



Department for  
Business, Energy  
& Industrial Strategy

# Energy Security Bill Policy Statement

Competition in onshore electricity networks:  
Criteria Regulations and Tender Regulations

December 2022



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# Contents

Summary – Criteria Regulations _____	4
Criteria Regulations made by Secretary of State _____	5
Background _____	5
Types of Competition for Onshore Networks and their eligibility Criteria _____	6
Offshore Tenders ('OFTO tenders') and Eligibility Criteria _____	8
Summary - Tender Regulations _____	9
Tender Regulations for Competitive Tenders _____	10
Background _____	10
Objectives and anticipated scope of Tender Regulations for competitive tenders in onshore electricity networks _____	11

## Summary – Criteria Regulations

The Energy Security Bill was introduced into Parliament on 6 July 2022. This Bill will deliver a cleaner, more affordable and more secure energy system for the long term. It builds on the ambitious commitments in the British Energy Security Strategy to invest in homegrown energy and maintain the diversity and resilience of the UK's energy supply.

The Energy Security Bill makes provision to enable competitive tenders in onshore electricity networks, extending the current offshore transmission operator regime ('OFTO regime') to apply to onshore network projects. We expect this to save consumers up to £1 billion by 2050. This measure seeks to take several powers to enable delivery of this policy<sup>1</sup>. This note focuses on regulations made under powers held by the Secretary of State under new section 6BA of the Electricity Act 1989 ("Criteria Regulations"), by virtue of Schedule 12 (paragraph 2) of the Energy Security Bill. Annexed to this statement, the Government has provided a draft Statutory Instrument to indicate how these powers will be used to make Criteria Regulations in respect of the transmission system.

The Government will separately be providing an indicative draft Statutory Instrument for another power sought under paragraph 2 of Schedule 12 (which introduces new section 6BB of the Electricity Act 1989) which enables the Secretary of State to designate a Delivery Body for competitive tenders ("Appointment Regulations"). The Government will also be providing a Policy Statement to describe how the Tender Regulations will be used, using new section 6C of the Electricity Act 1989, sought by paragraph 3 of Schedule 12 of the Energy Security Bill.

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<sup>1</sup> Further detail on these can be found in the Delegated Powers Memorandum: <https://bills.parliament.uk/bills/3311/publications>

## Criteria Regulations made by Secretary of State

The power sought in this legislative measure gives the Secretary of State the power to set criteria that Ofgem, as the independent electricity network regulator, will apply to network projects to determine their eligibility for competitive tenders under the clauses as set out in Schedule 12 of the Energy Bill.

These Criteria Regulations are important to ensure all network projects which are competed are suitable for competition, and that competitions are run on projects where it will be in the interests of consumers.

They will be laid before Parliament as soon as possible after Royal Assent of this Bill (and upon clause 153 and Schedule 12 commencing in line with clause 242(3)(e)) in order to ensure quick implementation of a competitive framework to the network regulatory landscape. To note, this power allows for different sets of Criteria Regulations to be made for different types of competition.

### Background

Onshore electricity network projects are undertaken by network companies, regulated by Ofgem through the price control process. Competitive tenders are designed to work alongside the normal price control process, to provide value to consumers in cases where competition will benefit the overall delivery of the project and save consumers money. To ensure this objective is achieved, criteria are needed to determine which projects are competed and which go through the price control.

Ofgem has previously consulted on the criteria for competition<sup>2</sup> for competition to suit different types of onshore projects. More recently, Government published a response to its consultation on onshore electricity network competition<sup>3</sup>, which reaffirmed the criteria for late-stage competition and confirmed that Ofgem would set the early-stage competition criteria.

