



Department for
Business, Energy
& Industrial Strategy

ELECTRICITY GENERATION, DISTRIBUTION AND SUPPLY LICENCE EXEMPTIONS

Frequently Asked Questions (FAQs)

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Executive Summary

There follows a list of frequently asked questions concerning electricity generation, distribution and supply licence exemptions. These are designed to give introductory information regarding the regulatory regime governing the activities of generating, distributing and supplying energy in Great Britain, the exemptions available under that regime and the Department's process and policy on considering exemption applications. Detailed questions concerning interpretation of legislation should be directed to your legal advisers and questions regarding licences themselves should be directed to the energy regulator, Ofgem.

Electricity Generation, Distribution and Supply Licence Exemptions – FAQs

Q. Do I need a generation, distribution or supply licence?

A. If you intend to generate, distribute or supply electricity in the UK you will need to determine whether a licence or exemption is required.

The legal prohibition is contained in section 4(1) of the Electricity Act 1989, which makes it an offence for a person to, among other things:

- generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given (section 4(1)(a));
- distribute electricity for that purpose (section 4(1)(bb)); or
- supply electricity to any premises (section 4(1)(c));

unless authorised to do so by a licence (or otherwise exempted).

Definitions of what constitutes ‘generation’, ‘distribution’ and ‘supply’ can be found at sub-sections 4(4) and (5) of the Electricity Act 1989.

We recommend you seek legal advice if you are unsure whether you will be generating, distributing and/or supplying electricity for the purposes of the prohibition or if you are uncertain whether a licence or exemption would be appropriate in your circumstances.

Q. What exemptions are available?

A: The Secretary of State may grant exemption from the requirement to hold a licence under section 4(1) either to an individual person or to “persons of a class” (section 5(1)(a), Electricity Act 1989).

1. **Class exemption:** Class exemptions will apply automatically to those persons falling within the terms of a relevant class exemption. The Electricity (Class

Exemption from the Requirement for a Licence) Order 2001 (“the Class Order”) created a number of class exemptions applicable to discrete categories of generation, distribution and supply activities.

In the case of generation for example, there is a class exemption for small scale generators producing no more than 10 MWs of electrical power from any one generating station or 50 MWs in the case of a generating station with a declared net capacity of less than 100 MWs (see article 3(1)(a) and Schedule 2 to the Class Order).

The Order can be found at:

<http://www.legislation.gov.uk/uksi/2001/3270/contents/made>

2. Individual exemption: The Secretary of State may also consider applications for exemption for individual generation, distribution or supply undertakings that do not fall under class exemption.

Generation: With regard to generation activities, the Department’s policy has broadly been to only consider applications for generating stations of less than 100 MWs capacity. This is because such plants will generally have a low impact on the total electricity system and it is considered appropriate therefore that, subject to consultation, such stations be exempted from the same degree of system regulation (and costs) as imposed by standard licensing conditions.

Distribution and Supply: The Department considers that in most cases it is not appropriate to grant exemption from the requirements of supply or distribution licence. This is because it is rarely considered appropriate for these activities not to be subject to the full terms of licensing regime. Applications for exemption where exceptional circumstances apply may still be possible. We suggest you contact the Department in the first instance.

Q. What will I be exempt from?

A. An exemption under section 5 of the Electricity Act 1989 exempts the holder from the requirement to hold a licence in respect of the licensable activity under section 4 (and thereby from the conditions arising from holding such licences).

Details of standard licence conditions can be found at:

<http://www.ofgem.gov.uk/Licensing/Pages/Licensing.aspx>

Q. How do I apply for a licence?

A. The national energy regulator, Ofgem, considers gas and electricity licence applications and decides whether or not to grant a licence. More information can be found at:

<http://www.ofgem.gov.uk/LICENSING/WORK/Pages/Work.aspx>

Class Exemptions

Q. Do I need to apply to BEIS/Ofgem for a class exemption?

A. Class exemptions are automatically applicable in respect of an undertaking meeting the conditions of the exemption in question. In such circumstances, an undertaking does not need to apply to the Department or to Ofgem for the exemption to apply, or to notify that they are claiming a class exemption.

Individual exemptions on the other hand are granted by the Secretary of State and an application must be made (see below).

We strongly recommend that you seek legal advice if you are unsure of whether you are able to benefit from a class exemption. It is an offence to generate, distribute or supply electricity without a licence unless you are otherwise exempt.

Q. Can BEIS give advice on whether I qualify for class exemption?

A. The Department cannot give specific advice as to whether individual operators fall within a class exemption; it falls to those wishing to benefit from a class exemption to determine whether the activities they propose to undertake will fall within the scope of its terms. We strongly recommend that you seek legal advice if you are unsure as to whether proposed generation, distribution or supply activities will require a licence (or if an exemption is available).

Individual generation exemptions

As mentioned, the Department's policy to-date has broadly been that in most cases it is not appropriate to grant exemption from the requirements of supply or

distribution licence. What follows, therefore, relates to applications for generation exemptions only.

Q. What information do I need to provide to make an application?

A. If you wish to make an application to the Secretary of State for exemption of a generating plant (which should in most cases be less than 100MWs), please write to the Department with the following information:

- Name of generating plant;
- Owners of plant and parent company (if any);
- Company numbers of the owners of plant and parent company;
- Capacity of generating plant;
- Detailed location of plant including Ordnance Survey six figure Land Ranger reference (eg SS526363);
- Details of which distribution network operator (DNO) is providing a connection to the plant;
- Timing - when the plant due to begin generation and when the applicants would like the exemption to be in place;
- Contact details including email address and phone number;
- Any other information that may be considered to be relevant.

