

To offshore transmission owners,
current and prospective bidders for
Offshore Transmission Licences, and
other interested parties

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Consultation on proposed modifications to Offshore Transmission Licences

Introduction

The Authority is proposing a number of modifications to Offshore Transmission (**OFTO**) licences.

These fall into three main groupings, set out in this letter as follows:

Part A outlines proposed modifications for **all OFTO licences** to Amended Standard Condition E12-J3 ('Restriction of Transmission Revenue: Allowed Pass-through Items') (the **IAE Condition**) as set out in the 28 November 2018 Decision Document (the **Decision Document**)¹;

Part B outlines minor and clarificatory modifications for **all OFTO licences** to the IAE Condition that were not covered by the Decision Document; and

Part C outlines proposed modifications for **certain OFTO licences** to Amended Standard Conditions E12-J9, E13, E12-D2 and E12-J11 (as relevant to each licensee). These modifications were not covered in the Decision Document.

We recommend that this letter and the appended notices be read in conjunction with the Decision Document. In each case, we would welcome views on the proposed licence modification and whether (where applicable) this achieves the policy position set out in the Decision Document.

¹ <https://www.ofgem.gov.uk/publications-and-updates/income-adjusting-events-policy-offshore-transmission-owner-licences>

For ease of reference, below is a table referring each licensee to the Appendix that contains the notice of modifications relevant to that particular licensee. The draft guidance at **Appendix H** is relevant to all OFTO licensees.

Licensee	Consultation Notice
Blue Transmission London Array Limited	Appendix A
Blue Transmission Sheringham Shoal Limited	Appendix A
Blue Transmission Walney 1 Limited	Appendix A
Blue Transmission Walney 2 Limited	Appendix A
Diamond Transmission Partners BBE Limited	Appendix C
Diamond Transmission Partners Galloper Limited	Appendix C
Diamond Transmission Partners RB Limited	Appendix C
Diamond Transmission Partners Walney Extension Limited	Appendix C

Licensee	Consultation Notice
Greater Gabbard OFTO plc	Appendix A
Gwynt y Mor OFTO plc	Appendix E
Humber Gateway OFTO Limited	Appendix D
TC Barrow OFTO Limited	Appendix B
TC Dudgeon OFTO plc	Appendix C
TC Gunfleet Sands OFTO Limited	Appendix B
TC Lincs OFTO Limited	Appendix F
TC Ormonde OFTO Limited	Appendix A
TC Robin Rigg OFTO Limited	Appendix B
TC Westermost Rough OFTO Limited	Appendix D
Thanet OFTO Limited	Appendix A
WoDS Transmission plc	Appendix G

Licences granted after the date of this letter

Whilst this consultation is made under section 11A of the Electricity Act 1989 and that process covers those OFTO licences that have already been issued, the Authority also proposes to make the modifications set out in Parts A and B to all OFTO licences granted after the date of this letter (except section A3 which is proposed to only apply to licences granted in tender round 6 onwards). We therefore also welcome views from potential

bidders for future licences, including preferred bidders where already identified, on those modifications. The Schedule at Appendix C contains the drafting of the proposed modifications (except the proposed modification discussed at A3 below) relevant to licences granted after the date of this letter.

PART A - PROPOSED MODIFICATIONS TO THE IAE CONDITION, AS SET OUT IN THE DECISION DOCUMENT OF NOVEMBER 2018

A1. Deductibles for uninsurable claims: all OFTO licences

As stated in the Decision Document, we intend to apply a deductible to the revenue adjustment for any successful income adjusting event (**IAE**) claims in respect of an uninsurable latent defect (an **Uninsurable IAE Claim**). As noted in the Decision Document, we consider that this is consistent with an insurance response. We intend to reduce any IAE revenue adjustment for an Uninsurable IAE claim by applying the relevant deductible at the outset as follows:

- **For OFTOs licensed prior to 28 November 2018**, we have concluded that imposing a higher deductible than that set out in their insurance policy at the time of bidding could change the risk profile, and therefore propose to set the deductible for those OFTOs at the level of the insurance deductible included in the invitation to tender questionnaire provided by the licensee at the time of submitting their bid (the **ITT Bid**).
- **For OFTOs licenced after 28 November 2018**, we propose to set the deductible at £5m or the deductible set out in the OFTO's ITT Bid, whichever is the higher. We consider that future OFTOs are in a position to incorporate a stated deductible into their financial models and set their reserve accounts and financial response strategies accordingly. Bidders for projects in tender round 5 onwards were instructed under the tender process to assume that a deductible of £5m or 30% of the claim (whichever is higher) would be imposed on Uninsurable IAE Claims, and submitted bids on this basis. In our Decision Document published on 28 November 2018, we clarified our intent to set the IAE deductible at £5m or the level of the insurance deductible set out in the Licensee's ITT bid, whichever is higher. This will continue for future tender rounds.

