

EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (INDIVIDUAL EXEMPTIONS FROM THE REQUIREMENT FOR A TRANSMISSION LICENCE) (CORONAVIRUS) ORDER 2020

2020 No. 815

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy & Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 To grant time limited exemptions from the requirement to hold an electricity transmission licence to Beatrice Offshore Windfarm Limited in respect of Beatrice offshore wind farm, Rampion Offshore Wind Limited in respect of Rampion offshore wind farm, Hornsea 1 Limited in respect of Hornsea 1 offshore wind farm and East Anglia One Limited in respect of East Anglia One offshore wind farm.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales and Scotland.
- 4.2 The territorial application of this instrument varies depending on the location of the infrastructure to which an exemption relates. Article 2 applies in Scotland and the waters off the coast of Scotland in which the relevant infrastructure is located. Articles 3 to 5 apply in England and the waters off the coast of England in which the relevant infrastructure is located. Article 1 applies in all these areas.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 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”). 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.

- 6.2 A transmission licence may be granted by the Gas and Electricity Markets Authority (“Ofgem”) under section 6(1)(b) 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 asset. 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 four offshore generators. Three of the four exemptions run from the end of the relevant offshore generator’s commissioning period. The fourth runs from the expiry of a prior exemption granted under S.I. 2019/106.

7. Policy background

What is being done and why?

- 7.1 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. It underpins the Government’s renewable energy targets by placing the requirements of renewable generators and Great Britain’s electricity consumers at the forefront.
- 7.2 Whilst 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. EU ‘unbundling’ rules prevent transmission and generation infrastructure being owned and operated by the same party.¹
- 7.3 To select an OFTO to own and operate the transmission asset, after it is transferred by the generator during the commissioning period, Ofgem runs a tender exercise.
- 7.4 Ofgem also grants a licence and fixed revenue stream for a specified period, which is set at 20 years for all the projects in tender round 5 and 25 years for the projects in tender round 6.
- 7.5 The commissioning period, as set out in paragraph 6.3, is designed to allow the transmission asset to be transferred to an independent OFTO under the OFTO regime, as the Act anticipates on completion of the project (as indicated by Ofgem being notified by National Grid Electricity System Operator that the completion notice has

¹ However, the drivers for unbundling are primarily around non-discriminatory access to the network. If a generator owns a transmission asset, there is a risk that they prioritise access to the asset to their own generation at the expense of competitors (but for a point-to-point cable with a single generator at the end, this risk is significantly reduced).

been issued to the developer). The commissioning period allows for the technical demonstration of the asset, 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 the transmission of electricity without a licence, which is an offence under section 4(1)(b) of the Act.

- 7.6 Ofgem groups projects together in OFTO tender rounds so that tender rules can be consistently applied across the projects, and bidders have better visibility of the projects coming forward. The COVID-19 pandemic has disrupted work in relation to projects in tender rounds 5 and 6. Generators have experienced, or are likely to experience, delays for one or more of the following reasons: (i) lack of available personnel; (ii) restricted movement of people; (iii) possible further uncertainty in the financial markets impacting transactions; (iv) knock on impacts of delay and disruption to other OFTO projects within the OFTO regime; and (v) ongoing disruption to normal working practices.
- 7.7 These delays mean it is very likely that the offshore generators in tender round 5 and 6 (identified in paragraph 2.1 above) will, despite best endeavours to work with Ofgem to progress tenders, find themselves in a position where they have not completed the transfer of transmission assets within the 18-month commissioning period (or, in the case of Rampion Offshore Wind Limited, the additional time allowed by their previous exemption). After this, they will be unable to continue to lawfully transmit electricity to the grid.
- 7.8 The exemptions will come into effect at the end of the 18 months of the commissioning period for each generator in tender round 6, and at the end of the previous exemption granted to the project in tender round 5. The exemptions will expire on the relevant date specified in the instrument, or upon transfer of ownership of the transmission asset to an OFTO if that is earlier. The length of the individual exemptions is designed to account for the delays already experienced due to the impacts of COVID-19 and allow, where possible, for the possibility of some further COVID-19 related delay and disruption. The purpose of the exemptions is to help ensure the projects have sufficient time to conclude commercial negotiations and complete the transfer of the asset to an OFTO.
- 7.9 The instrument will effectively extend the period during which these generators can transmit electricity without a licence to account for the impact of COVID-19. Without the instrument, the relevant generating stations would be prevented from transmitting lawfully, and hence be prevented from generating electricity.

