



Department for
Business, Energy
& Industrial Strategy

Exemptions from the Requirement for an Electricity Licence

Call for Evidence

Closing date: 8 March 2021



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Introduction

Since the introduction of statutory powers, statutory class and individual exemption orders and government policy for granting exemptions from requirements to hold electricity licences (the “exemptions regime”)¹, Great Britain’s energy landscape has changed substantially, for example through the growth of distributed generation and renewables.

This call for evidence supports a review of the exemptions regime to ensure it is, and remains, fit for purpose in this changing landscape and continues to protect consumers’ interests. This call for evidence will help the Government to gain a fuller and better picture of how the exemptions regime is currently operating, with a view to understanding how it has interacted with changes in the energy market. The call for evidence will provide a basis for considering whether changes to the exemptions regime are needed to reflect policy aims, in particular, the Government’s objectives to ensure that all market participants (including those who are exempt from licence requirements) pay their fair share of policy and network costs and achieving its Net Zero commitment. The evidence obtained by this exercise is expected to inform a future consultation on potential changes to the exemptions regime, as part of this review.

The review does not include questions on transmission licence exemptions, as it will focus on the types of licence covered by the statutory class exemption order and which have been the subject of the majority of individual exemption orders.

We are aware that individual and class exemptions are likely to be used by a wide range of stakeholders and cover large industrial sites, ports, airports, and shopping centres to caravan and motorhome parks, and other small business developments. However, our knowledge of who is utilising exemptions (the “exempt sector”) is limited because those who benefit from a class exemption are not required to notify the Government. Thus, a business which considers that it meets the conditions for a class exemption – class exemptions comprising the lion’s share of licence exempt entities – does so automatically without needing to contact the Government or energy regulator. Although this feature of the exemptions regime removes an administrative burden for small businesses, it also makes it difficult to assess whether class exemptions are working appropriately for their diverse beneficiaries or whether changes might be necessary.

We are therefore launching a call for evidence, which will collect information from existing exemption holders (class or individual) and other stakeholders who have an interest, with the aim of increasing Government’s knowledge of the exempt sector and understanding of what might be required to align the exemptions regime with current and future market features and broader policy goals. Once concluded, BEIS will collate and analyse returns with a view to developing proposals for potential changes to the exemptions regime on which we will consult.

¹The foundation of the current legislative framework for granting exemptions from the requirement for a licence for the generation, distribution and supply of electricity is set out in the Electricity Act 1989. In 2001, the Electricity (Class Exemptions from the Requirement for a Licence) Order came into force, replacing a previous version from 1997. The 2001 Order was last amended in 2007.

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General information

Why we are issuing a Call For Evidence

As part of a wider review of the exemptions regime (including legislation, powers to exempt and policy), we are issuing a call for evidence to increase BEIS's understanding of the way in which the exempt sector is currently operating, with a view to consulting on potential changes in due course.

Call For Evidence details

Issued: 30 October 2020

Respond by: 8 March 2021

Enquiries to:

Wholesale Electricity Markets
Markets and Affordability
Department for Business, Energy and Industrial Strategy
3rd Floor
1 Victoria Street
London
SW1A

Tel: 0300 068 6085

Email: exemptions@beis.gov.uk

Reference: Electricity Licence Exemptions CfE

Audiences:

Those with an interest in the exemptions regime, including:

- Those benefitting from an exemption from the requirement for an electricity licence.
- Those wishing to benefit from an exemption but unable to do so due to the requirements of exemptions legislation and/or policy.
- Any other stakeholders, including (but not limited to) licensed stakeholders, consumers and trade bodies.

Territorial extent:

England, Scotland and Wales.

How to respond

Respond online at: beis.gov.uk/citizenspace.com/energy-strategy-networks-markets/electricity-licence-exemptions-cfe

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](https://www.gov.uk). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This call for evidence has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this call for evidence has been conducted, please email: beis.bru@beis.gov.uk.

Background

The exemptions regime comprises the powers, legislation and policy in place to enable exemptions from licence requirements to be granted.

Exemptions Power

Electricity generation, distribution, supply and transmission are required to be licensed by virtue of section 4 of the Electricity Act 1989 ("the Act"), unless the person is exempt from the requirement to hold a licence. Section 5(1) of the Act gives the Secretary of State the power to exempt individuals or classes of individuals from the requirements to hold a supply, generation, distribution or transmission licence by order (a statutory instrument subject to the negative procedure). The Secretary of State may grant exemptions unconditionally or subject to such conditions as the order may specify (section 5(1)(c)). As relayed in the Introduction, this review will not cover transmission licence exemptions.

Definitions of what constitutes 'generation', 'distribution' and 'supply' are in section 4(4) of the Act. Schedule 2ZA to the Act sets out the duties of distribution licence exemption holders and Schedule 2ZB to the Act sets out the duties of supply licence exemption holders.

