Email to:

offshorelicensing@ofgem.gov.uk

26 February 2025

Dear OFTO Policy Team,

Response to Ofgem's OFTO: extension and evolution of a mature asset class consultation

Scottish Renewables is the voice of Scotland's renewable energy industry. The sectors we represent deliver investment, jobs and social benefits and reduce the carbon emissions which cause climate change. Our 360-plus members work across all renewable energy technologies, in Scotland, the UK, Europe and around the world. In representing them, we aim to lead and inform the debate on how the growth of renewable energy can help sustainably heat and power Scotland's homes and businesses.

RenewableUK members are building our future energy system, powered by clean electricity. We bring them together to deliver that future faster; a future which is better for industry, billpayers, and the environment. We support over 500 member companies to ensure increasing amounts of renewable electricity are deployed across the UK and access markets to export all over the world. Our members are business leaders, technology innovators, and expert thinkers from right across industry.

Scottish Renewables (SR) and RenewableUK (RUK) welcome the opportunity to collaboratively respond to Ofgem's OFTO: extension and evolution of a mature asset class consultation. We are pleased to see Ofgem's recognition that the Offshore Transmission Owner (OFTO) regime will require reform to be fit for purpose for the current and future class of offshore transmission development, in this consultation as well as other publications such as the recent policy update on OFTO build models. Both SR and RUK look forward to further engaging with Ofgem throughout this reform process and are happy to help support engagement with our members.

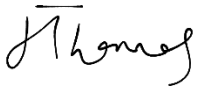
Inevitably, some of the solutions we present in our consultation response rely on larger, legislative change in the control of external parties. In particular, the Department of Energy Security and Net Zero (DESNZ) regarding the Generator Commissioning Clause (GCC) and generator-ownership option for End of Tender Revenue Stream (EoTRS), thus, are not fully within Ofgem's gift to enact. However, we believe the value in agreeing to solutions which we consider interim in nature is limited. We believe elements such as the coverage of sunk costs and mitigation of associated risk would be optimised if a generator-ownership option or generator responsibility for operation and maintenance were to be fully explored.

We encourage Ofgem to reflect on the solutions posed by our members to DESNZ and work closely with them to develop long-term solutions. We welcome Ofgem's initiative and willingness to work towards solutions in these areas. However, we believe that it will be necessary to see an indication from DESNZ, as part of their response to the OFTO call for evidence, before industry can commit to supporting a final outcome.

In our response, we have highlighted areas where the industry would benefit from greater consistency in terms of treatment and a stricter delineation of alternative options. Overall, SR and RUK members favour the extension of OFTOs' license periods to eliminate the issues arising from the piecemeal Tender Revenue Stream (TRS)/Extended Revenue Stream (ERS) structure.

As more offshore wind projects integrate into the system, reviewing the fundamental structure of the current regime through more revolutionary reform, as opposed to isolated adjustments, is paramount to meaningfully addressing the issues currently debilitating vital projects. Scottish Renewables and RenewableUK would be keen to engage further with this agenda and would be happy to discuss our response in more detail.

Yours sincerely,



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Question 1: How should the risk or funding level required for OFTOs to fund major unexpected repairs be considered in the evaluation of ERS bids?

To provide an accurate answer on the funding of major repairs in this context, greater detail is required on what constitutes a 'major unexpected repair' and an 'early failure event'. At present, it is unclear as to whether a major repair translates to a specific type of failure and/or relates to financial thresholds. Regardless of if major repairs would be determined on a case-by-case basis, a broad understanding through a more explicit standardised definition will be required for the purposes of this question and for potential future dispute resolutions. It would also provide greater clarity beyond the immediate OFTO and developer parties, including insurers, Operations & Maintenance (O&M) providers, etc.

Scottish Renewables and RenewableUK would be happy to help facilitate discussions with our membership to help progress this.

Question 2: Should developers pay for major repairs to OFTO systems?

