EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (INDIVIDUAL EXEMPTION FROM THE REQUIREMENT FOR A TRANSMISSION LICENCE) (EAST ANGLIA ONE) (ENGLAND) ORDER 2022

2022 No. 558

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 a time limited exemption from the requirement to hold an electricity transmission licence to East Anglia One Limited ("EAOL") 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.

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 is England.

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 assets. 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 one offshore generator. This exemption will run from the entry into force of this order and expire on the earlier of 13 April 2023 or the transfer of the transmission assets to the preferred bidder OFTO.

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. '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 assets, 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 for the transmission associated with the East Anglia One windfarm is set at 25 years.

7.5 The commissioning period, as set out in paragraph 6.3, is designed to allow the transmission assets 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 been issued to the developer). The commissioning period allows for the technical demonstration of the assets, 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 In 2020, exemptions from the requirement to hold a transmission licence were granted to four generators, to account for delays incurred as a result of the COVID-19 pandemic and associated disruption. This included EAOL, which was granted an exemption lasting three months following directly on from the end of its

[1] The drivers for unbundling are primarily around non-discriminatory access to the network. If a generator owns transmission assets, there is a risk that they prioritise access to those assets 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).

commissioning period and expired on 13 December 2021. This duration of three months was requested by EAOL and was expected to provide sufficient time for the transfer to occur. The explanatory memorandum prepared for the exemptions granted in 2020 noted that the Secretary of State maintained the option to revisit the exemptions should further significant delays be experienced.[2]

Request for a further exemption

7.7 EAOL requested a further exemption on 3 September 2021, approximately 3 months before the end of the transmission licence exemption granted in 2020. In their exemption request, EAOL noted that the restrictions on the movement of personnel due to COVID-19 led to delays in starting the due diligence work ahead of the transfer, in turn resulting in late discovery of technical issues with the cable installation that need to be remedied before the transfer process can continue. The causes of the delay in being able to complete the transfer of the assets to the preferred bidder OFTO can therefore be broken down into two contributing factors:

7.7.1 Ongoing impacts of the COVID-19 pandemic.

- Further restrictions related to the ongoing COVID-19 pandemic came into force after EAOL's previous exemption came into force in October 2020, which were not known about at the time that the initial 3-month exemption came into force.
- Restrictions on the number of personnel able to travel to the offshore substation to prepare for offshore site visits. This delayed site visits by around 3 months.
- Delayed rectification of a number of technical issues.
- Delays to the due diligence process resulting in material commercial issues being delayed, including the late discovery of the cable issue (referred to below).
- Disruption to normal working practices and patterns with much less in-person engagement.

7.7.2 Onshore cable issue:

In summer 2021, EA1 discovered technical issues relating to its onshore cables which requires remedial works in order to allow the transfer of transmission assets to the preferred bidder OFTO to proceed. These works will rely on the input of multiple third parties, including relevant local authorities, landowners and contractors, and is expected to require some physical remedial work.

Reasoning for exemption granted

7.8 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.

[2] https://www.legislation.gov.uk/uksi/2020/815/memorandum/contents

7.9 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 a time-limited exemption to EAOL.

7.10 The exemption promotes consumers' interests by allowing EAOL to continue operation, which supports the continued investment and competition in the sector. It also contributes to security of supply of electricity to consumers by ensuring that EAOL is able to continue to generate and transmit electricity lawfully, including during the next winter period if the transfer of the transmission assets to the OFTO is not otherwise completed by that point.

7.11 Providing this exemption to EAOL also directly supports future reductions in greenhouse gases by ensuring that an offshore wind farm can continue to lawfully transmit low-carbon power to the grid for the limited time required for the transfer of transmission assets to be completed. The exemption will allow EAOL a sufficient window in which it can successfully transfer the transmission assets so that the windfarm's generation will not be 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.

7.12 It is in the public interest for offshore wind generation to be transmitted to shore lawfully. 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 EAOL a time limited exemption from the requirement to hold a transmission licence.

7.13 In determining the length of this exemption, the Secretary of State has considered the delays experienced and expected by EAOL, the need to maintain sufficient momentum to complete the transaction in a timely fashion, and the contribution that EAOL will make to security of supply of electricity over the next winter period if it is fully operational. The duration of the exemption also allows for a reasonable margin for any incremental delays in the process to transfer the transmission assets to the OFTO that could otherwise result in unlicensed transmission or cessation of transmission.

7.14 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.[3] 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 this exemption. 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, 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.

7.15 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

[3] https://www.gov.uk/guidance/electricity-licence-exemptions

reasons: (i) The offshore transmission assets, operated by EAOL, 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 and Future Relationship

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 25 February 2022.[4]

10.2 The notice period closed on 25 March and three representations were received from stakeholders directly affected by the proposed exemption. The three representations expressed strong support for the proposed exemption expiring in April 2023. In expressing support for an exemption, all respondents agreed that this is consistent with contributing to a diverse and secure supply of electricity. In addition, all respondents felt that the longer duration option would be prudent to allow for the completion of transfer of the transmission assets, reflecting ongoing uncertainties as to the impact of COVID-19 on the transfer process. EAOL explicitly agreed with our assessment that they are incentivised to work towards an earlier transfer.

10.3 Responses were also received from Citizens Advice and Consumer Scotland. Citizens Advice supported a proposed exemption that would expire in April 2023 based on the balance of risk between a continued licence exemption and the risk to security of supply and increased carbon emissions over winter. Consumer Scotland had no comments on the proposed exemption.

10.4 The Scottish Government were also consulted on their view of the exemption. Their response specifically noted the risks to consumers associated a shut-down scenario, which was said to be particularly pertinent in the current climate.

11. Guidance

11.1 As mentioned in paragraph 7.14, there is no specific guidance on the Government's approach to granting transmission licence exemptions. However, the principles set out in the Departments approach to generation, distribution and supply licence exemptions which is published on the Government website, including the 'frequently

[4] https://www.gov.uk/government/publications/electricity-transmission-licence-exemption-east-anglia-one-limited

asked questions' document has informed our approach in considering this exemption and those granted previously.[5]

12. Impact

12.1 A full impact assessment has not been produced for this instrument as it is a temporary measure.

12.2 There is no, or no significant, impact on business, charities or voluntary bodies.

12.3 There is no, or no significant, impact on the public sector.

12.4 This exemption has positive social benefit of £520m. Assuming the supported offshore wind generation displaces gas generation, overall generation cost savings to the energy system are expected to be £290m, with associated carbon savings expected to be 0.9MTCO_2e valued at £230m.

12.5 EAOL is estimated to receive £350m as a result of continuing to lawfully generate and transmit electricity to the market during the period of the exemption.

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 EAOL must continue to comply with the conditions of its generation licence (including satisfying industry standards).

15. Contact

15.1 Matt Coyne at the Department for Business, Energy and Industrial Strategy Telephone: 0300 068 5265 or email: matthew.coyne@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Chris Fox/Charlotte Middleton, 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 Greg Hands at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

5 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/617786/Exemption_FAQs_updated_June_2017rg.pdf