
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.



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

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,

and who do not at any time supply more electrical power than—

- (i) 500 kilowatts disregarding in the case only of electrical power generated solely by CHP generating sets, not being non-fossil fuel generating sets, power provided to any consumer of the type specified in paragraph (b)(i) or (b)(ii) of Class C; or
- (ii) in the case of electrical power generated solely by non-fossil fuel generating sets, one megawatt, disregarding power provided to any consumer of the type specified in paragraph (b)(i) or (b)(ii) of Class C.

For the purposes of (i) and (ii) above—

“CHP generating set” means a generating set used for the simultaneous generation of usable heat and power in a single process at high efficiency;

“coal products” means any substances produced directly or indirectly from coal;

“fossil fuel” means coal, coal products, peat, lignite, crude liquid petroleum or petroleum products;

“high efficiency” means achieving a year round total energy efficiency which would normally be in excess of 70% calculated on the basis of net calorific value;

“natural gas” has the same meaning as in the Energy Act 1976(5);

“non-fossil fuel generating set” means a generating set which is fuelled or driven principally otherwise than by a fossil fuel or by natural gas;

“petroleum products” has the same meaning as in the Energy Act 1976.

A.1.—(1) For the purposes of Class A electrical power supplied by a body corporate which is associated with the supplier in question and which occupies premises on the same site as the generating station operated by that supplier shall be treated as supplied by that supplier.

(2) For the purposes of sub-paragraph (1), premises and a generating station shall be treated as being 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 supplier or the body corporate in question or by any other person who together with that supplier or body corporate forms a qualifying group.

(3) For the purposes of sub-paragraph (2), two or more persons 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 and was related to each other on 1st April 1992.

Class B: Resale

Persons who—

- (a) do not supply any electricity except—
 - (i) electricity which is supplied to their premises by the holder of a licence under Article 10(1)(c) or (2) of the Electricity Order or by a person in circumstances such that he falls within Class C in this Schedule (in this Class referred to as a “Class

(5) 1976 c. 76

C supplier”) provided that for the purpose of determining for the purpose of this Class and paragraphs B.1 and B.2 whether a person is supplying electricity in such circumstances paragraphs (b)(i) and (ii) of Class C in this Schedule shall have effect as if the words from “and” to “Schedule” in each case, were omitted; or

(ii) electricity which they generate themselves or which is supplied to them by a person authorised by an exemption to supply electricity when—

(aa) the supply of electricity which is normally available to them from the holder of a licence under Article 10(1)(c) or (2) of the Electricity Order or a Class C supplier (their “normal supply”) is interrupted temporarily due to circumstances outside their control; or

(bb) the plant or equipment which is used to generate electricity for the purpose of giving their normal supply is being tested; and

(b) to the extent that they supply Class C electricity—

(i) supply such electricity only to premises which are on the same site as the relevant premises; and

(ii) comply with all the conditions set out at B.2.

B.1. For the purposes of Class B—

“Class C electricity” means electricity which is supplied by a person in circumstances such that he falls within Class C in this Schedule;

“relevant premises” in relation to any reference to a supplier falling or seeking to fall within Class B, means the premises from which he supplies that electricity; and

“year” means a period of twelve months running from 1st October to 30th September.

B.2. The conditions referred to in sub-paragraph (b) of Class B are as follows:

(a) In respect of each relevant premises the supplier must not in the previous year have supplied from those relevant premises an amount of Class C electricity which is more than the lower of—

(i) 10 per cent of the Class C electricity supplied in that year to those relevant premises; or

(ii) subject to sub-paragraph (c), 250 megawatt hours of electricity.

(b) If during a year the supplier starts to supply Class C electricity from any particular relevant premises for the first time at the time he starts to make such supplies he must reasonably expect that the total amount of Class C electricity supplied by him during the remainder of that year from those premises will be no more than the lower of—

(i) 10 per cent of the Class C electricity supplied in that year to those relevant premises; or

(ii) the amount obtained by multiplying 250 megawatt hours by a percentage equal to the percentage of the year remaining.

(c) If during the previous year the supplier started to supply Class C electricity from any particular relevant premises for the first time, the amount set out in sub-paragraph (a)(ii) shall be reduced to the amount which is obtained by multiplying 250 megawatt hours by a percentage equal to the percentage of the year remaining at the time he started to make such supplies.

B.3. A supplier shall not, if and to the extent that it would lead to his falling outside Class B, be treated as supplying Class C electricity to any premises during a year in which the relevant premises are being supplied with electricity by the holders of licences under Article 10(1)(c) or (2) of the Electricity Order, unless he supplies more electricity in that year than the amount of electricity which

is supplied to those relevant premises by the holders of licences under Article 10(1)(c) or (2) of the Electricity Order in that year.

Class C: On-site supply

Persons who—

- (a) do not supply any electricity except—
 - (i) electricity which they generate themselves; or
 - (ii) 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; and
- (b) provide the output of each generating station at which they generate electricity other than electricity supplied to premises in the circumstances specified in the description of Class A only to—
 - (i) one consumer who occupies premises which are on the same site as the premises where the generating station is situated and consumes all the electricity provided to those premises by the supplier in question at those premises other than any of that electricity supplied by that consumer in circumstances such that he falls within Class B in this Schedule; or
 - (ii) 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 electricity provided to those premises by the supplier in question at those premises other than any of that electricity supplied by that consumer in circumstances such that he falls within Class B in this Schedule; or
 - (iii)
 - (aa) Consumers of the type specified in sub-paragraph (i) or (ii); and
 - (bb) any other person in circumstances where the provision of the output of the generating station in question does not amount to the supply of electricity to any premises; or
 - (iv) in the case of electrical power generated solely by CHP generating sets—
 - (aa) consumers of the type specified in sub-paragraph (i) or (ii); and
 - (bb) any consumer who occupies premises which are not on the same site as, but receive the electricity supply from, the CHP generating set and consumes all the power provided to those premises from the CHP generating set at those premises (other than any of that electricity supplied by that consumer in circumstances such that he falls within Class B in this Schedule), where that consumer is either a consumer specified in paragraph (aa) or together with the consumers specified in paragraph (aa) forms a qualifying group and where the total maximum amount of electrical power supplied to all such premises at any one time does not exceed one megawatt, which one megawatt limit shall be reduced by any amount of electricity supplied to premises in the circumstances specified in the description of Class A of this Schedule.

C.1.—(1) In Class C—

“consumer” means a person to whom electricity is provided (whether or not he is the same person as the person who provides the electricity) and, subject to paragraph C.2, 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 supplied electricity by the person in question or a body corporate associated with that person on that date;

“output” in relation to a generating station means the electricity generated at the generating station other than electricity consumed by the plant.

