

**EXEMPTION FROM THE
REQUIREMENT FOR A LICENCE TO
GENERATE ELECTRICITY:
PROPOSAL TO MAKE THE
ELECTRICITY (EXEMPTION FROM
THE REQUIREMENT FOR A
GENERATION LICENCE) (COVANTA
INCE PARK LTD) (ENGLAND AND
WALES) ORDER 2012**

August 2012

EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO GENERATE ELECTRICITY: PROPOSAL TO MAKE THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (COVANTA INCE PARK LTD) (ENGLAND AND WALES) ORDER 2012

The Secretary of State, pursuant to section 5(2) and (3) of the Electricity Act 1989 (“the Act”) as amended by the Utilities Act 2000, hereby gives notice that he proposes to make an order under section 5(1) of the Act granting exemption from section 4(1)(a) of the Act to Covanta Ince Park Limited in respect of the Covanta Ince Park Limited Generating Facility.

The Secretary of State’s reasons for making such an order on the terms proposed are set out in the attached consultation document: *Exemption from the requirement for a licence to generate electricity: proposal to make “The Electricity (Exemption from the Requirement for a Generation Licence) (Covanta Ince Park Limited) (England and Wales) Order 2012”*. The terms of the proposed draft order (which, subject to representations, is in substantially final form) are set out in the Appendix to the consultation document.

Representations may be made with respect to the proposal by 17 September 2012 to:-

Chris Chown, Energy Market Framework, Department of Energy and Climate Change, Fourth Floor, 3 Whitehall Place, London SW1A 2HD (telephone: 0300 068 6085; e-mail: chris.chown@decc.gsi.gov.uk)

20 August 2012

EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO GENERATE ELECTRICITY: PROPOSAL TO MAKE “THE ELECTRICITY (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (COVANTA INCE PARK LIMITED) (ENGLAND AND WALES) ORDER 2012

INTRODUCTION

1. The Secretary of State proposes to make an order (“the Order”) under section 5(1) of the Electricity Act 1989 (“the Electricity Act”), as amended by the Utilities Act 2000, granting exemption from the requirement to hold a generation licence to Covanta Ince Park Limited in respect of the Covanta Ince Park Generating Facility situated on the south bank of the Manchester Ship Canal in Ince, Cheshire.
2. The application for exemption has been received from Covanta Ince Park Limited who are proposing to construct a 95MW combined heat and power (Energy from Waste) plant (“the Covanta Ince Park Generating Facility”), with full operations expected to commence in 2015. We understand that construction for the plant is expected to begin in 2012.
3. The Secretary of State proposes to make the Order subject to the conditions specified in the attached draft Order (see paragraph 9 below), and to the views of consultees. This document explains why the Secretary of State proposes to make such an order.

LEGISLATIVE BACKGROUND

4. Section 4(1)(a) of the Electricity Act makes it an offence for a person to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given unless he is authorised to do so by a licence (or otherwise exempted). Section 5(1) of the Electricity Act provides that the Secretary of State may, by order, grant exemption from section 4(1)(a). Section 5(2) of the Electricity Act sets out the requirements for giving notice before such an order can be made.
5. Exemption is attractive for generators as it enables them to avoid the costs associated with licensing, including compliance with industry-wide codes and system charges regimes.
6. On 1 October 2001, the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (“the Class Exemptions Order”) came into force¹. Among other things, the Class Exemptions Order continued the “Class C” exemption in the Electricity (Class Exemptions from the Requirement for a Licence) (England

¹ S.I. 2001/3270

and Wales) Order 1997² for persons operating generating stations with existing energised connections on 30 September 2000 and whose stations are not normally capable of exporting more than 100MW of power to the total system (Class C, Schedule 2 of the Class Exemptions Order).

POLICY BACKGROUND

7. The Class C exemption does not exempt those (such as Covanta Ince Park) who propose to operate plants which did not have existing energised connections on 30 September 2000 – even where those plants export less than 100MW to the total system. The policy reason for this was to maintain the exemption for existing plant of less than 100MW but not to extend this for all future plant. Consequently, generators with new plant similar in size to that set out in the Class C exemption who were not connected to the total system on 30 September 2000 must apply to the Secretary of State for individual exemption pursuant to section 5 of the Electricity Act or obtain a licence.

8. In determining whether such applications have merit, DECC's starting assumption is that all generation of electricity not covered by class exemption should be licensed, unless applicants can demonstrate that exemption does not pose a threat to the safe and secure operation of the electricity system or the interests of customers. In such cases, DECC considers that expecting applicants to meet the costs and obligations of a licence is disproportionate and that individual exemption should be given.

REASONS FOR PROPOSED ORDER

9. Following initial informal consultation with interested parties, and taking account of the level of the electrical power that could be exported to the total system in England and Wales by the proposed station, the Secretary of State has provisionally concluded that the connection of the Covanta Ince Park Generating Facility to the system would not adversely affect the safe and secure operation of the electricity system or the interests of customers. He therefore proposes to make the exemption.

