STATUTORY RULES OF NORTHERN IRELAND

2013 No. 93

ELECTRICITY

Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013

Made - - - -	*28th March 2013*
Coming into operation	*29th April 2013*

The Department of Enterprise, Trade and Investment, makes the following Order in exercise of the powers conferred on it by Article 9(1) and (3) of the Electricity (Northern Ireland) Order 1992(**1**) and of every other power enabling it in that behalf, after consultation with the Northern Ireland Authority for Utility Regulation.

Citation and commencement

1. This Order may be cited as the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013 and shall come into operation on 29th April 2013.

Interpretation

2.—(1) In this Order—

"the Electricity Order" means the Electricity (Northern Ireland) Order 1992;

"distribution exemption holder" means a person referred to in Article 3(1)(b);

"ordinary share capital" has the same meaning as in section 1119 of the Corporation Tax Act 2010(**2**);

"supply exemption holder" means a person referred to in Article 3(1)(c); and

"parent undertaking" shall be construed in accordance with section 1162 of the Companies Act 2006(**3**).

(2) For the purposes of this Order—

(a) one body corporate shall be treated as associated with another if—

(i) one of them is a subsidiary of the other; or

(ii) both of them are subsidiaries of the same holding company

(**1**) S.I. 1992/231 (N.I. 1)
(**2**) 2010 c. 4
(**3**) 2006 c. 46

and "holding company" and "subsidiary" shall have the same meaning as in section 1159 of the Companies Act 2006;

(b) one body corporate shall be treated as related to another if—

(i) one of them is a 75 per cent subsidiary of the other; or

(ii) both of them are 75 per cent subsidiaries of a third body corporate,

and "75 per cent subsidiary" shall be construed in accordance with section 1154 of the Corporation Tax Act 2010;

(c) one body corporate shall be treated as connected to another if—

(i) 50 per cent or more of the ordinary share capital of one of them is owned directly or indirectly by the other; or

(ii) 50 per cent or more of the ordinary share capital of each of them is owned directly or indirectly by a third body corporate,

and for the purpose of determining whether 50 per cent or more of the ordinary share capital of a body corporate is owned directly or indirectly by another body corporate the provisions of Chapter 3 of Part 24 of the Corporation Tax Act 2010 shall apply in relation to this sub-paragraph;

(d) a person shall be treated as generating electricity at any time if he is the operator of plant or equipment which at that time—

(i) is generating or capable of generating electricity; or

(ii) is not capable of generating electricity only by reason of the repair or testing of the plant or equipment.

Exemptions from Article 8 of the Electricity Order

3.—(1) Subject to paragraph (3) exemption is granted—

(a) from Article 8(1)(a) of the Electricity Order to persons of the class specified in Schedule 1;

(b) from Article 8(1)(bb) of the Electricity Order to persons of the classes specified in Schedule 2; and

(c) from Article 8(1)(c) of the Electricity Order to persons of the classes specified in Schedule 3.

(2) A person shall be treated as falling within any class specified in Schedule 2 or 3 notwithstanding that he distributes or supplies electricity, as the case may be, in circumstances other than those specified in the description of that class if the distribution or supply of electricity in those circumstances would, if taken on its own, be such that that person would fall within another class in Schedule 2 or 3, as the case may be.

(3) A person shall not be regarded as falling within—

(a) the class specified in Schedule 1 for as long as he is the holder of a licence under Article 10(1)(a) of the Electricity Order;

(b) any of the classes specified in Schedule 2 for as long as he is the holder of a licence under Article 10(1)(bb) of the Electricity Order; or

(c) any of the classes specified in Schedule 3 for as long as he is the holder of a licence under Article 10(1)(c) of the Electricity Order.

Conditions on exemptions

4.—(1) The exemption granted by Article 3(1)(b) the persons of the classes specified in Schedule 2 is subject to compliance with the conditions specified in Schedule 4 to this Order.

(2) The exemption granted by Article 3(1)(c) to persons of the classes specified in Schedule 3 is subject to compliance with the conditions specified in Schedule 5 to this Order.

Revocation

5. The Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 1999(**4**) is hereby revoked.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 28th day of March 2013.

L.S.