While it is challenging to comment without a clearer repair structure, there is concern that the proposal for developers to recover the cost could promote bad practice by inadvertently encouraging OFTOs to delay major repairs for completion in the ERS period. If work that should be covered under the TRS is intentionally delayed until the ERS, delays would be left untreated for more extended periods, causing further damage and causing a cost to the final repair, which could ultimately be recovered from the developer. This is already arising as an issue where repairs that relate to the TRS period are postponed to the ERS where they are externally funded. The cause of this is a misalignment on probability of risk, with OFTOs and developers in disagreement as to when the repair will inherently be required and the appropriate timings.

Furthermore, we would like greater clarity on why the OFTOs' insurance would not naturally cover such events. If OFTOs' insurance does not cover such 'major repairs', we recommend a mechanism should be introduced to ensure OFTOs are obliged to obtain adequate insurance and warranties should any of the equipment fail.

If developers are to cover the cost of major repairs, the regime starts to liken more to that of a developer-operate model. This prompts questions about why developer ownership is not offered as an option if key elements are being adopted. Where developers must assume responsibility for requirements beyond a reasonable division between the two parties, there should be a subsequent benefit for the developer, i.e., funding major repairs should result in developers having more control of the process.

Ultimately, we believe OFTOs should have adequate insurance to cover major repairs and in the presumed unlikely event where there is a valid reason for an insurer not to cover, the OFTO should cover the costs to avoid the incentivisation of repair delay and reflect a proportionate balance of responsibility.

Question 3: Should both parties agree instead only to run the systems until the first major failure event, or to run them with lower availability in the case of a partial (e.g., single cable) failure?

Members welcome flexibility in operational capacity agreements where it can offer the most economic sense for extension schemes and where decisions are made jointly between the generator and OFTO, not in isolation. However, as aforementioned, it is difficult to comment fully on the concept of flexibility without further detail.

Regardless, most developers are not supportive of the idea of OFTOs operating until major failure, which would leave developers with stranded assets and promote bad practices. The base assumption should remain as completing timely repairs over defaulting to partial capacity operations. In the case of partial failures, developers' business cases for life extension are not going to be strong enough to support operation at a lower capacity and thus, we don't see this as a feasible option. If health reviews and reinvestment works are carried out effectively, as Ofgem reiterates in the consultation, the OFTO should be committed to operating for the full term of the ERS, including covering repairs, and should thus price it accordingly.

As mentioned in both RenewableUK's and Scottish Renewables' response to Ofgem's April consultation, parties should be responsible for the cost-recovery of any delays and/or repairs of the respective areas over which they have control. A challenge previously raised in our joint response to Ofgem's health review consultation is the significant lead times associated with decommissioning hamper OFTO and developers' flexibility to cease operation immediately.

Question 4: Do you agree that the availability target should remain at 98% Performance Reserve?

As affirmed by Ofgem in the consultation, developers maintain a preference for the availability target to be kept at 98% Performance Reserve and do not see either presented option as a fair substitute. Option 1 places more risk on the generator while Option 2 disproportionally rewards the OFTO by deriving bonuses from a higher TRS period and penalties from a lower ERS, resulting in an imbalanced treatment of both OFTOs and, subsequently, developers. As aforementioned in answer to question 3, if the asset health check and investment works are carried out correctly to ensure operation for the whole ERS, there should be no drop in availability because of asset age.

There is some debate between members over whether there is sufficient incentivisation for OFTOs to participate in an extension period. Some doubt the appeal of operating in an arguably riskier period, while others state that the ERS will have paid off assets, and so benefits and penalties would be proportionate for this extended period.

However, some members agree that Ofgem needs to revisit the residual value assumptions. Despite committing to clarifying residual value in previous consultations, notably around the OFTO asset health review consultation, Ofgem states that it 'does not intend to revisit these assumptions in the extension period'. Without residual value assumptions made publicly available, final costs may be

higher than estimated if OFTOs advance without bidding residual values, resulting in higher bids overall.

