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STATUTORY INSTRUMENTS

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**1995 No. 909**

**ELECTRICITY**

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

<i>Made</i>	- - - -	<i>27th March 1995</i>
<i>Laid before Parliament</i>		<i>29th March 1995</i>
<i>Coming into force</i>	- -	<i>30th March 1995</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 by sections 5 and 111(2) of the Electricity Act 1989<sup>(1)</sup> and of all other powers enabling them in that behalf 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) (No. 2) Order 1995 and shall come into force on 30th March 1995.

**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<sup>(2)</sup>;

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

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

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(1) 1989 c. 29.  
(2) 1971 c. 61; section 1 was substituted by section 24 of the Oil and Gas (Enterprise) Act 1982 (c. 23).  
(3) 1988 c. 1.  
(4) 1985 c. 6; section 258 was inserted by section 21 of the Companies Act 1989 (c. 40).

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

“road” has the same meaning as in section 192(1) of the Road Traffic Act 1988<sup>(5)</sup>; 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<sup>(6)</sup>;

(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; 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—

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(5) 1988 c. 52; section 192(1) was amended by the Road Traffic Act 1991 (c. 40), Schedule 4, paragraphs 78(1) and (2).

(6) 1985 c. 6; section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40).

(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 (4) below.

(2) Any person who falls within Class C in Schedule 2 shall have notified 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.

(3) Any person who falls within Class E in Schedule 3 shall have notified 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).

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

(5) 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—

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- (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 or E in Schedule 3, in the circumstances specified in paragraphs C.1 in Schedule 2 and B.1 and E.1 in Schedule 3 respectively.

### **Revocation**

6. The Electricity (Class Exemptions from the Requirement for a Licence) Order 1990(7), the Electricity (Class Exemptions from the Requirement for a Licence) (Amendment) Order 1994(8), the Electricity (Class Exemptions from the Requirement for a Licence) (Amendment) (No. 2) Order 1994(9) and the Electricity (Class Exemptions from the Requirement for a Licence) Order 1995(10) are hereby revoked.

27th March 1995

*Tim Eggar*  
Minister for Industry and Energy,  
Department of Trade and Industry

27th March 1995

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

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(7) S.I. 1990/193, amended by S.I. 1994/1070 and S.I. 1994/1683.  
(8) S.I. 1994/1070.  
(9) S.I. 1994/1683.  
(10) S.I. 1995/588.

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.

(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 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 provided 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

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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.

**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 connected to each other and 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 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 were generating electricity on 31st March 1990 and who had 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 1998; 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 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 paragraph B.1 below whether a person is supplying electricity in such circumstances paragraphs (2)(a) and (b) of Class C in this Schedule shall have effect as if the words following “is situated”, 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—
  - (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 or a Class C supplier 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—

- (a) if he supplies Class C electricity to any premises other than in either of the circumstances specified in sub-paragraph (2) below;
- (b) if he supplies section 6(2) electricity or Class C electricity to any premises in either of the circumstances specified in sub-paragraph (2) below and those premises are not on the same site as relevant premises;
- (c) if during a relevant period he starts to make relevant supplies from any particular relevant premises from which he has not previously made relevant supplies and at the time he starts to make such supplies from those premises he does not reasonably expect that the total amount of relevant supplies made by him during the remainder of the relevant period in question from those relevant premises will be less than the lower of that amount which is obtained by multiplying the specified amount by a percentage equal to the percentage of that relevant period then remaining and 10 per cent. of the total amount of section 6(2) and Class C electricity supplied to those relevant premises in that relevant period;
- (d) on 1st June in any year if the total amount of relevant supplies made by him in the preceding relevant period from any particular relevant premises exceeds the lower of—
  - (i) the specified amount or, in a case where the exempt supplier started to make relevant supplies from those relevant premises (from which he had not previously made relevant supplies) in that preceding relevant period, that amount which is obtained by multiplying the specified amount by a percentage equal to the percentage of that preceding relevant period remaining at the time he started to make such supplies; and
  - (ii) 10 per cent. of the total amount of section 6(2) and Class C electricity supplied to those relevant premises in that preceding relevant period,

provided that for the purposes of sub-paragraphs (b) to (d) above no account shall be taken of any section 6(2) electricity which is supplied by or to the exempt supplier in question after 31st March 1998.

