



**EXEMPTION FROM THE  
REQUIREMENT FOR A LICENCE TO  
GENERATE ELECTRICITY:  
PROPOSAL TO MAKE THE  
ELECTRICITY (EXEMPTION FROM  
THE REQUIREMENT FOR A  
GENERATION LICENCE)  
(MARKINCH) ORDER 2013 AND THE  
ELECTRICITY (EXEMPTION FROM  
THE REQUIREMENT FOR A  
GENERATION LICENCE) (BAILLIE)  
ORDER 2013**



## **EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO GENERATE ELECTRICITY: PROPOSAL TO MAKE THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (MARKINCH) ORDER 2013 AND THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (BAILLIE) ORDER 2013**

The Secretary of State, pursuant to section 5(2) and (3) of the Electricity Act 1989 (“the Act”) as amended by the Utilities Act 2000, hereby gives notice that he proposes to make orders under section 5(1) of the Act granting exemption from the requirement to hold a generation licence under section 4(1)(a) of the Act to:

- RWE Npower Renewables (Markinch) Limited in respect of the Markinch Biomass CHP facility.
- Baillie Windfarm Limited (a subsidiary of Statkraft UK Ltd), in respect of the Baillie onshore wind farm.

The Secretary of State’s reasons for making such orders on the terms proposed are set out in the attached document entitled “Exemption from the Requirement for a Licence to Generate Electricity: Proposal to Make the Electricity (Exemption from the Requirement for a Generation Licence) (Markinch) Order 2013 and the Electricity (Exemption from the Requirement for a Generation Licence) (Baillie) Order 2013 (“the document”). The terms of the proposed draft orders are set out in the appendix to the document.

Representations may be made with respect to the proposals in the document by 2 April 2013 to:-

*Chris Chown, Energy Market Framework, Department of Energy and Climate Change, Fourth Floor, 3 Whitehall Place, London SW1A 2HD (telephone: 0300 068 6085; e-mail: [chris.chown@decc.gsi.gov.uk](mailto:chris.chown@decc.gsi.gov.uk))*

**5 March 2013**

# EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO GENERATE ELECTRICITY: PROPOSAL TO MAKE THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (MARKINCH) ORDER 2013 AND THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (BAILLIE) ORDER 2013

## INTRODUCTION

1. The Secretary of State proposes to make orders under section 5(1) of the Electricity Act 1989 (“the Electricity Act”), as amended by the Utilities Act 2000, granting exemption from the requirement to hold a generation licence to:

RWE Npower Renewables (Markinch) Limited. in respect of the Markinch Biomass CHP facility, a CHP generating station situated approximately 1.5 km east of Glenrothes, Scotland (the Order); and

Baillie Windfarm Ltd (a subsidiary of Statkraft UK Ltd), in respect of the Baillie onshore wind farm. This is a 52.5 MW plant, situated approximately 7km west of the town of Thurso, in the Caithness region of the North of Scotland. ).

It is intended that these generating stations will become fully operational in 2013.

3. The Secretary of State proposes to make these Orders subject to the conditions specified in the attached draft Orders (referred to in paragraph 9 below), and to the views of consultees. This document explains why the Secretary of State is provisionally proposing to make the Orders.

## LEGISLATIVE BACKGROUND

4. Section 4(1)(a) of the Electricity 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 he is authorised to do so by a licence (or otherwise exempted). Section 5(1) of the Electricity Act provides that the Secretary of State may, by order, grant exemption from section 4(1)(a). Section 5(2) of the Electricity Act sets out the requirements for giving notice before such an order can be made.

5. On 1 October 2001, the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (“the Class Exemptions Order”) came into force<sup>1</sup>. Among other things, the Class Exemptions Order continued the ‘Class C exemption’ previously comprised in the Electricity (Class Exemptions from the Requirement for a Licence) (England and Wales) Order 1997<sup>2</sup> for persons operating generating stations with existing energised connections on 30 September 2000 and whose stations are not normally capable of exporting more than 100 MW of power to the total system (Schedule 2, Class C of the Class Exemptions Order).

