



Department for
Business, Energy
& Industrial Strategy

EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO SUPPLY ELECTRICITY

Proposal to make The Electricity (Individual
Exemption from the Requirement for a
Supply Licence) (E.ON UK CHP Limited)
Order 2020



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Executive Summary

1. 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 supply licence under section 4(1)(c) of the Act to:
 - E.ON UK CHP Limited, in respect of supply of electricity to premises located in specified areas of the port of Liverpool.
2. 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 supply electricity: proposal to make The Electricity (Exemption from the Requirement for a Supply Licence) (E.ON UK CHP Limited) Order 2020” (“the Order”). The proposed terms of the Order are set out in the appendix to that document.
3. Representations may be made with respect to the proposal by 22 May 2020 to:

Chris Chown
Energy Markets & Affordability
Department for Business, Energy and Industrial Strategy (BEIS)
Third Floor
1 Victoria Street
London SW1H 0ET

telephone: 0300 068 6085
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Introduction

4. The Secretary of State proposes to make The Electricity (Exemption from the Requirement for a Supply Licence) (E.ON UK CHP Limited) Order 2020 (“the Order”) under section 5(1) of the Electricity Act 1989 (“the Act”), granting exemption from the requirement to hold a supply licence to E.ON UK CHP in respect of supply of electricity to premises located in specified areas of the port of Liverpool.
5. The Secretary of State proposes to make the Order subject to the conditions which are described in paragraph 20 below. This document explains why the Secretary of State proposes to make the Order, attaches a draft version of the Order and invites representations.

Legislative background

6. Section 4(1)(c) of the Act makes it an offence for a person to supply electricity to any premises unless they hold a licence or exemption from the requirement to hold a licence. Section 5(1) of the Act provides that the Secretary of State may, by order, grant exemption from section 4(1)(c) to a person (described as an “individual exemption” in this document) or a class of persons. Section 5(2) of the Act sets out the procedure for making such an order.
7. On 1 October 2001, the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (“the Class Exemptions Order”)¹ came into force. The Class Exemptions Order contains classes of generation, distribution and supply activity which are exempt from the requirement to hold a licence and therefore do not require a licence. Suppliers self-assess whether they fall under any of the exempt classes in Schedule 4 of the Class Exemptions Order.
8. One of the supply exemptions classes - Class C of Schedule 4 of the Class Exemptions Order - provides exemption for supply to consumers who are on-site to the generating station providing that supply (the “on-site class exemption”). There are a number of ways a supplier may fall within the on-site class exemption, depending on whether the supply is to one consumer or more. Paragraph 2(c) of Class C of Schedule 4 is relevant to the circumstances of E.ON UK CHP Limited (who supply a number of consumers at the port of Liverpool) if the requirements in that paragraph are met.
9. In determining whether paragraph 2(c) of Class C of Schedule 4 is applicable, a supplier such as E.ON UK CHP Limited will have regard to a number of factors. In particular, paragraph 2(c)(i) describes requirements that the consumers receiving the supply occupy premises which are:

¹ <http://www.legislation.gov.uk/uksi/2001/3270/contents/made>

- on the same site² as the premises where the generating station is situated; **or**
 - not on the same site but which receive supply from that generating station over private wires.
10. For the purposes of determining whether paragraph 2(c)(i) applies, premises include “any land, building or structure”³.

Exemptions policy

11. The BEIS policy document ‘Electricity Generation, Distribution and Supply Licence Exemptions – FAQs’⁴ (the “exemptions policy document”) sets out the exemptions policy relating to the Class Exemption Order and individual exemptions.
12. The Secretary of State considers each application for an individual exemption on its merits and in accordance with the exemptions policy. The exemptions policy document states that in most cases it is not appropriate to grant exemption from the requirement for a supply licence “*because it is rarely considered appropriate for these activities not to be subject to the full terms of licensing regime*” but that “*applications for exemption where exceptional circumstances apply may still be possible*”.
13. The exemptions policy document also highlights⁵ that in deciding an application for an individual exemption, the Secretary of State must act to further the principal objective set out in section 3A of the Act, which is to protect the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems (including their interests in the reduction of emissions of targeted green-house gases and security of electricity supply), and 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 furthering the principal objective, the Secretary of State must also have regard to, among other things, the need to ensure security of supply and the need to contribute to the achievement of sustainable development.