(2) For the purposes of Class C and paragraph C.1(1)—

- (a) where at any time the supplier in question and some other person generate electricity at the same generating station or provide the output of the same generating station, the generation of electricity by that other person or the provision of the output of that generating station by that other person shall be treated as the generation of electricity and the provision of the output of that generating station respectively by that supplier if that other person, being a body corporate, is associated with that supplier;
- (b) two or more generating sets which are operated by the same person or by bodies corporate which are associated with each other shall be treated as a single generating station if they are on the same site as each other (whether or not there is an electrical interconnection between any of them) but otherwise shall be treated as separate generating stations, and in this sub-paragraph—
 - (i) “generating set” means a combination of the plant and equipment that produces electricity and any other plant or equipment by which that plant or equipment is driven; and
 - (ii) generating sets shall be treated as being on the same site as each other if they are—
 - (aa) situated on the same premises as each other;
 - (bb) situated on premises which are immediately adjoining each other; or
 - (cc) situated on premises which are separated from each other only by a road, railway or watercourse or by other premises occupied by the supplier in question or by a body corporate which is an associate of that supplier; and
- (c) premises shall be treated as on the same site as each other 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 supplier or consumer in question, or by any other person who together with that consumer forms a qualifying group;
- (d) “CHP generating set” means a generating set used for the simultaneous generation of usable heat and power in a single process at high efficiency;
- (e) “high efficiency” means achieving a year round total energy efficiency which would normally be in excess of 70% calculated on the basis of net calorific value.

C.2. In addition to the circumstances prescribed in paragraph C.1

two or more consumers shall also form a qualifying group for the purposes of paragraph (b)(iv) of Class C if one of those consumers controls the management or funding of each of the other consumers or the management or funding of each of those consumers is controlled by the same person.

SCHEDULE 4

Article 4(1)

Conditions to which the exemptions from Article 8(1)(bb) of the Electricity Order are subject

Third party access

1.—(1) This paragraph applies where—

- (a) a customer owns or occupies premises which are connected to an exempt distribution system;
- (b) the customer is taking a supply of electricity through that system from—
 - (i) the distribution exemption holder that operates or has control of the system; or
 - (ii) a person related to the distribution exemption holder; and
- (c) the customer—
 - (i) has served on the distribution exemption holder a notice expressing the customer’s interest in taking a supply of electricity from a third party supplier through that system; and
 - (ii) has provided with the notice evidence that at least one third party supplier would be willing to supply the customer with electricity through that system, and has identified any such third party supplier in the notice.

(2) In this Schedule “expression of interest” means a notice served under sub-paragraph (1).

(3) Within 5 working days beginning with the day on which it receives the expression of interest, the distribution exemption holder must provide any person related to it that is currently supplying the customer with electricity with a copy of the expression of interest.

(4) Within 10 working days beginning with the day on which it receives the expression of interest, the distribution exemption holder must serve on the customer—

- (a) a notice informing the customer that it will take the steps in sub-paragraph (6) with a view to giving a third party supplier access to its distribution system; or
- (b) a notice informing the customer that the distribution exemption holder considers—
 - (i) that it would need to increase the capacity of its distribution system in order to give a third party supplier access to that distribution system; and
 - (ii) that one of the conditions in sub-paragraph (5) is met.

(5) Those conditions are—

- (a) that it is not technically feasible to provide the increase in capacity in question;
- (b) that providing that increase in capacity would have a significant and adverse economic impact on the distribution exemption holder or any other person.

(6) Where the distribution exemption holder has served on the customer a notice under sub-paragraph (4)(a), the distribution exemption holder must—

- (a) serve on any third party supplier identified in the expression of interest a notice specifying —
 - (i) any metering arrangements that the distribution exemption holder considers would be required to enable access to be given; and
 - (ii) whether it would be willing to give access through contractual arrangements which would not require a connection to be made or modified; and
- (b) provide each such third party supplier with any other documents or information that it may reasonably request.

(7) The distribution exemption holder must serve the notice required by sub-paragraph (6)(a) within 20 working days beginning with the day on which it receives the expression of interest.

(8) The distribution exemption holder must provide any documents or information requested by a third party supplier under sub-paragraph (6)(b)—

- (a) within 20 working days beginning with the day of the distribution exemption holder's receipt of the expression of interest; or
- (b) if the request is made at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in paragraph (a) above, within 10 working days beginning with the day of the distribution exemption holder's receipt of the request.

2.—(1) This paragraph and paragraph 3 apply where a customer who has served an expression of interest relating to an exempt distribution system serves on the distribution exemption holder a notice—

- (a) confirming that the customer has entered into a contract with a third party supplier identified in the expression of interest for the supply of electricity to premises which are connected to the exempt distribution system; and
- (b) identifying that third party supplier.

(2) Within 5 working days beginning with the day on which it receives the notice served under sub-paragraph (1), the distribution exemption holder must provide any person related to it that is currently giving a supply of electricity to the customer with a copy of that notice.

(3) If the distribution exemption holder has not, by the end of the 10 working day period mentioned in paragraph 1(4), served on the customer a notice under paragraph 1(4)(b), the distribution exemption holder must give the third party supplier such access to the distribution system to which the expression of interest relates as is necessary to enable the third party supplier to give a supply of electricity to the customer.

(4) Access under sub-paragraph (2) must be given either—

- (a) as soon as is reasonably practicable after the distribution exemption holder receives the notice served under sub-paragraph (1); or
- (b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.

(5) Sub-paragraphs (6) to (11) apply if the distribution exemption holder has served on the customer a notice under paragraph 1(4)(b) (whether before or after the service of the notice under sub-paragraph (1)).

(6) Subject to sub-paragraph (7), the distribution exemption holder must give the third party supplier such access to its distribution system as is necessary to enable the third party supplier to give a supply of electricity to the customer, and must give that access—

- (a) as soon as is reasonably practicable after the end of the period of 28 working days beginning with the day on which the customer serves the notice under sub-paragraph (1); or
- (b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.

(7) If, before the end of the period mentioned in sub-paragraph (6)(a), the distribution exemption holder takes the steps mentioned in sub-paragraph (8)—

- (a) the distribution exemption holder is not required to give access in accordance with sub-paragraph (6), and
- (b) sub-paragraph (9) applies.

(8) The steps mentioned in sub-paragraph (7) are—

- (a) providing the third party supplier with evidence to show—
 - (i) that the distribution exemption holder would need to increase the capacity of its distribution system in order to give the third party supplier access to that distribution system; and
 - (ii) that one of the conditions in paragraph 1(5) is met; and
- (b) sending a copy of the evidence to the customer.

(9) If, within the period mentioned in sub-paragraph (10), the distribution exemption holder and the third party supplier enter into a contract for the provision to the third party supplier of such access as is necessary to enable it to give a supply of electricity to the customer through the distribution system, the distribution exemption holder must give access to the third party supplier in accordance with the terms of the contract.

(10) That period is—

- (a) the 10 working days immediately following the period mentioned in sub-paragraph (6)(a); or
- (b) any longer period that the distribution exemption holder, the third party supplier and the customer may agree in writing.