While there is the idea that there is no *cost* left, i.e., OFTOs should have repaid the loan that funded the initial capital investment by the end of the TRS period through TNUoS charges, there is residual *value* in the asset and conflating the two terms will only lead to higher cost to the consumer. Furthermore, the Local Offshore TNUoS charging methodology is designed to be cost-reflective, meaning charges correspond to development and construction costs of the transmission assets throughout a set licence period. Therefore, logically, the only permissible costs for the ERS would be those associated with the maintenance and operation of the paid assets. Ofgem would therefore be required to consult on an appropriate TNUoS charging methodology for the extension period.

One OFTO member affirms that the adoption of a residual value will have resulted in a lower TRS in the initial revenue period and that the loan does not cover the full cost of CapEx, as equity funds part of the asset.

For optimum clarity, Scottish Renewables and RenewableUK have previously asked for the regulator to address these values and once again urges Ofgem to reverse its decision to no longer comment and provide more information.

Question 5: Do you agree that we should amend TR1 licences to introduce an uprating provision as proposed?

We agree that TR1 licences need to be amended to introduce an uprating provision on the financial security between years 16 and 20 to ensure alignment with all other tender round projects. As per Ofgem's comment, not amending the licence would risk the maximum availability penalties exceeding the financial security provisions, thus exposing generators and/or consumers to excessive levels of risk if the OFTO cannot cover any outstanding liabilities at the end of the extension period.

Question 6: Do you agree that a performance reserve should be required in the extension period, equal to 50% of the ERS, uprated each year in line with inflation?

Throughout the consultation, Ofgem is inconsistent with its treatment of TRS and ERS, which causes confusion and can make responding accurately challenging. In some sections, TRS and ERS are treated as a combined period, while in others, they are viewed as distinctly separate; we encourage Ofgem to ensure consistency in approach when referring to either.

With regards to a performance reserve, we agree that OFTOs should be required to establish performance reserves for any extension periods to ensure they can cover any availability liabilities at the end of the revenue term. In line with the initial TRS period, we believe it is reasonable to set the reserve level at 50% of the base revenue, specifically 50% of the ERS. However, while we note that Ofgem states the performance reserve should reflect 50% of the ERS and any liabilities owed at the end of the TRS, we wish to explicitly contest the latter element. All availability liabilities should be

settled by the OFTO after the initial TRS period, allowing for a full reset during extension periods and, as mentioned, treating the two streams as distinctly separate.

Question 7: Do you agree that Ofgem should introduce an amendment to allow partial awards to be made for investment works where costs represent a significant proportion of OFTOs' revenue stream?

Question 8: Do you agree that this amendment should only cover investment works and not health reviews?

Similarly to our response to question 6, we believe Ofgem could be clearer in its breakdown of works when considering the various routes to their repair with a clear distinction between asset health review, Income Adjusting Events (IAEs) and investment cases. As mentioned in answer to question 1, without clear identification of thresholds and/or types of repair that would qualify for certain funding, it is challenging to make a full assessment.

Therefore, we would encourage Ofgem to produce an explicit table structuring the types of repairs and/or their potential financial value and the corresponding funding mechanism through which OFTOs would be advised to seek recovery of the costs. Upon receipt of this illustration, industry could offer more informed comments on the proposed routes to repair. To avoid future conflict between parties, an explicit depiction is required. Regarding the partial awards, it would be helpful to have greater sight of the timings of these and detail around where the funds flow from; who finances these first investment works if the OFTO doesn't have the necessary funds?

Ofgem itself has identified that advanced payments are unprecedented within the OFTO licence, and thus, we deem it inappropriate to introduce them and agree with the decision to pursue partial awards as a more suitable approach. In terms of the investment works, developers have advised that the proposed range of £1-5 million might be suitable for modern wind farms but, if applied to older ones, would not be appropriate and is very likely to break the business case and make a life extension financially unviable.