Requests for exemptions

- 7.10 Beatrice Offshore Windfarm Limited, Rampion Offshore Wind Limited, Hornsea 1 Limited and East Anglia One Limited have each requested a temporary exemption from the requirement to hold an electricity transmission licence, in respect of the transmission taking place over the transmission system connected to a specific offshore wind farm (the location of the relevant generating stations are described in articles 2(3)(b), 3(3)(b), 4(3)(b), and 5(3)(b) of the instrument).

- 7.11 Each generator requested an exemption well in advance of the end of its commissioning period based on delays already experienced, further anticipated delays and the impact expected on the timely transfer of assets to an OFTO.
- 7.12 Beatrice Offshore Windfarm Limited requested an exemption on 24 April 2020, approximately 5 months before the end of its commissioning period on 2 October 2020. Beatrice has experienced delays due to social distancing measures and restrictions on movement, which have been a barrier to reaching a crucial milestone for transfer. This is likely to have a knock-on effect on future milestones if, for example, windows of good weather are missed this year. There is also uncertainty around how long Beatrice will continue to be affected and additionally, if it will be affected in the lead up to the original 2 October transfer due to possible further uncertainty in the financial markets impacting transactions. To account for these delays, Beatrice requested an exemption of 12 to 18 months.
- 7.13 Rampion Offshore Wind Limited requested an exemption on 21 April 2020, approximately 7 months before the expiration of their previous exemption from the requirement for a transmission licence on 27 November 2020. As a result of the impacts of Covid-19, Rampion has reported 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 works 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, the possibility of further uncertainty in the financial markets impacting transactions is also considered a risk leading up to Rampion’s original 27 November 2020 deadline. To account for these delays, Rampion requested a further exemption of more than 9 months.
- 7.14 Hornsea 1 Limited requested an exemption on 24 April 2020, approximately 9 months before the end of its commissioning period on 14 January 2021. Hornsea 1 has reported the impacts of Covid-19 causing delays due to the cumulative impacts of decreased personnel availability, disruption to normal working practices during the “lockdown” period, 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, which can be expected to have a significant but uncertain impact on the timetable for transfer. To account for these delays, Hornsea 1 originally requested a minimum exemption of 12 months.
- 7.15 East Anglia One Limited requested an exemption on 24 April 2020, approximately 17 months before the end of its commissioning period on 13 September 2021. East Anglia One reported a delay to the invitation to tender (ITT) process starting as a result of Covid-19 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 requested an exemption of 3 months, which the generator expects will provide sufficient time for the transfer to occur.

Reasoning for exemptions granted

- 7.16 In carrying out functions under Part 1 of the Act (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.

- 7.17 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. The Secretary of State considers it would further the principal objective of the Act to grant time-limited exemptions to those generators affected by COVID-19 in tender rounds 5 and 6.
- 7.18 The exemptions promote consumers' interests by protecting these generators from the adverse legal and commercial consequences of COVID-19 related delays, which supports the 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 exemptions will allow the affected generators a sufficient window in which to successfully transfer transmission assets so that their generation is not interrupted. This is in line with the overall objective of the Government's Clean Growth Strategy to enable economic growth while cutting greenhouse gas emissions.
- 7.19 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 truly exceptional circumstances of the COVID-19 pandemic, the Secretary of State is using 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. The Secretary of State also maintains the option to revisit these exemptions should further significant delays be experienced.
- 7.20 The length of the exemptions is based on careful consideration of the delays experienced and expected by the affected parties, uncertainty about the impact COVID-19 is likely to have in the future, and the need to maintain sufficient momentum to complete transactions in a timely fashion. Longer exemptions which account for the possibility of less predictable significant delays have been granted where this will not unduly disrupt negotiations between the parties. Where it is not clear this is the case, a more conservative exemption limited to more immediate and predictable COVID-19 related disruption has been granted.
- 7.21 Guidance on the Department's approach to generation, distribution and supply licence exemptions is published on the Government website, including the 'frequently asked questions' document.² This does not explicitly set out circumstances in which transmission licence exemptions would be granted, but does set out general principles, which have informed our approach in considering these exemptions. These principles include that, in determining applications, the Secretary of State should take account of the impact of the exemption on the safe and secure operation of the electricity system,

² <https://www.gov.uk/guidance/electricity-licence-exemptions>

and the interests of consumers. For example, exemptions are routinely granted to generators of less than 100MW capacity due to their low impact on the total electricity system.