(11) If, before the end of the 28 day period mentioned in sub-paragraph (6)(a), the distribution exemption holder, the third party supplier and the customer agree in writing to the extension of that period, sub-paragraphs (6) to (10) have effect as if sub-paragraph (6)(a) referred to the extended period instead of to the period of 28 working days there mentioned.

3.—(1) The third party supplier referred to in paragraph 2(1) may make a complaint to the Authority under Article 31A of the Electricity Order if—

- (a) the distribution exemption holder has served on the customer a notice under paragraph 1(4)(b); and
- (b) at the end of the period mentioned in paragraph 2(10), the distribution exemption holder is not under a duty (whether by virtue of sub-paragraph (6) or (9) of paragraph 2) to give access to the third party supplier.

(2) The third party supplier may not make a complaint under Article 31A of the Electricity Order unless it has, no later than the 10th working day before the day on which the complaint is made, served on the distribution exemption holder a notice—

- (a) informing the distribution exemption holder that it intends to make a complaint under Article 31A; and
- (b) inviting the distribution exemption holder to provide it with any further evidence it may wish to provide for the purpose mentioned in paragraph 2(8)(a).

(3) The complaint must include—

- (a) any evidence provided by the distribution exemption holder under paragraph 2(8)(a) or sub-paragraph (2)(b) above;
- (b) a description of the nature of the access required by the third party supplier (including any alternative forms of access that would be acceptable to it); and
- (c) any evidence the third party supplier may wish to include—
 - (i) to show that the capacity of the distribution system would not need to be increased in order to give a third party supplier access to it;
 - (ii) to show that a condition in paragraph 1(5) is not met; or
 - (iii) as to the benefits that would be brought by any increase in capacity that may be necessary.

(4) The third party supplier must send a copy of the complaint to the distribution exemption holder and the customer.

(5) If the Authority determines under Article 31A of the Electricity Order that the distribution exemption holder is not entitled to refuse the third party supplier access to its distribution system on the ground of lack of capacity—

(a) the distribution exemption holder must give the third party supplier such access to its distribution system as is necessary to enable the third party supplier to give a supply of electricity to the customer;

(b) paragraphs 1(6) to (8) shall apply as if the distribution exemption holder had served a notice under paragraph 1(4)(a) on the customer, and as if the references in paragraph 1(7) and paragraph 1(8)(a) to the “expression of interest” were to the notification of the determination of the complaint by the Authority under Article 31A of the Electricity Order; and

(c) paragraph 5 shall have effect as if the reference in paragraph 5(3) to the “expression of interest” were to the notification of the determination of the complaint by the Authority under Article 31A of the Electricity Order.

(6) Access under sub-paragraph (5)(a) must be given either—

(a) as soon as is reasonably practicable after the distribution exemption holder receives the notification of the determination of the complaint by the Authority under Article 31A of the Electricity Order; or

(b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.

4.—(1) This paragraph applies where a distribution exemption holder is required under paragraph 2(3), (6) or (9) or 3(5)(a) to give a third party supplier access to its distribution system.

(2) The duty must be performed for so long as the access is required.

(3) In meeting the duty the distribution exemption holder must not—

(a) treat the third party supplier less favourably than any other supplier in respect of the terms and conditions for access to its distribution system, including those relating to any connection under paragraph 7(2);

(b) refuse to give access on the basis that the Authority has not yet approved its charging methodology; or

(c) act in a manner which unreasonably prevents, restricts or delays access to its distribution system by the third party supplier.

(4) the distribution exemption holder must grant the third party supplier such ancillary or incidental rights over its distribution system as are necessary to enable the third party supplier to meet its licence or statutory obligations, including any obligations of the third party supplier relating to metering functions.

(5) Where access has been given before a methodology for calculating a use of system charge has been given an approval that is required by virtue of paragraph 5(1), the distribution exemption holder may, within a reasonable period after receiving notification of the approval of the methodology, require the third party supplier to pay for that access an amount that is—

(a) equivalent to the charge that would have been payable for that access had the methodology been approved before the access was given; and

(b) payable within such period as the parties agree or, in the absence of such agreement, within such reasonable period after the distribution exemption holder demands the payment as may be specified by the distribution exemption holder.

Charges for use of system

5.—(1) Subject to paragraph 12(1), a distribution exemption holder on whom a customer has served an expression of interest must not impose a use of system charge unless the Authority has approved the methodology for calculating that charge under sub-paragraph (5) or paragraph 13(7).

(2) If such a distribution exemption holder proposes to impose a use of system charge in circumstances where, by virtue of sub-paragraph (1), the Authority's approval of the methodology for that charge is required the distribution exemption holder must—

- (a) prepare a record of the assets and liabilities associated with its distribution activities at the time of the receipt of the expression of interest;
- (b) prepare a statement (a "charging statement") containing details of the proposed methodology for calculating the use of system charge;
- (c) provide the Authority with—
 - (i) the charging statement,
 - (ii) any evidence that the distribution exemption holder may wish to provide in support of the methodology proposed for calculating the use of system charge,
 - (iii) a copy of the expression of interest, and
 - (iv) such other information or documents as the Authority may request;
- (d) provide the relevant third party supplier with a copy of the charging statement.

(3) Subject to sub-paragraph (4), all of the steps required by sub-paragraph (2) must be carried out within 20 working days beginning with the day of the distribution exemption holder's receipt of the expression of interest.

(4) Where the Authority has requested further information or documents in accordance with sub-paragraph (2)(c)(iv) at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in sub-paragraph (3), the further information or documents must be provided within 10 working days beginning with the day of the distribution exemption holder's receipt of the request.

(5) Where a distribution exemption holder has complied with sub-paragraph (2)(c) the Authority must, as soon as is reasonably practicable—

- (a) decide whether to approve the methodology proposed by that distribution exemption holder; and
- (b) notify the distribution exemption holder of that decision.

(6) Where a distribution exemption holder receives a notice under sub-paragraph (5)(b), it must, as soon as is reasonably practicable after that receipt, provide the relevant third party supplier with a copy of that notice.

(7) Where the Authority does not approve the methodology proposed by the distribution exemption holder, the Authority must give reasons for that decision.

(8) Where the Authority does not approve the methodology proposed by the distribution exemption holder and the distribution exemption holder still wishes to impose a use of system charge the distribution exemption holder must—

- (a) submit to the Authority a charging statement containing details of a revised methodology;
- (b) provide the Authority with a copy of such other information as the Authority may request in respect of that revised methodology; and
- (c) provide the relevant third party supplier with a copy of the charging statement.

(9) Where at any time a distribution exemption holder wishes to modify a methodology that has previously been approved under this Schedule and is used by it for calculating a use of system charge

levied for the use of a distribution system other than a closed distribution system, the distribution exemption holder must—

- (a) submit to the Authority a charging statement containing details of the proposed revised methodology;
- (b) provide the Authority with a copy of such other information as the Authority may request; and
- (c) provide the relevant third party supplier, and any other third party supplier who would be affected by the modification proposed, with a copy of the charging statement.

