



Department
of Energy &
Climate Change

**EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO
GENERATE ELECTRICITY: PROPOSAL TO MAKE THE
ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A
GENERATION LICENCE) (HARBURNHEAD) ORDER 2016**

March 2016

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Executive summary

EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO GENERATE ELECTRICITY: PROPOSAL TO MAKE THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (HARBURNHEAD) ORDER 2016

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 she 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:

LDV Harburnhead Limited, in respect of the Harburnhead onshore wind farm, a 52 MW onshore wind farm located approximately 8 kilometres south of Livingston, Scotland.

The Secretary of State’s reasons for making such an order in 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) (Harburnhead) Order 2016”. The terms of the proposed draft order are set out in the appendix to the document.

Representations may be made with respect to the proposals in the document by 21 April 2016 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)

EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO GENERATE ELECTRICITY: PROPOSAL TO MAKE THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (HARBURNHEAD) ORDER 2016

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:
 - LDV Harburnhead Limited, in respect of the Harburnhead onshore wind farm, located approximately 8 kilometres south of Livingston, Scotland.
2. It is intended that this generating station will become fully operational September/October 2016.
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 consumers. 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 Harburnhead 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 that it would not be appropriate to require LDV Harburnhead Limited to hold an electricity generation licence in respect of the station. She 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;
 - 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
 - LDV Harburnhead 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 26 April 2016 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)

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

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).

• S T A T U T O R Y I N S T R U M E N T S

2016 No.

ELECTRICITY

**The Electricity (Exemption from the Requirement for a Generation Licence)
(Harburnhead) Order 2016**

<i>Made</i> - - - - -	... 2016
<i>Laid before Parliament</i>	... 2016
<i>Coming into force</i> - -	... 2016

The Secretary of State, after consulting with the Scottish Ministers, makes the following Order in exercise of the powers conferred by section 5 of the Electricity Act 1989⁽¹⁾.

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. [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) (Harburnhead) Order 2016 and comes into force on [date].

Interpretation

2. In this Order—

“the Act” means the Electricity Act 1989;

“the company” means LDV Harburnhead Limited, a company registered in Scotland with company number SC420122;

“the generating station” means Harburnhead Wind Farm, an electricity generating station whose entrance is located at Ordnance Survey map reference NT 039 602, approximately 8 kilometres south of Livingston, 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⁽²⁾.

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.

⁽¹⁾ 1989 c.29. Section 5 was substituted by section 29 of the Utilities Act 2000 (c.27). Under article 4 of and Schedule 3 to the Scotland Act (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), functions under section 5(1) of the Electricity Act 1989 are, in so far as they are exercisable in or as regards Scotland, exercisable only after consultation with the Scottish Ministers.

⁽²⁾ Section 6 was substituted by section 30 of the Utilities Act 2000.

- (2) The exemption granted by 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

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 section 4(1)(a) of the Electricity Act 1989 (which prohibits the generation of electricity for supply to any premises without a licence) to LDV Harburnhead Limited in relation to Harburnhead Wind Farm, an electricity generating station whose entrance is located at Ordnance Survey map reference NT 039 602, approximately 8 kilometres south of Livingston, 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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