



Department for
Business, Energy
& Industrial Strategy

**EXEMPTION FROM THE REQUIREMENT FOR A
LICENCE TO GENERATE ELECTRICITY:
PROPOSAL TO MAKE *THE ELECTRICITY
(EXEMPTIONS FROM THE REQUIREMENT FOR A
GENERATION LICENCE) (ENGLAND AND
WALES) ORDER 2018.***

20 July 2018

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Executive Summary

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

Ferrybridge FM2 Limited, in respect of the Ferrybridge Multifuel Generation Station (also known as FM2), a 77MW plant located at Knottingley, West Yorkshire; and

K3 CHP Limited, in respect of the Wheelabrator Kemsley Generating Station, a 62MW plant located at Swale Way, Kemsley.

The Secretary of State’s reasons for making these orders in the terms proposed are set out in the document entitled “Exemptions from the Requirement for a Licence to Generate Electricity: Proposal to Make *The Electricity (Exemptions from the Requirement for a Generation Licence) (England and Wales) Order 2018*. The terms of the proposed draft exemption orders are set out in the appendix to that document.

Representations may be made with respect to the proposals in the document by 17 August 2018 addressed to:-

Chris Chown, Energy Market Framework, Department for Business, Energy and Industrial Strategy (BEIS), Third Floor, 1 Victoria Street, London SW1H 0ET (telephone: 0300 068 6085; e-mail: chris.chown@beis.gov.uk)

INTRODUCTION

1. The Secretary of State proposes to make the draft Electricity (Exemptions from the Requirement for a Generation Licence) (England and Wales) Order (“the draft Order”) under section 5(1) of the Electricity Act 1989 (“the Electricity Act”), as amended by the Utilities Act 2000, granting exemptions from the requirement to hold a generation licence to:
 - o Ferrybridge FM2 Limited, in respect of the Ferrybridge Multifuel Generation Station (also known as FM2), a 77MW plant located at Knottingley, West Yorkshire; and
 - o K3 CHP Limited, in respect of the Wheelabrator Kemsley Generating Station, a 62MW plant located at Swale Way, Kemsley.
2. The Secretary of State is proposing to make the draft Order subject to the conditions specified in the draft Order and summarised in paragraph 8 below. This document explains why the Secretary of State is proposing to make this draft Order.

LEGISLATIVE BACKGROUND

3. 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 they hold a licence or exemption from the requirement to hold a licence. 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.
4. 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).
5. 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. 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 under section 5 of the Electricity Act or obtain a licence.

EXEMPTIONS POLICY

6. The BEIS exemptions policy 'Electricity Generation, Distribution and Supply Licence Exemptions – FAQs' sets out the policy relating to class exemptions and individual exemptions. The general policy is that applications for individual generation exemptions should only be considered in respect of stations of less than 100MW capacity, whilst stations capable of exporting more than 100MW should be licensed. This is because plant of less than 100MW capacity 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".
7. The policy also requires applicants to demonstrate that exemption "does not pose a threat to the safe and secure operation of the electricity system or the interests of consumers and why it would be disproportionate to meet the costs and obligations of a licence".

REASON FOR PROPOSED ORDERS

8. The Secretary of State has carefully considered the applications to grant exemptions in respect of the two stations listed in paragraph 1 above. Both applications concern stations of less than 100MW capacity. Taking account of the amount of electrical power that could be exported to the total system in Great Britain by these stations, the Secretary of State has provisionally concluded that these exemptions would generally have a low impact on the total electricity system. The exemptions would not pose a threat to the safe and secure operation of the electricity system or the interests of consumers. Additionally, it would be disproportionate to require the applicants to meet the costs and obligations of holding electricity generation licences in respect of the stations. He is therefore proposing to grant the exemptions through the attached draft Electricity (Exemptions from the Requirement for a Generation Licence) (England and Wales) Order 2018.

CONDITIONS

9. The conditions proposed to be included in respect of any such exemption are that:
 - The generating stations are connected to the total system in England and Wales;

- Except in circumstances outside the reasonable control of the operator, the generating stations are not normally capable of exporting more electrical power than 100 megawatts to the total system in England and Wales; and
- The parties do 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 may be made by 17 August 2018 and should be made to: Chris Chown, Energy Market Framework, Department for Business, Energy and Industrial Strategy, Third Floor, 1 Victoria Street, London SW1H 0ET (telephone: 0300 068 6085; e-mail: chris.chown@beis.gov.uk)

REGULATORY IMPACT ASSESSMENT

11. A Regulatory Impact Assessment has not been made in respect of the draft Electricity (Exemptions from the Requirement for a Generation Licence) (England and Wales) Order 2018. A general 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 for Business, Energy and Industrial Strategy, Wholesale Energy Markets Division, 1 Victoria Street, London SW1H 0ET. Copies have been placed in the libraries of both Houses of Parliament.