Secretary of State's principal objective and general duties under the Act

In deciding whether to exercise the power to grant an individual or class exemption, the Secretary of State must act in accordance with the principal objective and general duties of the Secretary of State, as outlined in the Act (Section 3A). The principal objective is to protect the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems. The interests of consumers include their interests in the reduction of emissions of targeted green-house gases). The exercise of the power must be best calculated to further the principal objective, 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 deciding whether to exercise the power, the Secretary of State must also have regard to, among other things, the need to ensure security of supply, the need to ensure licence holders can finance the activities funded through licence conditions, and the need to contribute to the achievement of sustainable development.

Class Exemptions

The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (the "Class Exemptions Order")² sets out the circumstances in which a person will be considered exempt from the requirement to hold a generation, distribution and supply licence, and conditions attached to each such exemption. The following is an overview of the Class Exemptions Order.

Generation Class Exemptions

In the case of generation, the following class exemptions are available to stakeholders³:

² S.I. 2001/3270

³ <https://www.legislation.gov.uk/ukSI/2001/3270/schedule/2>

- Class A: Small generators – Generates lower than 50 megawatts with a declared net capacity of up to 100 megawatts
- Class B: Offshore generators
- Class C: Generators not exceeding 100 megawatts connected to the total system on 30th September 2000
- Class D: Generators never subject to central despatch

Our understanding through limited contact with stakeholders is that these classes of exemptions are generally utilised by small and medium scale generators (including onshore and offshore wind farms), Combined Heat and Power (CHP), solar and energy from waste plant. There are also legacy exemptions for larger scale generation on industrial sites.

Distribution Class Exemptions

In the case of distribution, the following class exemptions are available to stakeholders⁴:

- Class A: Distribute up to 2.5 megawatts to domestic consumers
- Class B: Distribute up to 1 megawatt to onsite domestic consumers from onsite generation
- Class C: Distribute to only non-domestic consumers

Our understanding through limited contact with stakeholders is that these classes of exemption are mainly utilised by stakeholders distributing electricity through private wire networks (this could be a network encompassing an industrial site, port or airport or a simpler network around a mobile home park or residential development) or remotely via public networks.

Supply Class Exemptions

In the case of supply, the following class exemptions are available to stakeholders⁵:

- Class A: Small Suppliers – Supply no more than 5 megawatts which they generate themselves of which only 2.5 megawatts are supplied to domestic consumers
- Class B: Resale of electricity supplied by a licensed or exempt supplier
- Class C: On-site Supply (varied up to 100 megawatts)
- Class D: Offshore Supply

Our understanding through limited contact with stakeholders is that these classes of exemption are mainly utilised by stakeholders supplying various types of development, both domestic and commercial, including shopping centres, residential developments, student accommodation, mobile home parks, ports, airports, industrial sites including energy intensives. We understand that the Class B exemption is used in the resale of electricity via tenancy agreements by landlords and others.

⁴ <https://www.legislation.gov.uk/ukxi/2001/3270/schedule/3>

⁵ <https://www.legislation.gov.uk/ukxi/2001/3270/schedule/4>

Individual Exemptions and Departmental Policy

Individual exemptions are granted at the Secretary of State's discretion under section 5(1) of the Act. The Department's policy (see below) is applied in considering each application for an individual exemption.

Exemptions Policy

The BEIS policy 'Electricity Generation, Distribution and Supply Licence Exemptions FAQs'⁶ (the "Exemptions Policy") sets out the policy relating to class exemptions and individual exemptions.

Exemptions were envisaged as a means by which small scale operators would not be burdened by licensing costs and obligations that could be considered to be disproportionate to the scale of their impact on the electricity system.

Generation Individual Exemptions

With regard to generation activities which do not fall within a class exemption (over 50 megawatts capacity), the Exemptions Policy has broadly been to only consider applications for generating stations capable of generating less than 100 megawatts capacity (although Class C and Class D in the Exemptions Order allow generation up to 100 megawatts capacity under specified circumstances). This is because such plants will generally have such a low impact on the total electricity system that it is considered appropriate that, subject to consultation on a proposed exemption, such stations should be exempted from the degree of system regulation (and costs) which would be imposed by being subject to a licence.

Supply and Distribution Individual Exemptions

The Department considers that in most cases it is not appropriate to grant individual 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, other than where the supply or distribution activities fall within one of the class exemptions under the Class Exemptions Order. Applications for individual exemption where exceptional circumstances apply may still be possible.

Other considerations

The principal objective of, and general duties on, the Secretary of State when deciding whether to exercise the power to grant an exemption are set out above.

In deciding whether to exercise the power, the Secretary of State should also have regard to, among other things, the need to ensure security of supply, the need to ensure licence holders can finance the activities funded through licence conditions 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.

