EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (INDIVIDUAL EXEMPTION FROM THE REQUIREMENT FOR A TRANSMISSION LICENCE) (SPIORAD NA MARA) (SCOTLAND) ORDER 2025

2025 No. 378

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 Ben Norris at the Department for Energy Security and Net Zero. Telephone: +442072156911 or email: ben.norris@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 an enduring exemption from the requirement to hold an electricity transmission licence to Spiorad na Mara Ltd. in respect of Spiorad na Mara Offshore wind farm.

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 and 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 The Electricity Act 1989 regulates UK energy markets to prevent generation and transmission infrastructure being owned and operated by the same party. The purpose

of the regulatory regime is to maintain effective competition and thereby deliver better value for money to consumers.

5.2 Under this regime, different assets which are part of, or associated with, an offshore windfarm are owned and operated by different parties.

5.3 A generator owns and operates the turbines and array systems located offshore. Array systems are a component of an offshore wind farm, comprised of the cables and equipment emerging from individual wind turbines that convey electricity to an offshore substation, for onward transmission to an onshore substation, which connects to the grid.

5.4 An OFTO owns and operates the offshore substation that array systems connect to, and the transmission system from that substation up to the onshore grid connection. Transmission connections to offshore wind farms are licensed to OFTOs 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.

5.5 In each instance, the generator and OFTO have clear boundaries of ownership and operation.

5.6 As the technology of the offshore wind sector develops, offshore wind turbines are increasing in size and are beginning to exceed 15MW each. In 2005, offshore wind turbines had an average power rating of 4MW each. With the increasing size of wind turbines, it is now can be more cost-effective and energy efficient for generators to use array system voltages of 132kV and above ("high voltage array systems").

5.7 Transmission assets are defined by the Electricity Act 1989 as consisting wholly or mainly of high-voltage lines [Section 4(4)(b)]. High-voltage lines are defined in the Electricity Act 1989 [Section section 64(1A)] as lines of a nominal voltage of 132kV or more.

5.8 Under these definitions, if generators were to install high voltage (132kV or above) array cables between the turbines and the offshore substation, these would have been licensable as offshore transmission and subject to the OFTO regime. This was an unintended consequence of the Act, which never intended generators to lose the right to own and operate array systems of any voltage.

5.9 As high voltage array systems would improve efficiency, and have become viable for use in the arrays of new offshore wind generation developments, the Department made a class exemption [SI 2024/819] which exempted offshore array systems using cables at 132kV or above.

5.10 However, under this class exemption for offshore array systems, the developers of Spiorad na Mara are not exempt from the need to obtain a transmission licence exemption because the proposed array would not be connecting to an offshore substation but rather connecting with an onshore substation. This design is due to the proposed near-to-shore location of Spiorad na Mara.

5.11 In the absence of this Order, Spiorad na Mara would be deterred from installing more cost-effective and energy-efficient high voltage array systems as their operation would be licensable as transmission under the Act.

5.12 This Order grants exemption to Spiorad na Mara Limited from the requirement to hold a transmission licence in respect of the transmission system connecting the Spiorad na Mara offshore wind farm with the onshore substation, thereby allowing the installation of more cost-effective, energy efficient high voltage cables without these assets subject to the competitive regime managed by Ofgem to be transferred to an

OFTO. Spiorad na Mara will still interact with the OFTO regime, where the transmission assets running from the onshore substation to the point of connection with the Western Isles HVDC Link will still be transferred to an OFTO via a competitive tender managed by Ofgem.

What was the previous policy, how is this different?

5.13 Previous policy was that high voltage array systems connecting to an onshore substation, if developed, would be treated as transmission assets, and need to be owned and operated by an OFTO rather than the generator. This meant the developers of Spiorad na Mara offshore wind farm were disincentivised to install more cost-effective high voltage array systems, as these assets would require transfer to an OFTO.

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 others) 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 This Order grants exemptions in respect of one offshore generator. This exemption will run from the entry into force of this Order and expire at project close.

Why was this approach taken to change the law?

6.4 This is the best approach to allow Spiorad na Mara Ltd. to develop an offshore wind farm with a high-voltage array system, retained by them as the generator, connecting to an initial onshore substation location on the north-west coast of the Isle of Lewis. Currently generators are prevented from holding a transmission licence covering high voltage array systems connected to onshore substations under the Act, and it is not viable for the array systems of a generator to be transferred to an OFTO. This design of wind farm does not fall under the terms of the previous class exemption, which specify that the connected substation must be offshore.

6.5 The previous class exemption SI [SI 2024/819], which exempted offshore array systems using 132kV or above cables, was not widened to include onshore substation designs in order to ensure the OFTO regime continues to apply universally to offshore generation developments, to facilitate competition in the offshore wind transmission sector.

6.6 This Order provides Spiorad na Mara an exemption in order to ensure it is able to use 132kV or above array cables in a similar way to other wind farms under the terms of the Class Exemption, but specific to this case of connecting the offshore wind farm array to an onshore substation.

6.7 Under this Order, the competitive OFTO regime will continue to apply to Spiorad na Mara for the transmission from the onshore substation. This measure will allow Spiorad na Mara to start designing and building a high voltage array system without

the risk of it being transferred to an OFTO upon completion. This cannot be enabled through any administrative or other means.

7. Consultation

Summary of consultation outcome and methodology

7.1 The consultation was published on gov.uk on 11 October 2024 and closed on 8 November 2024. It received zero responses from the public. It was viewed more than 40 times.

7.2 Scottish ministers were consulted and the Cabinet Secretary for Net Zero and Energy expressed no objection to the proposal to grant a lifetime exemption from the requirement to hold a transmission licence. The Cabinet Secretary clarified that this does not prejudice the independent consideration that will be given by Scottish Ministers to any future consent and licence applications submitted by the developers of the Spiorad na Mara offshore wind farm.

8. Applicable Guidance

8.1 A 'Guidance Note for Offshore Transmission Licence Exemptions' was published in August 2023 on www.gov.uk. 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.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full regulatory Impact Assessment has not been produced for this Statutory Instrument because the impacts are estimated to be below the de minimis threshold.

9.2 The Equivalent Annualised Net Direct Cost to Business was estimated to be approximately –£2m (a net benefit). This was estimated using a similar method as detailed in the Impact Assessment supporting The Electricity (Class Exemptions from the Requirement for a Licence) (Amendment) Order 2024, using lifetime cost savings of adopting 132kV arrays systems as estimated by The Carbon Trust. These are driven by capital cost savings relative to lower voltage array systems, as well as lower losses and unavailability costs.

9.3 We do not anticipate this legislation to cause any significant wider economic impacts or transfers.

Impact on businesses, charities and voluntary bodies

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

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

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 There are no formal monitoring or review requirements for this instrument and the instrument does not include a statutory review clause. The impact of the measure is not expected to be significant (less than £10 million annualised net direct business impact) and it would be disproportionate to include such a review clause due to the cost involved in undertaking a formal review. However, as this exemption is being made in advance of the finalised design of the offshore wind farm, the Department and regulators will remain vigilant during the consenting process to ensure the project continues to align with the policy intent of this measure.

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 for the Department for Energy Security and Net Zero 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) (Spiorad na Mara) (Scotland) 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").