Draft Order

STATUTORY INSTRUMENTS

2018 No.

ELECTRICITY, ENGLAND AND WALES

The Electricity (Exemptions from the Requirement for a Generation Licence) (England and Wales) Order 2018

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

The Secretary of State 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 sections 5(2) and 5(3) of that Act and has considered representations made in respect of the proposal.

Citation, commencement and extent

1. This Order may be cited as the Electricity (Exemptions from the Requirement for a Generation Licence) (England and Wales) Order 2018 and comes into force on [].

Interpretation

2.—(1) In this Order—

“the Act” means the Electricity Act 1989;

“Ferrybridge MFE 2 Limited” means the company of that name registered in England and Wales with number 09685158;

“Ferrybridge Multifuel 2 Power Station” means the plant known as Ferrybridge Multifuel 2 Power Station situated at Stranglands Lane, Knottingley, West Yorkshire, WF11 8SQ;

“K3 CHP Limited” means the company of that name registered in England and Wales with number 09240062;

“Kemsley Generating Station” means the plant known as Wheelabrator Kemsley Generating Station located at Ordnance Survey map reference E592126.88, N166550.76, situated on the Sittingburne Relief Road, Swale Way, Kemsley, with Ridham Avenue to the south, Barge Way to the north and the river Swale to the east;

⁽¹⁾ 1989 c.29; section 5 was substituted by section 29 of the Utilities Act 2000 (c.27).

“licensed generator” means the holder of a licence under section 6(1)(a) of the Act;

“the total system in England and Wales” means—

- (a) the transmission system of the holder of a licence under section 6(1)(b) of the Act⁽²⁾; and
- (b) all distribution systems,

in each case, to the extent located in England and Wales.

Exemptions from prohibition of unlicensed generation of electricity for supply

3. Exemption is granted from section 4(1)(a) of the Act to—

- (a) K3 CHP Limited in respect of Kemsley Generating Station; and
- (b) Ferrybridge MFE 2 Limited in respect of Ferrybridge Multifuel 2 Power Station.

Conditions on exemptions

4. The exemption granted by article 3(a) of this Order is subject to the conditions that—

- (a) Kemsley Generating Station is connected to the total system in England and Wales;
- (b) except in circumstances outside the reasonable control of K3 CHP Limited, Kemsley Generating Station does not export more than 100 megawatts of electrical power to the total system in England and Wales; and
- (c) K3 CHP Limited is not a licensed generator.

5. The exemption granted by article 3(b) of this Order is subject to the conditions that—

- (a) Ferrybridge Multifuel 2 Power Station is connected to the total system in England and Wales;
- (b) except in circumstances outside the reasonable control of Ferrybridge MFE 2 Limited, Ferrybridge Multifuel 2 Power Station does not export more than 100 megawatts of electrical power to the total system in England and Wales; and
- (c) Ferrybridge MFE 2 Limited is not a licensed generator.

Claire Perry
Minister of State

Date

Department of Business, Energy and Industrial Strategy

⁽²⁾ Section 6 was substituted by section 30 of the Utilities Act 2000, and section 6(1)(b) was further substituted by section 136(1) of the Energy Act 2004 (c.20).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants exemptions 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) in relation to two electricity generating stations. The companies granted exemptions are:

- K3 CHP Limited in relation to Kemsley Generating Station, an electricity generating station located at Ordnance Survey map reference E592126.88, N166550.76, situated on the Sittingburne Relief Road, Swale Way, Kemsley, with Ridham Avenue to the south, Barge Way to the north and the river Swale to the east.
- Ferrybridge MFE 2 Limited in relation to Ferrybridge Multifuel 2 Power Station, an electricity generating station situated at Stranglands Lane, Knottingley, West Yorkshire, WF11 8SQ.

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 for Business, Energy and Industrial Strategy, Wholesale Energy Markets Division, 1 Victoria Street, London SW1H 0ET. Copies have been placed in the libraries of both Houses of Parliament.