EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (MARKINCH) ORDER 2013

2013 No. 1031

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 RWE Npower Renewables (Markinch) Limited in respect of the Markinch generating station, a 65MW combined heat and power (CHP) biomass station in Fife, Scotland (the "Markinch generating facility").

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 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 those under Class A and Class C of Schedule 2 to the Order:

[1] S.I. 2001/3270

Class A: Small generators

Persons (other than licensed generators) who do not at any time provide more electrical power from any one generating station than—

(1) 10 megawatts; or
(2) 50 megawatts in the case of a generating station with a declared net capacity of less than 100 megawatts;

disregarding—

(a) power supplied to—

i. a single consumer who occupies premises which are on the same site as the premises where the generating station is situated and who consumes all the power provided to him from that generating station at those premises or who supplies all or some of such power in circumstances specified in the description of Class B in Schedule 4 and consumes at those premises any of such power not so supplied by him; or

ii. two or more consumers who form a qualifying group each of whom occupies premises which are on the same site as the premises where the generating station is situated and consumes all the power provided to him from that generating station at those premises or supplies all or some of such power in circumstances specified in the description of Class B in Schedule 4 and consumes at those premises any of such power not so supplied by him; and

(b) for the purposes of paragraph (2) above power temporarily provided in excess of 50 megawatts due to technical circumstances outside the reasonable control of the person providing that power.

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 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 Great Britain.

6. European Convention on Human Rights

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

7. Policy background

7.1 RWE Npower Renewables (Markinch) Limited has made an application for exemption from the requirement to hold an electricity generation licence in respect of the Markinch generating facility.

7.2 As outlined in 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 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 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.

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 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 Markinch generating facility 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.

8. Consultation outcome

8.1 A consultation was launched on 5 March 2013 and closed on 2 April 2013. 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 minimal. The impact on charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 A regulatory impact assessment in respect of similar exemptions from the requirements of section 4(1)(a) of the Act was prepared in 2001 and can be obtained from the Department of Energy and Climate Change.

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, 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.