EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (INDIVIDUAL EXEMPTION FROM THE REQUIREMENT FOR A SUPPLY LICENCE) (E.ON UK CHP LIMITED) (ENGLAND) ORDER 2020

2020 No. 569

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 exemption from the requirement to hold an electricity supply licence to E.ON UK CHP Limited, in respect of supply of electricity to premises located in specified areas of the port of Liverpool, until 31 March 2024.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is ***Great Britain.***

4.2 The territorial application of this instrument is ***England***.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Section 4(1)(c) of the Electricity Act 1989 ("the Act") makes it an offence for a person to supply 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 or exemption. Section 5(1) of the Act provides that the Secretary of State may, by order, grant exemption from section 4(1)(c) either to a person ("an individual exemption") or to a class of persons.

6.2 Section 5(2) and 5(3) of the Act set out the notice requirements for making such an order.

6.3 The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 ("the Class Exemptions Order") [1], made under section 5(1) of the Act, provides exemptions for various classes of electricity supply, however none of those class exemptions are applicable to the supply of electricity by E.ON UK CHP Limited in respect of some areas of the port of Liverpool.

7. Policy background

What is being done and why?

7.1 E.ON UK CHP Limited has made an application for an individual exemption in respect of the supply of electricity from a CHP (Combined Heat and Power) plant which is located at the port of Liverpool ("the plant") and supplies electricity only to premises at the port of Liverpool. The application relates to supply to premises within specified discrete areas of the port of Liverpool (highlighted in yellow in the plan in the Schedule to this instrument).

7.2 Section 3A of the Act provides that 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 their interests in 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 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, the Secretary of State's regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

7.4 The Department's exemptions policy is set out in the Electricity Generation, Distribution and Supply Licence Exemptions - Frequently Asked Questions document[2] ("the exemptions policy document"). The exemptions policy document states that in most cases it is not appropriate to grant exemption from the requirement for a supply licence "*because it is rarely considered appropriate for these activities not to be subject to the full terms of licensing regime"* but that "*applications for exemption where exceptional circumstances apply may still be possible*".

7.5 E.ON UK CHP Limited operate the plant which has a 31 Mega Watt (MW) capacity and supplies heat and electricity to non-domestic consumers located at the port of Liverpool. E.ON UK CHP Limited have been granted a lease for the plant until April 2024 by the owner and operator of the port. Consumers occupying premises at the port are within a distinct geographical site which contains cables owned by the owner and operator of the port ("private wires"), and those consumers create a demand for electricity of 18MW. The consumers which create 10MW of that demand are supplied by the plant over the private wires and E.ON UK CHP Limited have assessed that that supply is exempt under the Class Exemptions Order.

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[1] S.I 2001/3270.

[2] www.gov.uk/government/uploads/system/uploads/attachment_data/file/617786/Exemption_FAQs_updated_June_2017rg.pdf

7.6 The consumers which create the remaining 8MW of demand are premises in discrete areas of the port which are unable to be supplied from the plant directly over the private wires because of distribution constraints within the local infrastructure serving the port, and E.ON UK CHP Limited have assessed that that supply does not fall within the Class Exemptions Order, so those premises are currently supplied by a licensed supplier.

7.7 The plant is a small generator with a declared net capacity of less than 100 MWs, and consumer interests will not be disproportionately disadvantaged if an individual exemption is made in respect of the supply to discrete areas of the port which E. ON UK CHP Limited have assessed does not currently fall within the Class Exemptions Order.

7.8 In consideration of the exceptional circumstances of the supply of electricity by the plant operated by E.ON UK CHP Limited when considered together with the nature of supply of electricity to the port of Liverpool, the principal objective (described in paragraph 7.2 above), and the exemptions policy document (described in paragraph 7.4 above), article 3(1) of this instrument grants an individual exemption which will exempt E.ON UK CHP Limited in respect of supply to premises within discrete areas of the port identified in the plan in the Schedule to this instrument.

7.9 This instrument imposes conditions on the individual exemption (in article 3(2)) so that it only covers premises within the discrete areas of the port identified in the plan in the Schedule to this instrument (being premises where consumers create 8MW demand) and will last until April 2024 when E.ON UK CHP Limited's lease for the plant expires.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 In accordance with Section 5(2) of the Act, a notice was published on the Government website setting out the proposal to make the instrument, containing the terms of this instrument, and inviting representations, on 24 April 2020**.**

10.2 The notice period closed on 22 May 2020 and no representations were received.

11. Guidance

11.1 Guidance on licence exemptions exists on the Government website[3].

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

[3] www.gov.uk/guidance/electricity-licence-exemptions

12.3 An Impact Assessment has not been prepared for the licence exemptions granted by this instrument because the impact is believed to be de-minimis.

13. Regulating small business

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

14. Monitoring & review

14.1 There are no formal monitoring or review requirements for this instrument. However, failure by E.ON UK CHP Limited to meet any of the conditions in the instrument will render the exemption invalid. In such circumstances, E.ON UK CHP Limited would not be exempt from the requirement to hold a licence to supply electricity in respect of supply of electricity to premises located in specified areas of the port of Liverpool and would need to obtain an electricity supply licence to comply with the Act.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Minister Kwasi Kwarteng has made the following statement. The impact of the measures in this instrument are not expected to be significant (less than £5 million annualised net business impact). It would be disproportionate to include such a review clause because of the costs involved in undertaking such a review, with limited scope for change following any review.

15. Contact

15.1 Chris Chown at the Department for Business, Energy and Industrial Strategy (Telephone: 0300 068 6085 or email: chris.chown@beis.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Jane Walker, Deputy Director for Markets and Affordability, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kwasi Kwarteng, Minister at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.