour shall be treated as if it were generated by that person at a generating station at which he generates electricity and as the output of that generating station if it—

- (a) is purchased by that person pursuant to the pooling and settlement agreement; and
  - (b) does not exceed the amount of electricity which he generates at that station in that half hour and which he is required to sell and does sell pursuant to that agreement.
- (a) (2) (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

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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.

**C.2. In Class C—**

“additional group consumers within the 100 megawatt limit” means consumers described in paragraph (2)(c) of 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—

- (i) the supplier in question;
- (ii) a consumer who receives a supply from the supplier in question from the generating station;
- (iii) 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
- (iv) any of the persons described in paragraphs (i) to (iii) above jointly with any other of the persons described in those paragraphs,

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

**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.

SCHEDULE 4

Article 4(2)

MAXIMUM RESALE PRICE

1. The maximum price specified for the purposes of article 4(2) shall consist of two elements.



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2. The elements referred to in paragraph 1 are, in respect of electricity supplied to a consumer who takes supply in the authorised area of the public electricity supplier 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) <i>Public Electricity Supplier</i>	(2) <i>Unit Charge (pence)</i>	(3) <i>Daily Availability Charge (pence)</i>
East Midlands Electricity plc	7.23	9.98
Eastern Electricity plc	8.21	8.31
London Electricity plc	7.38	13.72
Manweb plc	7.93	13.64
Midlands Electricity plc	7.64	9.39
Northern Electric plc	7.56	12.94
NORWEB plc	7.10	10.51
Scottish Hydro Electric plc	7.09	13.45
Scottish Power plc	7.35	11.97
SEEBOARD plc	7.88	5.03
Southern Electric plc	7.37	11.74
South Wales Electricity plc	8.45	13.02
South Western Electricity plc	7.96	10.30
Yorkshire Electricity plc	6.69	11.84

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order re-enacts the Electricity (Class Exemptions from the Requirement for a Licence) (No. 2) Order 1995 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) 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 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.

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

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- the exemption granted to persons falling within Class A in Schedule 3 is extended to cover electricity supplied to them by the holder of a licence under section 6(2) of the Act (a “second-tier supplier”);
- the limitations on the exemption granted to persons falling within Class B in Schedule 3 are removed to the extent that those persons are supplying electricity which has been supplied to them by a second-tier supplier;
- the requirement in Class B in Schedule 3 for Class C electricity not to be resold to premises taking more than 100 kilowatts has been removed; and
- the exemption granted to persons falling within Class C in Schedule 3 is extended to allow supply to several consumers on-site who are not connected to each other and to consumers off-site who are supplied over private wires, in each case subject to a total maximum amount of electricity of 100 megawatts, of which not more than one megawatt can be supplied to domestic consumers.