

**EXPLANATORY MEMORANDUM TO**  
**THE ELECTRICITY (CRITERIA FOR RELEVANT ELECTRICITY PROJECTS)**  
**(TRANSMISSION) REGULATIONS 2024**

**2024 No. 168**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before both Houses of Parliament by command of His Majesty.

**2. Declaration**

- 2.1 Minister Stuart at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.
- 2.2 Paul van Heyningen, Deputy Director for Electricity Networks Strategy and Regulatory Policy, at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 Rachel Siddell at the Department for Energy Security and Net Zero, Telephone: 07341 776892 or email: [Rachel.Siddell@energysecurity.gov.uk](mailto:Rachel.Siddell@energysecurity.gov.uk) can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 This instrument specifies criteria which onshore electricity transmission network projects must meet in order to be considered as potentially eligible for a competitive tender process.

*Where does the legislation extend to, and apply?*

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

**5. Policy Context**

*What is being done and why?*

- 5.1 Competitive tenders in onshore electricity network projects are expected to save consumers up to £1 billion by 2050 and invite greater inward investment into our networks as well as enabling new and innovative solutions to be brought into the electricity transmission network. At present, savings are made to consumers by competitions delivered by Ofgem (the independent regulator for GB's energy sector)

to determine the person who should hold an offshore transmission licence under the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 (S.I. 2015/1555), however those competitions are limited in scope. This Statutory Instrument enables competitions to be undertaken for onshore projects which deliver electricity solutions that address network needs (a constraint or requirement) on the transmission network.

- 5.2 Sections 6BA to 6H of the Electricity Act 1989 (“the Act”) contain provision to enable competitions to be held for matters in respect of electricity networks (those matters include the design, build, ownership and operation of electricity projects). If a network need arises, the competition Delivery Body and Ofgem will apply the criteria specified in this instrument to onshore transmission network projects before a competitive tender process has the potential to be delivered in respect of a project which meets the criteria. If a project does not meet the criteria set out in this instrument, a network need will be addressed by a project undertaken by the Transmission Owner responsible for the area in which the network need is located through the longstanding price control processes overseen by Ofgem, as is the case currently.
- 5.3 The criteria for competition depend on the type of competition. Broadly, there are two types of competition: late-stage and early-stage. For both types of competition, there will be a network need which a solution could address, and there should be reasonable certainty of that network need, as determined by the Authority and/or Delivery Body in considering network plans. This instrument provides that any solution considered to solve such a need should have reasonable certainty of resolving the need in question, noting that tenders may bring forward alternative solutions in due course.
- 5.4 Late-stage competition is when competition is intended for a project where detailed design and any required consents, and property rights are known. The criteria for projects which may be subject to late-stage competition are therefore that the solution delivered by a project should be: i) new (under Regulation 5); ii) separable (under Regulation 6); and iii) high value (under Regulation 8). In respect of a project which comprises of an asset, ‘new’ includes a completely new asset or a complete replacement of an existing asset. This, along with the ‘separable’ criterion, aims to ensure property rights and ownership boundaries of other transmission network licence owners and owners of associated assets are maintained. Setting a high value threshold is intended to ensure that the costs of running a competition are lower than the benefits that would be anticipated to result from the delivery of the winning bid.
- 5.5 Early-stage competition is when competition is intended for a project before the detailed project design, consents, and property are known. The criteria for projects which may be subject to early-stage competition are therefore that the solution delivered by a project should be i) new (under Regulation 5); ii) separable (under Regulation 6); and iii) should provide consumer benefit (under Regulation 7). Consumer benefit is where the net benefits of delivering a competitive process for a project are anticipated to be more favourable than going through the existing monopoly-delivered price control process for same network need.
- 5.6 The distinction between early-stage and late-stage means that the high-value criteria is not relevant for early-stage competition where the decision as to whether a competition will be taken forward will be before the final design of the electricity solution for a network need is known, so it is hard to put a minimal value threshold on the solution in the way that is done for late-model competition.