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- (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) or Class C 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 100 kilowatts 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 100 kilowatts;
  - (b) in a case where the exempt supplier in question supplies section 6(2) or Class C electricity to new premises, that the exempt supplier at the time when he supplies section 6(2) or Class C 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 100 kilowatts 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).

- (a) (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;

“Class C electricity” means electricity which is supplied by a person in circumstances such that he falls within Class C in this Schedule;

“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 to which that exempt supplier is not supplying Class C electricity and 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 to which that exempt supplier is not supplying Class C electricity and 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) or Class C electricity to the premises in question;

“relevant period” means the period of twelve consecutive months ending on 31st March each year except that the first relevant period shall be the period beginning on 5th May 1994 and ending on 31st March 1995;

“relevant premises”, in relation to any reference to an exempt supplier supplying electricity, means the premises from which he supplies that electricity;

“relevant supplies” means supplies of section 6(2) electricity or Class C electricity to any premises on the same site as relevant premises in either of the circumstances specified in sub-paragraph (2) above;

“section 6(2) electricity” means electricity which is supplied by the holder of a licence under section 6(2) of the Act; and

“the specified amount” means 250 megawatt hours or, in the relevant period beginning on 5th May 1994 and ending on 31st March 1995, 225 megawatt hours;



- (b) For the purposes of this paragraph—
- (i) an exempt supplier shall not, if and to the extent that it would cause the exemption granted to him by this Order to cease to be in force, be treated as supplying either section 6(2) electricity or Class C electricity to any premises during a relevant period, or as regards supplies of electricity falling within sub-paragraph (1)(a) or (b) of this paragraph at any time during a month, in which the relevant premises are also being supplied with electricity which is not section 6(2) electricity or, as the case may be, Class C electricity unless by not being so treated he would in effect be treated as supplying—
    - (aa) more electricity that is neither section 6(2) electricity nor, as the case may be, Class C electricity, than is supplied to those relevant premises during that relevant period or that month; or
    - (bb) any amount of electricity that is neither section 6(2) electricity nor, as the case may be, Class C electricity in circumstances where that would cause the exemption granted by this Order to cease to be in force;
  - (ii) premises supplied by an exempt supplier shall be treated as on the same site as relevant premises if they are—
    - (aa) the same premises;
    - (bb) immediately adjoining each other; or
    - (cc) 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 in question, by the person supplied with electricity by that exempt supplier at the premises in question or by a person who has supplied Class C electricity to the relevant premises in question; 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 other than any of that electricity supplied by that consumer in circumstances such that he falls within Class B in Schedule 3; 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 other than any of that electricity supplied by that consumer in circumstances such that he falls within Class B in Schedule 3; 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,

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and for the purposes of this Class 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.

**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) In Class C and paragraph C.1 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 the 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 connected to each other and 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 31st March 1990 and was supplied with electricity by the 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.

(2) For the purposes of Class C and paragraph C.1 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 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 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 were supplying electricity or making the supply of electricity available to premises on 31st March 1990 and who had been supplying electricity or making the supply 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 within Class E shall cease to be in force in relation to any person—

(a) on 31st March 1998; 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).

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## EXPLANATORY NOTE

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

This Order re-enacts the Electricity (Class Exemptions from the Requirement for a Licence) Order 1990 (as amended) (“the 1990 Order”) with further amendments. It 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.

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

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- the duration of the transitional exemptions granted to persons falling within Class C in Schedule 2 and Class E in Schedule 3 is extended until 31st March 1998;
- it sets out circumstances in which, for the purposes of Class C in Schedule 3, electricity which a person purchases pursuant to the pooling and settlement agreement shall be treated as the output of a generating station at which that person generates electricity.

The 1990 Order, the Electricity (Class Exemptions from the Requirement for a Licence) (Amendment) Order 1994, the Electricity (Class Exemptions from the Requirement for a Licence) (Amendment) (No. 2) Order 1994 and the Electricity (Class Exemptions from the Requirement for a Licence) Order 1995 are revoked.