

Electricity Generation, Distribution and Supply Licence Exemptions

Frequently asked questions (FAQs)



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Executive Summary

There follows a list of frequently asked questions concerning electricity generation, distribution and supply licence exemptions. These are designed to give introductory information regarding the regulatory regime governing the activities of generating, distributing and supplying energy in Great Britain, the exemptions available under that regime and the Department's process and policy on considering exemption applications. Detailed questions concerning interpretation of legislation should be directed to your legal advisers and questions regarding licences themselves should be directed to the energy regulator, Ofgem.

General questions

Q. Do I need a generation, distribution or supply licence?

A. If you intend to generate, distribute or supply electricity in the UK you will need to determine whether a licence or exemption is required.

The legal prohibition is contained in section 4(1) of the Electricity Act 1989, which makes it an offence for a person to, among other things:

- generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given (section 4(1)(a));
- distribute electricity for that purpose (section 4(1)(bb)); or
- supply electricity to any premises (section 4(1)(c));

unless authorised to do so by a licence (or otherwise exempted).

Definitions of what constitutes 'generation', 'distribution' and 'supply' can be found at sub-sections 4(4) and (5) of the Electricity Act 1989.

We recommend you seek legal advice if you are unsure whether you will be generating, distributing and/or supplying electricity for the purposes of the prohibition or if you are uncertain whether a licence or exemption would be appropriate in your circumstances.

Q. What exemptions are available?

A: The Secretary of State may grant exemption from the requirement to hold a licence under section 4(1) either to an individual person or to "persons of a class" (section 5(1)(a), Electricity Act 1989).

1. Class exemption: Class exemptions will apply automatically to those persons falling within

the terms of a relevant class exemption. The Electricity (Class Exemption from the Requirement for a Licence) Order 2001 (“the Class Order”) created a number of class exemptions applicable to discrete categories of generation, distribution and supply activities.

In the case of generation for example, there is a class exemption for small scale generators producing no more than 10 MWs of electrical power from any one generating station or 50 MWs in the case of a generating station with a declared net capacity of less than 100 MWs (see article 3(1)(a) and Schedule 2 to the Class Order).

The Order can be found at: <http://www.legislation.gov.uk/uksi/2001/3270/contents/made>

2. Individual exemption: The Secretary of State may also consider applications for exemption for individual generation, distribution or supply undertakings that do not fall under class exemption.

Generation: With regard to generation activities, the Department’s policy has broadly been to only consider applications for generating stations of less than 100 MWs capacity. This is because such plants 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.

Distribution and Supply: The Department considers that in most cases it is not appropriate to grant exemption from the requirements of supply or distribution licence. This is because it is rarely considered appropriate for these activities not to be subject to the full terms of licensing regime. Applications for exemption where exceptional circumstances apply may still be possible. We suggest you contact the Department in the first instance.

Q. What will I be exempt from?

A. An exemption under section 5 of the Electricity Act 1989 exempts the holder from the requirement to hold a licence in respect of the licensable activity under section 4 (and thereby from the conditions arising from holding such licences). Details of standard licence conditions can be found at: <http://www.ofgem.gov.uk/Licensing/Pages/Licensing.aspx>

Q. How do I apply for a licence?

A. The national energy regulator, Ofgem, considers gas and electricity licence applications and decides whether or not to grant a licence. More information can be found at: <http://www.ofgem.gov.uk/LICENSING/WORK/Pages/Work.aspx>

Class Exemptions

Q. Do I need to apply to the Department and/or Ofgem for a class exemption?

A. Class exemptions are automatically applicable in respect of an undertaking meeting the conditions of the exemption in question. In such circumstances, an undertaking does not need to apply to the Department or to Ofgem for the exemption to apply, or to notify that they are claiming a class exemption.

Individual exemptions on the other hand are granted by the Secretary of State and an application must be made (see below).

We strongly recommend that you seek legal advice if you are unsure of whether you are able to benefit from a class exemption. It is an offence to generate, distribute or supply electricity without a licence unless you are otherwise exempt.

Q. Can the Department give advice on whether I qualify for class exemption?

A. The Department cannot give specific advice as to whether individual operators fall within a class exemption; it falls to those wishing to benefit from a class exemption to determine whether the activities they propose to undertake will fall within the scope of its terms. We strongly recommend that you seek legal advice if you are unsure as to whether proposed generation, distribution or supply activities will require a licence (or if an or exemption is available).