*What was the previous policy, how is this different?*

- 5.7 Enabling competition in onshore transmission networks is a new policy, where previously competition has only been possible in relation to the person who should be awarded on offshore transmission licence. The Act was amended by the Energy Act 2023 to introduce new powers to enable this Statutory Instrument to be made and an onshore competitive tender policy to be implemented.

## **6. Legislative and Legal Context**

*How has the law changed?*

- 6.1 Section 6BA(1)(b) of the Act gives the Secretary of State the power to specify the criteria which a project must meet in order to be a “relevant electricity project”. This Statutory Instrument is the first exercise of the power in section 6BA(1)(b) of the Act to specify criteria in respect of transmission network projects. Alongside this, section 6C of the Act gives the Gas and Electricity Markets Authority (whose functions are exercised by Ofgem) the power to make regulations in respect of competitive tenders for any “relevant electricity project”.
- 6.2 This instrument is one of three Statutory Instruments which will enable competition to be delivered for onshore transmission network projects. Tenders will be delivered by the Delivery Body which has already been designated by the Secretary of State under the Electricity (Designation of Delivery Bodies) (Transmission) Regulations 2023 (S.I. 2023/1228). After the making of this Statutory Instrument, Ofgem will set out the competitive tender process that a project which meets the criteria in this instrument may potentially be subject to in regulations made under section 6C of the Act.

*Why was this approach taken to change the law?*

- 6.3 Under section 6BA(1) of the Act, this Statutory Instrument is the only means by which the criteria can be specified in respect of transmission network projects, and enables the Secretary of State to ensure that the competition policy is delivered as intended.

## **7. Consultation**

*Summary of consultation outcome and methodology*

- 7.1 Between 2 August 2021 and 26 October 2021, the Department for Business, Energy and Industrial Strategy, as was, consulted on, amongst other things, the criteria to be used for projects which will be subject to competitions in onshore electricity competition. This was a full and public consultation<sup>1</sup>. The Department received responses from a range of stakeholders, including incumbent network owners and potential investors in network competitions. Responses to the consultation favoured the criteria which are reflected in this instrument.

## **8. Applicable Guidance**

- 8.1 Guidance on the competitive tender regime will be published by Ofgem in due course. This will provide policy guidance to potential bidders and wider industry on the tender process introduced in regulations to be made by Ofgem, including on questions about

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<sup>1</sup> The full consultation and government response can be found here:  
<https://www.gov.uk/government/consultations/competition-in-onshore-electricity-networks>

the application of criteria to determine whether a network project may be subject to competition.

## **Part Two: Impact and the Better Regulation Framework**

### **9. Impact Assessment**

- 9.1 A full Impact Assessment was submitted and published alongside the Electricity (Designation of Delivery Bodies) (Transmission) Regulations 2023 ('the Designation Regulations') on the gov.uk website. That Impact Assessment also covers impacts of this Statutory Instrument.

#### *Impact on businesses, charities and voluntary bodies*

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because these Regulations set criteria to determine eligibility for competitions, and do not place a burden on any of these parties.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector because these Regulations set criteria to determine eligibility for competitions, and do not place a burden on the public sector.

### **10. Monitoring and review**

#### *What is the approach to monitoring and reviewing this legislation?*

- 10.1 There are no formal monitoring and review requirements for this instrument. Reviews will be undertaken by the delivery body and Authority in respect of all network project competitions run, as part of good practice. The Department will engage with these reviews, evaluating and improving the competitive tender regime where possible and appropriate.

## **Part Three: Statements and Matters of Particular Interest to Parliament**

### **11. Matters of special interest to Parliament**

- 11.1 None.

### **12. European Convention on Human Rights**

- 12.1 The Minister of State for Energy Security and Net Zero has made the following statement regarding Human Rights:

“In my view the provisions of the Electricity (Criteria for Relevant Electricity Projects) (Transmission) Regulations 2024 are compatible with the Convention rights.”

### **13. The Relevant European Union Acts**

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).