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<sup>2</sup> For late-model competition: <https://www.ofgem.gov.uk/publications/integrated-transmission-planning-and-regulation-itpr-project-final-conclusions>; For early-model competition: <https://www.nationalgrideso.com/future-energy/projects/early-competition-plan> ; <https://www.ofgem.gov.uk/publications/consultation-our-views-early-competition-onshore-electricity-transmission-networks>

<sup>3</sup><https://www.gov.uk/government/consultations/competition-in-onshore-electricity-networks>

## Types of Competition for Onshore Networks and their eligibility Criteria

Ofgem will apply these criteria to network projects as they arise. There are different models of competition, which include:

- **Early-model Competition**, which occurs when a network need is identified (e.g. not enough capacity on the electricity network to allow for supply and/or demand, and/or there are issues with balancing supply and demand) but prior to the detailed design, surveying and consenting phases of asset development, so the design, construction and delivery of a project is tendered for. The inclusion of this type of competition is important to reflect the fact that the electricity system is changing and will continue to change as different types of solutions have, and will, become available. Previously, if there was a network need, a network licensee would often only be able to solve it through a traditional solution (normally transmission infrastructure build). Increasingly, a network need could be resolved in different ways (smart solution and/or traditional infrastructure), bringing different benefits.
- **Late-model Competition**, which occurs after the main design phase is complete and major planning consents are secured, so it is the construction and delivery of a project that are tendered for. Late-model is a more established and common competition model (both in the electricity sector and in terms of wider Public-Private Partnership procurements); it is when a network need has been identified, the solution decided and received development consent, and parties bid to build, own and operate that solution.

The key difference between early and late-model competition is the stage at which the project to solve the network need is put out for tender. The scope of tender is limited to one particular type of solution in late-model competition, while a broader range of solutions to address the network need in question is invited in early-model competition. Both models have different advantages<sup>4</sup>. Given the different stages of a network project at which they come into effect, they will need slightly different eligibility criteria, as provided for in regulation 3(2) and (3) of the annexed draft.

**Late- model competition** has been developed with industry and Ofgem through the Integrated Transmission Planning and Regulation (ITPR) project<sup>5</sup>. Descriptions of the criteria i) **novelty**; ii) **separability** and iii) **high value** have been set out in Ofgem guidance previously<sup>6</sup>. The high-value criteria applies only to late-model competitions. Regulations 5 to 7 in the annexed draft provide an indication of how these will be implemented. In practice, Ofgem, as the energy regulator, will be applying these criteria to projects and we expect guidance to supplement them.

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<sup>4</sup> For full details on the benefits see pp14-15 of our August 2021 consultation.

<sup>5</sup> <https://www.ofgem.gov.uk/publications/integrated-transmission-planning-and-regulation-itpr-project-final-conclusions>

<sup>6</sup> Ofgem, Guidance for the Criteria for Competition (2019)  
[https://www.ofgem.gov.uk/system/files/docs/2019/02/criteria\\_guidance.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/02/criteria_guidance.pdf)

**Early-model competition** has been developed by National Grid ESO in their Early Competition Plan project, commissioned by Ofgem. Ofgem consulted on the ESO's Plan and decided that criteria should be i) **certainty (in respect of network need)** (see regulation 4 of the annexed draft); and ii) a **cost benefit** (see regulation 8 of the annexed draft which will apply early-model competition) indicating that benefits of tendering the project outweigh not tendering the project and letting it go through the normal price control process. **Novelty** and **separability** also apply to early-model competition.

## Offshore Tenders ('OFTO tenders') and Eligibility Criteria

For the OFTO licensing regime implemented via the existing Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015<sup>7</sup>, there are no eligibility criteria for application for a licence, but rather all offshore transmission licences are tendered. Regulation 3(1) in the annexed draft ensures that no criteria apply to those tenders.

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<sup>7</sup> (S.I 2015/1555).



## Summary - Tender Regulations

The Energy Security Bill was introduced into Parliament on 6 July 2022. This Bill will deliver a cleaner, more affordable and more secure energy system for the long term. It builds on the British Energy Security Strategy to invest in homegrown energy and maintain the diversity and resilience of the UK's energy supply.

The Energy Security Bill makes provision to enable competitive tenders in onshore electricity networks, extending the current offshore transmission operator regime ('OFTO regime') to apply to onshore network projects. We expect this to save consumers up to £1 billion by 2050. This measure seeks to take several powers to enable delivery of this policy<sup>8</sup>. This note focuses on how the power for the Authority (the Gas and Electricity Markets Authority, acting through Ofgem) to make regulations enabling competitive tenders ("Tender Regulations"), under section 6C of the Electricity Act 1989, as substituted by paragraph 3 of Schedule 12 to the Energy Security Bill, will be used.