² S.I. 1997/989 amended by S.I. 2000/2424

CONDITIONS

10. The conditions of granting the exemption are that the Covanta Ince Park Generating Facility is connected to the total system in England and Wales and is not normally capable of exporting more than 100MW of electrical power disregarding power temporarily provided in excess of 100MW due to circumstances outside the reasonable control of Covanta.

REPRESENTATIONS AND TIMETABLE

11. Representations on the issues raised in this document and the proposal are invited by 17 September 2012 and should be made to: Chris Chown, Energy Market Framework, Department of Energy and Climate Change, Fourth Floor, 3 Whitehall Place, London SW1A 2HD (telephone: 0300 068 6085; e-mail: chris.chown@decc.gsi.gov.uk)

REGULATORY IMPACT ASSESSMENT

12. The Government produced a Regulatory Impact Assessment in respect of the Class Exemptions Order in October 2001. The assessment may be viewed at:

13. http://www.decc.gov.uk/en/content/cms/meeting_energy/markets/electricity/licence_exemp/licence_exemp.aspx

14. or obtained from: Chris Chown, Energy Market Framework, Department of Energy and Climate Change, Fourth Floor, 3 Whitehall Place, London SW1A 2HD (telephone: 0300 068 6085; e-mail: chris.chown@decc.gsi.gov.uk).

 DRAFT STATUTORY INSTRUMENTS

2012 No. 0000

ELECTRICITY, ENGLAND AND WALES

The Electricity (Exemption from the Requirement for a Generation Licence)
(Covanta Ince Park Limited) (England and Wales) Order 2012

<i>Made</i> - - - -	[●] 2012
<i>Laid before Parliament</i>	[●] 2012
<i>Coming into force</i> - -	[●]2012

The Secretary of State makes the following Order in exercise of the powers conferred by section 5 of the Electricity Act 1989⁽³⁾.

In accordance with section 5(2) and 5(3) of that Act the Secretary of State has given notice of the proposal to make this Order [*and has considered representations accordingly – DETAILS TO BE INSERTED*].

Citation, commencement and extent

1.—(1) This Order may be cited as the Electricity (Exemption from the Requirement for a Generation Licence) (Covanta Ince Park Limited) (England and Wales) Order 2012 and shall come into force on [[●] 2012].

(2) This Order extends to England and Wales only.

Interpretation

2. In this Order—

“the Act” means the Electricity Act 1989;

“Covanta Ince Park Limited Generating Facility” means the generating station located at Ordnance Survey map reference SJ 46797662 on the south bank of the Manchester Ship Canal in Ince, Cheshire;

“Covanta Ince Park Limited” means the company of that name registered in England and Wales with number 07246720;

“total system in England and Wales” has the same meaning as it has in the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001⁽⁴⁾.

⁽³⁾ 1989 c.29; section 5 was substituted by section 29 of the Utilities Act 2000 (c.27).

⁽⁴⁾ S.I. 2001/3270; the definitions of “total system in England and Wales”, “total system in Scotland” and “total system in Great Britain” were substituted for the definition of “total system” by the Electricity (Class Exemption from the Requirement for a Licence) (Amendment) Order 2005 (S.I. 2005/488), article 3.

Exemption from section 4(1)(a) of the Act

3. Subject to article 4, exemption is granted from section 4(1)(a) of the Act (prohibition of unlicensed generation of electricity for supply) to Covanta Ince Park Limited in respect of Covanta Ince Park Limited Generating Facility.

Conditions on exemption

4. The exemption granted by article 3 to Covanta Ince Park Limited is subject to compliance with the following conditions—

- (a) that Covanta Ince Park Limited does not hold a licence under section 6(1)(a) of the Act⁽⁵⁾ (a generation licence);
- (b) that Covanta Ince Park Limited Generating Facility is connected to the total system in England and Wales; and
- (c) that Covanta Ince Park Limited Generating Facility is not normally capable of exporting more than 100 megawatts to the total system in England and Wales disregarding power temporarily provided in excess of 100 megawatts due to technical circumstances outside the reasonable control of Covanta Ince Park Limited.

Date

Name
Minister of State,
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants exemption from the requirements of section 4(1)(a) of the Electricity Act 1989 (which prohibits the generation of electricity to any premises without a licence) to Covanta Ince Park Limited in relation to Covanta Ince Park Limited Generating Facility, which is located on the south bank of the Manchester Ship Canal in Ince, Cheshire (Ordnance Survey map reference SJ 46797662).

A regulatory impact assessment in respect of exemptions from the requirements of section 4(1)(a) of the Electricity Act 1989 was prepared in 2001 and can be obtained from the Department of Energy and Climate Change, Energy Markets Unit, 4th Floor, 3 Whitehall Place, London, SW1A 2AW. Copies have been placed in the libraries of both Houses of Parliament.

⁽⁵⁾ Section 6 was substituted by section 30 of the Utilities Act 2000.

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URN 12D/316