Class A Supply Exemptions

Legislation and exemption limits

Q. What is the Class A small supplier exemption?

A. Class A can be found at Schedule 4 of The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 ('the exemptions order 2001').¹ Class A states that:

Class A: Small suppliers 'Persons (other than licensed suppliers) who do not supply any electricity except electricity which they generate themselves and who do not at any time supply more electrical power than 5 megawatts of which not more than 2.5 megawatts is supplied to domestic consumers.'

A.1. For the purposes of Class A, electrical power supplied by a body corporate which is associated with any supplier shall be treated as supplied by that supplier.'

Definitions of what constitutes 'supply' are in section 4(4) of the Electricity Act 1989². Schedule 2ZB to the Act sets out the duties of supply licence exemption holders.

The Class A small supplier exemption allows generators to supply all of their self generated output **or** a portion of it (but no more than 5MWs, of which no more than 2.5MWs to domestic consumers) to domestic and/or commercial consumers without the need for a supply licence. Class A does not allow any parties other than generators to operate as an exempt supplier.

To note: the limits detailed above are specifically addressing those associated with supply. For details on generation please see the generation exemptions section of the FAQs.

Q. What are the penalties for not satisfying the requirements of a Class A supply exemption?

A. Not satisfying the requirements of a Class A supply exemption invalidates that exemption and you cannot rely on it. If you supply outside these parameters, you are required to be licenced with Ofgem. Operating without a licence (or a valid exemption from licensing requirements) is an offence (Electricity Act section 4(1) with potential penalties referenced under Section 4(2) of the Electricity Act 1989).

Q. What generation technologies are eligible under Class A?

A. The exemptions order 2001 is technology neutral, all generation technologies are eligible (provided they meet the relevant conditions) to supply under Class A.

¹ [The Electricity \(Class Exemptions from the Requirement for a Licence\) Order 2001](#)

² [Electricity Act 1989](#)

Q. Does the Class A small supplier limit constitute a constant 5MW supply or 5MW supplied annually?

A. A constant supply of up to 5MW. It is a measure of rate not volume.

Q. Are there any circumstances under which I can supply more than 5MW (of which no more than 2.5MW is supplied to domestic consumers)?

A. No. The Class A exemption specifically states: ‘and who do not **at any time** supply more electrical power than 5MW (of which no more than 2.5MWs is supplied to domestic consumers).’ Thus, the 5MW limit is an absolute limit.

Q. Does this limit include MW supplied by a parent company and/or a group of affiliated companies?

A. The 5MW limit includes any power supplied by a body corporate associated with a supplier. The provisions relating to ‘body corporate’ can be found at article 2(2) of the Class Order 2001. If in doubt, please seek legal advice.

Q. Can I supply to multiple consumers at the same time while not exceeding the 5MW (2.5MW to domestic consumers) limit?

A. Yes. A stakeholder could supply multiples of 1MW to different consumers at the same time as long as the 5MW (or 2.5MW only to domestic consumers) limit is not exceeded.

Q. Can I supply, for example, 2.5MW to commercial consumers and 2.5MW to domestic consumers (totalling 5MW)?

A. Yes, as long as the 5MW limit (no more than 2.5MW to domestic consumers) is not exceeded you can supply in different configurations (e.g. 1MW to domestic consumers, 4MW to commercial consumers), (or to give another example: 2MW to domestics and 3MW to commercial consumers).

Q. Can I use Class A in combination with any other Class of exempt supply?

A. It can be used with other classes of supply class exemption that also reference self generated electricity only. However, the 5MW (no more than 2.5MW to domestic consumers) limit still applies across these classes. So, for example, if you are supplying 1MW to a commercial consumer under the Class C supply exemption, only 4MW could be supplied to commercial consumers under Class A.

Q. Can I use Class A with generation and/or distribution exemptions?

A. Yes.

Q. Can I generate more than 5MW and still benefit from Class A?

A. You may generate any amount of power you wish, within the limits of a generation licence or exemption. However, the 5MW (only 2.5MW to domestic consumers) limit under the Class A exemption is absolute (as described above) and you may not supply any more than this. What you do with your remaining generation is a commercial decision.

Route to market issues

Q. How does Class A licence-exempt supply happen across the public network?

A. The majority of licence-exempt supply occurs on private networks and in individual premises and relies on Classes B and C. Class A is different, as it allows exempt supply to happen across the public network (the distribution and transmission networks) which the majority of households and businesses are connected to. As Class A suppliers share the grid infrastructure that other generators and suppliers use to serve their customers, exempt supply volumes must be recorded so that generation and consumption flows match, and imbalances can be managed correctly.

