

Decision

Decision on the Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025

Publication date: 4 April 2025

Contact: Aakriti Bhardwaj, Senior Policy Manager

Team: Onshore Competition

Email: OnshoreCompetitionsPolicy@ofgem.gov.uk

This document sets out Ofgem’s policy decision on the Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025 (“Tender Regulations”) following our consultation, which opened on 20 September 2024 and closed on 2 November 2024.

Having considered the responses received, we have finalised the text of the Tender Regulations. The Tender Regulations have now been approved by the government and are available to view on the [legislation.gov.uk](https://www.legislation.gov.uk) website.¹

This document summarises the consultation responses and Ofgem’s consideration of them, details revisions to the draft regulations and sets out our reasons for doing so.

¹ The Tender Regulations will undergo a 21-day implementation period and enter into force on 25 April 2025.

© Crown copyright 2025

The text of this document may be reproduced (excluding logos) under and in accordance with the terms of the [Open Government Licence](#).

Without prejudice to the generality of the terms of the Open Government Licence the material that is reproduced must be acknowledged as Crown copyright and the document title of this document must be specified in that acknowledgement.

Any enquiries related to the text of this publication should be sent to Ofgem at:

10 South Colonnade, Canary Wharf, London, E14 4PU.

This publication is available at www.ofgem.gov.uk. Any enquiries regarding the use and re-use of this information resource should be sent to: psi@nationalarchives.gsi.gov.uk

Contents

Decision on the Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025.....	1
1. Introduction	4
Background	4
Related publications	5
Our decision-making process	5
Decision-making stages	6
General feedback.....	6
2. The Draft Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations: Stakeholder Feedback on the Questions of the Consultation and Ofgem response.....	7
References to other legislation	8
Qualifying Project	8
Securities and Bid Costs.....	9
Qualifying Bidders.....	10
Timelines	10
Withdrawal, Cancellation, Re-run, and Disqualification	10
Transparency	11
Best and Final Offer Stage.....	13
Licensing	14
Ofgem’s Involvement through the Tender Process.....	15
Confidentiality Agreements.....	15
Communication	15
Challenging Ofgem/NESO decisions	15
Other Changes to the draft Tender Regulations.....	16
3. Implementation of the Tender Regulations	17
Appendices	18

1. Introduction

Section summary

This section provides background information relevant to the draft Tender Regulations, including why we consulted on them and the objectives the consultation sought to achieve.

Background

- 1.1 Competition in the delivery of onshore electricity transmission network reinforcements has an important role to play in driving innovative solutions and cost efficiencies while also providing opportunities for new investment in our onshore networks. It has the potential to play a key role in the efficient delivery of our decarbonisation and Net Zero targets at the lowest cost to consumers. 'Early competition for onshore transmission' is one of the objectives in our [2024-25 Forward Work Programme](#).
- 1.2 The Energy Act 2023,² which received Royal Assent on 26 October 2023, made changes to the Electricity Act 1989 (the "Act") that enable the Authority to make regulations, subject to the approval of the Secretary of State, for facilitating competitive tendering in the design and delivery of onshore electricity projects. The Electricity (Criteria for Relevant Electricity Projects) (Transmission) Regulations 2024 (the "Criteria Regulations"),³ as drafted by the Department for Energy Security and Net Zero ("DESNZ"), specify the criteria a project must meet to be a 'relevant electricity project' suitable to be subject to a competitive tender process. The Tender Regulations are the statutory instrument that, alongside the Act and Criteria Regulations, complete the key legislative framework to allow for and govern early competition in onshore electricity transmission.⁴
- 1.3 The purpose of the Tender Regulations is to facilitate competitive tendering in the design and delivery of onshore electricity projects. The regulations set out the competitive tender process for the granting of an onshore electricity transmission

² Energy Act 2023 (legislation.gov.uk).

³ The Electricity (Criteria for Relevant Electricity Projects) (Transmission) Regulations 2024 (legislation.gov.uk).