(10) If a distribution exemption holder takes the steps required by sub-paragraph (8) or (9), sub-paragraphs (5) to (7) apply as if it had complied with sub-paragraph (2)(c).

(11) For the purposes of sub-paragraphs (2)(d), (6), (8)(c) and (9)(c), a duty to provide anything to “the relevant third party supplier” is a duty to provide it—

- (a) if at the time when the duty is discharged the distribution exemption holder has received a notice from the customer under paragraph 2(1), to the third party supplier identified in that notice; or
- (b) if at the time when the duty is discharged the distribution exemption holder has not received such a notice from the customer, to any third party supplier identified in the expression of interest.

6.—(1) Sub-paragraph (2) applies where a distribution exemption holder is under a duty to give access to its distribution system under paragraph 2(3), (6) or (9) or 3(5)(a).

(2) Where and for so long as the distribution exemption holder is imposing a use of system charge, it must—

- (a) prepare and maintain distribution accounts in respect of the distribution system for each regulatory year;
- (b) keep copies of those accounts for 6 years from the date of the transactions to which they relate; and
- (c) notify the Authority of the address where those accounts are held.

(3) In sub-paragraph (2)—

“distribution accounts” means accounting records in relation to the business (the “distribution business”) constituted by the distribution activities of the distribution exemption holder’s business that—

- (a) are sufficient to show and explain the transactions of the distribution business, separate from any other transactions of the distribution exemption holder’s business;
- (b) are sufficient to disclose with reasonable accuracy, at any time, the financial position of the distribution business at that time;
- (c) contain entries from day to day of all sums of money received and expended in the course of the distribution business and the matters in respect of which the receipt and expenditure takes place; and
- (d) contain a record of the assets and liabilities attributable to the distribution business;

“regulatory year”, in relation to a distribution business, means—

- (a) a period of 12 months beginning on 1 April in any calendar year and ending on 31 March of the next calendar year; or
- (b) where the distribution exemption holder wishes to align the accounting period for the distribution business with the accounting period for any other business it carries on or

the business of any person related to it, the period of 12 months used as the accounting period for that other business or the business of that related person.

Connection

7.—(1) This paragraph applies where a distribution exemption holder is under a duty to give access to a third party supplier under paragraph 2(3), (6) or (9) or 3(5)(a).

(2) The distribution exemption holder must, if required to do so by the third party supplier or the customer who served the notice under paragraph 2(1), make a connection between its distribution system and—

- (a) the premises mentioned in paragraph 1(1)(a); or
- (b) the distribution system of another authorised distributor.

(3) The duty under sub-paragraph (2) includes a duty to provide such electric lines or electrical plant as may be necessary to enable the connection to be used for the purpose for which it is required.

(4) The duty under sub-paragraph (2) must be performed in accordance with such terms as are agreed under paragraphs 8 and 9, or paragraph 10, for so long as the connection is required.

(5) In this paragraph and paragraphs 8 to 10—

- (a) any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant);
- (b) any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines or electrical plant); and
- (c) any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by the modification of an existing one.

8.—(1) Where a distribution exemption holder makes a connection under paragraph 7(2) any expenses reasonably incurred in making the connection or in providing any electric line or electrical plant that the distribution exemption holder is under a duty to provide must, if and to the extent that the distribution exemption holder requires, be met by the person requiring the connection.

(2) The reference in sub-paragraph (1) to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it.

(3) Where a distribution exemption holder is under a duty to make a connection under paragraph 7(2)—

- (a) it may require the person requiring the connection to provide it with reasonable security for the payment to it under sub-paragraph (1) of amounts in respect of the provision of any electric lines or electrical plant that it is under a duty to provide; and
- (b) if the person requiring the connection fails to provide any security required under paragraph (a), or any security given by the person requiring the connection becomes invalid or insufficient and that person fails to provide alternative or additional security, the distribution exemption holder may if it thinks fit—
 - (i) where the connection has not been made, refuse to provide the line or plant for so long as the failure continues; or
 - (ii) where the connection is being maintained, disconnect the premises or distribution system in question.

(4) Where any sum has been deposited with a distribution exemption holder by way of security under sub-paragraph (3) the distribution exemption holder must, on repaying the amount, also pay interest on that amount, at such rate as may from time to time be fixed by the distribution exemption holder with the approval of the Authority.

(5) Nothing in paragraph 7 is to be taken as requiring the distribution exemption holder to make a connection between its distribution system and any premises or other distribution system if and to the extent that—

- (a) the distribution exemption holder is prevented from doing so by circumstances outside its control;
- (b) circumstances exist by reason of which the connection would or might involve danger to the public, and the distribution exemption holder has taken all reasonable steps to prevent the circumstances from occurring and to prevent them from having that effect; or
- (c) it is not reasonable in all the circumstances for the distribution exemption holder to be required to do so.

(6) Without prejudice to the generality of sub-paragraph (5), nothing in paragraph 7 is to be taken as requiring the distribution exemption holder to make a connection if any consent that is necessary for the connection to be made has not been given.

(7) A distribution exemption holder who is required to make a connection under paragraph 7(2) may require the person requiring the connection to accept, in respect of the making of the connection, any terms restricting any liability of the distribution exemption holder for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept.

(8) Sub-paragraphs (3)(b)(ii) and (5)(c), do not permit a distribution exemption holder to disconnect any premises or distribution system unless the distribution exemption holder has given the owner and the occupier of the premises or (as the case may be) the person who operates or has control of the distribution system not less than 7 working days' notice of its intention to disconnect.

9.—(1) This paragraph applies where a distribution exemption holder has a duty to make a connection under paragraph 7(2).

(2) Except where an agreement under paragraph 10(1) is in place, the distribution exemption holder must comply with the requirements of sub-paragraph (3) as soon as is reasonably practicable after the person requiring the connection has—

- (a) served on the distribution exemption holder a notice requesting that the distribution exemption holder offer terms for making the connection; and
- (b) provided the distribution exemption holder with the following information—
 - (i) details of the premises or distribution system from which the connection to the distribution exemption holder's distribution system is required, including the location of the premises or distribution system,
 - (ii) the date on or by which the person requiring the connection proposes that the work necessary for the connection to be made should be carried out,
 - (iii) the maximum power at which electricity may be required to be conveyed through the connection,
 - (iv) details of any other requirements that the person requiring the connection has, including any metering requirements, and
 - (v) any other information in relation to the required connection reasonably requested by the distribution exemption holder.