Unlike licensed suppliers, Class A licence-exempt suppliers are not recognised as market participants by many industry code bodies. This means they cannot independently register metering systems or trade energy. Instead, a Class A exempt supplier will contract with a licensed supplier to undertake these activities on its behalf.

Q. What services would a Class A supplier need from a licensed supplier?

A. The range of services a Class A supplier needs will depend on the type (domestic and/or non-domestic) and number of consumers. It also depends on whether it wants the licensed supplier to deliver some customer-facing functions on its behalf. To ensure that generation and supply volumes are accurately accounted for, the Class A supplier will need:

- Metering services: registering, installing and maintaining metering arrangements (e.g. smart meters).
- Data collection and aggregation services: collecting, processing and aggregating meter data.
- Settlement services: forecasting and reporting accurate metered volumes of energy generated and consumed.

The Class A supplier could deliver customer facing functions itself, or it could procure these

from a licensed supplier:

- Billing and payment services: billing consumers to reflect consumer consumption/generation.
- Customer service: providing customer service support (e.g. handling customer queries).

However, procuring another party to provide these services does not transfer statutory obligations. The licence exempt supplier remains accountable for complying with relevant legislative obligations (e.g. Schedule 2ZB of the Electricity Act 1989).

Given the majority of Class A exempt-supply comes from renewables, it is likely that the generator's output will not always align with customers' power needs. The Class exemption only permits a Class A supplier to supply power it generates itself, it cannot buy and resell power for back-up or top-up purposes. This means that when the exempt supplier cannot meet the needs of its customers, the licensed supplier will step in and supply the necessary power through a separate supply contract with the consumer.

Q. Can I share the savings from the supply costs that I avoid paying through Class A supply exemption?

A. The exemptions framework does not prohibit this. More generally, however, there is concern that a significant increase in the usage of Class A could further impact consumer bills (in that avoided policy costs are spread across the market and ultimately consumer bills). We will monitor this situation going forward.

Q. Can I sell my output to a third party (e.g. a broker) and not have to worry about satisfying the requirements of a Class A supply exemption?

A. No. If the power is being sold to meet the demand of a commercial or domestic consumer, then you will likely still be considered a supplier under Class A and will need to satisfy the requirements of that Class. The fact that you use a third party (e.g. a broker) does not, therefore, relieve supplier responsibilities under the exemptions order 2001.

Q. Can I use Class A but seek help from a licensed supplier to provide sleeving services?

A. Exempt generators (acting as class A suppliers) can seek assistance from a licensed supplier in ensuring that consumers are provided with the necessary supply services (e.g. billing). This does not relieve the legal obligation on generators to satisfy the requirements of a Class A supply exemption. Provision of these services is competitive and exempt generators (operating as Class A suppliers) and their prospective consumers are encouraged to seek the best deal available to them.

Q. I have been approached by a third party (e.g. an energy broker) offering to find a customer for my generation.

A. Some generators seeking to undertake exempt supply under Class A are employing third parties (e.g. energy brokers) to identify potential domestic or commercial consumers. This approach is not precluded under Class A, but it does not relieve generators from their legal responsibilities as an exempt supplier nor satisfying the requirements of Class A.

Consumers are encouraged to do their own due diligence and seek legal advice if necessary.

Q. As a generator what should I ask any party that offers a service to facilitate licence exempt supply?

A. Generators are encouraged to do their own due diligence and ask questions of a third-party. They may also consider seeking legal advice. The following however, are areas on which you may wish to seek clarity:

- How will you ensure I will not be supplying more than the allowed limits under the Class A exemption?
- What are your terms and fees?
- Which licensed supplier(s) does the 3rd party have commercial agreements with that might sleeve my supply to end consumers?
- What is the process for identifying and agreeing who the supply customers of my power will be?
- How will my relationship with consumers be facilitated through the services provided by the licensed supplier?
- What kinds of costs are included in the sleeving agreement between me and the licensed supplier and how are they calculated?
- What agreements will I enter into with the broker, licensed supplier and end consumer(s)?

Obligations and responsibilities

Q. Do licence-exempt suppliers need to register their exemption with DESNZ, Ofgem or any other body?

A. No, you do not currently have to register your reliance on the exemption with DESNZ, Ofgem or any other body.

Q. Whose responsibility is it to ensure that the requirements of the Class A small supplier exemption are being satisfied?

