EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (CUREN) (ENGLAND AND WALES) ORDER 2012

2012 No. 2740

1. This explanatory memorandum has been prepared by The Department for 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 a time limited exemption from the requirement to hold an electricity generation licence to Curen Ltd for Lynemouth power station, until 31 March 2015.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 None.

4. Legislative Context

4.1 Section 4(1)(a) of the Electricity 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 Electricity 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 in respect of stations which were both connected to the total transmission and distribution system in England and Wales on 30th September 2000 and not subject to "central despatch" on that date by the licensed transmitter (Schedule 2, Class D to the Class Exemptions Order).

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

[1] S.I. 2001/3270

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 Curen Ltd ("Curen"), a subsidiary of RWE Supply and Trading GmbH ("RWE"), has made application for a time-limited exemption from the requirement to hold a generation licence for the 420 MW coal-fired Lynemouth power plant. Curen wish to purchase the plant from its current owners, Alcan Aluminium UK Ltd ("AAUK"), and embark on a programme of works to integrate it into the current market system, with a view to converting to biomass and operating the plant under a generation licence by 1st April 2015.

7.2 AAUK currently benefits from a Class D exemption (see paragraph 4.2 above). However, this exemption is drafted in such a way that it will not apply to any future owner of the Lynemouth power station and the station is not currently in a state to allow an operator to comply with the standard terms of a generation licence. Curen claim therefore that the purchase of the station will not be economically viable unless they are able to benefit from a time-limited exemption from the licensing requirement. This allows Curen to operate the station immediately on transfer of ownership, providing it with time (and revenue) to undertake the necessary technical works to comply with the conditions of a generation licence. From April 2015, therefore, Curen would start paying all relevant charges including transmission and balancing charges for Lynemouth.

7.3 As outlined in the Electricity Act 1989 ("the Act") (in particular section 3A), the principal objective of the Secretary of State in carrying out his functions 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 to, among other things, the need to ensure security of supply and the need to contribute to the achievement of sustainable development. In addition, regulation should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

7.5 In considering Curen's application for exemption and the consultation responses received, we therefore applied the policy objective that it is desireable to move towards a point at which Lynemouth can operate under a full electricity generation licence, and play a part in a low-carbon, secure electricity mix in competition with other generators.

Consolidation

7.6 NA.

8. Consultation outcome

8.1 A consultation was launched on 11th July 2012 and closed on 22nd August 2012. 12 consultation responses were received.

8.2 Responses were received from stakeholders both supporting a time limited exemption and opposing it. Some stakeholders believed that exemption should only be given with conditions attached to mitigate against competition concerns.

8.3 On balance, it was felt that the policy objectives outlined above (see paragraphs 7.3 - 7.5) would best be met by giving Curen an exemption to operate Lynemouth power station until 31st March 2015, when it would be required to obtain a generation licence. This meets with the objective of moving Lynemouth toward a position where it can operate under a full electricity generation licence, and play a part in a low-carbon, secure electricity mix in competition with other generators.

8.4 The possibility of Curen paying balancing charges for the output from Lynemouth for the duration of the exemption was also considered. However, it was noted that, whilst this would mitigate against some competition concerns, a decision to impose charges on Curen might critically impact on its decision to purchase the plant, thus negating the objective of moving Lynemouth toward a position where it can operate under a full electricity generation licence, and play a part in a low-carbon, secure electricity mix in competition with other generators. Without ownership of Lynemouth moving to Curen, Lynemouth would continue to be operated by AAUKTA. Our understanding is that RTA has no plans to operate Lynemouth beyond 2015 and therefore no plans to gain a generation licence. Curen on the other hand may continue to operate the plant for some years after 2015 as a licensed operator.

9. Guidance

9.1 Guidance exists on the DECC website; in the Explanatory Notes to the Electricity Act 1989 and The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001.

10. Impact

10.1 The impact on business is outlined in the Impact Assessment. The impact on charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

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 and the parties would have to obtain a licence to generate electricity to continue operations.

13. Contact

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