



Department for
Business, Energy
& Industrial Strategy

Notice of proposed Transmission Licence Exemptions

for Offshore Wind Farm Generators affected
by COVID-19

Closing date: 10 July 2020



OGI

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General information

Consultation details

Issued: 12 June 2020

Respond by: 23.45 on 10 July 2020

Enquiries to: ESSupport@beis.gov.uk

How to respond

Email to: ESSupport@beis.gov.uk

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Notice

Exemption from the requirement for a licence to transmit electricity: proposal to make the Electricity (Individual Exemptions from the Requirement for a Transmission Licence) (Coronavirus) Order 2020

Summary

This consultation seeks views on our proposal to make exemptions from the requirement to hold a transmission licence for specific projects involved in the fifth and sixth tender rounds of the Offshore Transmission Owner (OFTO) regime. These exemptions are intended to address delays to the transfer of assets caused by COVID-19 to avoid generators participating in unlawful transmission due to the effects of the pandemic. The exemptions are being proposed on the basis that the delays caused by COVID-19 constitute exceptional circumstances.

The causes of the delay due to the impacts of COVID-19, include:

- The lack of available personnel due to the pandemic;
- Restricted movement of people during “lockdown”;
- Financial uncertainty; and
- The cumulative, knock on impacts of COVID-19; and
- Potential for ongoing disruption to normal working practices and uncertainty about how long COVID-19 related impacts will continue.

We propose to grant exemptions providing generators with additional time to complete their transfer where we are satisfied:

(a) the transfer process will be materially impacted by COVID-19; and

(b) this COVID-19 related disruption materially increases the risk the generator, taking reasonable steps to complete the transfer, would be unable to complete the transfer process within the required timeframes.

Given the uncertainty as to the impact COVID-19 will have on both current and future projects, it is difficult to accurately assess how long individual generators are likely to require to complete their transfers. Therefore, when granting exemptions, we are proposing to err on the side of caution and grant exemptions for a duration we consider is likely to provide adequate time to transfer a generator’s transmission asset. It is, however, important that even in these exceptional circumstances, exemptions are linked to the impact of COVID-19 on a particular project, and that there remains a clear deadline by which the transfer process must be completed. Therefore, we are proposing to grant time limited exemptions of between 3 and 12 months depending on the impact COVID-19 is likely to have on each project.

The following sections outline the details of the proposed exemptions and the reasoning for making the Order. The draft Order is annexed to this document.

Proposal

The Secretary of State (SoS), pursuant to sections 5(2) and 5(3) of the Electricity Act 1989 (“the Act”), hereby gives notice of a proposal to make an order under section 5(1) of the Act granting exemption from the requirement to hold a transmission licence under section 4(1)(b) of the Act to the following four wind farms currently in the process of transferring transmission assets under the Offshore Transmission Owner’s (OFTO) regime:

- Rampion Offshore Wind Limited, Greenwood House, Westwood Way, Westwood Business Park, Coventry, CV4 8LG, England (company number 07199847), in respect of the Rampion offshore wind farm, consisting of 116 of 3.45MW turbines with an overall capacity of up to 400.2MW, located in the English Channel approximately 13km – 17.2/20km off the West Sussex coast.
- Beatrice Offshore Windfarm Limited, Inveralmond House, 200 Dunkeld Road, Perth PH1 3AQ, Scotland (company number SC350248), in respect of the Beatrice offshore wind farm, consisting of 84 of 7MW turbines with an overall capacity of up to 588MW, located in the Moray Firth approximately 13km – 24km off the Sarclet coast in Caithness;
- Hornsea 1 Limited, 5 Howick Place, London, SW1P 1WG, England (company number 07640868), in respect of the Hornsea 1 offshore wind farm, consisting of 174 of 7MW turbines with an overall capacity of up to 1218MW, located in the Southern North Sea approximately 120km from the Humber Estuary shore in East Yorkshire.
- East Anglia One Limited, 3rd Floor, 1 Tudor Street, London, EC4Y 0AH, England, (company number 07366753), in respect of the East Anglia One offshore wind farm, consisting of 102 of 7MW turbines with an overall capacity of up to 714MW, located in the Southern North Sea approximately 48.3km – 63.1km off the Suffolk coast;

