EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (CLASS EXEMPTIONS FROM THE REQUIREMENT FOR A LICENCE) (AMENDMENT) ORDER 2024

2024 No. 819

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Michael Shanks Minister for Energy at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

2.2 Paul van Heyningen, Deputy Director for Electricity Networks Strategy & Regulatory Policy at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Fergus Bailey at the Department for Energy Security and Net Zero. Telephone:07917 416718 or email: fergus.bailey@energysecurity.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Order will amend the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (S.I. 2001/3270) ("the Class Exemptions Order") to exempt high-voltage array systems from the transmission licence regime. Array systems are electric line and other electric plant which are used to convey electricity from an offshore generating station to an offshore substation. High-voltage array systems will allow generators to install more cost-effective, energy efficient high voltage cables. Low voltage array systems already do not require a licence and, as a result of this instrument, exempted high-voltage array systems will not require a licence nor be subject to the compulsory competitive Offshore Transmission Owner (OFTO) regime where they are transferred to an OFTO.

4.2 Exemption persons will therefore be able to own and operate offshore wind farms alongside array systems of different voltages, and, separately under a transmission licence, OFTOs will own and operate non- array systems transmission cables which connect to shore.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.4 The application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 The Electricity Act 1989 ("the Act") provides a regulatory regime for electricity generation and transmission systems that operate offshore.

5.2 Different assets which are part of, or associated with, an offshore windfarm are owned and operated by different parties. Currently, in respect of low voltage array systems, a generator owns and operates the turbines and array systems. Array systems are a component of an offshore wind farm, comprised of the cables and equipment emerging from individual wind turbines that convey electricity to an offshore substation/converter for onward transmission to shore. An OFTO owns and operates the offshore substation/converter that array systems connect to, and the transmission system leading from the substation to the onshore grid. Transmission connections to offshore wind farms are licensed to OFTOs through a competitive regime managed by Ofgem to ensure that offshore renewable generation projects are economically and efficiently connected to Great Britain's electricity grid.

5.3 In each instance, the generator and OFTO have clear boundaries of ownership and operation.

5.4 Offshore wind turbines are increasing in size and turbines are beginning to exceed 15MW each. In 2005, offshore wind turbines produced 4MW each, on average. In order to keep pace with the increasing size of wind turbines, array systems that convey electricity from wind turbines to an offshore substation are increasing in voltage to more cost-effective and energy efficient sizes of 132kV and above ("high voltage array systems"). In the absence of this Order, developers of offshore windfarms are deterred from installing more cost-effective and energy-efficient high voltage array systems as their operation is licensable as transmission under the Act.

5.5 This Order will amend the Class Exemptions Order to exempt high-voltage array systems from the transmission licence regime, therefore allowing generators to install more cost-effective, energy efficient high voltage cables without these assets being subject to the competitive regime managed by Ofgem to be transferred to an OFTO.

What was the previous policy, how is this different?

5.6 Previous policy was that high voltage array systems, if developed, would be treated as transmission assets, and need to be owned and operated by OFTOs. This meant developers of offshore wind farms were disincentivised to install more cost-effective high voltage array systems, as these assets would eventually be transferred to an OFTO.

6. Legislative and Legal Context

How has the law changed?

6.1 This Order amends the Class Exemptions Order to grant exemption from the requirement of section 4(1)(b) of the Act" (which prohibits the transmission of electricity without a licence) to persons in respect of transmission over high voltage array systems. Article 2 of the Class Exemptions Order 2001 is amended to insert a description of transmission over high voltage array systems (which are a type of "transmission system" under the Act) and Article 3 is amended to introduce the class of persons who benefit from the class exemption as set out in a new Schedule 5 to the Class Exemptions Order.

Why was this approach taken to change the law?

6.2 This is the best approach to allow generators to develop high-voltage array systems as currently generators are prevented from holding a transmission licence under the Act, and it is not viable for array systems to be transferred to an OFTO. This cannot be enabled through any administrative or other means. This class exemption will allow windfarms to start designing and building high voltage array systems without the risk of it being transferred to an OFTO upon completion. A class exemption is a more efficient alternative to providing individual exemptions to each generator requiring one.

7. Consultation

Summary of consultation outcome and methodology

7.1 A notice was published on the Government website setting out the proposal to make the instrument, containing the terms of this instrument, and inviting representations, on 13 November 2023. Citizens Advice, Consumer Scotland and the Scottish Government were also consulted individually.

7.2 The notice period closed on 5 March 2024 and 23 representations were received from stakeholders with an interest in the proposed class exemption. 16 windfarm developers, two trade associations, one solar developer, one OFTO, and a not for dividend organisation responded. A response was also received from National Grid Electricity System Operator.

7.3 All responses to the consultation were supportive with no respondents disagreeing with the class exemption for high voltage array systems. Most respondents stated that the exemption would provide legislative clarity and would encourage generators to install high voltage array systems. Many of the respondents also agreed there could be cost savings.

7.4 A government response to the consultation has been published on the Government website.

8. Applicable Guidance

8.1 As this Order introduces a new class exemption it is for persons to self-determine whether they fall within the terms of the exemption. There is guidance on the Government's approach to individual transmission licence exemptions, which was published in August 2023. This guidance does not cover class exemptions.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 The class exemption introduced by this Order maintains the status quo whereby generators own and operate the array system associated with their windfarm and are not subject to a transmission licence. Generators will be subject to the terms of a generation licence.

9.3 There is no, or no significant, impact on business, charities or voluntary bodies.

9.4 The legislation does not impact small or micro businesses as this would only apply to offshore windfarm developers.

9.5 There is no, or no significant, impact on the public sector as this would only apply to offshore windfarm developers.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Generators will self-assess whether they fall within the terms of the class exemption so there are no formal monitoring or review requirements. Any generator benefitting from the class exemption must comply with licence conditions under generation licenses which they are still required to hold.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None

12. European Convention on Human Rights

12.1 The Secretary of State for the Department for Energy Security and Net Zero has made the following statement regarding Human Rights:

"In my view the provisions of the Class Exemptions from the Requirement for A Licence (Amendment) Order 2024 is compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").