A. All parties involved in a supply arrangement under Class A should be aware of the need to ensure that the requirements of the exemption are being satisfied. However, as the Class A supply exemption specifically allows generators to act as exempt suppliers, those generators relying on it should ensure that they are not entering into any arrangements that do not satisfy the requirements and thus potentially open themselves to the penalties outlined above. If unsure, we recommend that legal advice is sought to ensure full compliance.

Q. Are there ongoing obligations for licence exempt suppliers?

A. Yes. In addition to ensuring they continue to comply with the exemptions order 2001, Schedule 2ZB of The Electricity Act 1989 sets out a range of duties for supply exemption holders (e.g. billing, contractual requirements and switching obligations).

Licence exempt suppliers are also subject to broader legislation (e.g. consumer protection law, data protection rules and competition law).

Q. Do I need a contract with the consumer I am supplying?

A. Schedule 2ZB of The Electricity Act 1989 sets out the duties of supply exemption holders including contractual obligations. We suggest that a supply contract is made that satisfies the requirements of the exemption legislation. It is in your interest to ensure you keep records of any contracts agreed.

Additional questions

Q. I am still not sure what I need to do?

A. The Department cannot give specific advice as to whether individual operators fall within a class exemption or are meeting the requirements of that exemption; it falls to those wishing to benefit from a class exemption to determine whether the activities they propose to undertake will fall within the scope of its terms. We therefore strongly recommend that you seek legal advice if you are unsure as to whether proposed supply activities qualify for an exemption or whether a licence will be required.

If you determine that you do need a supply licence, Ofgem can provide more information on the supply licence process.

Q. Could the exemptions regime change in the future?

A. Guarantees cannot be given on any future policy decisions that may require changes to be

made. It is important that licence-exempt suppliers continue to stay informed about their obligations and maintain compliance. The Government website exemptions page³ will outline any changes that are being made.

Q. Are third parties (e.g. brokers) considered to be suppliers in that they would need a licence or an exemption?

A. Definitions of what constitutes 'supply' (such that a licence or exemption is required) are in section 4(4) of the Electricity Act 1989. Schedule 2ZB to the Act sets out the duties of supply licence exemption holders.

Third parties (e.g. brokers) should be clear that they are not acting as a supplier of electricity or determine if they may in fact be providing a supply of electricity under section 4(4) of the Act, such that the requirements of a licence or class exemption would be applicable to the service they are providing. If unclear, legal advice should be sought.

To apply for or discuss obtaining a licence further information and contact details can be found on Ofgem's website⁴.

Q. Can subsidy support still be claimed if I elect to operate as a Class A exempt supplier?

A. Each subsidy scheme will have its own conditions. If in doubt, please seek legal advice.

³ [Electricity licence exemptions - GOV.UK](https://www.gov.uk/government/collections/electricity-licensing-exemptions)

⁴ <https://www.ofgem.gov.uk/>

Individual generation exemptions

As mentioned, the Department's policy to-date has broadly been that in most cases it is not appropriate to grant exemption from the requirements of supply or distribution licence. What follows, therefore, relates to applications for generation exemptions only.

Q. What information do I need to provide to make an application?

A. If you wish to make an application to the Secretary of State for exemption of a generating plant (which should in most cases be less than 100MWs), please write to the Department with the following information:

- Name of generating plant;
- Owners of plant and parent company (if any);
- Company numbers of the owners of plant and parent company;
- Capacity of generating plant;
- Detailed location of plant including Ordnance Survey six figure Land Ranger reference (eg SS526363);
- Details of which distribution network operator (DNO) is providing a connection to the plant;
- Timing - when the plant due to begin generation and when the applicants would like the exemption to be in place;
- Contact details including email address and phone number;
- Any other information that may be considered to be relevant.

Applicants should also provide a detailed covering letter outlining:

- why they believe it is not appropriate to generate under the normal licensing regime;
- why the Secretary of State should exempt the plant from licensing requirements.

The letter will need to demonstrate that exemption does not pose a threat to the safe and secure operation of the electricity system or the interests of customers and why it would be disproportionate for the applicant to meet the costs and obligations of a licence.

Address for application: exemptions@energysecurity.gov.uk

Q. What will the Secretary of State take into account?

A. The Secretary of State will consider each application for an exemption on its merits.

As detailed above, the Department's current policy is that applications should only be considered in respect of stations of less than 100MW capacity as only stations with a low impact on the total electricity system are considered eligible for exemption from the regulatory

measures imposed by licence conditions.

