



Department for  
Energy Security  
& Net Zero

# Guidance Note for Offshore Transmission Licence Exemptions

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**Disclaimer:** *This guidance is intended to provide information in respect of individual offshore Transmission Licence Exemptions. This guidance does not create any rights enforceable at law in any legal proceedings, is not a substitute for legal advice, and does not limit the ability of the Secretary of State to exercise their own discretion in accordance with the Electricity Act 1989. The Secretary of State is not bound to follow this guidance and may depart from it in appropriate circumstances. Transmission Licence Exemptions applications are subject to consultation and Parliamentary time, and therefore can never be guaranteed. Parties should take their own legal advice.*

## Background

The Offshore Transmission Owner (“OFTO”) regime was put in place to introduce competition to the sector, delivering efficiencies and thereby reducing costs for consumers. For new offshore windfarms, typically the generator builds the transmission asset<sup>1</sup> and is allowed to own and operate the offshore transmission system for a commissioning window of 18 months without being required to hold an offshore transmission licence. The commissioning period begins when National Grid ESO notifies Ofgem that they have issued the ION-B<sup>2</sup> notice to the developer, which is required for first export of active power from the wind farm.

The 18-month deadline is described in section 6G of the Electricity Act 1989 (“the Act”), colloquially known as the ‘Generator Commissioning Clause’ (“GCC”). It is intended to allow sufficient time for the generator to commission and demonstrate the asset, for Ofgem to run a tender process to appoint a preferred bidder (“PB”) for the ongoing operation of the asset to whom Ofgem will grant an offshore transmission licence, and for the two commercial parties to finalise the details of the transfer.

## Exemptions

Transmission is a licensable activity under Section 4 of the Act, and engaging in transmission in the absence of a licence or exemption is an offence. Under section 5 of the Act, the Secretary of State (SoS) has the power to grant exemptions from the requirement to hold an offshore transmission licence, and to impose conditions on that exemption. In the past, in exceptional circumstances, this power has been used to account for delays to the transfer process which meant that the transfer could not be completed during the GCC period. The granting of offshore transmission licence exemptions follows a statutory process set out in the Act, which can take approximately 6 months to complete and includes a 28-day public consultation.

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<sup>1</sup> There is also an OFTO led build option available, but this has not been utilised.

<sup>2</sup> Interim Operational Notification (ION)

The Secretary of State's principal objective as stated in Section 3A of the Act is to protect the interests of existing and future consumers in relation to electricity conveyed by distribution or transmission systems (including their interests in the reduction of emissions of targeted greenhouse gases). These are relevant considerations in respect of why the SoS may or may not grant an offshore transmission licence exemption for a generator in exceptional circumstances. Developers must consider the risk of not being granted an exemption in their project plans.

Should the Secretary of State receive an application for an offshore transmission licence exemption, the SoS will assess any application fairly and reasonably using the Exemption FAQs on gov.uk<sup>3</sup> (June 2017). They will consider the principal objective of protecting the interests of existing and future consumers wherever appropriate by promoting effective competition. They will also consider the need to ensure security of supply and the need to contribute to the achievement of sustainable development. In the absence of an exemption, developers must bear the risk, so it is imperative that sufficiently persuasive reasons are put to the Secretary of State.

It is the responsibility of the developer to formally notify DESNZ and Ofgem, at the earliest opportunity, that they will be unable to transfer the OFTO assets within the GCC. The developer should write to the Secretary of State setting out the issue that has caused the delay and what they are actively doing to remedy the situation to complete the transfer. The letter should also state when the developer thinks the transfer to the OFTO will be completed, with any supporting evidence.

The Secretary of State will continue to consider transmission licence exemption requests on a case-by-case basis. A variety of relevant factors and matters will be considered in order to determine whether an application is approved or rejected.

## Exemption Categories

*The following categories are examples of exceptional circumstances where DESNZ would consider an exemption application made by a developer provided the developer has demonstrated the necessary due diligence outlined above.*

### Unforeseen and Significant Technical Issues

Although it is the developers' responsibility to manage the risks associated with the delivery and commissioning of the transmission asset, there is always a residual risk that technical issues could cause delays to the commercial negotiations. These potential delays could prevent the OFTO transfer from being completed in the 18-month commissioning window.

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<sup>3</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/617786/Exemption\\_FAQs\\_updated\\_June\\_2017rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/617786/Exemption_FAQs_updated_June_2017rg.pdf)

In circumstances where, despite having appropriate project management and despite the developer's best efforts to remedy the situation and conclude the transfer ahead of the deadline, a technical issue can reasonably be expected to prevent the transfer concluding ahead of the GCC date, DESNZ would be minded to advise the SoS to consider a time-limited exemption from the requirement to hold an offshore transmission licence (subject to the statutory process being carried out, and consultation). In these circumstances, the duration of any exemption would be decided on a case-by-case basis with the aim of allowing a reasonable time for the commercial parties to conclude the transfer. An exemption will not be granted when the matter could be resolved between the parties on a commercial basis.

## Coordinated Projects

One of the main objectives of the Holistic Network Design is to minimise onshore and offshore infrastructure by requiring windfarms to share energy infrastructure where possible. This requirement will mean windfarms will look to coordinate or share transmission assets with other windfarms in order to minimise energy infrastructure.

However, we recognise that windfarms sharing infrastructure are unlikely to develop at the same pace. There is a risk that one windfarm will connect to the transmission system ahead of the other windfarm, which would start the GCC. A disconnect could result from securing a Contract for Difference (CfD) in different rounds, thereby delaying the construction phase.

To support projects pursuing a coordinated approach, a time-limited offshore transmission licence exemption may be considered for a project if the coordinating partner(s) was delayed but could be expected to deliver within a reasonable time. The duration of any exemption would be decided on a case-by-case basis but with the general aim of providing sufficient time to address the temporal disconnect.

## Innovative Projects

Notwithstanding that engaging in transmission should be covered by a licence, and in addition to the categories outlined above, we are aware that there are other specific exceptional circumstances where an offshore transmission licence exemption may be appropriate. This may include, for example, instances where a transmission cable is exclusively used for transmitting power from an offshore generator to a local source of demand and not for the export of power to the wider network.

In specific circumstances it may be appropriate to allow the developer to retain ownership and control of a transmission cable and operate the asset separately from the wider transmission system. For the asset to be operated separately from the wider system, it must be designed in such a way that facilitates both operational and legal separability of the asset from any asset that would be subject to an offshore transmission licence. Due to the complexities of determining the appropriateness of a licence exemption in cases such as these, they will be

considered on a case-by-case basis. Careful consideration will need to be given to any applications and are subject to the Secretary of State's discretion.

In circumstances where it is considered appropriate to grant licence exemptions for projects of this sort (subject to a consultation), we would consider whether the exemption should last for the lifetime of the project or an appropriate fixed period, and whether other conditions on the exemptions are appropriate.

This publication is available from: [www.gov.uk/guidance/electricity-licence-exemptions](https://www.gov.uk/guidance/electricity-licence-exemptions)

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