EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (COVANTA INCE PARK LIMITED) (ENGLAND AND WALES) ORDER 2012

2012 No. 2911

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 To grant an exemption from the requirement to hold an electricity generation licence to Covanta Ince Park Limited in respect of the Covanta Ince Park Limited Generating Facility, a 95MW combined heat and power (Energy from Waste) plant in Ince, Cheshire.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 4(1)(a) of the Electricity Act 1989 ("the Act") makes it an offence for a person to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given unless authorised to do so by a licence. Section 5(1) of the Act provides that the Secretary of State may, by order, grant exemption from section 4(1)(a). Section 5(2) of the Electricity Act sets out the notice requirements for making such an order.

4.2. On 1 October 2001, the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 ("the Class Exemptions Order") came into force[1]. Among other things, the Class Exemptions Order provided exemption for various classes of electricity generation, including:

Class C: Generators not exceeding 100 megawatts

Persons (other than licensed generators) who do not provide any electrical power except from generating stations which were connected to the total system on 30th September

[1] S.I. 2001/3270

2000 and which are not normally capable of exporting more than 100 megawatts to the total system, disregarding power temporarily provided in excess of 100 megawatts due to technical circumstances outside the reasonable control of the person providing that power.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Covanta Ince Park Limited has made an application for exemption from the requirement to hold an electricity generation licence in respect of the Covanta Ince Park Limited Generating Facility, a 95MW combined heat and power (Energy from Waste) plant in Ince, Cheshire.

7.3 As outlined in the Act (in particular section 3A), the principal objective of the Secretary of State in carrying out functions under the Act is to protect the interests of consumers in relation to electricity conveyed by distribution systems, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity.

7.4 In delivering the overall objective, the Secretary of State should also have regard, among other things, to the need to ensure security of supply and the need to contribute to the achievement of sustainable development.

7.5 In considering Covanta's application for exemption, the Department's view to date has broadly been that applications for individual exemption regarding stations of up to 100MW capacity should be considered for exemption, whilst stations capable of exporting more than 100MW should be licensed. This is because plant of less than 100MW capacity will generally have a low impact on the total electricity system and should not therefore be subject to the same degree of system regulation (and cost) as imposed by standard licensing conditions. As referred to at paragraph 4.2, a precedent exists for exempting generating plants under 100MW.

Consolidation

7.6 N/A.

8. Consultation outcome

8.1 A consultation was launched on 20 August 2012 and closed on 17 September 2012. No consultation responses were received.

9. Guidance

9.1 Guidance exists on the DECC website; in the Explanatory Notes to the Act and the Class Exemptions Order.

10. Impact

10.1 The impact on business is nil. The impact on charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 There are no formal monitoring or review requirements. However, failure to meet any of the conditions of the Order will render the exemption ineffective. Parties would then have to obtain a licence to generate electricity to continue operations, or face legal action.

13. Contact

Chris Chown at the Department of Energy and Climate Change - Tel: 0300 068 6085 or email: chris.chown@decc.gsi.gov.uk can answer any queries regarding the instrument.