We expect Ofgem to thoroughly review and benchmark any costs brought forward as per their standard assessment process while assuring that investment works align with the decommissioning/extension process. Only at T-2 years do we know if an extension is confirmed by the developer and so investments should align with this timeframe and not commence prior. Guidance should be explicit in dissuading OFTOs from making sizeable investments in the latter period of the TRS and that any made without the consent of both generator and Ofgem would be made at their own expense with no route for external cost recovery. For investments to be made, developers would benefit from their visibility as early as possible, as significant investments could trigger the need to commence an immediate decommissioning process.

As Ofgem affirms, the estimated cost for health reviews is relatively modest (£250-400,000). As this cost has been known for a while, we agree that OFTOs should cover it without partial awards.

Question 9: Do you agree it is necessary to have a mechanism to cover all or part of OFTOs' unmet, sunk costs in the event that the windfarm choose to close the windfarm before the end of the extension period?

Both the OFTO and the generator intend to remain committed throughout the entire ERS period; however, life extension involves numerous uncertainties that neither party can guarantee. Any protections established must ensure a fair distribution of risk and protection for both parties, as far as reasonably practical. Ofgem must ensure an appropriate balance is achieved, avoiding overly burdensome conditions that could prevent extensions from taking place.

In the event of an early withdrawal decision, the party responsible for the assets at fault/failure should not be entitled to recover any sunk costs from the other party. Most members think the distinction should be made based on the assets at fault as opposed to the decision maker as our position is that early withdrawal will need to be a joint decision between generator and OFTO. We thus propose that sunk costs should only be recoverable for the OFTO if the generator's assets are at fault and causing the early withdrawal/closure.

Question 10: Do you agree that developers should cover these sunk extension costs in that event, and that we should set that out in the licence?

If Ofgem chooses to establish a mechanism for generators to cover a proportion of the OFTOs' sunk costs, it is essential that this process is clearly defined in advance of any decisions made regarding life extension. Similarly to the request for clearer defined terms within 'major repairs', the Licence should state what constitutes a 'sunk cost'. Furthermore, any sunk costs submitted by the OFTO must be assessed by Ofgem to confirm compliance with the established mechanism and to ensure the OFTO's insurance does not cover them. Sunk costs incurred after the early closure decision should be deemed ineligible for recovery.

It may be beneficial to this process and wider aspects of the decision-making process for steps to be explicitly set out in Guidance for both OFTOs and generators participating in any lifetime extension.

Question 11: Do you agree that Ofgem should restrict ERS payments to the end of the ERS period or the year after generation stops, whichever is sooner; and if so, is there anything that we should be considering when we are assessing ERS bids to take this into account?

It is not appropriate to continue requiring the generator or consumers to cover the ERS for a period where there is no longer transmission of electricity.

There is no justification for ERS payments to extend beyond the last date of transmission for the purposes of 'providing the OFTO with the time and working capital it needs to wind-down its operation.' This requirement does not apply at the end of the TRS period, and there is no distinction in the case of an early closure, i.e., the wind-down activities will not differ. Ofgem's proposal for ERS payments for an additional year after generation ceases is inappropriate and unnecessary, as sunk costs would have already been recovered via the mechanism proposed in Questions 9 and 10.

Question 12: How else – whether through alternatives or with additional mechanisms - could developers, OFTOs and Ofgem adequately risk share against the costs of early withdrawal?

As per our response to Question 9 above, in the event of an early closure decision, the party at fault should not be able to recover sunk costs from the other party. If the wind farm is at fault, i.e., a major failure on the wind farm assets triggers early withdrawal, the OFTOs should be able to recover up to half of their sunk costs to motivate OFTOs to minimise the sunk costs incurred.

The current arrangements benefit and offer protection only to the OFTO. This imbalance of risk and protection needs to be recognised via the requirements placed on generators to cover these costs. As aforementioned, we are not advocating for parity on sunk costs but rather that if the OFTO is not required to provide any guarantees or cover any generator sunk costs, the generator should only be required to cover some and not all these sunk costs.