A F Hepper
A senior officer of the
Department of Enterprise, Trade and Investment

(**4**) 1999 No.352

SCHEDULE 1

Article 3(1)(a)

Exemptions from Article 8(1)(a) of the Electricity Order

Small generators

Persons who do not at any time provide more electrical power than 10 megawatts from any one generating station disregarding power provided to—

(a) a single consumer who occupies premises which are on the same site as the premises where the generating station is situated and who consumes all the power provided to him from that generating station at those premises or supplies all or some of such power in circumstances specified in the description of Class B in Schedule 3 and consumes at those premises any of such power not so supplied by him; or

(b) two or more consumers who form a qualifying group each of whom occupies premises which are on the same site as the premises where the generating station is situated and consumes all the power provided to him from that generating station at those premises or supplies all or some of such power in circumstances specified in the description of Class B in Schedule 3 and consumes at those premises any of such power not so supplied by him.

In this Schedule "consumer" means a person to whom electrical power is provided (whether or not he is the same person as the person who provides the electrical power) and two or more consumers form a qualifying group if, being bodies corporate,—

(a) each of them is connected to each other provided that no body corporate which is not connected to, or a parent undertaking in relation to, all of them is a parent undertaking in relation to any of them; or

(b) each of them is related to each other, was related to each other on 1st April 1992 and was provided with electricity by the person in question or a body corporate associated with that person on that date.

For the purposes of this Schedule premises shall be treated as on the same site as each other if they are—

(a) the same premises;

(b) immediately adjoining each other; or

(c) separated from each other only by a road, railway or watercourse or by other premises occupied by the consumer in question, by the person who generates the electricity or by any other person who together with that consumer forms a qualifying group.

SCHEDULE 2

Article 3(1)(b)

Exemptions from Article 8(1)(bb) of the Electricity Order

Class A: Small distributors

Persons who do not at any time distribute more electrical power than 2.5 megawatts for the purpose of giving a supply to domestic consumers or enabling a supply to be so given with that electrical power.

A.1. For the purposes of Class A electrical power distributed by a body corporate, which is associated with, connected to or related to any distributor and which does not fall within Class B below, shall be treated as distributed by that distributor.

Class B: On-site distribution

Persons who do not at any time distribute from any distribution system more electrical power than one megawatt for the purpose of giving a supply to domestic consumers or enabling a supply to be so given with that electrical power provided that each domestic consumer receives the electrical power, disregarding stand-by electrical power, from a generating station embedded in the same distribution system as himself.

B.1. For the purposes of Class B "stand-by electrical power" means electricity supplied periodically or intermittently to a person to make good any shortfall in the availability of electricity to that person from its own generation for the purposes of its supply of electricity to domestic consumers seeking such supply, where such shortfall arises from the generating station being wholly or partly out of commission for a temporary period.

Class C: Distribution to non-domestic consumers

Persons who do not at any time distribute electrical power for the purpose of giving a supply to domestic consumers or enabling a supply to be so given with that electrical power.

Class D: Offshore distributors

Persons who distribute electricity generated by an offshore generating station by means of a distribution system which is not used to convey electricity generated otherwise than by offshore generating stations and where those persons do not distribute electricity for the purpose of giving a supply to domestic premises.

D.1. For the purposes of Class D—

"offshore generating station" means a generating station that is situated within an area of offshore waters;

"offshore waters" means waters in or adjacent to Northern Ireland which are between the mean low water mark and the seaward limits of the territorial sea.

In this Schedule—

"consumer" means a person to whom electricity is provided (whether or not he is the same person as the person who provides the electrical power);

"domestic consumer" means a consumer provided with electricity at domestic premises (but excluding such consumer in so far as he is provided with electricity at premises other than domestic premises); and

"domestic premises" means premises at which electricity is provided wholly or mainly for domestic purposes.

SCHEDULE 3

Article 3(1)(c)

Exemptions from Article 8(1)(c) of the Electricity Order

Class A: Small supply

Persons who do not supply any electricity except—

(a) electricity which they generate themselves; or

(b) electricity which they generate themselves together with electricity which is supplied to them by the holder of a licence under Article 10(1)(c) or (2) of the Electricity Order,