The proposed licence modification therefore states that the relevant revenue adjustment will be reduced by the deductible where a claim is considered an Uninsurable IAE Claim. The term 'uninsurable' will be defined in guidance issued by the Authority, and will be based on the definition set out in the decision document published in November 2018. Setting out the definition in guidance will provide greater flexibility given the evolving nature of the OFTO regime, and make it efficient to amend in future should this prove necessary. We confirm that the guidance will not be amended without consultation in line with the Ofgem consultation policy.²

A copy of the draft guidance on the definition of 'uninsurable' is attached at **Appendix H**, and we welcome comments on this guidance in parallel with this consultation on the proposed licence amendments.

² <https://www.ofgem.gov.uk/consultations/our-consultation-policy>

A2. Force majeure: all OFTO licences

As stated in the Decision Document, we propose to amend paragraph 15(a) of the IAE Condition (**Limb (a)**) to remove reference to the System Operator Transmission Owner Code (**STC**)³ and insert into the OFTO licence a definition of force majeure that:

- excludes reference to the fault of plant and apparatus, and
- removes the requirement not to be able to perform an obligation under the STC.

This will ensure clarity of the meaning of 'force majeure' in the OFTO licence and enable Limb (a) to be interpreted as a standalone provision, independent from the STC, and not subject to STC modification. It is unusual to have a situation where modification to a subordinate document would result in amendments to a previously issued licence.

For OFTOs licensed in tender rounds one and two, the definitions relating to the IAE Condition are placed in amended standard condition E12-J1. However, for OFTOs licensed from tender round three onwards, the definitions relating to the IAE Condition are in amended standard condition E12-A1.

A3. IAE threshold: licences granted in tender round six onwards

When the offshore regime was introduced, the Authority put in place two IAE threshold bands, which were linked to the transfer value of OFTO assets. For OFTOs with a transfer value below £100m, the threshold was set at £0.5m, and for OFTOs with a transfer value above £100m, the threshold was set at £1.0m.

However the Authority recognises that the level of the minimum threshold for IAE claims has fallen as a proportion of the transfer value from an average of roughly 1:100 in tender round one to around 1:300 in tender round five. To ensure an ongoing link between the threshold and the transfer value of the OFTO assets, we therefore intend to introduce two new threshold bands as follows:

- a third band set at £2.0m where the transfer value exceeds £500m; and
- a fourth band set at £4.0m where the transfer value exceeds £1,000m.

The Authority therefore proposes to modify paragraph 15(c) of the IAE Condition to insert the new threshold amounts for OFTOs licensed in tender round six onwards.

Consultation Notices

The modifications to existing licences proposed in this Part A are addressed in the notices at **Appendices A to G**, with the proposed drafting of the licence modifications set out in the schedule attached to those notices. Please see the table at the introduction of this letter for a summary of which Appendix is relevant for each licensee.

PART B – OTHER PROPOSED MODIFICATIONS TO THE IAE CONDITION

³ <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-codes/electricity-codes/system-operator-transmission-owner-code-stc>

B1. Information requests: all OFTO licences

Paragraph 17 of the IAE Condition allows the Authority to request additional information from an OFTO that it considers appropriate in connection with an IAE claim. It is important that the Authority can obtain all of the information needed to reach its decision on IAE claims. For the avoidance of doubt, therefore, the Authority proposes to modify paragraph 17 to make it clear that the Authority may make more than one request for additional information, where necessary.

In addition, paragraph 17 requires OFTOs to provide the information requested by the Authority within one month of the request. We appreciate that OFTOs may need to pull together a substantial amount of complex information, and therefore for the avoidance of doubt, propose to amend paragraph 17 to make clear that we may extend the one month deadline, where appropriate.

B2. Commercial recourse: all OFTO licences

Paragraph 21(c) of the IAE Condition requires the Authority to set the revenue adjustment of a successful IAE claim at an amount that restores the OFTO to the financial position it would have been in, had the failure event not taken place. The Authority considers that OFTOs have a responsibility to pursue commercial recourse against other parties wherever this is possible, and that when the quantum of an IAE revenue adjustment is calculated, this should be offset by the amount of any recourse recovered by the OFTO.

