

EXPLANATORY MEMORANDUM TO
THE ELECTRICITY (INDIVIDUAL EXEMPTION FROM THE REQUIREMENT
FOR A TRANSMISSION LICENCE) (SEAGREEN) (SCOTLAND) ORDER 2024

2024 No. 700

1. Introduction

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

2. Declaration

- 2.1 Claire Coutinho MP, Secretary of State at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Paul van Heyningen, Deputy Director for Electricity Networks Strategy & Regulatory Policy at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Fergus Bailey at the Department for Energy Security and Net Zero. Telephone:07917 416718 or email: fergus.bailey@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 The legislation will grant a time limited exemption from the requirement to hold an electricity transmission licence to Seagreen Wind Energy Limited (“SWEL”) in respect of Seagreen offshore windfarm.

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 Scotland.

5. Policy Context

What is being done and why?

- 5.1 Government and the Gas and Electricity Markets Authority (more commonly known as Ofgem) established a regulatory regime for offshore transmission networks. Offshore transmission connections to offshore wind farms are licensed through a competitive regime managed by Ofgem to ensure that offshore renewable generation projects are economically and efficiently connected to Great Britain’s electricity grid.
- 5.2 While transmission assets can be built and tested by an independent Offshore Transmission Owner (“OFTO”), all projects in the UK to date have been built and

tested by generators. ‘Unbundling’ rules prevent transmission and generation infrastructure being owned and operated by the same party.

- 5.3 Where assets are built and tested by generators, once they have been completed, Ofgem runs a tender exercise to select an OFTO to own and operate the transmission assets for the enduring operational period.
- 5.4 Ofgem will grant a licence and fixed revenue stream to the successful bidder for a specified period, which is set at 25 years for the transmission associated with the Seagreen windfarm.
- 5.5 The generator is able to own and operate the asset for a commissioning period of 18 months. This is designed to allow the transmission assets to be transferred to an OFTO under the OFTO regime. The commissioning period allows for the technical demonstration of the assets, gives time for Ofgem to run a tender process and select a preferred bidder for the OFTO, and provides time to finalise commercial negotiations ahead of the transfer of assets. It is generally considered that 12 months is required to successfully conclude the commercial negotiations following appointment of the preferred bidder. Beyond the 18 months of the commissioning period, the generator is prevented from continuing to transmit electricity, as doing so would constitute transmission of electricity without a licence, which is an offence under section 4(1)(b) of the Act.
- 5.6 A generator can request a transmission licence exemption if they are unable to transfer the transmission assets to the OFTO by the commissioning period deadline. This is subject to Secretary of State approval and a Statutory Instrument laid in parliament.

Exemption Request

- 5.7 On 5 March 2024, SWEL requested a time limited exemption from the requirement to hold a transmission licence, which would expire on 7 February 2025. SWEL stated that they had experienced a significant issue with burying an intertidal export cable to the required depth. This issue risks the long-term health of these cable and can only be remedied in suitable weather conditions. As a result, this has delayed the transfer of the transmission assets to the OFTO.
- 5.8 If the cable burial attempts fail again this summer the windfarm could be faced with conducting remedial work on the cable and applying for a new marine licence which will take time. This will affect the OFTO’s ability to take ownership of these assets as the work would need to be completed before they can accept ownership.
- 5.9 SWEL requested additional time to rebury the intertidal export cable or seek alternative technical solutions if the burial campaign fails. They anticipated this could take up to 7.5 months to be completed.

Reasoning for exemption granted

- 5.10 In carrying out functions under Part 1 of the Electricity Act 1989 (including considering granting any exemption from the requirement to hold a transmission licence), the Secretary of State is required under section 3A of the Act to further the principal objective, which is to protect the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems (including the reduction of emissions of targeted greenhouse gases), wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity.

- 5.11 In furthering the principal objective, the Secretary of State should have regard to, among other things, the need to ensure security of supply and the need to contribute to the achievement of sustainable development. In addition, the Secretary of State's regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.
- 5.12 It is in the public interest for offshore wind generation to be transmitted to shore lawfully. Therefore, the Secretary of State is using the powers granted under section 5 of the Act to grant SWEL a time limited exemption from the requirement to hold a transmission licence.
- 5.13 Providing SWEL with an exemption will directly support UK energy security and future reductions in greenhouse gases by ensuring that an offshore wind farm can lawfully transmit low-carbon power to the grid whilst the transfer of transmission assets is completed. This is in line with the overall objective in the Powering Up Britain Energy Security Plan which is to ensure the UK is more energy independent, secure and resilient.
- 5.14 In determining the length of this exemption, the Secretary of State has considered the delays experienced and expected by SWEL, the need to maintain sufficient momentum to complete the transaction in a timely fashion, and the contribution that SWEL will make to security of supply of electricity. The duration of the exemption also allows for a reasonable margin for delays in the process to transfer the transmission assets to the OFTO, which could result in unlicensed transmission or cessation of transmission. The Secretary of State notes that there is a risk that the SWEL may be unable to bury the intertidal cables and additional time has been built into this exemption to allow for alternative technical solutions to be achieved. The Secretary of State considers that an exemption until 7 February 2025 presents a reasonable and proportionate exemption in the current circumstances.
- 5.15 A 'Guidance Note for Offshore Transmission Licence Exemptions' was published in August 2023. The guidance provides information in relation to individual transmission licence exemptions, by categorising the circumstances where an exemption application by a developer would be considered by the Department. These categories include that the Secretary of State would consider an exemption application in the event of 'unforeseen and significant technical issues.' SWEL's exemption application has been assessed against this category, given the significant issues it is experiencing with cable burial as described above.

