

Dear Colleague

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Dear Colleague

Changes to Decommissioning guidance published by Department of Business, Energy and Industrial Strategy (BEIS) and the Scottish Government – impacts on Offshore Transmission Owners

I am writing in response to the letters of June 2019 (the **June letters**), submitted by the Licensees listed in Annex 1 to this letter, in respect of decommissioning costs.

On 7 January 2011, DECC (now BEIS), published 'Decommissioning of offshore renewable energy installations under the Energy Act 2004: guidance notes for industry' (the **January 2011 guidance**).¹ On 1 March 2019, BEIS published an amendment to the relevant guidelines (the **amended guidance**).² On 22 November 2019, the Scottish Government published the draft Decommissioning of Offshore Renewable Energy Installations in Scottish Waters or in the Scottish Part of the Renewable Energy Zone under the Energy Act 2004: Guidance notes for industry (in Scotland) (the **2019 draft guidance**).³

In the June letters, the Licensees stated [it/they] may incur costs higher than originally forecast at the time they were granted an OFTO Licence, as a result of changes in requirements introduced in the amended guidance. In the June letters, the Licensees specifically highlighted the following change of requirements:

¹ [Link](#) to 'Decommissioning of offshore renewable energy installations under the Energy Act 2004: guidance notes for industry', dated 7 January 2011.

² [Link](#) to 'Decommissioning of offshore renewable energy installations under the Energy Act 2004: Guidance notes for industry' dated March 2019.

³ [Link](#) to Decommissioning of Offshore Renewable Energy Installations in Scottish Waters or in the Scottish Part of the Renewable Energy Zone under the Energy Act 2004: Guidance notes for industry (in Scotland).

- a) VAT to be applied to the decommissioning security;
- b) Exclusion of any scrap value of recovered material from the decommissioning security;
- c) Use of CPI rather than RPI applied to the decommissioning security; and
- d) A requirement to assess full removal of the export cable.

In our response of 9 August 2019 (the **August letter**), Ofgem wrote to each Licensee and confirmed it did not consider that the amended guidance constitutes a “*change in legislative requirements*” as required under paragraphs 7 to 13 of Amended Standard Condition E12-J3: Restriction of Transmission Revenue: Allowed Pass-Through Items of the OFTO licence (the **Licence Condition**).

Following receipt of a request from a Licensee, we have further considered each of the requirements listed above and our decisions are:

a) Value Added Tax (VAT) to be applied to the decommissioning security

We note that the January 2011 guidance was silent on the treatment of Value Added Tax (**VAT**). The amended guidance specifically states, “*VAT must be factored into financial securities where necessary*”.⁴ The 2019 draft guidance specifically states, “*VAT will have to be factored into financial securities where the VAT regime applies*”.⁵

We consider there has been a change to the requirements in this regard. Consequently, we intend to consult on modifications to licences granted in Tender Round 1 (**TR1**) and Tender Round 2 (**TR2**) to include specific protection that covers additional costs, unforeseen at licence grant, which may be incurred as a result of VAT being applied to the decommissioning security.

This approach is consistent with protection included in licences granted in Tender Round 3 (**TR3**) onwards.⁶

b) Exclusion of any scrap value of recovered material from decommissioning security

⁴ Paragraph 8.5 refers.

⁵ Paragraph 8.10 refers.

⁶ We consider it was right to provide protection that applies where VAT was incurred (we note that VAT only applies only applies within internal waters and the UK territorial sea (i.e. up to 12 nautical miles from the shore baseline) – see chapter 8 of the amended guidance and the 2019 draft guidance) and when the applicable rate of VAT was known (the rate of VAT may change in future).

The January 2011 guidance was silent on this issue. The amended guidance and the 2019 draft guidance specifically states: *"Developers/owners should not offset scrappage value from their total cost assumptions"*.⁷

We consider there has been a change to the requirements in this regard. Consequently, we intend to consult on modifications to licences granted in TR1, TR2 and TR3 to include specific protection that covers additional costs, unforeseen at licence grant, which may be incurred as a result of the exclusion of any scrap value of recovered material from the decommissioning security.

c) Use of CPI rather than RPI applied to the decommissioning security

The January 2011 guidance was silent on the inflation rates that should apply. The amended guidance and the 2019 draft guidance instructs OFTOs to ensure that the estimated cost of decommissioning includes an appropriate rate for inflation over the lifetime of the project and is to be measured by the Consumer Price Index (CPI).

Although we consider there has been a change to the guidance in this regard, it is our view there will be no impact on the Licensee of the need to apply CPI to the decommissioning security.

As such, we do not intend to consult on modifications to the Licence Condition to include specific protection that covers additional costs, unforeseen at licence grant, incurred as a result of the need to apply CPI rather than RPI to the decommissioning security.

d) A requirement to assess full removal of the export cable

We note paragraph 7.7 of the January 2011 guidance clearly stated that full removal was the preferred option, stating: *"Our guidance, therefore, starts from a general presumption in favour of the whole of all disused installations being removed and subsequently taken back to land for reuse, recycling, incineration with energy recovery or disposal at a licensed site. Exceptions from this general requirement will only be considered where there are very good reasons."*

Paragraph 3.3.3 of the amended guidance states *"The International Maritime Organisation's standards set out that any infrastructure placed in the marine environment should be*

⁷ Paragraphs 8.7 and 8.14 refer (respectively).

designed with full removal in mind, and full removal will be the default position for OREIs unless there are strong reasons for any exception.”⁸

Paragraph 7.4 of the 2019 draft guidance states *“It is expected that all installations and structures will be fully removed at the end of their operational life to minimise residual liabilities and that approval of decommissioning programmes will be based on this assumption.”* Paragraph 7.6 states *“Exceptions will be considered on a case by case basis [...]”*

As the requirements have not changed since January 2011, we do not intend to consult on modifications to the Licence Condition to include specific protection that that covers additional costs, incurred as a result of the need to assess full removal of the export cable.⁹

For clarity, all future bidders/OFTOs must provide security for their full decommissioning cost assumptions.

We intend to issue our consultation on modifications to the Licence Condition later this year.

Yours sincerely



Jourdan Edwards

Head of the OFTO Regime

⁸ An OREI is an ‘Offshore Renewable Energy Installation’.

⁹ The amended guidance states *“The International Maritime Organisation’s standards set out that any infrastructure placed in the marine environment should be designed with full removal in mind, and full removal will be the default position for OREIs unless there are strong reasons for any exception.”*

Annex 1 – list of Licensees that submitted a letter to Ofgem in June 2019, in respect of decommissioning costs (the **June letters**).

- Blue Transmission Walney 2 Ltd;
- Blue Transmission Sheringham Shoal;
- Blue Transmission London Array,
- TC Barrow OFTO;
- TC Gunfleet Sands OFTO;
- TC Dudgeon OFTO;
- TC Lincs OFTO;
- TC Ormonde OFTO;
- TC Robin Rigg OFTO;
- TC Westermost Rough OFTO,
- Humber Gateway OFTO;
- Thanet OFTO;
- GyM OFTO;
- Diamond Transmission Partners Burbo Bank Extension and
- Greater Gabbard OFTO.