For the avoidance of doubt, the Authority proposes to amend paragraph 21(c) to make it clear that commercial recourse will be deducted from the amount of any IAE revenue adjustment award.

The Authority appreciates that it may take a considerable time for the process of commercial recourse to be completed. For the avoidance of doubt, we therefore propose to amend paragraph 21(c) to make it clear that the Authority may make a partial revenue adjustment while the process of recourse is still ongoing, provided that we have determined the claim to have met the definition of an IAE in accordance with paragraph 15 of the IAE Condition.

B3. Timing of determinations: all OFTO licences

Paragraph 22 of the IAE Condition requires the Authority to make determinations within three months from the date on which it receives all of the information needed to consider a claim. This period includes the time needed for consultation under paragraph 21 of the Condition, and therefore constrains both the time needed for our determination, and the time the Licensee has to respond to any consultation.

The Authority therefore proposes to amend paragraph 22 to provide that the three-month deadline does not include any period needed for consultation.

B4. Event or circumstance: all OFTO licences

Paragraph 16 of ASC E12-J3 sets out the requirements of the notice under paragraph 14, including the particulars of the event. Given that an IAE, as defined in paragraph 15, may arise from an 'event or circumstance', we consider that the words 'or circumstance' have been unintentionally omitted from paragraph 16 in requesting the particulars of the claim.

For clarity, we therefore propose to amend sub-paragraphs (a) to (d) to include the words 'or circumstance'. We do not consider that this proposed modification will effect the interpretation of the condition.

B5. Publication of IAE notice: all OFTO licences

Paragraph 19 of ASC E12-J3 requires the Authority to make public, excluding any confidential information, any IAE notice following its receipt. As the content of IAE notices can contain a significant amount of confidential information, this often requires a dialogue between the Authority and licensee to determine what parts of the relevant notice need to be redacted prior to publication.

For clarity, and for the avoidance of doubt, we therefore propose to include the words 'as soon as is reasonably practicable', to allow the Authority time to determine the confidential content of the notice and make the required redactions prior to publication.

B6. Amendment of revenue adjustment: all OFTO licences

Paragraph 24 of ASC E12-J3 provides the Authority the ability to revoke an approval of an IAE and revenue adjustment with the consent of the licensee.

Given the complex nature of IAE claims, and the proposed modification to make clear that partial revenue adjustments may be awarded where an event has been determined to be an IAE, we consider that providing a power to amend an IAE and revenue adjustment is helpful and efficient particularly where revocation would not be the appropriate action. For the avoidance of doubt, this is not removing the requirement for the licensee's consent, nor the requirement to consult with the licensee and relevant parties, prior to any amendment or revocation.

Consultation Notices

The modifications proposed in this Part B are addressed in the notices at **Appendices A to G**, with the proposed drafting of the licence modifications set out in the schedule attached to those notices. Please see the table at the introduction of this letter for a summary of which Appendix is relevant for each licensee.

PART C - OTHER PROPOSED LICENCE MODIFICATIONS

C1. Amended Standard Condition E12-J9 ('Basis of Transmission Owner Charges'): OFTO licences granted in tender rounds 1 to 3

Amended Standard Condition E12-J9 in OFTO licences granted in tender rounds one to three requires OFTOs to submit both their initial and annual revised charging statements to the Authority for approval. The Authority approves the basis of the charges set out in the statements, but not the charges themselves.

The Authority has already modified this condition for OFTOs licensed in tender round four onwards. For those OFTOs, the Authority approves the basis of the charges set out in the *initial* charging statement, and whilst those OFTOs are still required to revise their statements at least once in every year and to submit those revised statements to the Authority for information, the requirement for revised statements to be approved by the Authority has been removed.

The Authority now proposes to make the same modification to **all OFTO licences issued in tender rounds one to three**. This will minimise the regulatory burden on those OFTOs. However, the requirement for OFTOs to submit annual regulatory returns to the Electricity System Operator will remain.

The Authority further modified Amended Standard Condition E12-J9 in OFTO licences issued in tender round three onwards, with the result that the current licence condition is slightly different for: (i) Humber Gateway OFTO Limited and TC Westermost Rough OFTO Limited; and (ii) all other OFTOs licensed in tender rounds one to three.

Consultation Notices

This proposed modification is addressed in the notices at **Appendices A, B, D, E, F and G**, with the proposed drafting of the licence modification set out in the schedule attached to those notices. Please see the table at the introduction of this letter for a summary of which Appendix is relevant for each licensee.

