EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (GUNFLEET SANDS II) (ENGLAND AND WALES) ORDER 2008

2008 No. 3046

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.

2. Description

2.1 The Order exempts Gunfleet Sands II Wind Farm Limited from the requirement to possess an electricity generation licence in respect of a proposed offshore wind-farm at Gunfleet Sands, situated on the sand bank known as Gunfleet Sand (south-east of Clacton-on-Sea).

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Section 5 of the Electricity Act 1989 ("the Act"), as amended by section 29 of the Utilities Act 2000 empowers the Secretary of State to grant both individual and class exemptions from the requirement to hold a licence.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy Background

7.1 A number of applications for individual exemptions from generation licensing requirements has been received and approved by the Secretary of State. In considering such applications, the Secretary of State's principal policy objective is to save small-scale generators from costs arising from compliance with the electricity licensing regime, whilst protecting the security of the total system for the generation and transmission of electricity.

7.2 In exercising this policy, the Secretary of State is required formally to give notice to the Gas and Electricity Markets Authority and the Gas and Electricity Consumer Council, as well as bringing the proposal to the notice of other affected

parties. A consultation was published on 11 August 2008 and concluded on 8 September 2008. There were no objections to the introduction of the Order.

7.3 The conditions of granting the exemption are that Gunfleet Sands II Wind Farm Limited (a) does not hold a generating licence; (b) Gunfleet Sands II Wind Farm is connected to the total system in England and Wales (this will occur when Gunfleet Sands II Wind Farm Limited has reached a bilateral connection agreement with EDF Energy Networks); and (c) except in circumstances outside the reasonable control of the company, Gunfleet Sands II Wind Farm does not export more than 100 megawatts of electrical power to the total system in England and Wales.

8. Impact

8.1 This measure is deregulatory, and the impact is positive for the generator concerned. It carries no identifiable costs to the public and, by promoting additional generation capacity, has the scope to reduce costs to electricity purchasers.

8.2 A Regulatory Impact Assessment (RIA) in respect of licensing exemptions was produced at the time of the coming into force of the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (SI No. 3270/2001), and a copy is attached to this memorandum.

8.3 There is no impact on the public sector.

9. Contact

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Department of Energy and Climate Change
22nd November 2008

PROPOSED REVOCATION OF THE EXISTING ELECTRICITY (CLASS EXEMPTIONS FROM THE REQUIREMENT FOR A LICENCE) ORDER 1997 (AS AMENDED) AND MAKING OF A NEW ELECTRICITY (CLASS EXEMPTIONS FROM THE REQUIREMENT FOR A LICENCE) ORDER 2001

REGULATORY IMPACT ASSESSMENT

This assessment follows the regulatory impact assessment prepared in the light of a consultation document on the Government's proposed exemption regime for electricity, issued on 27 February 2001. Previously, in respect of generation and supply exemptions, a regulatory impact assessment was provided when a consultation document on proposed amendments to the above order was issued on 5 July 2000. This followed an earlier consultation in November 1999. In respect of distribution exemptions, the Government produced an updated Regulatory Impact Assessment (RIA) of the costs and benefits of the Utilities Bill when the Bill was introduced in the House of Lords. Paragraph 32 of the RIA referred to the impact of the exemptions on certain electricity distributors, and undertook to provide a separate assessment of where the boundary between licensed and exempt operators should lie and the decision to attach conditions to proposed exemptions.

1. Purpose and intended effect of the measure

Issue

1.1 How to set the point at which generators, suppliers and distributors of electricity should be exempt from the need to hold a licence.

Overall objectives

1.2 To minimise the burden of regulation on persons operating in a limited manner in the generation, supply and distribution of electricity.

1.3 To relax the Electricity Class Exemptions from the Requirement for a Licence Order 1997 (SI 1997/989) so as:

- to all more operators of small power stations, in particular those based on CHP and renewables, to generate electricity without a generation licence and so to facilitate trading under the new trading arrangements with the minimum of administrative overhead.
- to allow more operators of small power stations, in particular those based on CHP and renewables, to supply electricity without a supply licence.

1.4 To create a distribution exemption regime that permits persons:

- Whose distribution networks primarily serve industrial and commercial consumers;
- Who distribute very small volumes of electricity; and
- Who distribute electricity from on-site generating plant, in particular those based on CHP

to distribute electricity without a distribution licence.

Specific objectives

1.5 Generation: to make permanent (subject to periodic review) the exemptions established by the existing temporary Order (SI 2000/2424), which exempts persons:

- providing on 30/9/2000 up to 100 MW of electricity from generating plant,
- operating plant on 30/9/2000 which have never been subject to central despatch.

(Before SI 2000/2424 came into force, exemptions were limited to those who had plants with capacity not exceeding 100 MW that did not provide more than 50 MW – or – who had plant that did not provide more than 10 MW)

1.6 Supply: to exempt those persons who supply electricity from their industrial or local embedded plant, in particular CHP and renewables, so that:

(i) they may supply customers up to a maximum of 5 MW of power- of which up to 2.5 MW may be to domestic customers (at present the aggregate limit is 500KW).
(ii) they may supply a single consumer or a qualifying group at a remote location subject to a requirement that one third of that consumption is supplied on-site or over private wires (at present there is no such provision apart from the aggregate limit of 500 KW).
(iii) customers of such suppliers may resell up to 10% of the power bought of which no more than 250 MW hours per annum may be supplied to domestic customers.