If the Secretary of State is minded to grant an exemption, the Secretary of State is first required to publish a notice of the proposed exemption and giving a minimum of 28 days for representations to be made (section 5(2) of the Act). The draft order will also be sent to Ofgem

⁶ <https://www.gov.uk/guidance/electricity-licence-exemptions#licence-exemptions>

and Citizens Advice. Applications in respect of exemptions applicable in Scotland are also brought to the attention of Scottish Ministers.

Why review the exemptions regime now?

The exemptions regime was introduced to give small scale electricity operators the opportunity to avoid the costs and obligations associated with holding an electricity licence, which were considered to be disproportionate to the scale of these operators' impact on the electricity system. This usually (but not exclusively) includes the costs of the obligations to contribute to administration, balancing, policy and network costs.

The current exemptions regime has been in place for a number of years. However, the wider energy market has developed since the legislation underlying the exemptions regime came into effect. For example, there is now much more decentralised, low carbon energy and there is likely to be more in the future. New organisations offering energy flexibility services to consumers and businesses, through electricity storage and growing numbers of smart appliances and electric vehicles, will form a key part of the energy system. The review will therefore identify whether changes are needed to ensure the exemptions regime functions appropriately for current and future energy markets.

Additionally, two aspects of the policy landscape have changed since the exemptions regime was introduced: firstly, the introduction of the Government's net zero target; and secondly, the Government is now focused on ensuring all market participants pay their fair share of policy and network costs. The review will therefore also identify whether changes are needed to account for these policy areas.

The review has the following aims:

Improve Department's understanding of exempt sector

The Department's knowledge of the exempt sector is limited. The Class Exemptions Order provides that operators need to determine if they meet the Order's requirements to qualify for an exemption – there is no obligation to notify BEIS or the industry regulator. Whilst this was seen as an appropriate deregulatory measure, it has meant that our understanding of the scale of class-exempt generation, distribution and supply is very limited. With the current exemptions regime having been in place for a number of years, we believe it is now time to enlarge our understanding of how exemptions are being utilised with a view to considering whether changes are needed as per the aims of the review. It will also enable the Government to engage with the exempt sector more effectively in its policy considerations.

Improve Exemptions Regime

Stakeholders have told us they can sometimes find aspects of the current exemptions regime to be opaque and difficult to interpret. The review therefore aims to understand whether greater clarity needs to be given to businesses regarding the licence exemptions regime as a whole in Great Britain or specific aspects of it.

We are also interested in exploring whether there are opportunities to extend the scope of exemptions (particularly around distribution and supply of electricity) and how that would assist with Government meeting its objectives.

Ensure Exemptions Regime is consistent with Fair Share principles

The Government's aim is to ensure that all market participants, including those who are exempt, pay their fair share of administrative, policy and network costs. This call for evidence seeks to understand how exemptions are currently being used in practice, including the cost implications for exemptions holders and licence holders. This will assist in forming a view as to what a fair share of policy and network costs means for exemption holders and licence holders and the way in which the exemptions regime should be amended and operated. This is in line with the Secretary of State's principal objective of protecting the interests of existing and future consumers by ensuring that each energy user pays a fair and proportionate price and that licence holders can meet the costs of financing activities funded through licence obligations.

Ensure Exemptions Regime is consistent with Net Zero commitment

The UK has a legally binding commitment to bring its greenhouse gas emissions to net zero by 2050. Net zero means any emissions would be balanced by schemes to offset an equivalent amount of greenhouse gases from the atmosphere, such as planting trees or using technology like carbon capture and storage. The exemptions regime must support the Government's net zero objective and take into account the future development of the electricity industry.

What we are asking for

We are launching a call for evidence to collect information from existing and potential exemption holders, as well as other stakeholders, in a number of areas outlined in the call for evidence questions.

- **Exemption holders:** This will include both those stakeholders that hold class exemptions and those granted individual exemption by the Secretary of State. Please note that, whilst we hold information on holders of individual generation exemptions granted by the Secretary of State, we still welcome views from these stakeholders on the exemptions regime. We ask that exempt stakeholders give details of the exemption they hold, including background and contact information, along with their views and experience of the exemptions regime (including legislation and departmental policy).
- **Licence holders:** We also ask licence holders who have previously considered accessing class exemptions or applying for individual exemptions, to outline why they were required to apply for a licence or chose other regulatory means.
- **Other stakeholders:** Additionally, we welcome the views of other stakeholders, including those considering an exemption in the future, those operating with a licence, and those with an interest in exemptions or energy policy more generally (e.g. trade bodies, consumer bodies, individuals). In summary, all information is welcome and will increase our knowledge in this area.

Next steps

Responses to the call for evidence will be collated and analysed. BEIS will then consider developing and consulting on proposals for reform to the exemptions regime.

This call for evidence is available from: www.gov.uk/government/consultations/exemptions-from-the-requirement-for-an-electricity-licence-call-for-evidence

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