- (3) The distribution exemption holder must serve on the person requiring the connection a notice—
- (a) raising any concerns that it has with the information provided in accordance with sub-paragraph (2)(b);
 - (b) proposing arrangements for any security that the person requiring the connection will be required to pay to it under paragraph 8(3);
 - (c) proposing arrangements for any payment that the person requiring the connection will be required to make under paragraph 8(1);
 - (d) stating any terms that the person requiring a connection will be required to accept under paragraph 8(7), restricting the distribution exemption holder's liability; and
 - (e) proposing any other terms on which it will make the connection.
- (4) The distribution exemption holder must negotiate in good faith with the person requiring the connection and endeavour to reach an agreement on the terms and conditions for that connection.

10.—(1) The distribution exemption holder may enter into an agreement with a person requiring a connection in pursuance of paragraph 7(2) for the making of a connection on such terms as may be agreed by the parties.

(2) So long as the agreement is effective, the rights and liabilities of the parties shall be those arising under the agreement and not those provided for under paragraphs 7 to 9.

Closed distribution systems

11.—(1) A distribution exemption holder may apply to the Authority for an exempt distribution system operated or controlled by it to be classified as a closed distribution system.

(2) Where the Authority has received an application from a distribution exemption holder under sub-paragraph (1)(a) (“closed distribution system application”), it must classify the distribution system as a closed distribution system if the Authority considers that all of the following criteria are met—

- (a) the distribution system is not used for the purpose of supplying electricity to household customers, or is used to supply fewer than 50 household customers who—
 - (i) are employees of, or work for or otherwise render services to, the distribution exemption holder or a person related to the distribution exemption holder; and
 - (ii) take a supply of electricity that is wholly or mainly from a generating station embedded in the distribution system;
 - (b) the distribution system is wholly or mainly used for distributing electricity within a geographically self-contained industrial, commercial or shared services site and is not integrated with any distribution system operated or controlled by an electricity distributor, or any transmission system operated or controlled by the holder of a transmission licence; and
 - (c) the distribution system is wholly or mainly used either—
 - (i) by system users whose businesses, for technical or safety-related reasons, have operational or production processes that are integrated with those of other system users of that distribution system; or
 - (ii) for the purpose of supplying electricity to premises owned or occupied by the distribution exemption holder or by a person related to the distribution exemption holder.
- (3) A closed distribution system application must—
- (a) identify the distribution system to which the application relates;

- (b) include any evidence available to the applicant to support that application; and
 - (c) provide any further information or documents that the Authority may request in respect of that application.
- (4) The Authority must decide whether to classify a distribution system as a closed distribution system as soon as is reasonably practicable after the Authority has received—
- (a) the closed distribution system application; and
 - (b) any further information or documents requested by it under sub-paragraph (3)(c).
- (5) The Authority must notify the distribution exemption holder of its decision as soon as is reasonably practicable after that decision has been made.

12.—(1) Paragraph 5(1) to (8) does not apply in relation to any use of system charge (or proposed use of system charge) that relates to a closed distribution system.

(2) Where a distribution exemption holder that operates or has control of a closed distribution system receives an expression of interest from a customer who owns or occupies premises that are connected to that system, it must—

- (a) include in any notice served under paragraph 1(4) a statement that its distribution system is a closed distribution system; and
- (b) within 7 working days beginning with the day on which it receives the expression of interest, by notice inform any third party supplier identified in the expression of interest that its distribution system is a closed distribution system.

13.—(1) Sub-paragraphs (2) and (3) apply if a customer has served an expression of interest with respect to a closed distribution system and—

- (a) the customer, or a third party supplier identified in the expression of interest, serves a notice on the distribution exemption holder requesting that the methodology for a proposed use of system charge be submitted to the Authority for approval; and
- (b) at the time of receiving the request the distribution exemption holder has not received any confirmation under paragraph 2(1) that the customer has entered into a contract with a third party supplier.

(2) From the time when the distribution exemption holder receives that request, paragraph 5(1) to (8) has effect in relation to the closed distribution system as if paragraph 12(1) did not have effect.

(3) For the purposes of the application of paragraph 5(2) in relation to the proposed use of system charge mentioned in sub-paragraph (1)(a), the reference in paragraph 5(3) to the “expression of interest” is to be read as a reference to the request mentioned in sub-paragraph (1)(a) above.

(4) Sub-paragraphs (5) to (11) apply where a customer who owns or occupies premises that are connected to a closed distribution system has served a notice under paragraph 2(1) confirming that it has entered into a contract with a third party supplier (“the confirmed third party supplier”) and—

- (a) the customer or the confirmed third party supplier serves on the distribution exemption holder that operates or has control of the closed distribution system a notice requesting that the methodology for a use of system charge that is being applied by the distribution exemption holder be submitted to the Authority for approval;
- (b) the methodology for calculating the charge has not previously been approved under this Schedule; and
- (c) at the time of receiving the notice under paragraph (a), the distribution exemption holder has received the notice served under paragraph 2(1).

(5) The distribution exemption holder must, within 20 working days beginning with the day on which it receives the request under sub-paragraph (4)(a)—

- (a) provide the Authority with—
 - (i) a charging statement in respect of the methodology for any use of system charge applied at the time of the request being made; and
 - (ii) such other information or documents as the Authority may specify; and
 - (b) provide the customer and the confirmed third party supplier with a copy of that charging statement.
- (6) Where the Authority has requested further documents or information in accordance with sub-paragraph (5)(a)(ii) at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in sub-paragraph (5), those further documents or information must be provided within 10 working days beginning with the day of the distribution exemption holder's receipt of that request for further documents or information.
- (7) Where the distribution exemption holder has complied with sub-paragraph (5)(a), the Authority must, as soon as is reasonably practicable—
- (a) decide whether to approve the methodology set out in the charging statement; and
 - (b) notify the distribution exemption holder and the confirmed third party supplier of its decision.
- (8) Where the Authority does not approve the methodology, the Authority must give reasons for that decision.
- (9) Where the Authority has notified the distribution exemption holder of a decision that it does not approve the methodology, the distribution exemption holder must not continue to impose a use of system charge, except where the Authority has considered the methodology for such a charge by virtue of sub-paragraph (11) and has approved it.
- (10) Where the Authority does not approve the methodology submitted under sub-paragraph (5)
- (a) the distribution exemption holder may—
 - (a) submit to the Authority a charging statement containing details of a revised methodology;
 - (b) provide the Authority with such other information or documents as the Authority may specify; and
 - (c) send a copy of the charging statement to the customer and the confirmed third party supplier.
- (11) If the distribution exemption holder takes the steps mentioned in sub-paragraph (10)(a) to (c), sub-paragraphs (7) and (8) apply as if it had complied with sub-paragraph (5)(a).
- (12) Where at any time a distribution exemption holder wishes to modify a methodology that has previously been approved under this Schedule and is used by it for calculating a use of system charge levied for the use of a closed distribution system, the distribution exemption holder must—
- (a) submit to the Authority a charging statement containing details of the proposed revised methodology;
 - (b) provide the Authority with a copy of such other information or documents as the Authority may request; and
 - (c) send a copy of the charging statement to the customer, the confirmed third party supplier and any other third party supplier who would be affected by the modification proposed.
- (13) If the distribution exemption holder takes the steps mentioned in sub-paragraph (12)(a) to (c), sub-paragraphs (7) and (8) apply as if it had complied with sub-paragraph (5)(a).