1.7 Distribution: to exempt those persons who distribute electricity over networks that:

- server industrial and commercial customers,
- do not distribute more than 2.5 MW of power to domestic customers except when they,
- distribute electricity from generating plant, in particular those based on CHP, located on their network provided they distribute no more than 1 MW of power from any such station to domestic customers located on the same network.

2. The benefits

2.1 This Order makes changes that are deregulatory. It comes into force in parallel with the separation of the distribution and supply of electricity and the introduction of new standard licence conditions for the generation, distribution and supply of electricity.

2.2 The reference case, for the purpose of assessing benefits, is where the Order is not made and generators, suppliers and distributors who would otherwise be exempt will require licences, thus making them subject to the range of duties and responsibilities under the licensing regime. As a result, the compliance costs, which the measure will permit those affected to avoid, are largely negative.

- The requirement to hold a generation licence restricts the level of flexibility in terms of how to operate under the new electricity trading arrangements. Licensees have to sign and be directly subject to the Balancing and Settlement Code (BSC). Without the proposed measure, the ways in which such generators and suppliers could aggregate their output and so benefit from such aggregation would be limited. In particular, it would prevent small generators from simply selling their output to local suppliers. Exemption would minimise the commercial and trading arrangements into which they would have to enter directly.

- The requirement to hold a supply licence means, for example, that, beyond the current *de minimis* limit of 500 KW, local authorities that operate CHP plants at one location, for instance, a swimming pool, cannot supply without a licence other premises such as libraries, hospitals or community housing. It also means that industrial suppliers that have a generation plant at one site may not use public wires to supply excess electricity for consumption at another of their own sites.

- The requirement to hold a distribution licence means, for example, that operators of networks based on industrial estates would have to establish a range of administrative services that are appropriate for the national networks, such as a meter point administration service; provide an infrastructure capable of supporting competition in electricity supply; and adhere to a range of accounting requirements from the regulatory regime. Alternatively the person would have to arrange for the network to be taken over by another licensee – if that were possible.

2.3 Customers will benefit from the facilitation of a wider range of options for taking energy supply and an infrastructure subject to minimal regulatory overhead. Since more CHP and renewable plant should be encouraged as a result of the Order, it is anticipated that the environment will benefit accordingly. The drawback for domestic consumers on private networks is that they will not have access to the competitive market. That is why, as a counterbalance, certain conditions are attached to the exemptions (see paragraph 2.4).

2.4 To the extent that there are compliance costs, these lie in operators ensuring that they do not breach the limits or conditions of the exemption. Conditions attached to exemptions will not be more onerous than those attached to existing licences, although, in the case of supply to domestic customers, two conditions prevent exploitation. These are:

- a maximum price at which electricity can be sold to domestic customers, broadly similar to the provision in the existing (Order SI 1997/989) for exempt supplies made under Class C to domestic customers and to the maximum resale price applied to landlords or caravan sites; and

- a new requirement (a direction by OFGEM will designate the form this shall take) to include in contracts with such customers a statement alerting them to the effects of the exempt status of the supplier, for example, that they may be locked into longer term contracts (necessary in the case of CHP) than would be the case with licensed suppliers.

2.5 OFGEM will also retain the power to require information from exempt distributors, and the Gas and Electricity Consumer Council (GECC) will be able to investigate any complaints about their performance.

2.6 The Government believes that the policy improves flexibility for existing and future on-site generators and suppliers and small generators, and provides certainty to existing and future private network operators. While provision exists for revisiting these exemptions, we do not presently envisage any need to adjust the limits or apply new conditions if operators behave responsibly.

3. Business sectors affected

3.1 In the case of generation and supply, the main sectors are small and medium sized generators – mainly Combined Heat and Power and renewables plants together with the main industrial, commercial and public sectors such plants serve. These focus on energy intensive industries such as steel, metals, paper, cement and chemicals and the public sector, including local authorities and, potentially, central Government. In the case of distribution the main sector comprises operators of small and medium sized private networks serving industrial and commercial consumers, usually on industrial sites, including ports; and local authorities and others serving housing developments.

4. Quantify and Value the Benefits

4.1 Henceforth, OFGEM will recover licensing costs from residual monopoly businesses, although those companies will be able to pass through costs. Neither licensed non-residual monopolies nor exempt generators and suppliers will, therefore have to meet those costs direct, and will be no better or worse off than under existing arrangements. However, there are also costs and obligations attached to the application for a licence – an initial licence fee and an obligation to advertise – that exempt operators will avoid. In the case of generation and supply, the benefit of not being a Party to the Balancing and Settlement Code is £3,000 per annum.

4.2 The more substantial benefit of having a broader range from which to aggregate output is difficult to judge as it will depend on the degree to which variations in output may be hedged, but could easily significantly outweigh the above figures.

5. Consultation

5.1 The Government received a range of views as a result of the consultation, the last of which took place in February 2001, when all those who had responded to previous consultations were consulted. It has also discussed the issues raised with interested parties, including OFGEM. It has taken account of these views in making the Order.

6. Summary and recommendations

6.1 The Department has concluded that, it is timely and appropriate to establish an exemption regime for distribution and to modify that for generation and supply.

Regulatory Quality Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by the responsible Minister: *Brian Wilson*

Date: 01/10/2001

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