EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (INDIVIDUAL EXEMPTION FROM THE REQUIREMENT FOR A TRANSMISSION LICENCE) (SEAGREEN) (SCOTLAND) (AMENDMENT) ORDER 2025

2025 No. 28

1. Introduction

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

2. Declaration

2.1 The Secretary of State at the Department for Energy Security and Net Zero has delegated decisions on transmission license exemptions relating to the Offshore Transmission Owner (OFTO) regime to Minister Shanks, Minister for Energy. Minister Shanks confirms that this Explanatory Memorandum meets the required standard.

2.2 Paul van Heyningen, Deputy Director for Electricity Networks Strategy & Regulatory Policy at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Felicity McCourt at the Department for Energy Security and Net Zero. Telephone: 01325 654853 or email: felicity.mccourt@energysecurity.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The legislation will grant a time limited exemption from the requirement to hold an electricity transmission licence to Seagreen Wind Energy Limited ("SWEL") in respect of Seagreen offshore windfarm.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales and Scotland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Scotland.

5. Policy Context

What is being done and why?

5.1 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.

5.2 While transmission assets can be built and tested by an independent 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.

5.3 Where assets are built and tested by generators, once they have been completed, Ofgem runs a tender exercise to select an OFTO to own and operate the transmission assets for the enduring operational period.

5.4 Ofgem will grant a licence and fixed revenue stream to the successful bidder for a specified period, which is set at 25 years for the transmission associated with the Seagreen windfarm.

5.5 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 OFTO under the OFTO regime. 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. Beyond the 18 months of the commissioning period, the generator is prevented from continuing to transmit electricity, as doing so would constitute transmission of electricity without a2 licence, which is an offence under section 4(1)(b) of the Act.

5.6 A generator can request a transmission licence exemption if they are unable to transfer the transmission assets to the OFTO by the commissioning period deadline. This is subject to Secretary of State approval and a Statutory Instrument laid in Parliament.

5.7 SWEL have previously requested, and been granted on 20 June 2024, an extension to their commissioning period exemption from the requirement to hold a transmission licence for 7.5 months, due to significant technical issues with burying an intertidal export cable. These issues are now resolved, and no longer a cause of delay to the transfer of transmission assets to the OFTO.

Further Exemption Request

5.8 SWEL have now requested a second time-limited exemption from the requirement to hold a transmission licence, which would expire on 31 March 2025. SWEL stated that the additional transfer time is necessary because the lead lender to the preferred bidder to become the project's OFTO was prompted to undertake additional financial due diligence around the newly-formed National Energy System Operator (NESO), which they will require further time to complete. On 1 October 2024, NESO was created as a public corporation. It has taken on the roles and responsibilities previously undertaken by National Grid Electricity System Operator (NGESO). These include making payments to OFTOs. The specific circumstances instigated by the timing of the creation of NESO will, as a result of the need for the preferred bidder's main lender to undertake due diligence, will delay the transfer of the transmission assets to the OFTO.

5.9 SWEL requested additional time to allow for the preferred bidder's main lender to complete due diligence checks, and the two parties to complete the transfer of transmission assets. They anticipated this could require a further 6-7 weeks to be completed.

Reasoning for exemption granted

5.10 In carrying out functions under Part 1 of the Electricity Act 1989 (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.

5.11 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.

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

5.13 Providing SWEL with an exemption will directly support UK energy security and future reductions in greenhouse gases by ensuring that an offshore wind farm can lawfully transmit low-carbon power to the grid whilst the transfer of transmission assets is completed. This is in line with the Government's Clean Power 2030 ambition, as well as its efforts to accelerate domestic production of electricity and reduce reliance on energy imports.

5.14 In determining the length of this exemption, Minister Shanks has considered the delays experienced and expected by SWEL, the need to complete the transaction in a timely fashion, and the contribution that SWEL 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, which could result in unlicensed transmission or cessation of transmission. Minister Shanks considers that an exemption until 31 March 2025 presents a reasonable and proportionate exemption in the current circumstances.

5.15 A 'Guidance Note for Offshore Transmission Licence Exemptions' was published in August 2023. The guidance provides information in relation to individual transmission licence exemptions, by categorising the circumstances where an exemption application by a developer would be considered by the Department. This guidance outlines that we will consider exemption extensions in exceptional circumstances, and the Minister has determined that the unique commercial circumstances instigated by the creation of NESO by the government fall within the category of exceptional circumstances.

What was the previous policy, how is this different?

5.16 There have been previous instances where offshore transmission licence exemptions have been granted by the Department. 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 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. In September 2023 Moray East windfarm was given an exemption due to a cable fault.

6. Legislative and Legal Context

How has the law changed?

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"). A transmission licence may be granted by the Gas and Electricity Markets Authority ("Ofgem") under section 6(1)(b) of the Act.

6.2 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.

6.3 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 2025 or the transfer of the transmission assets to the preferred bidder OFTO.

Why was this approach taken to change the law?

6.6 Without this instrument, SWEL would be prevented from transmitting electricity lawfully.

7. Consultation

Summary of consultation outcome and methodology

7.1 The consultation was published on gov.uk on 15 November 2024 and closed on 13 December 2024. It received three responses, one from the Scottish Minister for Net Zero and Energy, one from Seagreen Wind Energy Ltd, and one from the preferred bidder to become the OFTO for this project, Equitix Investment Management Limited, Kyuden International Corporation and Kyuden T&D Global CO., Inc. Consortium. These responses were positive, and in support of the proposed exemption.

7.2 The consultation response will be published on gov.uk when the statutory instrument is laid in parliament.

8. Applicable Guidance

8.1 As described above, a 'Guidance Note for Offshore Transmission Licence Exemptions' was published in August 2023. The guidance provides information in relation to individual transmission licence exemptions, by categorising the exceptional circumstances where an exemption application by a developer would be considered by the Department.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full regulatory Impact Assessment has not been produced for this SI as it is an urgent and temporary measure. We do not anticipate it will result in significant direct costs to businesses. The measure is deregulatory and removes the potential risk of an offshore generator ceasing generation while it regularises arrangements on its transmission assets.

9.2 There could be small costs on businesses in the offshore wind and offshore transmission sectors if they choose to familiarise with this exemption as a development in their industry. The main impact is to benefit the company being exempted by avoiding potential contractual and/or internal governance breaches and reputational issues.

Impact on businesses, charities and voluntary bodies

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

9.4 The legislation does not impact small or micro businesses as this would only apply to windfarm developers.

9.5 There is no, or no significant, impact on the public sector as this would only apply to windfarm developers.

9.6 We also do not anticipate any significant wider economic impacts and transfers caused by this SI.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

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

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Minister Shanks has made the following statement regarding Human Rights:

"In my view the provisions of the Electricity (Individual Exemption from the Requirement for a Transmission Licence) (Seagreen) (Scotland) (Amendment) Order 2025 is compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").