



Department for  
Energy Security  
& Net Zero

# Notice of Proposed Transmission Licence Exemption

for Seagreen Wind Energy Limited

Closing date: 25 April 2024



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Any enquiries regarding this publication should be sent to us at: [essupport@energysecurity.gov.uk](mailto:essupport@energysecurity.gov.uk)

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# General information

## Why we are consulting

We are seeking views on a proposed time-limited exemption from the requirement to hold a transmission licence in respect of the offshore wind farm owned and operated by Seagreen Wind Energy Limited (SWEL).

## Consultation details

**Issued:** 28 March 2024

**Respond by:** 25 April 2024

**Enquiries to:** [essupport@energysecurity.gov.uk](mailto:essupport@energysecurity.gov.uk)

**Territorial extent:** Great Britain, including the devolved administrations.

## How to respond

**Email to:** [essupport@energysecurity.gov.uk](mailto:essupport@energysecurity.gov.uk)

## Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

## Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: [bru@energysecurity.gov.uk](mailto:bru@energysecurity.gov.uk)

# The proposals – Notice of proposed transmission licence exemption

## EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO TRANSMIT ELECTRICITY: PROPOSAL TO MAKE THE ELECTRICITY (INDIVIDUAL EXEMPTION FROM THE REQUIREMENT FOR A TRANSMISSION LICENCE) (SEAGREEN) (SCOTLAND) ORDER 2024

### Summary

This consultation seeks views on our proposal to make an exemption from the requirement to hold a transmission licence for the Seagreen Offshore Wind Farm owned and operated by SWEL.

### 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 windfarm currently in the process of transferring transmission assets under the Offshore Transmission Owner's (OFTO) regime:

Seagreen Wind Energy Limited (SWEL) (company number 06873902), with registered office address: No.1 Forbury Place, 43 Forbury Road, Reading, United Kingdom, RG1 3JH in respect of the Seagreen Offshore Wind Farm with an overall capacity of up to 1075MW. Seagreen Offshore Wind Farm is located 27km off the Angus coast in the North Sea.

### Legislative background

**Section 4** of the Act sets out the activities for which licences are required, which includes 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, hereinafter referred to as Ofgem) 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 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 licensed through a competitive regime. While the transmission assets can be built and tested by the OFTO itself (under the OFTO build option), all projects so far tendered have been built and tested by generators (under the generator build option).

Under this option, the transmission assets are built by the offshore wind developer in parallel with construction of the windfarm array. Once complete, Ofgem runs a tender to select the OFTO who will own and operate the transmission assets for a specified period.

The OFTO will then pay the generator the transfer value (determined by Ofgem through an open methodology) and will take ownership and responsibility for the operation of the transmission asset in return for a fixed revenue stream for the specified period.

Through this process we have introduced an important element of competition to the sector, which has been estimated to have delivered £700m of savings over the first £3.1bn worth of assets tendered, with further savings expected over subsequent tender rounds for assets estimated at a value in excess of £5 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.<sup>1</sup> 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.

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<sup>1</sup> For these purposes, 'completion' refers to the date that Electricity System Operator gives Ofgem a 'completion notice' in relation to the project.

Seagreen Offshore Wind Farm have experienced a technical issue with burying a cable to the required depth in an intertidal location. SWEL's subcontractor has attempted to bury the cable at the required depth multiple times since 2021. On each occasion they have failed to reach the necessary depth set out in the original design specifications. On 4 March 2024, SWEL sent a formal request for a Section 5 transmission licence exemption. The additional transfer time was requested to enable a final attempt to bury the cable at the required depth in the narrow weather window in 2024. If this burial campaign fails or is only partially successful, then SWEL and the OFTO will need to implement technical and commercial solutions to enable the successful transfer of transmission assets.

SWEL have requested an exemption from the requirement to hold a transmission licence to 7 February 2025, 7.5 months after the original commissioning period. SWEL have provided an estimated timeline for the OFTO transfer.

## Existing guidance on licence exemptions

In August 2023 the department published a guidance note for individual offshore Transmission Licence Exemptions<sup>2</sup>. The guidance states 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 SoS has the power to grant exemptions from the requirement to hold an offshore transmission licence, and to impose conditions on that exemption. Offshore transmission licence exemptions follow a statutory process set out in the Act, which includes a 28-day public consultation and Secondary Legislation laid in parliament.

Should the SoS receive an application for an offshore transmission licence exemption, the SoS will assess any application fairly and reasonably using the guidance note. 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 SoS.

The guidance note highlights three categories of exceptional circumstances where DESNZ would consider an exemption application made by a developer. These are Unforeseen and Significant Technical Issues, Coordinated Projects and Innovative Projects.

In 2019, the SoS for Business Energy and Industrial Strategy (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.

In 2020, the SoS for BEIS granted exemptions to four projects due to delays to the transfer process as a result of the COVID-19 pandemic and response measures. These exemptions

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<sup>2</sup> <https://assets.publishing.service.gov.uk/media/64ca699a6ae44e001311b40e/offshore-transmission-licence-exemptions-august-2023-guidance.pdf>



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were granted on the basis that in each instance the delays constituted exceptional circumstances.

