



# **Exemption from the requirement for a licence to generate electricity: proposal to make the electricity (exemption from the requirement for a generation licence) (berry burn) order 2014**



## **EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO GENERATE ELECTRICITY: PROPOSAL TO MAKE THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (BERRY BURN) ORDER 2014**

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 an order 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:

Berry Burn Wind Farm Limited (a subsidiary of Statkraft UK Limited) in respect of the Berry Burn onshore wind farm, a 66.7 MW plant located near Inverness in Scotland.

The Secretary of State’s reasons for making such an order 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) (Berry Burn) Order 2013”. The terms of the proposed draft order is set out in the appendix to the document.

Representations may be made with respect to the proposals in the document by 16 January 2014 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))*

**19 December 2013**

## **EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO GENERATE ELECTRICITY: PROPOSAL TO MAKE THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (BERRY BURN) ORDER 2014**

### **INTRODUCTION**

1. The Secretary of State proposes to make an order (“the Order”) 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:
  - Berry Burn Wind Farm Limited in respect of the Berry Burn onshore wind farm, situated near Inverness in Scotland.
2. It is intended that this generating station will become fully operational in Autumn/Winter 2013.
3. The Secretary of State is proposing to make the Order subject to the conditions specified in the attached draft Order and in paragraph 9 below, and to the views of consultees. This document explains why the Secretary of State is proposing to make such an Order.

### **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 exemption. 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 procedure for making such an order.
5. On 1 October 2001, the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (“the Class Exemptions Order”) came into force. 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 for persons operating generating stations with existing energised connections on 30 September 2000 that did not provide more than 100 MW of power to the total system (Schedule 2, Class C of the Class Exemptions Order).

### **POLICY BACKGROUND**

6. The Class C exemption does not exempt those 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 less than 100 MW (under the 1997 Order) but not to extend this to all such future plants connected after 30 September 2000, to ensure that future exemptions were controlled according to existing network regulation needs. 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 which 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 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.

## REASON FOR PROPOSED ORDER

8. Taking account of the level of the electrical power that could be exported to the total system in Great Britain by the Berry Burn onshore wind farm, the Secretary of State has provisionally concluded that the connection of this plant to the system would not adversely affect network operation and therefore that it would not be appropriate to require Berry Burn Wind Farm Limited to obtain an electricity generation licence in respect of the station. He is therefore proposing to make the exemption.

## CONDITIONS

9. The conditions proposed to be included in respect of any such exemption are that:
  - the generating station is connected to the total system in Great Britain;
  - that except in circumstances outside the reasonable control of the operator, the generating station is not normally capable of exporting more electrical power than 100 megawatts to the total system; and
  - that Berry Burn Wind Farm Limited does not hold a generation licence under section 6(1)(a) of the Electricity Act.

## REPRESENTATIONS AND TIMETABLE

10. Representations on the issues raised in this document and the proposal are invited by 16 January 2014] 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:

[http://www.legislation.gov.uk/ukxi/2004/1776/pdfs/ukxiem\\_20041776\\_en.pdf](http://www.legislation.gov.uk/ukxi/2004/1776/pdfs/ukxiem_20041776_en.pdf)

or obtained from: Chris Chown, Energy Market Design, 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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2014 No. 0000

**ELECTRICITY**

The Electricity (Exemption from the Requirement for a Generation Licence)  
(Berry Burn) Order 2014

<i>Made</i>	- - - -	*** 2014
<i>Laid before Parliament</i>		*** 2014
<i>Coming into force</i>	- -	*** 2014

The Secretary of State, after consultation with the Scottish Ministers<sup>(1)</sup>, makes the following Order in exercise of the powers conferred by section 5 of the Electricity Act 1989<sup>(2)</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**

This Order may be cited as the Electricity (Exemption from the Requirement for a Generation Licence) (Berry Burn) Order 2014 and comes into force on [ ].

**Interpretation**

In this Order—

“the Act” means the Electricity Act 1989;

“the company” means Berry Burn Wind Farm Limited, a company registered in England and Wales with company number 4511914;

“the generating station” means the Berry Burn onshore wind farm, an electricity generating station whose entrance is located at Ordnance Survey map reference NJ 06169 45610, near Inverness, 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>(3)</sup> (transmission and distribution licences).

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

—(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>(1)</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>(2)</sup> 1989 c.29. Section 5 was substituted by section 29 of the Utilities Act 2000 (c.27).

<sup>(3)</sup> Section 6 was substituted by section 30 of the Utilities Act 2000.

The exemption granted in paragraph (1) is subject to compliance with the following conditions—

that the generating station is connected to the total system;

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

that the company does not hold a licence under section 6(1)(a) of the Act.

Date 2014

*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 Berry Burn Wind Farm Limited in relation to the Berry Burn onshore wind farm, an electricity generating station whose entrance is located at Ordnance Survey map reference NJ 06169 45610, near Inverness, 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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