Question 13: Are there any additional factors to consider which we have not set out above?

We disagree with the position that guarantees should fall on the developer and don't see Ofgem's inclusion of the OFTO-of-last-resort process as a sufficient equivalent if an OFTO ceases operation in advance of the contracted end date. The priority should be devising a clear agreement, reflecting a fair division of responsibilities, of which sunk costs are covered should a generator withdraw early.

For clarity, we firmly believe that developers should only be responsible for OFTO-related sunk costs (where the definition of what constitutes a sunk cost requires definition and agreement) arising from an early wind farm closure when the fault is on the developer's side, not when the form of failure or event causing early closure relates to the OFTO assets. In addition, any cover that was to be provided should be made as a credit cover, not an upfront payment. While encouraging OFTOs to commit to extensions, Ofgem must assure parity in the process to ensure developers are sufficiently incentivised to recommission equally.

We urge Ofgem to adopt a broader perspective on various issues and challenges. Specifically, we believe that concerns such as the necessity for guarantees, the coverage of sunk costs and the mitigation of associated risks could be substantially reduced if the possibility of generator ownership, or generator responsibility for operation and maintenance, were thoroughly explored. For example, one of the key items identified by Ofgem as a sunk cost is 'early exit fees on services procured by the OFTO for extension such as [...] O&M'. By appointing the generator as the O&M provider, this sunk cost and the need for risk mitigation would be immediately removed.

Question 14: Is the existing 25 year period for transmission licences appropriate, and if not, why not?

The existing 25 year period for transmission licenses is not appropriate because it is not aligned with:

1. Leases awarded by the Crown Estate
2. Developer business plans

3. Development Consent Order (DCO) acquired by the developer for the wind farm and the transmission assets if it's longer than 25 years
4. Industry experience and practice as the transmission assets have a much longer life. Onshore transmission assets can easily be operated for 45 years and the transmission license provided for interconnectors is for 35 years. OFTO assets overlap with these assets, thus having a shorter transmission license is economically inefficient
5. Government objectives of providing affordable, renewable and reliable energy

Question 15: Does the current regime disincentivise longer asset life, and if so, should there be changes made to the existing regime (e.g. through construction, design and the tender process) to incentivise assets to be built for a longer asset life?

Question 16: Does extending the term limit the debt pool and/or increase the likely price of finance?

Our members believe that extending the transmission licence term will further optimise the debt and financing cost and ultimately improve the Levelised Cost of Energy (LCOE) for offshore wind assets in the UK.

Question 17: For the cost assessment process, the amount of evidence required for determining the OFTO asset's transfer value (i.e. the purchase price paid by the OFTO to the windfarm developer) may need to be substantiated to allow for any additional costs required to achieve a longer revenue term. Please comment on the evidence that developers could potentially provide to demonstrate that their costs are economic and efficient for a project expected to have a useful life of up to 40 years.

Considering the complexities arising from the breakpoint of extension, e.g., health review guidance, most members support the move to a longer TRS period. While there was debate between members about an appropriate TRS length, we support in principle raising the TRS cap to up to 40 years asset life with the flexibility for optionality if a shorter TRS if preferred which both parties agree. The duration of the TRS should, however, be ultimately determined by the generator, who should be free to consider the asset life on a project-by-project basis.

Many of our members also feel that the 18-month GCC period should be accounted for as separate from the period undertaken by the OFTO thereafter, e.g., a 35-year term would equate to the sum of the license and the GCC period so, ~36.5 years, as we believe this is currently unjustly eroding a full license term. We believe setting the cap at this level alleviates the isfsues that are arising from a piecemeal approach, such as the inadvertent incentivisation of bad practices.

In many cases, realising this extended lease option will rely on greater coordination with The Crown Estate (TCE) and Crown Estate Scotland (CES) to increase the length of leases that better align OFTOs with developer asset life. Leasing arrangements are already constraining the TRS period due to contracts being granted that do not align with asset life spans; thus, adjustments will need to be made in this space.