The Government will separately be providing indicative draft Statutory Instruments for two other powers sought under paragraph 2 of Schedule 12 (which introduces new sections 6BA and 6BB of the Electricity Act 1989 respectively). These will relate to the following: setting criteria for competition eligibility ("Criteria Regulations"); and designating a Delivery Body for competitive tenders ("Appointment Regulations").

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<sup>8</sup> Further detail on these can be found in the [Delegated Powers Memorandum](#)

## Tender Regulations for Competitive Tenders

This statement describes the objectives and intended policy of the power for the Authority (Ofgem) to set Tender Regulations. The power sought in this legislative measure extends the Authority's current power under existing section 6C of the Electricity Act 1989 to set Tender Regulations for competitive tenders in respect of offshore transmission assets to cover competitive tenders for both onshore and offshore electricity network projects.

These Regulations set out the process for onshore and offshore network competitive processes. The Secretary of State may use different sets of Regulations for onshore and offshore respectively, if he/she considers it most appropriate. The Government intends to lay these regulations before Parliament as soon as possible after Royal Assent of this Bill (and upon clause 153 and Schedule 12 commencing in line with clause 242(3)(e) to quickly implement a competitive framework in respect of the transmission network. This power allows for different sets of regulations to be made for different purposes, which will allow the Authority to set out detailed processes for onshore and offshore competition respectively, should it be appropriate and manageable to keep the processes separate.

### Background

In our consultation on onshore electricity network competition in August 2021, we set out that the Authority would draft the Tender Regulations which will 'set out at a high level the form and focus of competitions and their processes therein'<sup>9</sup>. These Regulations will set out the methodology for competitive tenders, as well as cost-recovery mechanisms for costs incurred by relevant parties and information sharing powers, which will assist with the person which will be appointed to deliver competitive tenders (the "Delivery Body")'s work to make a decision following a competitive tender for either onshore or offshore network projects.

To ensure consistency between onshore and offshore network competitive tenders, we expect that the Tender Regulations for onshore competition will closely mirror the Tender Regulations already in force for offshore transmission licence competitions<sup>10</sup>. We are not expecting to make any change to the offshore regulations at this time, although the power may be exercised in the future to amend those regulations, if necessary, for example as a result of the Offshore Transmission Network Review (OTNR)<sup>11</sup>.

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<sup>9</sup> <https://www.gov.uk/government/consultations/competition-in-onshore-electricity-networks>

<sup>10</sup> The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015; <https://www.legislation.gov.uk/uksi/2015/1555/contents/made>

<sup>11</sup> <https://www.gov.uk/government/groups/offshore-transmission-network-review>

## Objectives and anticipated scope of Tender Regulations for competitive tenders in onshore electricity networks

The objective of these Regulations is to ensure the smooth and efficient running of competitive tenders in electricity networks, both onshore and offshore, from project identification, to running the tender, to cost recovery after the process has been concluded.

Sections 6C to 6CD of the Electricity Act 1989, as inserted by paragraph 3 of Schedule 12 to the Energy Security Bill, set out the scope of Authority's powers to make Tender Regulations and outlines the matters that the Authority may include in the Regulations where appropriate for facilitating a decision/determination.

With regards to onshore competitive tenders, we anticipate that the Tender Regulations will set out detail with regards to:

### *The process for commencing a competition.*

The Authority will determine whether relevant electricity projects meet the eligibility criteria for competitive tenders set out in the Criteria Regulations made by the Secretary of State (see separate indicative draft Statutory Instrument). If the Authority considers that the criteria are met, the Delivery Body<sup>12</sup> will determine whether the time is right to commence a tender in respect of a network need, and so will undertake a cost benefit analysis on this to inform the Authority whether to approve the start of a tender. For example, if a late-stage competition were to be launched, the Delivery Body could determine that, if the full planning approvals for a project had not yet been granted, the tender should not commence until those approvals had been obtained. We anticipate that the Tender Regulations will set out the process and considerations to be taken into account by the Delivery Body in making this decision.

