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## STATUTORY INSTRUMENTS

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# 2001 No. 3270

## The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001

### Citation and commencement

1. This Order may be cited as the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 and shall come into force on 1st October 2001.

### Interpretation

2.—(1) In this Order—

“the Act” means the Electricity Act 1989;

“additional group consumers within the 100 megawatt limit” has the meaning given to that expression in paragraph C. 2 in Schedule 4;

“the Authority” means the Gas and Electricity Markets Authority;

“consumer” means a person to whom electricity is supplied <sup>M1</sup> (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” means a consumer supplied with electricity at domestic premises (but excluding such consumer in so far as he is supplied at premises other than domestic premises);

“domestic premises” means premises at which a supply is taken wholly or mainly for domestic purposes;

“licensed distributor” means the holder of a licence under section 6(1)(c) of the Act <sup>M2</sup>;

“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)(d) of the Act;

“licensed transmitter” means the holder of a licence under section 6(1)(b) 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 <sup>M3</sup>;

“ordinary share capital” has the same meaning as in section 832(1) of the Income and Corporation Taxes Act 1988 <sup>M4</sup>;

“parent undertaking” shall be construed in accordance with section 258 of the Companies Act 1985 <sup>M5</sup>;

“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 any body corporate which is connected to, or a parent undertaking in relation to, any of them is a parent undertaking in relation to all of them; or

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- (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 4;

“total system” means the transmission system in England and Wales of the licensed transmitter and all distribution systems in England and Wales; and

“vertically integrated undertaking” means a person who carries on two or more of the activities of generating, transmitting, distributing<sup>M6</sup> and supplying electricity.

- (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<sup>M7</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.

- (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 maintenance, 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 4.

#### **Marginal Citations**

- M1** The definition of “supply” was substituted in section 4(4) of the Electricity Act 1989 by section 28(1) and (3)(b) of the Utilities Act 2000.

- M2** A new section 6 was substituted by section 30 of the Utilities Act 2000.
- M3** S.I. 1995/738.
- M4** 1988 c. 1.
- M5** 1985 c. 6; section 258 was inserted by section 21 of the Companies Act 1989 (c. 40).
- M6** The definition of “distribute” was inserted into section 4(4) of the Electricity Act 1989 by section 28(1) and (3)(a) of the Utilities Act 2000.
- M7** Section 736 was substituted by section 144(1) of the Companies Act 1989.

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

(2) A person shall be treated as falling within any class specified in Schedule 2, 3 or 4 notwithstanding that he generates, distributes or supplies electricity, as the case may be, in circumstances other than those specified in the description of that class if the generation, distribution or 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 or 4, as the case may be.

### **Conditions on exemptions**

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

(2) The highest generation of electricity from any generating station of such a person (at the main alternator terminals) which can be maintained indefinitely without causing damage to the plant (the “maximum capacity”) shall not at any time exceed the maximum capacity of that generating station on 30th September 2000.

(3) The exemption granted by article 3(1)(b) to persons of the classes specified in Schedule 3 is subject to compliance with the conditions specified in paragraph (4) below.

(4) (a) Persons referred to in paragraph (3) above shall furnish to the Authority, in such manner and at such times as the Authority may direct, such information as the Authority may consider necessary for the purpose of performing its functions under the Act.

- (b) Persons referred to in paragraph (3) above who at any time distribute more electrical power than 500 kilowatts to domestic consumers and who are vertically integrated undertakings shall keep separate accounts for their distribution activities in their internal accounts.

(5) The exemption granted by article 3(1)(c) to persons of Class A in Schedule 4 is subject to compliance with the conditions specified in paragraph (6) below.

(6) A person who at any time supplies more electrical power than 500 kilowatts—

- (a) shall not supply electricity to domestic consumers at a price which exceeds such maximum price as may be specified in or as may be calculated by such method and by reference to such matters as may be specified in a direction given by the Authority; and
- (b) shall give at least seven days’ notice in writing to a domestic consumer before entering into a contract to supply the same. The notice shall be in such form as the Authority may direct and shall, in particular, specify that the person is authorised to supply electricity by exemption under article 3(1)(c) of this Order and is therefore not subject to the licence conditions and the obligations under the Act that he would be subject to if he were a licensed supplier.

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(7) The exemption granted by article 3(1)(c) to persons of Class C in Schedule 4 is subject to compliance with the condition specified in paragraph (8) below.

(8) A person shall not supply electricity to domestic consumers who are additional group consumers within the 100 megawatt limit at a price which exceeds such maximum price as may be specified in or as may be calculated by such method and by reference to such matters as may be specified in a direction given by the Authority.

### Revocation

5. The Electricity (Class Exemptions from the Requirement for a Licence) Order 1997 <sup>M8</sup> and the Electricity (Class Exemptions from the Requirement for a Licence) (Amendment) (England and Wales) Order 2000 <sup>M9</sup> are revoked.

#### Marginal Citations

**M8** [S.I. 1997/989](#).

**M9** [S.I. 2000/2424](#).

28th September 2001

*Brian Wilson,*  
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Department of Trade and Industry

**Status:**

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**Changes to legislation:**

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