Applicants should also provide a detailed covering letter outlining:

- i) why they believe it is not appropriate to generate under the normal licensing regime;
- ii) why the Secretary of State should exempt the plant from licensing requirements.

The letter will need to demonstrate that exemption does not pose a threat to the safe and secure operation of the electricity system or the interests of customers and why it would be disproportionate for the applicant to meet the costs and obligations of a licence.

Address for application:

Chris.chown@beis.gov.uk

Q. What will the Secretary of State take into account?

A. The Secretary of State will consider each application for an exemption on its merits.

As detailed above, the Department's current policy is that applications should only be considered in respect of stations of less than 100MW capacity as only stations with a low impact on the total electricity system are considered eligible for exemption from the regulatory measures imposed by licence conditions.

This will inform the Secretary of State's initial decision on whether to consider granting an exemption. Before granting an exemption however, the Secretary of State is required to consult on draft exemption orders for a minimum of 28 days (section 5(2)(c), Electricity Act 1989). This will normally entail publication of the draft order on the the Department's website and inviting comments from interested parties. The Order will also be sent to Ofgem and Citizens Advice. Applications in respect of exemptions applicable in Scotland are also brought to the attention of Scottish Ministers.

In reaching a final decision, the Secretary of State will take into account the views of those who respond to the 28 day consultation and all other factors relevant to the decision taking account of the duties of the Secretary of State under the Electricity Act 1989.

As outlined in the Act (in particular under 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.

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.

The Secretary of State will take particular note of any evidence that the impact on the safe and secure operation of the total electricity system will in fact be greater than originally anticipated.

Q. I am applying for exemption for a generating plant located in Scotland.

A. Only in so far as, for exemptions applicable in Scotland, the Department is required to consult Scottish Ministers (under article 4 of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999). This will be conducted alongside (i.e. simultaneous with) the 28 days consultation process.

Q. How long will the process take?

A. The Department aims to consider and reach a decision on applications for individual exemption within a 9 month timescale. However, we strongly advise that applicants allow for a longer period as this can be subject to delays.

Q. Is exemption always given?

A. No, there is no guarantee that exemption will be given. We strongly recommend that applicants prepare an alternative position in the event that their application is unsuccessful.

Q. What conditions will normally apply to a generation exemption?

A. The Secretary of State may grant exemptions unconditionally or subject to such conditions as he may specify (section 5(1)(c), Electricity Act 1989). The Secretary of State will consider the terms of each application for an exemption on its merits having taken into account all relevant information and the results of consultation. However, it would be usual as a minimum for the following conditions to be attached to a generation licence exemption:

- that each generating station is connected to the total system in Great Britain:
- that except in circumstances outside the reasonable control of the relevant operator, the generating station does not export more than 100 MWs of electrical power to the total system; and
- that the relevant operator does not hold a licence.

Q. Can the Secretary of State apply other conditions?

A. Yes, the Secretary of State may make an exemption ‘subject to such conditions as may be so specified’ (Section 5(1)(c) of the Electricity Act 1989).

Q. Where can I see examples of exemptions given?

A. Examples of previous applications for exemption and the decision made on them can be found at: <https://www.gov.uk/electricity-licence-exemptions>

Q. Does it matter what type of plant my application is for?

A. The generating technology used is not directly part of the criteria used to assess an application. However any impact on security of network operation resulting from the nature of the generating technology used will be taken into account.

Q. I wish to apply for a time limited exemption – is this possible?

A. Yes, it is possible to apply for an exemption with a condition related to the length of time it will remain in force. The Secretary of State may decide to impose a shorter time limit than that which has been applied for if considered appropriate.

Q. I have a licence but now wish to apply for exemption

A. Although it is possible to apply for an exemption whilst holding a licence, you cannot hold both a licence and an exemption simultaneously. You should therefore liaise with both the Department and Ofgem with regard to the possibility of synchronising timing for surrendering a licence and gaining an exemption if granted.

Q. I have an exemption but now wish to apply for a licence

A. Although it is possible to apply for a licence whilst holding an exemption, you cannot hold both a licence and an exemption simultaneously. You should therefore liaise with both the Department and Ofgem with regard to the possibility of synchronising timing for revocation of an exemption order and the commencement date of a licence if granted.

Q. Can a generation exemption be revoked/surrendered?

A. Yes. The Secretary of State may revoke an order by which an exemption was granted:

(a) at the person's request;

(b) in accordance with any provision of the order by which the exemption was granted; or

(c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.

(section 5(8), Electricity Act 1989)

Similar powers exist under section 5(9) and (10) of the Electricity Act 1989 in respect of revoking a class exemption order or withdrawing an exemption from a person within a class (respectively).

Broadly speaking, if revoking an exemption otherwise than at the beneficiary's request, the Secretary of State is required to consult Ofgem and the beneficiary accordingly (section 5(11) and (12), Electricity Act 1989).

Q. Where can I obtain more advice?

Advice on making an application to the Secretary of State for exemption can be sought from:

Chris.chown@beis.gov.uk