Change of circumstance in respect of a closed distribution system

14.—(1) If, after a system has been classified as a closed distribution system, there is a change of circumstance which affects, or might affect, whether the system continues to meet the criteria set out in paragraph 11(2), the distribution exemption holder that operates or has control of the distribution system must notify the Authority of the change as soon as is reasonably practicable after it occurs.

(2) If the distribution exemption holder that operates or has control of the distribution system wishes the system to continue to be classified as a closed distribution system, it must include in the notice an application to the Authority asking the Authority to confirm the classification.

(3) Any application under sub-paragraph (2) must—

- (a) identify the distribution system to which the application relates;
- (b) include any evidence available to the applicant to support that application; and
- (c) provide any further information or documents that the Authority may request in respect of that application.

(4) Where the Authority has received a notice under sub-paragraph (1), it must, as soon as is reasonably practicable, either—

- (a) revoke the classification; or
- (b) confirm the classification if—
 - (i) the notice includes an application made under sub-paragraph (2);
 - (ii) the Authority has received any further information or documents requested by it; and
 - (iii) the Authority considers that the criteria set out in paragraph 11(2) continue to be met.

(5) The Authority must notify the applicant of its decision under sub-paragraph (4) as soon as is reasonably practicable after the decision has been made.

Information and accounts

15.—(1) Distribution exemption holders shall furnish to the Authority, in such manner and at such times as the Authority may direct, such information as the Authority may consider necessary for the purpose of performing its functions under the Electricity Order or the Energy Order.

(2) Distribution exemption holders (other than persons who fall within Class D of Schedule 2) who at any time distribute electricity to household consumers and who are vertically integrated undertakings shall keep separate accounts for their distribution activities in their internal accounts.

Confidentiality

16. A distribution exemption holder shall keep confidential commercially sensitive information obtained in the course of carrying out its business as a distribution system operator and shall prevent information about its own activities as a distribution system operator which may be commercially advantageous being disclosed in a discriminatory manner.

Interpretation

17.—(1) In this Schedule—

“the Authority” means the Northern Ireland Authority for Utility Regulation;

“charging statement” (in relation to a distribution exemption holder who proposes to impose a use of system charge) is to be construed in accordance with paragraph 5(2)(b);

“closed distribution system” means a system classified as a closed distribution system by the Authority under paragraph 11(2);

“customer” means a person who purchases electricity for the person’s own consumption;

“the Energy Order” means the Energy (Northern Ireland) Order 2003;

“expression of interest” has the meaning given by paragraph 1(2);

“household customer” means a customer who purchases electricity for consumption by the customer’s own household;

“system user”, in relation to a distribution system, means—

(a) a person supplying electricity that is being conveyed by means of that distribution system; or

(b) a customer who owns or occupies premises that are connected to that distribution system;

“third party supplier”, in relation to a distribution exemption holder, means any authorised supplier that is not related to the distribution exemption holder; and

“use of system charge”, in relation to a distribution exemption holder, means a charge which—

(a) is levied by the distribution exemption holder on a third party supplier identified in an expression of interest that has been served on the distribution exemption holder; and

(b) is for use of the exempt distribution system to which the expression of interest relates; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971(6).

(2) For the purposes of this Schedule, a person (“A”) is related to another person (“B”) where A is—

(a) an undertaking in which B has a participating interest within the meaning of section 421A of the Financial Services and Markets Act 2000;(7)

(b) a holding company of B;

(c) a subsidiary of B; or

(d) a subsidiary of a holding company of B.

(3) For the purposes of sub-paragraph (2) “holding company” and “subsidiary” are to be construed in accordance with section 1159 of the Companies Act 2006.(8)

SCHEDULE 5

Article 4(2)

Conditions to which the exemptions from Article 8(1)(c) of the Electricity Order are subject

Change of supplier

1.—(1) This paragraph applies if a supply exemption holder enters into a contract with a customer to start supplying electricity to any premises.

(2) The supply exemption holder must, within 5 working days beginning with the day on which the contract is entered into, give any person who is currently supplying electricity to the premises a notice stating—

(6) 1971 c.80

(7) 2000 c.8 as amended by S.I. 2008/948

(8) 2006 c. 46.

- (a) that the contract has been entered into; and
 - (b) when the supply exemption holder will start supplying electricity to the premises.
- (3) Subject to sub-paragraphs (4) and (7), the supply exemption holder must start supplying electricity to the premises within 15 working days of the relevant date.
- (4) The supply exemption holder need not comply with sub-paragraph (3) if—
- (a) the customer requests that the supply start on a later date;
 - (b) the customer terminates, or gives notice to terminate, the contract; or
 - (c) one or more of the reasons in sub-paragraph (5) applies.
- (5) The reasons in this sub-paragraph are—
- (a) that the supply exemption holder—
 - (i) does not have all of the information it requires in order to start supplying electricity to the premises, despite having taken all reasonable steps to obtain the missing information from the customer; and
 - (ii) cannot readily obtain that information from another source;
 - (b) that the customer is taking a supply of electricity through an exempt distribution system and the supply exemption holder is unable to start supplying electricity to the premises because—
 - (i) a connection which the customer or supply exemption holder requires to be made in pursuance of paragraph 7(2) of Schedule 4 has not yet been made; or
 - (ii) the distribution exemption holder has specified, in a notice under paragraph 1(6)(a) (i) of Schedule 4, a metering arrangement which it considers would be required for access to be given to a third party supplier (within the meaning of that Schedule) and that metering arrangement is not yet in place;
 - (c) that any other circumstance which is outside the control of the supply exemption holder and which it has taken all reasonably practicable steps to resolve prevents it from starting to supply electricity to the premises.
- (6) If, because of a reason in sub-paragraph (5), a supply exemption holder is not required to start supplying electricity to the premises within 15 working days of the relevant date, it must start supplying electricity to the premises as soon as is reasonably practicable after the reason ceases to apply, and in any event within 15 working days of the date on which the reason ceases to apply (but if there is more than one reason, references in this sub-paragraph to a reason's ceasing to apply to all the reasons having ceased to apply).
- (7) If another supply exemption holder is currently supplying electricity to the premises and has objected to the change of supplier under paragraph 2, then the supply exemption holder mentioned in sub-paragraph (1) above—
- (a) must not start supplying electricity to the premises before that objection is resolved; but
 - (b) must start supplying electricity to the premises as soon as is reasonably practicable after the objection is resolved, and in any event within 15 working days of the date on which the objection is resolved.
- (8) For the purposes of sub-paragraph (7) an objection made under paragraph 2 is taken to be resolved—
- (a) in the case of an objection based on the reason in paragraph 2(5)(a) alone—
 - (i) when the customer, or the supply exemption holder who made the objection, informs the supply exemption holder mentioned in sub-paragraph (1) above that the debt has been paid off in full, or