What was the previous policy, how is this different?

- 5.16 There have been previous instances where offshore transmission licence exemptions have been granted by the Secretary of State. This includes four of the five projects in tender round 5 in 2019, due to delays in the tendering process outside of the developers' control. In 2020, four projects were granted exemptions due to delays incurred as a result of the COVID-19 pandemic and associated disruption. In June 2022, an exemption was granted to East Anglia One Limited to account for delays related to onshore cable issues and ongoing COVID-19 impacts. In October 2022, Triton Knoll windfarm was given a 9-month exemption due to a subsea cable fault on one of the cables preventing the OFTO transfer. In September 2023 Moray East windfarm was given an exemption due to a cable fault.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Section 4(1)(b) of the Electricity Act 1989 (“the Act”) makes it an offence for a person to participate in the transmission of electricity for the purpose of giving supply to premises without a licence (“a transmission licence”). A transmission licence may be granted by the Gas and Electricity Markets Authority (“Ofgem”) under section 6(1)(b) of the Act.
- 6.2 Section 5(1) of the Act enables the Secretary of State to grant an exemption from (amongst other requirements) the requirement to hold a transmission licence. The exemption can be revoked by the Secretary of State for the reasons set out in section 5(8) of the Act.
- 6.3 The requirement to hold a transmission licence does not apply where sections 6F and 6G of the Act apply. Those provisions allow offshore generators to transmit electricity without a transmission licence during the “commissioning period” (as defined in section 6G(1) of the Act).
- 6.4 The commissioning period includes the period before and during the 18 months beginning on the day the National Grid Electricity System Operator issues a completion notice to the developer and notifies Ofgem in respect of the transmission assets. In this context, following the end of the commissioning period unlicensed transmission by an offshore generator is an offence under section 4(1)(b) of the Act, unless an exemption from the requirement to be licensed is granted.
- 6.5 This Order grants exemptions in respect of one offshore generator. This exemption will run from the entry into force of this Order and expire on the earlier of 7 February 2025 or the transfer of the transmission assets to the preferred bidder OFTO.

Why was this approach taken to change the law?

- 6.6 Without this instrument, SWEL would be prevented from transmitting electricity lawfully.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The consultation was published on gov.uk on 28 March 2024 and closed on 25 April 2024. It received three responses, from the generation asset owner SWEL, the Scottish Government and an anonymous respondent.
- 7.2 SWEL expressed strong support for the transmission licence exemption as it would allow them the necessary time to resolve the intertidal export cable issue. They also highlighted that a potential shutdown of the windfarm would impact UK consumers and energy security.
- 7.3 The Scottish Government were also supportive of the exemption, noting that Seagreen windfarm is making a significant contribution to Scotland’s renewable energy generation at a time when energy prices and security of supply are at the forefront of the agenda.
- 7.4 The anonymous respondent supported the proposed transmission licence exemption for Seagreen but suggested the exemption last until December 2024 and not February 2025. They believe the technical and commercial issues could be resolved in a timely manner and think 7.5 months is excessive. They stated that an exemption past

December 2024 would represent unnecessary contingency and contradicts the DESNZ Guidance Note which states an exemption should not be granted when issues can be resolved through commercial means.

7.5 The consultation response will be published on gov.uk in due course.

8. Applicable Guidance

8.1 As described above, a ‘Guidance Note for Offshore Transmission Licence Exemptions’ was published in August 2023. The guidance provides information in relation to individual transmission licence exemptions, by categorising the exceptional circumstances where an exemption application by a developer would be considered by the Department.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it is a temporary measure.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because it is a temporary measure.

9.3 The legislation does not impact small or micro businesses as this would only apply to windfarm developers.

9.4 There is no, or no significant, impact on the public sector as this would only apply to windfarm developers.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Due to the strictly time-limited nature of the exemptions, there are no formal monitoring or review requirements. There are no conditions attached to the exemption, but SWEL must continue to comply with the conditions of its generation licence (including satisfying industry standards).

10.2 The instrument does not include a statutory review clause.

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 Secretary of State for the Department for Energy Security and Net Zero has made the following statement regarding Human Rights:

“In my view the provisions of the Electricity (Individual Exemption from the Requirement for a Transmission Licence (Seagreen) (Scotland) Order 2024 is 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”).