C2. Amended Standard Condition E12-D2 ('Equity Transaction Reporting Requirement'): TC Lincs OFTO Limited only

In October 2014, the Authority modified all of the tender round one and tender round two licences granted at that time to introduce a new Amended Standard Condition E12-D2, requiring OFTOs to submit details of equity transactions to the Authority each year.⁴ This modification provided further transparency in respect of equity transactions and provided the Authority with information on the appetite in the secondary equity market for investment in OFTOs.

The Authority has subsequently introduced this condition into OFTO licences issued in tender round three onwards. However, the condition was not incorporated into the licence issued for **TC Lincs OFTO Limited** in November 2014, because the licence was granted during the section 11A consultation period for this modification. The Authority therefore now proposes to make a modification to this effect, to rectify the omission.

Consultation Notice

A copy of the modification notice for TC Lincs OFTO Limited is at **Appendix F**, and the proposed licence modification set out in the schedule attached to that notice.

C3. Amended Standard Condition E13: System Operator ('Transmission Owner Code'): all OFTO licences granted in tender rounds 1 and 2

The Authority introduced a cross-reference to Special Condition D2 in Condition E13 in all OFTO licences awarded in tender round three onwards. Condition E13 sets out that references to special conditions in the STC shall have effect as if they said 'amended standard conditions' for the purposes of the OFTO licence. This is because that the STC refers to 'special' conditions of transmission licences, and the OFTO licence uses 'amended standard' conditions, but this is just an inconsistent terminology matter.

⁴ <https://www.ofgem.gov.uk/publications-and-updates/decision-under-section-11a-1-b-electricity-act-1989-modify-offshore-electricity-transmission-license-so-introduce-amended-standard-condition-e12-d2-equity-transaction-reporting-requirement>

We now propose to make the same modification to **all tender round one and two OFTO licences** to ensure correct and clear interpretation of the STC reference to 'special' conditions of the licence and also consistency across the OFTO licensees as is appropriate.

Consultation Notices

A copy of the modification notice is at **Appendices A, B, E and F**, and the proposed licence modification set out in the schedule attached to that notice.

C4. Amended Standard Condition E12-J11 ('Network Innovation Competition'): Gwynt y Môr OFTO plc only

In February 2015, the Authority modified all of the tender round one and tender round two OFTO licences granted at that time to modify Amended Standard Condition E12-J11, to require licensees to share learning with electricity distribution licensees under the Network Innovation Competition Governance Document.⁵ The Authority has subsequently introduced the same modification into all OFTO licences in tender round three onwards, but the condition was not incorporated into the licence issued for Gwynt y Môr OFTO plc in February 2015, because that licence was granted during the section 11A consultation period for this modification.

Given this, the Authority therefore proposes now to make two minor modifications to sections 17(c) and 19 of Amended Standard Condition E12-J11 of the licence issued to **Gwynt y Môr OFTO plc**, to bring it into line with all other OFTO licences in respect of the Network Innovation Competition as is appropriate and rectify the omissions.

Consultation Notice

A copy of the modification notice is at **Appendix E**, and the proposed licence modification set out in the schedule attached to that notice.

Next Steps

We welcome views on the licence modifications proposed in this document, including (where applicable) whether these achieve the policy position set out in the Decision Document. Any representations must be made by e-mail on or before **24 September 2020** to Stephen.Taylor@ofgem.gov.uk.

Due to the circumstances surrounding COVID-19, we are not issuing hard copies of the modification documents, nor do we expect consultation responses by post. If, however, you do wish to receive the documents and respond by post, we are able to organise this for you. Please contact us at the email address above, or on 020 3263 9936 to request hard copies of the relevant documents and postal address for responses

The Authority will carefully consider all responses received to this consultation document. We will then publish our decision on the proposed modifications. In accordance with section 11A(9) of the Electricity Act 1989, if the Authority makes the licence modifications, they will come into effect 56 days after the date of that decision.

⁵ <https://www.ofgem.gov.uk/publications-and-updates/modification-amended-standard-condition-e12-j11-network-innovation-competition-offshore-transmission-owners'-licences>

Your feedback

We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this consultation. Please send any general feedback comments to offshorelicensing@ofgem.gov.uk.

A handwritten signature in black ink, appearing to read 'Jourdan Edwards', with a stylized flourish at the end.

Jourdan Edwards

Head of the OFTO Regime, Networks

For and on behalf of the Gas and Electricity Markets Authority