Legislative background

Section 4 of the Act sets out the activities for which licences are required, which include the transmission of electricity. It specifies that an offence is committed if these activities are carried out without a licence. A transmission licence is granted by the Authority (the Gas and Electricity Markets Authority) under section 6(1)(b) of the Act. “Transmission” and the relevant term “transmission system” is defined in section 4;

Section 5 of the Act grants the SoS powers to grant exemptions from the requirement to hold various types of licences, including a transmission licence. Section 5(1)(c) allows the SoS to specify conditions that apply to exemptions. The exemption can be revoked if it appears to the SoS inappropriate that the exemption should continue to have effect, as set out in section 5(8);

Sections 6F and 6G of the Act allow offshore generators to transmit electricity without an offshore transmission licence subject to certain conditions, including the condition that the transmission takes place during the ‘commissioning period’. The commissioning period is defined as the period before and during the 18 months beginning on the day the Electricity System Operator (ESO) gives a completion notice to Ofgem.

Unlicensed transmission by an offshore generator after the end of the commissioning period or outside of an exemption is an offence under section 4(1)(b) of the Act, unless an exemption from the requirement to be licensed is granted.

Policy background and reasons for proposed Order

The transmission cables linking offshore wind farms are licenced through a competitive regime. Ofgem runs a tender to select the offshore transmission owner (OFTO) who will own and operate the transmission assets for a specified revenue period. Whilst the transmission assets can be built and tested by the OFTO itself (under the OFTO build option), all projects tendered so far have been built and tested by generators (under the generator build option). The OFTO regime has introduced an important element of competition to the sector, which is estimated to have delivered £700m of savings over the first £3.1bn worth of assets tendered, with further savings expected over tender rounds 5 and 6 for assets estimated at a value in excess of £4 billion. The OFTO regime in the Act contemplates that the transmission asset is transferred to an independent OFTO within 18 months of the completion of the project.¹ This 18-month commissioning period allows for the technical demonstration of the asset to potential bidders, 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 transfer.

Beyond this 18-month commissioning period the generator is not legally able to continue transmitting electricity, as doing so would constitute the transmission of electricity without a licence, which is an offence under section 4(1)(b) of the Act.

The tender process for wind farms in tender rounds 5 and 6 is already impacted, and is expected to be further impacted, by COVID-19 in the following ways:

- The lack of available personnel due to the pandemic – general personnel and key personnel sickness, reduced working hours for parents due to the closure of schools;
- Restricted movement of people during “lockdown” – inability to make the site visits required for due diligence;
- Financial uncertainty during this period – market volatility early on has meant there has been uncertainty as to whether lenders would change their terms, (e.g. a change in lenders insurance terms) and there may be an unwillingness to underwrite the increased perceived risk during this period;
- The cumulative, knock-on impacts from this period – any delays as a result of COVID-19 to one project in the OFTO regime may have a knock-on impact on later projects; and
- Uncertainty about future impact and potential disruption to normal working practices.

As outlined below, we consider Beatrice and Hornsea 1 are now likely to find themselves in a position that they have not completed the transfer of transmission assets within the 18-month commissioning period due to the impact of COVID-19. We also consider that, due to COVID-19, Rampion is now unlikely to be able to complete their transfer within the additional time allowed for as a result of an exemption granted in 2019 due to delays in the tender process². In each case, we are proposing to grant an exemption of 12 months from the date on which transfer is currently required to be completed. We also consider COVID-19 related delays to the tender process, materially increases the risk of East Anglia One failing to transfer their

¹ For these purposes, ‘completion’ refers to the date that Electricity System Operator gives Ofgem a ‘completion notice’ in relation to the project.

² <https://www.gov.uk/government/consultations/transmission-licence-exemption-order-for-offshore-generators>

transmission asset within the commissioning period. In this case we are proposing to grant a shorter exemption of 3 months.

Beatrice's commissioning period is due to end on 2 October 2020. The effects of social distancing measures and restrictions of movement on Beatrice have been a barrier to reaching a crucial milestone in working toward transfer. This is likely to have further knock on impacts on future milestones if, for example windows of good weather are missed this year. There is uncertainty around how long Beatrice will continue to be affected and additionally, if it will be affected in the lead up to the 2 October transfer due to financial uncertainty. Therefore, Beatrice has requested a 12-18-month exemption, with their preferred bidder (Transmission Capital Partners, TCP) agreeing a 9-12-month exemption would be appropriate.