### *The roles of parties involved in the tender process and the stages of the tender process from Invitation to Tender (ITT) stage to the point of a licence/ contract being granted/ awarded.*

The Regulations will require the Authority and Delivery Body to work together on ITT documentation as appropriate (with the Authority having the final approval on these), the process for the tender and timelines for applying and any restrictions on entities who are entitled to apply.

The Regulations will outline how the Delivery Body will run the tender and make a decision on the outcome of the tender. They will also set out timelines for the stages of the tender and any specific considerations that the Delivery Body must or may take into account in assessment of bids and applicants. The Government response<sup>13</sup> to the consultation on competition in onshore electricity networks sets out in more detail what these factors might be. In that document, we

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<sup>12</sup> The Secretary of State may exercise their discretion to appoint Ofgem as the Delivery Body (such as in respect of existing offshore transmission tenders) in which case, references in this note to the Delivery Body should be read as references to Ofgem.

<sup>13</sup> <https://www.gov.uk/government/consultations/competition-in-onshore-electricity-networks>

clarified that we consider that these should be set in a solution-agnostic and location-agnostic way, and so these factors will need to be prioritised and weighted to suit the project at hand. We consider assessment of bids should include consideration and evaluation of<sup>14</sup>:

- the whole-life costs of the project;
- factors relating to the bidder, like their experience in such projects; and
- factors relating to the solution tendered, like cost, deliverability and adherence to industry standards.

The Regulations will reaffirm that the final decision to grant a licence to, or agree a contract with, a winning bidder lies with the Authority for licences or contract counterparty (as regulated by the Authority) for contracts. The Authority has a role to grant licences under section 6 of the Electricity Act 1989. We expect the contract counterparty to be the Electricity System Operator (or Independent System Operator and Planner if the relevant provisions in the Bill come into force) as they oversee balancing the of the system<sup>15</sup>. The Regulations will also set out the process, in line with the Authority's existing powers, for granting licences and/or contracts to the winning bidder as appropriate.

The Regulations will provide for the role of the Authority in overseeing the running of tenders by the Delivery Body, ensuring they are run in an efficient manner in the interest of the consumer, in line with statutory duties and objectives of the Authority<sup>16</sup>. The Regulations will provide rules for the process to follow in circumstances in which the Authority considers it appropriate to pause, stop or restart a tender (which the Delivery Body will have the power to do, as the body in charge of running the tender). This could be if the project is no longer economically sound, for example<sup>17</sup>. The Regulations will also provide for the Authority's role in overseeing and auditing cost recovery by parties who incur expenses during tenders. See further information below.

#### *Provision to require information to deliver roles in competition*

The Delivery Body, the Authority and the contract counterparty may require information from other parties to deliver their roles set out in the Regulations. The Regulations will set out the process they must follow to require other parties to provide relevant information and give the Authority the power to enforce this power should non-compliance by other parties occur by way of a fine. The parties that could be required to provide information could include, for example, bidders providing information on their bid or their corporate structure. Alternatively, the Delivery Body could be asked to provide evidence on their expenses incurred through the tender process to the Authority.

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<sup>14</sup> Ibid at pg 18

<sup>15</sup> Further detail on this can be found in the Government response to the consultation on onshore competition: <https://www.gov.uk/government/consultations/competition-in-onshore-electricity-networks>

<sup>16</sup> As set out in Electricity Act 1989, to carry out their respective functions in the interests of energy consumers

<sup>17</sup> For example, regulations 24-25 of the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 make provision for re-run and cancellation of a tender exercise.

*Cost recovery of expenses incurred with delivery of a tender*

The Delivery Body, the Authority and the contract counterparty could all incur costs and so could be eligible for recovery of costs associated with the tender process. The Authority has the ultimate authority in approving and allocating these costs.

The Regulations will set out what costs can be recovered, by which parties associated with the tender, and from whom. For example, the Regulations will set the Delivery Body's process for recovering costs incurred from running the tender; it will also set how the Authority could recover costs incurred from overseeing the tender.

The Regulations will set out the process for collecting the funds, the allocation of the funds and the auditing process available to the Authority, or a body appointed to undertake auditing roles on behalf of the Authority to ensure energy consumers secure value for money.

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