- 7.22 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: (i) The offshore transmission assets, operated by the offshore generators 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 Electricity System Operator, and (ii) in that context, the Electricity System Operator already operates the system safely and securely while these generators are generating during the commissioning period.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 A notice was published on the Government website setting out the proposal to make the instrument, containing the terms of the instrument, and inviting representations, on 12 June 2020³.
- 10.2 The notice period closed on 12 July 2020 and eight representations were received.
- 10.3 All eight representations supported the general proposal to grant time limited exemptions. There was a consensus in relation to three of the four projects (Beatrice, Rampion and East Anglia One) with the respondents with an interest in each of the projects agreeing the exemption proposed was appropriate, making no suggestions for changes. However, there were differing views about the proposed exemption for Hornsea 1 where two respondents agreed with the proposal to grant a 12-month exemption, while one argued 12-months was too long and a 3-month exemption should be granted instead.
- 10.4 One of the respondents in favour of a 12-month exemption for Hornsea 1 noted there had already been significant delay and disruption due to COVID-19 and that further disruption could be expected. Although, based on delays to date, the transfer could potentially be completed in less than 12 months, in their view a 12-month exemption remained appropriate once the potential for further significant COVID-19 related delay and disruption was taken into account. The other respondent in favour endorsed the 12-month exemption without providing detailed reasons in support.
- 10.5 The respondent opposed to the 12-month exemption considered this was longer than required and suggested that a 3-month exemption would be sufficient to account for delays relating to COVID-19. It was noted that granting an unnecessarily long

³ <https://www.gov.uk/government/consultations/transmission-licence-exemptions-for-offshore-wind-farm-generators-affected-by-covid-19>

exemption would have a negative impact on the respondent, and that if more time was required to account for future delays a further exemption could be granted when it was clear one was required.

- 10.6 Given the lack of consensus in relation to Hornsea 1, the Government has decided a shorter exemption of 6-months is appropriate. An exemption of this length provides additional time to account for delays already incurred and more immediate and predictable future COVID-19 related disruption. This helps ensure the exemption granted does not unduly impact the commercial negotiations between the parties. Where there is agreement between the parties that a 12-month exemption is appropriate, the Government considers granting exemptions of this length, which also account for the possibility of more significant but less predictable COVID-19 related delays, remains the right approach.
- 10.7 The Scottish Government were consulted on their view of the exemptions, with particular reference to the Beatrice windfarm which is located within Scottish waters. The Scottish Government are supportive of the exemptions and of a cohesive and flexible approach particularly during this time.

11. Guidance

- 11.1 The majority of responses highlighted concerns about possible further impacts of Coronavirus should there be a “second wave”. Should there be further impacts due to a “second peak” or “wave”, Government would be open to considering the need to grant a further exemption. In this instance, we would again refer to guidance on the Department’s approach to generation, distribution and supply licence exemptions which is published on the Government website, including the ‘frequently asked questions’ document.⁴ This has informed our approach in considering these transmission licence exemptions and those previously (2019). The current situation is considered to arise from the truly exceptional circumstances brought about by COVID-19 affecting generators in tender rounds 5 and 6, we therefore do not intend to publish additional guidance on our approach to transmission licence exemptions.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Regulatory Impact Assessment has not been produced for this instrument as it is a temporary measure. No significant direct costs to the private, voluntary or public sectors are foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 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 exemptions, but each exempted wind farm must continue to comply with the conditions of its generation licence (including satisfying industry standards).

⁴ <https://www.gov.uk/guidance/electricity-licence-exemptions>

15. Contact

- 15.1 Matt Coyne/ Amanda Webb and Sophia Cliff at the Department for Business, Energy and Industrial Strategy Telephone: 0300 068 5265/ 0207 215 6052 and 0207 215 4219 or email: Coyne-Webb.Jobshare@beis.gov.uk and Sophia.Cliff@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Teresa Camey, Deputy Director for Electricity Systems at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Kwasi Kwarteng at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.