- (ii) when an arrangement such as is mentioned in paragraph 2(5)(a)(iii) is made with respect to the debt;
 - (b) in the case of an objection based on the reason in paragraph 2(5)(b) alone, when the period mentioned in that paragraph expires;
 - (c) in the case of an objection based on both those reasons, when the objection has been resolved in relation to each reason in accordance with paragraphs (a) and (b) above; or
 - (d) in any case, when the objection is withdrawn.
- (9) In this paragraph “the relevant date” means—
- (a) the day after the day on which the supply exemption holder enters into the contract mentioned in sub-paragraph (1); or
 - (b) if, after the contract is entered into, there is a period within which the customer may decide not to proceed with it, the earlier of—
 - (i) the day after the day on which that period ends; or
 - (ii) 10 working days after the day on which the contract was entered into.
- 2.—(1) This paragraph applies if—
- (a) a person (“the new supplier”) has entered into a contract with a customer to start supplying electricity to any premises; and
 - (b) a supply exemption holder is currently supplying electricity to the premises under a contract with that customer.
- (2) If one or more of the reasons in sub-paragraph (5) applies, the supply exemption holder may object to the change of supplier by sending notice of the objection and the reason (or reasons) for it to—
- (a) the new supplier; and
 - (b) the customer.
- (3) A notice under sub-paragraph (2) must be sent—
- (a) as soon as reasonably practicable; and
 - (b) if the supply exemption holder is notified under paragraph 1(2), or in accordance with a condition in a licence, that the contract has been entered into, not later than the end of the 10th working day after the day on which it receives that notification.
- (4) If the supply exemption holder objects to a change of supplier because of the reason in sub-paragraph (5)(b), the notice of this objection must also state when the period mentioned in that sub-paragraph will expire.
- (5) The reasons in this sub-paragraph are that—
- (a) the customer owes money in excess of one hundred pounds (£100.00) (“the debt”) to the supply exemption holder in respect of electricity supplied to the customer and—
 - (i) the supply exemption holder has demanded payment of the debt;
 - (ii) at least 20 working days have passed since the date on which the demand was sent to the customer and any date for payment stated in the demand has also passed; and
 - (iii) the new supplier and the supply exemption holder have not agreed to an arrangement under which all of the debt will be assigned to the new supplier; or
 - (b) a contract between the supply exemption holder and the customer includes a term which prevents the customer from terminating that contract within a specified period which has not expired.

(6) The supply exemption holder must comply with any reasonable request from the new supplier to provide any information, or take any other steps, required to enable the new supplier to start supplying electricity to the customer's premises.

3.—(1) A supply exemption holder must not require a customer to pay any sum in respect of a change of supplier by that household customer.

(2) Sub-paragraph (1) does not prevent a supply exemption holder from requiring payment of any termination fee payable under any contract between it and the customer.

(3) A supply exemption holder must take all reasonable steps to ensure that a final bill in respect of any unpaid charges for electricity supplied to a customer's premises is sent to that customer within 6 weeks of the date on which the supply exemption holder stops supplying electricity to the premises.

Customer contracts

4.—(1) Where a supply exemption holder enters into a contract with a household customer for the supply of electricity it must provide the customer with a copy of the contract.

(2) The contract must specify—

- (a) the identity and address of the supply exemption holder;
- (b) the services provided, including any maintenance services provided;
- (c) any service quality levels that are to be met;
- (d) if a connection is required, when that connection will take place;
- (e) the means by which up-to-date information may be obtained about—
 - (i) any applicable tariffs, the unit rate, in terms expressed as “pence per kWh”, maintenance charges and any other applicable standing charges; and
 - (ii) the supply exemption holder's terms and conditions;
- (f) the duration of the contract;
- (g) any conditions for renewal of the contract;
- (h) any conditions for termination of the contract or of any services provided under it and any right of the customer to terminate the contract where the supply exemption holder proposes a variation to the terms and conditions of the contract and the customer does not wish to accept such new terms and conditions;
- (i) any charges for early termination of the contract;
- (j) any compensation and refund arrangements which apply if any service quality levels specified in the contract are not met, including any arrangements which apply in the event of inaccurate or delayed billing;
- (k) the methods of dispute resolution available to the customer in the event of a dispute with the supply exemption holder, including how such dispute resolution procedures can be initiated; and
- (l) where further information on the customer's rights as a consumer of electricity can be found.

(3) If a supply exemption holder intends to increase the applicable tariffs or charges payable under a contract with a household customer it must inform that customer of the change and of any applicable termination rights at least 15 working days in advance of the date the variation is due to take effect.

(4) If a supply exemption holder intends to change any of the main contractual conditions of a contract with a household customer it must inform that customer of the change and of any applicable termination rights at least 15 working days in advance of the date the change is due to take effect.

(5) Any charge made under the contract for offering a particular payment method, including any charge for use of a pre-payment meter, must reflect the cost to the supply exemption holder of making that payment method available.

(6) A supply exemption holder must not treat a household customer or group of household customers differently without good reason when offering different payment methods to customers.

(7) In this paragraph, “main contractual conditions” means any conditions of the contract which relate to a matter mentioned in any of paragraphs (b), (c) and (f) to (j) of sub-paragraph (2).

(8) A supply exemption holder must provide a household customer with a choice of payment methods, including as a minimum making payment in arrears (at such frequency as is set out in the terms and conditions), by direct debit (at such frequency as is set out in the terms and conditions) and in advance through a pre-payment meter.

(9) Where the supply exemption holder enters into a contract with a household customer that has a fixed term contract, the supply exemption holder shall, by way of sending a notice at least 15 working days but no more than 30 working days before the expiry date of the fixed term, notify the household customer of the expiry date of the fixed term period, the name and unit rate, expressed as “pence per kWh”, of the tariff that will apply under the contract following the expiry date of the fixed term period.

Provision of services for persons who are of pensionable age or disabled or chronically sick

5.—(1) The supply exemption holder shall—

- (a) not, in any month from October to March, cut off the supply of electricity to the premises at which the household customer—
 - (i) has not paid charges for electricity supplied to those premises;
 - (ii) is of pensionable age, disabled or chronically sick; and
 - (iii) lives alone or only with other persons who are of pensionable age, disabled, chronically sick or under the age of 18;
- (b) take all reasonable steps to avoid, in any month from October to March, cutting off the supply of electricity to the premises of a household customer—
 - (i) where the household customer has not paid the charges for electricity supplied to those premises; and
 - (ii) the occupants of those premises include a person who is of pensionable age, disabled or chronically sick and to whom sub-paragraph (a) does not apply; and
- (c) take all reasonable steps to ascertain, before it exercises any right it may have to cut off the supply of electricity to the premises of a household customer, whether those premises is one that falls within the scope of sub-paragraph (a) or (b) above.

