EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (EXEMPTIONS FROM THE REQUIREMENT FOR A GENERATION LICENCE) ORDER 2017

2017 No. 731

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To grant exemptions from the requirement to hold an electricity generation licence to the operators of eight generating stations in Great Britain.

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 applicants in respect of these generating stations.

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 The companies named in article 3(1) of the instrument have made application for exemption from the requirement to hold an electricity generation licence in respect of the named generating stations.

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 stations under 100MW.

7.5 The Department's view is that the impact that each of the generating stations named in the instrument 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 standard conditions.

Consolidation

7.6 None.

8. Consultation outcome

8.1 A consultation was launched on 4 April 2017 and closed on 2 May 2017.

8.2 One consultation response was received from an electricity supplier, which objected to the granting of exemptions to:

RWE Cogen UK Limited, in respect of the Cheshire Power Station, a 85.5MW plant located at Ellesmere Port, South Wirral, Cheshire; and

Snowdonia Pumped Hydro Limited, in respect of the Glyn Rhonwy Pumped Hydro, a 99.9MW plant located North West of Llanberis, Gwynedd.

8.3 The representation raised concerns that both applicants had i) not demonstrated sufficiently that the costs of obtaining a generation licence would be disproportionate; and ii) that the level of 'embedded benefits' to be claimed by both applicants was not in the consumer interest. Embedded benefits are payments which some small electricity generators receive from suppliers as part of electricity network charging arrangements.

8.4 The Secretary of State has considered the consultation response and decided to proceed with granting exemptions to all eight applicants. In particular:

I. The Department considers that in determining licence exemption applications only limited weight should be given to network charging issues, such as the level of embedded benefits that an applicant may receive, because these are matters for Ofgem, the independent regulator. Ofgem has recently reviewed embedded benefits and published a decision to reduce the level of such payments significantly from April 2018. The Department does not consider that the arguments made in the consultation response about this outweigh other factors in favour of granting the exemptions.

II. The generating stations are under the capacity threshold (100MW) below which it is generally considered (absent any other complicating factors) that requiring the generator to obtain and comply with the conditions of a generation licence would be disproportionate. The Department considers, having taken account of the information provided by the applicants and the arguments set out in the consultation response, that this would be the case for all the applicants.

III. National Grid has not indicated any local problems with balancing the output of any of the generating plants and the impact on the total electricity system appears therefore to be minor.

9. Guidance

9.1 Guidance exists on the Government website and in the Explanatory Notes to the Act and the Class Exemptions Order 2001.

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.gov.uk) can answer any queries regarding the instrument.