

THE OFTO REGIME: A RETROSPECTIVE

11 NOVEMBER 2020 • ARTICLE



With the first Offshore Transmission Owner (OFTO) licence granted in March 2011 (connecting the Robin Rigg offshore wind farm to Great Britain's (GB's) national grid), and a total of 20 granted over the last decade, it seems a good time to take a step back to re-evaluate the regime. What were the aims of and hopes for the regime when it was launched? What has it delivered and where are we now? Has the regime met its aims, and is it still fit for purpose in 2020?

We will start with a history lesson, looking back at the initial aims of the regime as envisaged by Ofgem and the Department for Business, Energy and Industrial Strategy (BEIS) – in its various incarnations as DTI, BERR, and DECC – and set out in their consultations from 2007 to 2009. A series of articles will follow exploring different aspects of the regime, including analysis of the lessons learned from what worked well, what worked less well, and perhaps a wish list for the future of the regime.

"So what was the vision? A coordinated offshore transmission grid, providing redundancy, reinforcement, and connection between offshore generating stations."

THE PURPOSE OF THE OFTO REGIME

The separation of interests in the electricity market in GB started in the 1980s culminating in the Electricity Act 1989. Throughout the 1990s, the separation of generation, transmission, distribution and supply as separate licensable activities followed. It is sometimes said that this "unbundling" of activities came from EU legislation, but GB was a world leader in liberalising its electricity market, with the first "package" of EU legislation for electricity adopted in 1996, well after domestic implementation in GB.

The foundations for the offshore transmission regime were laid in the Energy Act 2004, followed by various consultations in 2007, 2008 and 2009. From the start, the intention expressed by Ofgem and BERR was that OFTOs "would have responsibility

for designing, building, financing and maintaining the offshore transmission network required to connect an offshore generator", and that the OFTO "would be selected by competitive tender". In the same document, it was acknowledged that a transitional regime would be needed for those projects "where the offshore generator is already constructing or undertaking steps towards constructing the offshore transmission assets".

In its November 2009 Open Letter, Ofgem referred to the need “to ensure that the offshore electricity transmission regime was sufficiently flexible to respond to the potentially changing needs of network users and deliver a co-ordinated offshore grid as economically and efficiently as possible”.

So what was the vision? A coordinated offshore transmission grid, providing redundancy, reinforcement, and connection between offshore generating stations.

INDUSTRY VOICES SWAY THE DESIGN

The first two OFTO tender rounds were intended to capture projects in the “transitional regime”, with generators continuing to build out the transmission assets required to connect them to the national grid. Notwithstanding public statements earlier this year, the intention was that from the third tender round onward, the regime would be OFTO build only, with no generator build option.

Outcry from the industry resulted in a series of consultations, with generator build included as an option for the “enduring regime” in a December 2010 decision paper. OFTO build was not abandoned as a model but relegated to a choice for developers to make. A December 2014 policy paper introduced different OFTO build models in the hope that generators would choose OFTO build rather than generator build.

With the seventh tender round expected to launch later this year, none of the projects tendered to date have followed the OFTO build model.

"Notwithstanding public statements earlier this year, the intention was that from the third tender round onward, the regime would be OFTO build only, with no generator build option."

WHERE ARE WE NOW?

a) What has the regime delivered?

i) TR1 and TR2 – the first two tender rounds were transitional and operated under partially commenced legislation. Licence exemptions and legislative definitions allowed Ofgem and the industry to kick off the regime, learning and refining the process as they went. The National Audit Office (NAO) review of the new regime resulted in the publication of a report in June 2012. A number of the recommendations made by the NAO in that report were implemented for TR2;

ii) TR3 – this was the first tender round of the “enduring regime”, with the offshore transmission regime fully commenced on 10 June 2014. The hoped-for OFTO build model did not materialise, though policy work continued (see above on the new

OFTO build variations introduced in December 2014); and

iii) TR4 to TR6 – the most recent tender rounds have included much larger projects, which are further out at sea, and both of these factors have introduced complexities. Newer technologies have been developed for longer cables and more powerful turbines. The tripartite challenges of distance, depth and technology mean these projects are taking longer to design and build, but conversely, they also present a huge opportunity for the UK industry.

b) Impetus for change

i) The electricity industry has changed significantly since the OFTO regime was introduced. With rapid advancements in technology, electrification of transport well under way and electrification of heat on the horizon, energy demands are rising. At the same time, coal plants are due to come offline by 2025 and gas reserves are dwindling.

ii) Sitting alongside this, global commitment to net zero carbon emissions has increased steadily since the Paris Agreement was signed in 2015. Its central aim is to strengthen the global response to the threat of climate change by keeping a global temperature increase this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.

iii) Even before the UK enshrined a net zero emissions target in law in June 2019, BEIS reached an Offshore Wind Sector Deal with the industry in March 2019. The targets set are ambitious:

a) the law now requires the UK to bring all greenhouse gas emissions to net zero by 2050, compared with the previous target of at least 80% reduction from 1990 levels; and

b) the sector deal initially aimed to deliver 30GW of offshore wind by 2030, and this was subsequently increased to 40GW (in the Queen's Speech in December 2019).

"With the passage of time, rapid development of technology and ambitious legal, commercial and environmental targets, now is the time to look at different aspects of the OFTO regime and seize the opportunities presented."

WHERE TO NEXT?

With the passage of time, rapid development of technology and ambitious legal, commercial and environmental targets, now is the time to look at different aspects of the OFTO regime and seize the opportunities presented. We will be exploring the challenges, barriers and opportunities in our upcoming series of articles and considering what has worked and what could be improved.

To Opt In to WFW mailings and register for alerts on our forthcoming articles as soon as they are published, please email us [here](#). All the articles published in our OFTO series can be found [here](#).

KEY CONTACTS



MARTIN LUCAS
PARTNER • LONDON

T: +44 20 7814 8101

mlucas@wfw.com



CHRIS KILBURN
PARTNER • LONDON

T: +44 20 7814 8193

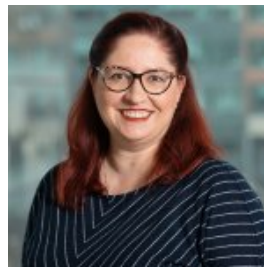
ckilburn@wfw.com



NICK WALKER
PARTNER • LONDON

T: +44 20 3036 9822

nwalker@wfw.com



MARIANNE ANTON
COUNSEL • LONDON

T: +44 20 3314 6330

manton@wfw.com

DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.