This will inform the Secretary of State's initial decision on whether to consider granting an exemption. Before granting an exemption however, the Secretary of State is required to consult on draft exemption orders for a minimum of 28 days (section 5(2)(c), Electricity Act 1989). This will normally entail publication of the draft order on the the Department's website and inviting comments from interested parties. The Order will also be sent to Ofgem and Citizens Advice.

Applications in respect of exemptions applicable in Scotland are also brought to the attention of Scottish Ministers.

In reaching a final decision, the Secretary of State will take into account the views of those who respond to the 28 day consultation and all other factors relevant to the decision taking account of the duties of the Secretary of State under the Electricity Act 1989.

As outlined in the Act (in particular under section 3A), the principal objective of the Secretary of State in carrying out his functions is to protect the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems (including the reduction of emissions of targeted green-house gases), 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 delivering the overall objective, the Secretary of State should 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.

The Secretary of State will take particular note of any evidence that the impact on the safe and secure operation of the total electricity system will in fact be greater than originally anticipated.

Q. I am applying for exemption for a generating plant located in Scotland.

A. Only in so far as, for exemptions applicable in Scotland, the Department is required to consult Scottish Ministers (under article 4 of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999). This will be conducted alongside (i.e. simultaneous with) the 28 days consultation process.

Q. How long will the process take?

A. The Department aims to consider and reach a decision on applications for individual exemption within a 9 month timescale. However, we strongly advise that applicants allow for a longer period as this can be subject to delays.

Q. Is exemption always given?

A. No, there is no guarantee that exemption will be given. We strongly recommend that

applicants prepare an alternative position in the event that their application is unsuccessful.

Q. What conditions will normally apply to a generation exemption?

A. The Secretary of State may grant exemptions unconditionally or subject to such conditions as he may specify (section 5(1)(c), Electricity Act 1989). The Secretary of State will consider the terms of each application for an exemption on its merits having taken into account all relevant information and the results of consultation. However, it would be usual as a minimum for the following conditions to be attached to a generation licence exemption:

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

Q. Can the Secretary of State apply other conditions?

A. Yes, the Secretary of State may make an exemption 'subject to such conditions as may be so specified' (Section 5(1)(c) of the Electricity Act 1989).

Q. Where can I see examples of exemptions given?

A. Examples of previous applications for exemption and the decision made on them can be found at: <https://www.gov.uk/electricity-licence-exemptions>

Q. Does it matter what type of plant my application is for?

A. The generating technology used is not directly part of the criteria used to assess an application. However any impact on security of network operation resulting from the nature of the generating technology used will be taken into account.

Q. I wish to apply for a time limited exemption – is this possible?

A. Yes, it is possible to apply for an exemption with a condition related to the length of time it will remain in force. The Secretary of State may decide to impose a shorter time limit than that which has been applied for if considered appropriate.

Q. I have a licence but now wish to apply for exemption

A. Although it is possible to apply for an exemption whilst holding a licence, you cannot hold both a licence and an exemption simultaneously. You should therefore liaise with both the Department and Ofgem with regard to the possibility of synchronising timing for surrendering a licence and gaining an exemption if granted.

Q. I have an exemption but now wish to apply for a licence

A. Although it is possible to apply for a licence whilst holding an exemption, you cannot hold both a licence and an exemption simultaneously. You should therefore liaise with both the Department and Ofgem with regard to the possibility of synchronising timing for revocation of an exemption order and the commencement date of a licence if granted.

Q. Can a generation exemption be revoked/surrendered?

A. Yes. The Secretary of State may revoke an order by which an exemption was granted:

- a) at the person's request;
- b) in accordance with any provision of the order by which the exemption was granted; or
- c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.

(section 5(8), Electricity Act 1989)

Similar powers exist under section 5(9) and (10) of the Electricity Act 1989 in respect of revoking a class exemption order or withdrawing an exemption from a person within a class (respectively).

Broadly speaking, if revoking an exemption otherwise than at the beneficiary's request, the Secretary of State is required to consult Ofgem and the beneficiary accordingly (section 5(11) and (12), Electricity Act 1989).

Q. Where can I obtain more advice?

Advice on making an application to the Secretary of State for exemption can be sought from: exemptions@energysecurity.gov.uk

This publication is available from: www.gov.uk/guidance/electricity-licence-exemptions

If you need a version of this document in a more accessible format, please email alt.formats@energysecurity.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.