Reason for proposed orders

14. The Secretary of State has carefully considered the application by E.ON UK CHP Limited for an individual exemption for the supply of electricity from a CHP (Combined Heat and Power) plant with a 31 Mega Watt (MW) capacity (“the plant”) at the port of Liverpool (“the port”) until 2039.

² Article 2(2)(e) of the Class Exemptions Order 2001 provides that premises are on the same site if they are: “(i) the same premises; (ii) immediately adjoining each other; or (iii) separated from each other only by a road, railway or watercourse or by other premises occupied by the consumer in question, by any person who together with that consumer forms a qualifying group, or by the person seeking to fall within the class in question specified in Schedule 2 or 4 [of the Class Exemptions Order]”

³ Section 64 of the Act.

⁴ <https://www.gov.uk/guidance/electricity-licence-exemptions>

⁵ See page 8 of the exemptions policy document.

15. E.ON UK CHP Limited operate the plant at the port which supplies heat and electricity to non-domestic consumers located at the port. E.ON UK CHP Limited have advised the Secretary of State that consumers occupying premises at the port create a demand of 18MW:

- The consumers which create 10MW of that demand are supplied by the plant over private wires (cables owned by the owner and operator of the port). E.ON UK CHP Limited have self-assessed that that supply to these consumers is class exempt under the on-site class exemption because the consumers receive supply over private wires.
- The consumers which create the remaining 8MW of demand are premises in discrete areas of the port, which are unable to be supplied from the plant directly over private wires because of multiple distribution constraints within the local infrastructure serving the port. This is outside of the direct control of E.ON UK CHP Limited. E.ON UK CHP Limited have self-assessed that supply to these consumers does not fall within the on-site class exemption so they are currently supplied by a separate E.ON licensed supply business.

16. The Secretary of State has considered the circumstances of E.ON UK CHP Limited including, in summary, the following:

- The non-domestic consumers in the port are within the port of Liverpool - a distinct geographical site with a self-contained private wire network.
- The plant is a small generator with a declared net capacity of less than 100 MWs, and the Secretary of State has provisionally concluded that consumer interests will not be disproportionately disadvantaged if an individual exemption is made in respect of supply which E. ON UK CHP Limited have self-assessed does not currently fall within the Class Exemptions Order.
- E.ON UK CHP Limited have been granted a lease until April 2024 by the owner of the port.

17. The Secretary of State notes that the circumstances of E.ON UK CHP Limited and the nature of the port are exceptional. In consideration of this, the principal objective (described in paragraph 13 above), and the exemption policy document, the Secretary of State proposes to grant an individual exemption through the attached draft Electricity (Individual Exemption from the Requirement for a Supply Licence) (E.ON UK CHP Limited) Order 2020, which will exempt E.ON UK CHP Limited in respect of supply to premises within identified discrete areas of the port (ie not those areas which E.ON CHP UK Limited have self-assessed as falling within the on-site class exemption). Those discrete areas will be identified by use of a map which is proposed to be included with the Order to specifically outline those areas for the avoidance of doubt as to which premises fall within them.

18. The exemptions policy aims to reduce the regulatory burden on small generating plant such as the plant, in order to encourage provision from secure and sustainable sources of generation at competitive prices, whilst providing adequate protection for consumers. The Secretary of State has provisionally concluded that an individual exemption would not pose a threat to the operation of the electricity system or the interests of consumers,

such that an individual exemption in place of a supply licence to supply to the consumers within the identified discrete areas of the port is appropriate.