(2) For the purposes of this paragraph, a person is “disabled” if he/she has a disability within the meaning given to that term in the Disability Discrimination (Northern Ireland) Order 2006(9).

Customer information

6.—(1) No later than 12 months after entering into a contract with a customer to start supplying electricity to any premises, and at intervals of not less than 12 months thereafter, a supply exemption holder must send the customer the information specified in sub-paragraph (3), (4) or (5) (whichever is applicable).

(2) But the supply exemption holder is required to specify the matters mentioned in sub-paragraphs (3)(b) and (4)(b) only so far as it is reasonably practicable to do so.

(3) If the customer is charged for its supply wholly or partly by reference to the quantity of electricity supplied and a meter records the quantity supplied to that customer separately from the quantity supplied to other customers, the information in question is—

- (a) the number of that meter if it has one;
- (b) the amount of electricity recorded by that meter as having been consumed by that customer in the 12 months immediately preceding the date on which the information is sent (or in the part of the period during which the supply exemption holder supplied electricity to those premises under the contract with the customer); and
- (c) the total cost that the customer has been charged for that electricity.

(4) If the customer is charged for its supply wholly or partly by reference to the quantity of electricity supplied and that quantity is not recorded using a separate meter, the information in question is—

- (a) the number of any meter that recorded the total electricity consumed by that customer and other customers in the 12 months immediately preceding the date on which the information is sent (or in any part of that period during which the supply exemption holder supplied electricity to those premises under the contract with the customer);
- (b) the amount of electricity recorded by that meter; and
- (c) an explanation as to how the proportion of electricity charged to the customer was determined.

(5) If the customer is not charged for its supply by reference to the quantity of electricity supplied, the information in question is the total cost that the customer has been charged for that electricity in the 12 months immediately preceding the date on which the information is sent.

(6) A supply exemption holder who is supplying electricity to any premises under a contract with a customer must comply with any written request by the customer to send relevant information—

- (a) to the customer; or
- (b) to a person who is not currently supplying electricity to the premises under a contract with the customer but has expressed an interest in doing so.

(7) In sub-paragraph (6) “relevant information” means—

- (a) if information has been sent to a customer in accordance with sub-paragraph (1) in the previous 12 months, a copy of that information;
- (b) in any other case, so much of the information referred to in sub-paragraph (1) as can be readily provided by the supply exemption holder.

(8) A supply exemption holder must not require a customer to pay for any costs associated with preparing or sending information to the customer, or to any other person at the customer’s request, in accordance with this paragraph.

7.—(1) A supply exemption holder must, so far as is reasonably practicable to do so, inform each customer with each bill of the following matters—

- (a) what sources of energy were used to generate the electricity supplied in the period covered by that bill;
- (b) the proportions in which the sources of energy were used; and
- (c) where further information can be found about the environmental impact of generating electricity using those sources of energy.

(2) A supply exemption holder must, at the end of any period of 12 months during which it has supplied a customer with electricity but has neither sent a bill nor provided the customer with information under this sub-paragraph, provide the customer with the information required by sub-paragraph (1) (but for this purpose sub-paragraph (1)(a) is to be read as if the reference to the period covered by the bill were to the period of 12 months mentioned in this sub-paragraph).

(3) A supply exemption holder must not require a customer to pay for any costs associated with preparing or sending information to the customer in accordance with this paragraph.

8.—(1) A supply exemption holder must—

- (a) with each bill inform each customer what methods of dispute resolution are available to the customer in the event of a dispute with the supply exemption holder; and
- (b) with each bill inform each household customer—
 - (i) where the energy consumer checklist can be found; and
 - (ii) that the household customer has a right to request a copy of the energy consumer checklist from the supply exemption holder.

(2) At the end of any period of 12 months during which a supply exemption holder has supplied a customer with electricity but has not sent a bill (nor provided the customer with information under this sub-paragraph) the supply exemption holder must inform the customer of—

- (a) the matters mentioned in sub-paragraph (1)(a); and
- (b) if the customer is a household customer, the matters mentioned in sub-paragraph (1)(b).

(3) A supply exemption holder must send a household customer a copy of the energy consumer checklist within one month of receiving a request for it from or on behalf of that customer.

(4) A supply exemption holder must not require a customer to pay for any costs associated with preparing or sending information to the customer in accordance with this paragraph.

(5) In this paragraph the “energy consumer checklist” means any guidance such as is mentioned in Article 7(5) of the Energy Order which is published under that Article.

Information

9. Supply exemption holders shall furnish to the Authority, in such manner and at such times as the Authority may direct, such information as the Authority may consider necessary for the purpose of performing its functions under the Electricity Order or the Energy Order.

Interpretation

10. In this Schedule—

- “customer” means a person who purchases electricity for the person’s own consumption;
- “the Energy Order” means the Energy (Northern Ireland) Order 2003;
- “household customer” means a customer who purchases electricity for consumption by the customer’s own household; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order re-enacts the Electricity (Class Exemptions from the Requirements for a Licence) Order (Northern Ireland) 1999, with amendments. It continues to grant exemption from the requirements of Article 8(1)(a) of the Electricity (Northern Ireland) Order 1992 (the “Electricity Order”) (which prohibits the generation of electricity without a licence) and Article 8(1)(c) of the Electricity Order (which prohibits the supply of electricity to premises without a licence) to persons of particular classes. The class of persons who are exempt from the requirement to hold a licence to generate electricity is set out in Schedule 1 and the classes of persons who are exempt from the requirement to hold a licence to supply electricity to premises are set out in Schedule 3.

In addition to minor and drafting amendments, this Order makes the following changes of substance

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- (a) A new exemption from the requirement of Article 8(1)(bb) of the Electricity Order (which prohibits the distribution of electricity without a licence) is granted. The classes of persons who are exempt from the requirement to hold a licence to distribute electricity are set out in Schedule 2 to this Order and are as follows—
 - (i) 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;
 - (ii) 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;
 - (iii) 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; and
 - (iv) 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.
 - (b) The exemption from the requirement to hold a licence to distribute electricity is granted subject to compliance with the conditions specified in Schedule 4 to this Order. These include an obligation to give third party suppliers access to licence-exempt networks in order to enable customers connected to those networks to switch supplier; arrangements for connection in the context of the provision of such access; an obligation to submit methodologies for use of system charges to the Utility Regulator for approval;

requirements relating to the preparation and separation of distribution account; and provisions relating to closed distribution systems.

- (c) The exemption from the requirement to hold a licence to supply electricity to premises is granted subject to compliance with the conditions specified in Schedule 5 to this Order. These include an obligation to enable customers, free of charge, to switch suppliers within three weeks (unless a debt in excess of £100.00 is owed to the existing supplier by the customer in specified circumstances or conditions in the contract with the existing supplier prevent this) and obligations regarding the conditions of customer contracts and the provision of the energy consumer checklist (published under Article 7(5) of the Energy (Northern Ireland) Order 2003) and other information to customers.