EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (INDIVIDUAL EXEMPTION FROM THE REQUIREMENT FOR A TRANSMISSION LICENCE) (MORAY EAST) (SCOTLAND) ORDER 2023

2023 No. 981

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 To grant a time limited exemption from the requirement to hold an electricity transmission licence to Moray Offshore Windfarm (East) Limited ("MOWEL") in respect of Moray East 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 Scotland.

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 31 March 2024 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 Once the assets have been completed, Ofgem runs a tender exercise to select an OFTO to own and operate the transmission assets for the enduring operational period.

7.4 Ofgem also grants a licence and fixed revenue stream for a specified period, which for the transmission associated with the Moray East windfarm is set at 25 years.

7.5 The generator is able to own and operate the asset for a commissioning period of 18 months. This 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 There have been previous instances where offshore transmission licence exemptions have been granted by the Secretary of State. This includes four of the five projects in tender round 5 in 2019, due to delays in the tendering process outside of the developers' control. In 2020, four projects were granted exemptions due to delays incurred as a result of the COVID-19 pandemic and associated disruption. In June 2022, an exemption was granted to East Anglia One Limited to account for delays

[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).

related to onshore cable issues and ongoing COVID-19 impacts. In October 2022, Triton Knoll windfarm was given a 9-month exemption due to a subsea cable fault on one of the cables preventing the OFTO transfer.

7.7 Without this instrument, MOWEL would be prevented from transmitting electricity lawfully.

Exemption Request

7.8 MOWEL requested a time limited exemption to hold a transmission licence on 14 April 2023 which would expire on 31 March 2024. MOWEL stated that they had experienced a significant export cable fault which caused Moray East windfarm to lose a third of its generation. As a result, this has delayed the transfer of the transmission assets to the OFTO.

7.9 MOWEL requested additional time in order to identify the fault, conduct a Root Cause, fix and demonstrate the asset and restart commercial negotiations with the OFTO. They anticipated this could take up to 11 months to be completed.

Reasoning for exemption granted

7.10 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.

7.11 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 MOWEL.

7.12 We can expect MOWEL to stop generating after 9 October 2023 as they would face the risk of prosecution if they continued to transmit electricity after this date unless an exemption is granted. This would result in the loss of 600MW of renewable generating capacity, and 950MW once the cable fault is fixed, in the event MOWEL ceased generating.

7.13 The exemption promotes consumers' interests by allowing MOWEL to transmit electricity lawfully, which supports the continued investment and competition in the sector. It also supports security of electricity supply to consumers.

7.14 Providing this exemption to MOWEL also directly supports future reductions in greenhouse gases by ensuring that an offshore wind farm can 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 MOWEL 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 domestic economic growth while

cutting greenhouse gas emissions, as well as the British Energy Security Strategy to ensure secure, clean, and affordable British energy for the long term.

7.15 It is in the public interest for offshore wind generation to be transmitted to shore lawfully. Therefore, the Secretary of State is using the powers granted under section 5 of the Act to grant MOWEL a time limited exemption from the requirement to hold a transmission licence.

7.16 In determining the length of this exemption, the Secretary of State has considered the delays experienced and expected by MOWEL, the need to maintain sufficient momentum to complete the transaction in a timely fashion, and the contribution that MOWEL will make to security of supply of electricity. The duration of the exemption also allows for a reasonable margin for delays in the process to transfer the transmission assets to the OFTO that could otherwise result in unlicensed transmission or cessation of transmission. The Secretary of State notes that the full assessment of the cable fault has not yet been completed, however reasonable additional time has been built into this exemption to account for complexities around insurance that might arise from this. The Secretary of State considers that an exemption until 31 March 2024 presents a reasonable and proportionate exemption in the current circumstances.

7.17 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 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.

7.18 The 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 MOWEL, 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.

9. Consolidation

9.1 None.

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

10. Consultation outcome

10.1 A notice was published on the Government website setting out the proposal to make the instrument, and inviting representations, on 25 May 2023.[3]

10.2 The notice period closed on 22 June 2023 and four representations were received, including from MOWEL, the entity that owns Moray East Offshore wind farm.

10.3 A response was received from MOWEL. This supported the proposed exemption until 31 March 2024 outlining the benefits such as a reduction in carbon and a contribution to energy security.

10.4 A response was also received from Transmission Capital Partners, the preferred OFTO bidder. This supported the proposed exemption until 31 March 2024 and encouraged a timely transfer to ensure the delay is minimised.

10.5 A response was also received from the Renewable Energy Foundation. The Foundation did not support the proposed exemption based on a concern for consumers bearing increased costs, due to MOWEL being able to charge higher constraint costs.

10.6 The Scottish Minister for Energy Gillian Murphy supported the exemption highlighting that Moray East is making a significant contribution to Scotland's renewable electricity generation.

10.7 A government response to the consultation has been published on the Government website.[4]

11. Guidance

11.1 As mentioned in paragraph 7.18 above there is no specific guidance on the Government's approach to granting transmission licence exemptions. However, the principles set out in the Department's approach to generation, distribution and supply licence exemptions which is published on the Government website, including the 'frequently 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 prepared 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 £180m during the exemption period. Assuming the supported offshore wind generation displaces gas generation, overall

[3] https://www.gov.uk/government/publications/electricity-transmission-licence-exemption-moray-offshore-windfarm-east/notice-of-proposed-transmission-licence-exemption-for-moray-offshore-windfarm-east-limited#:~:text=In%20late%20February%202023%2C%20Moray,exemption%20on%2014%20April%202023.

[4] https://www.gov.uk/government/publications/electricity-transmission-licence-exemption-moray-offshore-windfarm-east/notice-of-proposed-transmission-licence-exemption-for-moray-offshore-windfarm-east-limited

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

generation cost savings to the energy system are expected to be £80m, with associated carbon savings expected to be 1MTCO_2e valued at £97m.

12.5 MOWEL is estimated to receive £210m as a result of lawfully generating and transmitting electricity to the market during the period of the exemption.[6]

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 exemption, but MOWEL must continue to comply with the conditions of its generation licence (including satisfying industry standards).

15. Contact

15.1 Matthew Coyne/Amanda Webb at the Department for Energy Security and Net Zero Telephone: 07920 703286 or email: Coyne-Webb.Jobshare@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ruth Harriford /Charlotte Middleton, Deputy Directors for Europe and Offshore Electricity Networks at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Andrew Bowie at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.

[6] The revenues reflect expectations at time of analysis, but contain uncertainties and are sensitive to market movements.