Rampion's current exemption (2019) is due to expire on 27 November 2020. Rampion is experiencing and continuing to experience delays due to the reduced availability of contractors, personnel and parts, suppliers from third parties and infection of individuals contributing to the development of the transfer. Works which were due to commence toward the beginning of "lockdown" have been delayed. These works require a window of good weather, which if missed, create a much longer delay as they could only commence again next spring. Further work has been affected due to social distancing measures and restrictions on movement also. As with all the projects, financial uncertainty is also considered a risk leading up to Rampion's 27 November 2020 deadline. Rampion has therefore requested a further exemption of more than 9 months, with TCP (the preferred bidder) agreeing a 9-12-month exemption would also be appropriate.

Hornsea 1's 18-month commissioning period ends on 14 January 2021. The cumulative impacts of decreased personnel availability and disruption to normal working practices during the "lockdown" period and accounting for future amended working practices in the near term and knock on impacts of any delays to other projects with deadlines prior to Hornsea 1, can be expected to have a significant but uncertain impact on the timetable for transfer. Therefore, Hornsea 1 has requested a minimum exemption of 12 months, which reflects the increased uncertainty this project faces. However, Hornsea 1's preferred bidder Diamond Transmission Corporation (DTC) does not expect the delays linked to COVID-19 to push the transfer past its statutory deadline. Despite these differing views, we consider the evidence available suggests the existing timeframes are likely to be inadequate and are therefore proposing to grant an exemption.

East Anglia One's 18-month commissioning period ends on 13 September 2021. The invitation to tender (ITT) process is already delayed by at least 2 months and this is anticipated to materially increase the risk that the generator may not complete the transfer by the deadline. To account for these delays, East Anglia One has requested an exemption of 3 months, which the generator expects will provide sufficient time for the transfer to occur. We therefore propose granting an exemption of 3 months in duration. Based on the information available at this time we agree a 3-month exemption is warranted. However, we are aware of the potential for further COVID-19 related delays to occur and remain open to considering a longer exemption to account for the possibility of further delays.

It is in the public interest for offshore wind generation to be transmitted to shore lawfully, to avoid leaving the generator with the option of either curtailing generation or continuing to transmit illegally. Therefore, in line with the Government's efforts to support the economy and businesses in the light of the COVID-19 national emergency, the SoS is minded to use the powers granted under section 5 of the Act to grant Beatrice, Rampion, Hornsea 1 and East Anglia One time-limited exemptions from the requirement to hold a transmission licence. This is in response to the truly exceptional circumstances of COVID-19.

Existing guidance on licence exemptions

The BEIS guidance *'Electricity Generation, Distribution and Supply Licence Exemptions: Frequently Asked Questions (FAQs)'* (June 2017) addresses generation, distribution and supply licence exemptions but does not specifically provide guidance on transmission licence exemptions. This document is nevertheless used as a reference point for BEIS policy on transmission licence exemptions. Although there are differences involved in transmission, and specifically offshore transmission, we are keen that there is consistency in our approach as far as possible.

The guidance states that the SoS may grant exemptions to an individual person or to “persons of a class” under section 5(1)(a) of the Act. Exemptions are routinely granted to generators of less than 100MW capacity due to their low impact on the total electricity system and because the exemption “does not pose a threat to the safe and secure operation of the electricity system”. Similarly, the continued operation of the assets covered by the proposed exemption does not threaten the safe and secure operation of the total electricity system for the following reasons:

- The offshore transmission assets to be granted exemptions do not have the same complexities as onshore transmission – they are point-to-point transmission cables, and are functionally simple connections to one generator rather than part of a complex grid that requires more active management by the ESO.
- In that context, the ESO already operates the system safely and securely while these generators are generating during the commissioning period.

In 2019, the SoS for BEIS granted four of the five projects in tender round 5 an exemption from the requirement to hold a transmission licence due to delays in the tendering process outside of the developers' control. This exception was pursued on the basis that the delays constituted exceptional circumstances.

The Secretary of State's principal objective

Additionally, in carrying out functions under Part 1 of the Act (including considering granting any exemption from the requirement to hold a transmission licence), the SoS is required under section 3A to consider the principal objective of protecting the interests of existing and future consumers. Consideration of consumers' interests includes interests in: reduction of emissions of targeted greenhouse gases and security of supply. The SoS must further the principal objective in a way that promotes competition wherever possible, and must have regard to the interests in section 3A(2) including the need to contribute to the achievement of sustainable development.