## POLICY BACKGROUND

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<sup>1</sup> S.I. 2001/3270 as amended by S.I. 2005/488

<sup>2</sup> S.I. 1997/989 as amended by S.I. 2000/2424

6. The Class C exemption does not exempt those (such as Markinch or Baillie) who propose to operate plants which did not have existing energised connections on 30 September 2000 – even where those plants export no more than 100 MW to the total system. The policy reason for this was to maintain the exemption for existing plant of no more than 100 MW (under the 1997 Order) but not to extend this to all future plants of no more than 100 MW (i.e. those connected after 30 September 2000), to ensure that future exemptions were controlled according to network regulation needs then existing. This class exemption has not since been updated. Consequently, generators with new plant similar in size to that set out in the Class C exemption who were not connected to the total system on 30 September 2000 must apply to the Secretary of State for individual exemption pursuant to section 5 of the Electricity Act or obtain a licence.

7. In determining whether such applications have merit, DECC's starting assumption is that all generation of electricity not covered by class exemption should be licensed, unless applicants can demonstrate that exemption does not pose a threat to the safe and secure operation of the electricity system or the interests of customers. In such cases, DECC considers that expecting applicants to meet the costs and obligations of a licence is disproportionate and that individual exemption should be given.

## **REASONS FOR PROPOSED ORDERS**

8. Following initial informal consultation with interested parties, and taking account of the level of the electrical power that could be exported to the total system in Great Britain by the proposed station, the Secretary of State has provisionally concluded that the connection of neither the Markinch Biomass CHP facility nor the Baillie onshore wind farm to the system would adversely affect network operation. The Secretary of State therefore proposes to make the exemptions.

## **CONDITIONS**

9. The conditions of granting the exemptions are that:

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

## **REPRESENTATIONS AND TIMETABLE**

10. Representations on the proposals discussed in this document and the proposed Orders are invited by 2 April 2013 and should be made to: Chris Chown, Energy Market Framework, Department of Energy and Climate Change, Fourth Floor, 3 Whitehall Place, London SW1A 2HD (telephone: 0300 068 6085; e-mail: [chris.chown@decc.gsi.gov.uk](mailto:chris.chown@decc.gsi.gov.uk))

## **REGULATORY IMPACT ASSESSMENT**

11. The Government produced a Regulatory Impact Assessment in respect of the Class Exemptions Order in October 2001. The assessment may be viewed at:

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

or obtained from: Chris Chown, Energy Market Framework, Department of Energy and Climate Change, Fourth Floor, 3 Whitehall Place, London SW1A 2HD (telephone: 0300 068 6085; e-mail: [chris.chown@decc.gsi.gov.uk](mailto:chris.chown@decc.gsi.gov.uk)).

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 STATUTORY INSTRUMENTS
 

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**2013 No. 0000**

**ELECTRICITY**

**The Electricity (Exemption from the Requirement for a Generation Licence)  
(Baillie) Order 2013**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	*** 2013

The Secretary of State, after consultation with the Scottish Ministers<sup>(3)</sup>, makes the following Order in exercise of the powers conferred by section 5 of the Electricity Act 1989<sup>(4)</sup>.

The Secretary of State has given notice of the proposal to make this Order in accordance with section 5(2) and (3) of that Act[ and has considered the representations made in relation to the proposal.][. No representations in respect of the proposal have been made.]

**Citation and commencement**

1. This Order may be cited as the Electricity (Exemption from the Requirement for a Generation Licence) (Baillie) Order 2013 and comes into force on [ ].

**Interpretation**

2. In this Order—

“the Act” means the Electricity Act 1989;

“the company” means Baillie Windfarm Limited, a company registered in Scotland with company number SC256692;

“the generating station” means the Baillie onshore wind farm, an electricity generating station whose entrance is located at Ordnance Survey map reference ND 0336 6421, near Thurso in Caithness, Scotland;

“the total system” means all transmission systems and distribution systems, located in Great Britain, of holders of licences under section 6(1)(b) and (c) of the Act<sup>(5)</sup> (transmission and distribution licences).

**Exemption from section 4(1)(a) of the Act**

3.—(1) Subject to paragraph (2), the company is granted exemption from section 4(1)(a) of the Act (prohibition of unlicensed generation of electricity for supply) in respect of the generating station.

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<sup>(3)</sup> S.I. 1990/1750; article 4 and Schedule 3 provide that functions under section 5(1) of the Act are, in so far as they are exercisable in or as regards Scotland, only exercisable after consultation with the Scottish Ministers.

<sup>(4)</sup> 1989 c.29. Section 5 was substituted by section 29 of the Utilities Act 2000 (c.27).