We also wish to emphasise again the merit in permitting developers to jointly own and operate both the generation and transmission assets during any life extension period for greater simplicity and, thus, the probability of asset extension. As noted by Ofgem in its minded-to decision on health reviews, DESNZ intends to consider the generator ownership option over the medium term. Thus, any changes to the TRS term should coordinate with DESNZ's review of this area.

Question 18: In the event of an extension to the GCC by DESNZ, would there be benefits (e.g improved data quality, better considered bids and quicker transactions) to Ofgem delaying the start of the ITT stage until later in the GCC window when more operational data from the developer is available?

As aforementioned, we feel the exploration of alternatives is limited in value when reliant on DESNZ for the ultimate decision around the GCC. However, we would signal our previously cited responses to the original call for evidence for a comprehensive breakdown of our views. Our members are actively promoting workable solutions to amend the GCC, and SR/RUK would be happy to facilitate discussion around these.

Question 19: Does VDD in practice reduce the total cost of a tender process? Are there any benefits in a VDD and would it assist the bidding process?

Based on member experience with using VDD reports across industry, we anticipate only a marginal impact on the duration of the PB stage. The VDD reports seen to date have included caveated positions that are unlikely to fully meet bidders' requirements, which would limit any significant advantages. Consequently, it is likely that additional and confirmatory due diligence would still be necessary.

Some members do see the benefit in a VDD whereby OFTOs are all working with the same material, rendering the process more efficient. If VDD reports were to be mandated as a new requirement, we expect a streamlining of other tender documentation to prevent redundancy, particularly the Information Memorandum and Signposting Document. We would also expect the establishment of a clear process for addressing any omissions or oversights in an independent VDD report, ensuring that the generator is not subjected to additional risks beyond its control. Finally, we would expect that any cost of a VDD can be recovered through the FTV.

Question 20: Do you have any other suggestions that would help ensure efficiency in this process based on the three scenarios?

As Scottish Renewables and RenewableUK previously attested to in response to DESNZ's 2023 call for evidence, the GCC is not fit for purpose in its current design and is fuelling an imbalanced negotiation structure. In some cases, developers face incredibly challenging circumstances whereby transactions run to the deadline, and developers are forced to forfeit any negotiation power over losing production for an additional period to avoid criminality in the current design. However, the proposed solutions from Ofgem based on a hypothetical decision from DESNZ will not resolve these issues.

The proposal to extend the GCC period fails to address the heart of the issue. It will only result in extending existing issues over a longer period as parties extend negotiations. While commencing the ITT stage at a later date would offer some benefit to ensure the process of due diligence does not erode the PB stage and is not hurried, as is currently the case, this will not be a sufficient solution to the overall structure. Furthermore, as projects grow in complexity, more work will be undertaken in the PB stage than previously in transactions, and there is the risk of creating a perpetual loop on the need to extend processes. Finally, extending negotiations further means asking developers pursuing project-financed offshore wind farms to carry the cost for a more extended period, thus burdening them with months of increased cost.

While we appreciate Ofgem's attempt to offer alternatives, we believe the options here represent temporary, inadequate solutions that will not lead to better outcomes. In the interim, an improved alternative would be to build upon the DESNZ guidance note for offshore transmission licence exemptions. This could include committing to have a designated representative within Ofgem who is delegated to engage early and deal efficiently with requests for extension under the categories of the DESNZ guidance note, a joint statement with DESNZ in support of allowing exemptions, as well as commitment from Ofgem to support DESNZ in more fundamental reform of the GCC.

Ultimately, an entirely different structure, as opposed to a longer process, is the solution to issues that are being faced by the GCC, which Scottish Renewables and RenewableUK have repeatedly brought to the attention of DESNZ and Ofgem. While we acknowledge that some reform may require action beyond the control of only the regulator, we would be happy to support Ofgem in consulting with our membership on potential long-term solutions to generator commissioning beyond what is currently offered.