EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (HARBURNHEAD) ORDER 2016

2016 No. 1000

1. Introduction

1.1 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. Purpose of the instrument

2.1 To grant an exemption from the requirement to hold an electricity generation licence to LDV Harburnhead Limited in respect of the 52MW Harburnhead onshore wind farm, located near Livingston, Scotland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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 licence. Section 5(1) of the Act provides that the Secretary of State may, by order, grant exemption from section 4(1)(a) either to a person or to persons of a class.

4.2 Section 5(2) and (3) of the Act set out the notice requirements for making such an order. Article 4 of, and Schedule 3 to, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers, etc) Order 1999 provide that the functions in section 5(1) of the Act are exercisable in or as regards Scotland only after consultation with the Scottish Ministers.

4.3 The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001, made under section 5(1), provides exemptions for various classes of electricity generation, but none of those class exemptions are applicable to the applicant in respect of this generating station.

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is Great Britain.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 LDV Harburnhead Limited has made an application for exemption from the requirement to hold an electricity generation licence in respect of the Harburnhead onshore wind farm.

7.2 As outlined in the Act (in particular section 3A), the principal objective of the Secretary of State in carrying out relevant functions under the Act is to protect the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems (including the reduction of emissions of targeted green-house gases), wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity.

7.3 In delivering the principal 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.

7.4 The Department's policy to date has broadly been that applications for individual exemption regarding stations of above 50MW and 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 is imposed by standard licensing conditions. This approach is reflected in the class exemptions referred to above for generating plants under 100MW.

7.5 The Department's view is that the impact that the Harburnhead onshore wind farm will have on the system is low, such that it would be appropriate to grant an exemption from the requirement to hold a generation licence, subject to certain conditions.

Consolidation

7.6 None.

8. Consultation outcome

8.1 A consultation was launched on 24 March 2016 and closed on 21 April 2016. A draft copy of 'The Electricity (Exemption from the Requirement for a Generation Licence) (Harburnhead) Order 2016' was appended to the consultation document. No consultation responses were received.

9. Guidance

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

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

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, or face legal action.

13. Contact

13.1 Chris Chown at the Department for Business, Energy and Industrial Strategy (Tel: 0300 068 6085 or email: chris.chown@beis.gsi.gov.uk) can answer any queries regarding the instrument.