<sup>(5)</sup> Section 6 was substituted by section 30 of the Utilities Act 2000.

- (2) The exemption granted in paragraph (1) is subject to compliance with the following conditions—
- (a) that the generating station is connected to the total system;
  - (b) that, except in circumstances outside the reasonable control of the company, the generating station does not export more than 100 megawatts of electrical power to the total system; and
  - (c) that the company does not hold a licence under section 6(1)(a) of the Act.

Date 2013

*Name*  
Minister of State  
Department of Energy and Climate Change

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants exemption from the requirements of section 4(1)(a) of the Electricity Act 1989 (which prohibits the generation of electricity for supply to any premises without a licence) to Baillie Windfarm Limited in relation to the Baillie onshore wind farm, an electricity generating station whose entrance is located at Ordnance Survey map reference ND 0336 6421, near Thurso in Caithness, Scotland.

A 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 of Energy and Climate Change, Energy Markets Unit, 4th Floor, 3 Whitehall Place, London, SW1A 2AW. Copies have been placed in the libraries of both Houses of Parliament.



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**D R A F T   S T A T U T O R Y   I N S T R U M E N T S**

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**2013 No. 0000**

**ELECTRICITY**

**The Electricity (Exemption from the Requirement for a Generation Licence)  
(Markinch) Order 2013**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	[ 2013 ]

The Secretary of State, after consultation with the Scottish Ministers<sup>(6)</sup>, makes the following Order in exercise of the powers conferred by section 5 of the Electricity Act 1989<sup>(7)</sup>.

The Secretary of State has given notice of the proposal to make this Order in accordance with section 5(2) and (3) of that Act[ and has considered the representations made in relation to the proposal.][. No representations in respect of the proposal have been made.]

**Citation and commencement**

**4.** This Order may be cited as the Electricity (Exemption from the Requirement for a Generation Licence) (Markinch) Order 2013 and comes into force on [ ].

**Interpretation**

**5.** In this Order—

“the Act” means the Electricity Act 1989;

“the company” means RWE Npower Renewables (Markinch) Limited, a company registered in England and Wales with company number 06574689.

“the generating station” means the Markinch Biomass CHP facility, a generating station of that name whose entrance is located at Ordnance Survey map reference NO 284 014 in Markinch, near Glenrothes in Fife, Scotland.

“the total system” means all transmission systems and distribution systems, located in Great Britain, of holders of licences under section 6(1)(b) and (c) of the Act<sup>(8)</sup> (transmission and distribution licences).

**Exemption from section 4(1)(a) of the Act**

**6.—**(1) Subject to paragraph (2), the company is granted exemption from section 4(1)(a) of the Act (prohibition of unlicensed generation of electricity for supply) in respect of the generating station.

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<sup>(6)</sup> S.I. 1990/1750; Article 4 and Schedule 3 provide that functions under section 5(1) of the Act are, in so far as they are exercisable in or as regards Scotland, only exercisable after consultation with the Scottish Ministers.

<sup>(7)</sup> 1989 c.29. Section 5 was substituted by section 29 of the Utilities Act 2000 (c.27).

<sup>(8)</sup> Section 6 was substituted by section 30 of the Utilities Act 2000.<sup>(9)</sup> Section 6 was substituted by section 30 of the Utilities Act 2000.

- (2) The exemption granted in paragraph (1) is subject to compliance with the following conditions—
- (a) that the generating station is connected to the total system;
  - (b) that, except in circumstances outside the reasonable control of the company, the generating station does not export more than 100 megawatts of electrical power to the total system; and
  - (c) that the company does not hold a licence under section 6(1)(a) of the Act<sup>(9)</sup>.

Address  
Date

*Name*  
Minister of State  
Department

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants exemption from the requirements of section 4(1)(a) of the Electricity Act 1989 (which prohibits the generation of electricity for supply to any premises without a licence) to RWE Npower Renewables (Markinch) Limited in relation to the Markinch Biomass CHP facility, a combined heat and power generating station situated approximately 1.5 km east of Glenrothes, Scotland.

A 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 of Energy and Climate Change, Energy Markets Unit, 4th Floor, 3 Whitehall Place, London, SW1A 2AW. Copies have been placed in the libraries of both Houses of Parliament.

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<sup>(9)</sup> Section 6 was substituted by section 30 of the Utilities Act 2000.

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