19. The Secretary of State proposes that conditions are attached to the order for the following reasons:

- It is not appropriate to grant an individual exemption for the whole of the port because E.ON UK CHP Limited have self-assessed that that supply to consumers with 10MW demand in the port is class exempt for falling within the on-site class exemption (see the first bullet point in paragraph 15 above), rather, an individual exemption should only cover premises within the identified discrete areas of the port who create 8MW demand (see the second bullet point in paragraph 15 above).
- It is not appropriate to grant exemption until 2039, rather, an individual exemption should last until April 2024 when E.ON UK CHP Limited's lease for the plant expires.

Conditions

20. The conditions of granting the exemption are that:

- Except in circumstances outside the reasonable control of E.ON UK CHP limited, no more than 8MW of electricity is supplied to premises within the identified discrete areas of the port (as outlined in a map to be included with the Order) who create 8MW of demand.
- The individual exemption is time limited and expires on 31st March 2024.
- E.ON UK CHP Limited does not hold a supply licence in respect of those premises.

Representation and timetable

21. Representations on the issues raised in this document and the proposal may be made by 22 May 2020 and should be made to:

Chris Chown
Energy Markets & Affordability
Department for Business, Energy and Industrial Strategy (BEIS)
Third Floor
1 Victoria Street
London SW1H 0ET

telephone: 0300 068 6085
email: chris.chown@beis.gov.uk

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

Regulatory Impact Assessment

23.A Regulatory Impact Assessment has not been made in respect of the draft The Electricity (Individual Exemption from the Requirement for a Supply Licence) (E.ON UK CHP Limited) (England and Wales) Order 2020 because the impact has been assessed to be de-minimis.

Draft Order

STATUTORY INSTRUMENTS

2020 No.

ELECTRICITY

The Electricity (Individual Exemption from the Requirement for a Supply Licence) (E.ON UK CHP Limited) Order 2020

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

The Secretary of State, in exercise of the powers conferred by section 5 of the Electricity Act 1989⁽⁶⁾, makes the following Order.

The Secretary of State, in accordance with sections 5(2) and 5(3) of that Act, has given notice of the proposal to make this Order.

Citation and commencement

This Order may be cited as the Electricity (Individual Exemption from the Requirement for a Supply Licence) (E.ON UK CHP Limited) Order 2020 and comes into force on [date].

Interpretation

In this Order—

“the Act” means the Electricity Act 1989;

“E.ON UK CHP Limited” means the company of that name registered in England and Wales with company number 02684288; and

“relevant premises” means premises located in an area shaded in yellow in the plan of the Port of Liverpool in the Schedule, other than premises at which a supply is taken wholly or mainly for domestic purposes.

Exemption from prohibition of unlicensed supply of electricity

—○ Subject to paragraph (2), exemption is granted from section 4(1)(c)⁽⁷⁾ of the Act (prohibition of unlicensed supply of electricity to any premises) to E.ON UK CHP Limited in respect of relevant premises.

The exemption granted by paragraph (1) is subject to the following conditions—

E.ON UK CHP Limited does not hold a licence under section 6(1)(d) of the Act⁽⁸⁾ in respect of relevant premises;

⁽⁶⁾ 1989 c.29; section 5 was substituted by section 29 of the Utilities Act 2000 (c.27).

⁽⁷⁾ The definition of “supply” in section 4(4) of the Act was substituted by section 179(1), of the Energy Act 2004 (c.20).

⁽⁸⁾ Section 6 of the Act was substituted by section 30 of the Utilities Act 2000.

Generation Licence Exemption

except in circumstances outside the reasonable control of E.ON UK CHP Limited, E.ON UK CHP Limited does not supply more than 8 megawatts of electricity to relevant premises; and the exemption is granted for the period ending on 31st March 2024.