The exemptions promote consumers' interests by protecting these generators from the adverse legal and commercial consequences of COVID-19 related delays to tender rounds 5 and 6, which supports continued investment and competition in the sector. Providing exemptions to these assets also directly supports future reductions in greenhouse gases by ensuring that offshore wind farms can continue to transmit low-carbon power to the grid for the limited time required for the transfer of transmission assets to be completed. The proposed exemptions will allow the affected generators to continue to lawfully generate and provide a sufficient window in which to successfully transfer transmission assets so that they can continue to generate clean electricity and transmit it ashore to be used by businesses and households. This is in line with the overall objective of the Government's Clean Growth Strategy to enable economic growth while cutting greenhouse gas emissions. Enabling

offshore wind generation to be lawfully transmitted to shore will help us reduce emissions, supporting the Government's efforts to tackle climate change.

The length of the proposed exemptions is based on careful consideration of the delays experienced and expected by the affected parties, ongoing uncertainty around the response to COVID-19, and the need to maintain sufficient momentum to complete transactions in a timely fashion. It has been noted that the deadline for transfer is perceived to create an asymmetry in the commercial negotiations between parties, and that extending the time for a generator to transfer assets could be seen as beneficial to generators included in this exemption compared to others both past and future. However, given the significant impact of COVID-19 on the ability of parties to complete the transactions, the extended deadlines are not expected to materially alter the existing asymmetry in negotiations.

Terms of proposed exemptions

The Department has considered whether the terms of the exemptions should include conditions that prevent generators from gaining any unfair commercial advantage as a result of being granted an exemption. In creating the exemption, the Department has taken into consideration:

- **Strict time limits:** The duration of the proposed exemptions is strictly time limited. The exemptions begin immediately after each generator's deadline for transferring the transmission assets to the selected OFTO passes and continue until a fixed date specified in the Order, or the date of transfer to an OFTO, if that is sooner. Specifically, we propose that the exemptions should expire either 3 or 12 months after the deadline for transferring the transmission asset passes. This 3 or 12-month period is intended to account for the impacts of COVID-19 to the tender process experienced in tender rounds 5 and 6, thus allowing the generators and preferred bidders sufficient time to conclude commercial negotiations ahead of a transfer of the asset, as was the original intention of the commissioning period.

The 3 or 12-month period selected errs on the side of caution, providing for an additional period of time which we consider should be adequate for the projects to transfer their assets. We consider the periods proposed strike an appropriate balance between the need to impose strict time limits, and the uncertainty in relation to the timeframes for transfer due to the ongoing impact of COVID-19.

- **Commercial advantage:** In considering the best approach to address this issue, we considered whether there would be any financial advantage that could be enjoyed by a generator in receipt of a time-limited exemption, for example, through Transmission Network Use of System (TNUoS) charges or through the avoidance of paying a licence fee. Our conclusion is that there is no material advantage.
- **Interaction with other policies:** We also considered whether there would be any unintended interactions with other policies that could adversely affect the achievement of our objectives in other areas, which might justify imposing conditions. Again, we were not able to identify any.

We therefore do not consider it necessary for the exemptions to be subject to conditions. The generators will still be required to comply with their obligations under their generation licences, meaning they will continue to adhere to the codes of conduct, industry agreements and behavioural conventions.

Representations and timetable

We welcome the views of interested parties in relation to these proposals, including in relation to whether the proposed exemptions are required, and the length of the exemption which would be appropriate in the circumstances.

Representations on the proposed Order must be made by 23:45 on 10 July 2020 to:
ESSupport@beis.gov.uk

De Minimis impact assessment

The Government produced a *de minimis impact assessment* in respect of the proposed exemptions in 2020, which indicated that no financial advantage is expected to be conferred on the relevant generators by granting time-bound exemptions and that we anticipate direct costs to business will be significantly less than £5m/year.

As this is a temporary measure, and we do not anticipate significant impacts directly related to the preferred policy option, it was judged proportionate to only conduct a brief de minimis assessment as opposed to a full regulatory Impact Assessment.

This notice is available from: www.gov.uk/government/consultations/transmission-licence-exemptions-for-offshore-wind-farm-generators-affected-by-covid-19

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