In 2022, the SoS for BEIS granted a further exemption to East Anglia One Limited to account for a further delay to the transfer process. While the ultimate cause of the delay was technical issues relating to the onshore cables, the delay was compounded by the restrictions put in place in response to the exceptional circumstances of the COVID-19 pandemic and its ongoing effects.

In 2022, the SoS for BEIS granted an exemption to Triton Knoll offshore windfarm to account for delays experienced from a cable fault, sufficient time for the parties to conclude commercial negotiations and allowing some additional time in case of complexities around insurance matters arising from the cable fault.

In 2023, the SoS granted an exemption to Moray East offshore windfarm after the windfarm suffered a fault with one of its export cables. The transmission assets were transferred to the OFTO in February 2024.

## The Secretary of State's Principal Objective

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(1A)(a) to consider the principal objective of protecting the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems. The interests of existing and future consumers are their interests taken as a whole, including their interests in [the Secretary of State's compliance with the duties in sections 1 and 4(1)(b) of the Climate Change Act 2008 (net zero target for 2050 and five-year carbon budgets)]. The SoS shall carry out their functions under Part 1 in the manner which they consider is best calculated to further the principal objective, wherever appropriate by promoting effective competition, and must have regard to the interests in section 3A(2), including the need to contribute to the achievement of sustainable development.

If the SoS were not to provide an exemption, we would anticipate that SWEL would cease operation on or immediately after 20 June 2024, as to continue transmission of electricity without a licence or an exemption would be unlawful. If this situation continued for an extended period (i.e. more than a few weeks), the OFTO would likely require 3 months of normal operation after the windfarm is re-energised to be satisfied that there were no residual technical issues associated with the shut-down and to finalise the transfer of the transmission asset. Lawful transmission of electricity after 20 June 2024 to demonstrate the asset in this way would require an exemption to be granted first. The deadline created by the 18-month commissioning period is to ensure a timely transfer to the OFTO so that the benefits of the regime can be realised as quickly as possible. It would therefore be unsatisfactory if an extended cessation of transmission occurred. This would delay the benefits to the consumer that can be expected as a result of the OFTO regime.

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In the absence of compelling reasons to the contrary, the SoS considers it to be in the public interest for offshore wind generation to be transmitted to shore so that it can reduce the overall level of greenhouse gas emissions from the power sector and contribute to a diverse and secure supply of electricity. The SoS is satisfied that there would be no material distortions to competition and no unfair economic advantage to be gained if an exemption were granted.

Providing an exemption would directly support future reductions in greenhouse gases by demonstrating to investors and developers that offshore windfarms can continue to transmit low-carbon power to the grid for the limited time required for the transfer of transmission assets to be completed. Enabling offshore wind generation to be lawfully transmitted to shore will help reduce emissions in line with carbon budgets set under the Climate Change Act 2008 as well as reducing dependence on imported fossil fuels to generate electricity.

In determining the length of any proposed exemption, the SoS will consider the delays experienced and expected by SWEL as a result of the technical problems with cable burial, alongside the need to complete the transaction in a timely fashion. SoS will also consider the contribution that SWEL will make to security of supply of electricity and the reduction in costs to consumers as a result of displacing more expensive forms of generation.

Therefore, in line with the Government's efforts to reduce greenhouse gas emissions, increase domestic production of electricity and reduce reliance on energy imports, the SoS is minded to use the powers granted under section 5 of the Act to grant SWEL a time-limited exemption from the requirement to hold a transmission licence. We propose granting a time-limited transmission licence exemption to 7 February 2025, in line with SWEL's request.

## Terms of proposed exemption

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

- **Strict time limits:** The duration of the proposed exemption will be strictly time limited. An expiry date would be included in the exemption order and the exemption would automatically expire if the transfer to the OFTO is completed before that date. The SoS considers that a proposed exemption running to 7 February 2025 is appropriate to account for the delays to the process. This proposed exemption is also intended to allow SWEL and the OFTO time to resolve the technical issues with the cable burial depth.
- **Commercial advantage:** In considering the best approach to take to address this issue, the SoS has 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. The conclusion is that there is no material advantage.

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- **Interaction with other policies:** The SoS 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. No issues were identified.

Therefore, the SoS does not consider it necessary for the exemption to be subject to conditions. SWEL will still be required to comply with its obligations under its generation licence meaning it will continue to adhere to the codes of conduct, industry agreements and behavioural conventions. The SoS notes that there are economic incentives on SWEL to complete the transfer and expects SWEL to work towards a transfer as soon as possible and to report to the Department for Energy Security and Net Zero on progress towards this.

## Summary

We invite views from interested parties on a proposal for the SoS to use powers under the Electricity Act 1989 to grant an exemption from the requirement to hold a transmission licence to SWEL to expire on 7 February 2025, 7.5 months after the original commissioning period. SWEL has presented a timeline that envisages a transfer before 7 February 2025.

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This consultation is available from: [www.gov.uk/government/publications/electricity-supply-licence-exemption-seagreen-wind-energy-limited-swel](http://www.gov.uk/government/publications/electricity-supply-licence-exemption-seagreen-wind-energy-limited-swel)

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