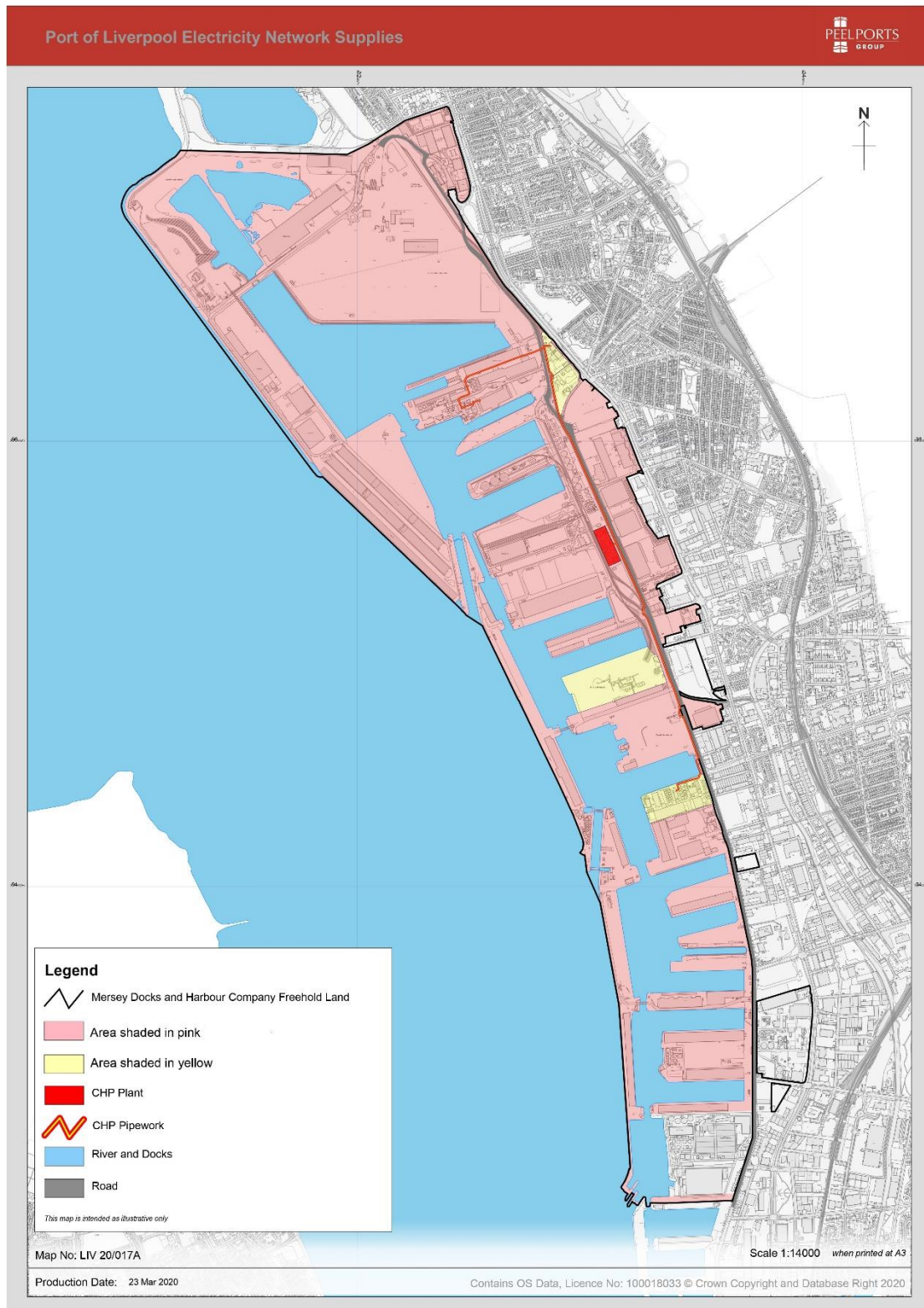
[Date]

Department for Business, Energy and Industrial Strategy

SCHEDULE

The Port of Liverpool

Article 2



EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants an exemption from the requirements of section 4(1)(c) of the Electricity Act 1989 (which prohibits the supply of electricity to any premises without a licence) to E.ON UK CHP Limited in relation to supply of electricity

Generation Licence Exemption

to premises (which are not domestic premises) in relevant areas of the Port of Liverpool. The plan in the Schedule to the Order identifies those relevant areas.

A regulatory impact assessment has not been prepared because the impact of this Order has been assessed to be de minimis.

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