EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (INDIVIDUAL EXEMPTIONS FROM THE REQUIREMENT FOR A GENERATION LICENCE) (ENGLAND AND WALES) ORDER 2018

2018 No. 967

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 K3 CHP Limited in respect of Kemsley Generating Station and Ferrybridge MFE 2 Limited in respect of Ferrybridge Multifuel 2 Generating Station.

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 England and Wales, and Scotland.

4.2 The territorial application of this instrument is England and Wales.

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)(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.

6.2 Section 5(2) and (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 generation, but none of those class exemptions are applicable to the generating stations named in the instrument.

7. Policy background

What is being done and why?

7.1 K3 CHP Limited and Ferrybridge MFE 2 Limited have made applications for exemption from the requirement to hold an electricity generation licence in respect of the generating stations named in article 3.

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 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]. Under the exemptions policy, applications for individual exemption regarding stations of above 50 megawatts and up to 100 megawatts capacity may be considered for exemption because plant of less than 100 megawatt capacity will generally have a low impact on the total electricity system and it is generally considered appropriate that such stations be exempted from the same degree of system regulation (and cost) as is imposed by standard licensing conditions. In determining applications, the Secretary of State takes account of the impact of the exemption on the safe and secure operation of the electricity system, and the interests of consumers, and why it would be disproportionate for the applicant to meet the costs and obligations of a licence.

7.5 The impact that the generating stations named in the instrument will have on the system is low, and it would be appropriate to grant an exemption from the requirement to hold a generation licence, subject to standard conditions (set out in articles 4 and 5 of the instrument).

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.

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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

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 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 20 July 2018[3].

10.2 The notice period closed on 17 August 2018 and no representations were received.

11. Guidance

11.1 Guidance on licence exemptions exists on the Government website.[4]

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.

12.3 An Impact Assessment has not been prepared for this instrument because the impact is believed to be de-minimis. A general regulatory impact assessment in respect of exemptions from the requirements of section 4(1)(a) of the Electricity Act 1989 was prepared in 2001 and can be obtained from the Department for Business, Energy and Industrial Strategy, Wholesale Energy Markets Division, 1 Victoria Street, London SW1H 0ET. Copies have been placed in the libraries of both Houses of Parliament.

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 K3 CHP Limited or Ferrybridge MFE 2 Limited to meet any of the conditions in the instrument which relate to them, will render the exemption invalid. In such circumstances, the relevant company would not be exempt from the requirement to hold a licence to generate electricity, and would need to obtain a licence to comply with the Act.

15. Contact

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

15.2 David Buttery, Deputy Director for Energy Security of Supply, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

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

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[3] www.gov.uk/government/publications/electricity-generation-licence-requirement-proposals-for-exemptions-for-ferrybridge-and-wheelabrator-kemsley-stations

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