⁴ With respect to our duty under section 5A of the Utilities Act 2000 to carry out and publish an Impact Assessment, having considered this duty and our own [Impact Assessment Guidance](#), in this instance, we consider it unnecessary to carry out another Impact Assessment because we are implementing secondary legislation in accordance with the enabling provisions in ss 6C-6CD of the Electricity Act 1989 and the content of which has been subject to extensive stakeholder engagement and assessment. This includes an [Impact Assessment](#) that was submitted and published alongside The Electricity (Designation of Delivery Bodies) (Transmission) Regulations 2023 that covers the impacts of introducing a competitive tender process to the electricity onshore network, which these Regulations now implement.

licence to a successful bidder (what will be known as a Competitively Appointed Transmission Owner or “CATO” licence), including how the tender process will be administered by Ofgem as ‘the Authority’ and National Energy Systems Operator (“NESO”) as ‘the delivery body’.

1.4 Our consultation on the draft Tender Regulations⁵ provided an explanation of the proposed tender process and provided stakeholders with information on the envisaged licence application process. We requested stakeholder feedback and comments on the drafting of the Tender Regulations.

Related publications

1.5 Other publications related to this consultation are as follows:

- [Draft Electricity \(Early-Model Competitive Tenders for Onshore Transmission Licences\) Regulations 2024 for consultation](https://www.ofgem.gov.uk/publications-and-consultation/draft-publications/draft-electricity-early-model-competitive-tenders-for-onshore-transmission-licences-regulations-2024-for-consultation) (ofgem.gov.uk).
- Ofgem, [Decision on early competition in onshore electricity transmission networks](https://www.ofgem.gov.uk/publications-and-consultation/draft-publications/decision-on-early-competition-in-onshore-electricity-transmission-networks), March 2022
- Ofgem, [Decision on Early Competition in onshore electricity transmission networks: policy update](https://www.ofgem.gov.uk/publications-and-consultation/draft-publications/decision-on-early-competition-in-onshore-electricity-transmission-networks-policy-update), July 2024
- Department for Energy Security and Net Zero, [Transmission Acceleration Action Plan](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114111/transmission-acceleration-action-plan), November 2023
- Legislation.gov.uk, [Energy Act 2023](https://www.legislation.gov.uk/ukpga/2023/1/section/1), October 2023
- Legislation.gov.uk, [Electricity Act 1989](https://www.legislation.gov.uk/ukpga/1989/1), July 1989
- Legislation.gov.uk, [The Electricity \(Criteria for Relevant Electricity Projects\) \(Transmission\) Regulations 2024](https://www.legislation.gov.uk/uksi/2024/100/contents/matter), March 2024
- Electricity System Operator, [Early Competition Plan](https://www.eso.co.uk/early-competition-plan), April 2021
- Electricity System Operator, [Early Competition implementation \(ECI\) update](https://www.eso.co.uk/early-competition-implementation-eci-update), February 2024

Our decision-making process

A total of 7 responses were received. 3 responses were from incumbent Transmission Owners (“TOs”), 1 was from an electricity distributor, 1 was from a transmission company, 1 from an industry participant (a venture capital and development company) and 1 from an entity representing business interests. We have published the non-confidential responses on our website.⁶

⁵ [Draft Electricity \(Early-Model Competitive Tenders for Onshore Transmission Licences\) Regulations 2024 for consultation](https://www.ofgem.gov.uk/publications-and-consultation/draft-publications/draft-electricity-early-model-competitive-tenders-for-onshore-transmission-licences-regulations-2024-for-consultation) (ofgem.gov.uk).

⁶ Ibid.

Decision – Decision on the Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025

Following careful consideration of the responses, we have finalised the Tender Regulations. The final version of the Tender Regulations is attached separately to this Decision as Appendix 1. The Tender Regulations have also been published alongside an explanatory memorandum, available on www.legislation.gov.uk.

Decision-making stages

Date	Stage description
20/09/2024	Stage 1: Consultation open
02/11/2024	Stage 2: Consultation closed (awaiting decision), Deadline for responses
Dec 2024 – Feb 2025	Stage 3: Responses reviewed
04/04/2025	Stage 4: Consultation decision

General feedback

We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this report. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall quality of this document?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Are its conclusions balanced?
5. Did it make reasoned recommendations?
6. Any further comments

Please send any general feedback comments to

OnshoreCompetitionsPolicy@ofgem.gov.uk.

2.The Draft Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations: Stakeholder Feedback on the Questions of the Consultation and Ofgem response

Section summary

This section presents an overview of the feedback and queries received in response to the questions asked in our consultation (as listed below) and our consideration of the responses received.

Questions

- Q1. Do you agree with our drafting of the draft Tender Regulations?
- Q2. Are there specific changes you would recommend to the draft Tender Regulations?
- Q3. Is the proposed drafting of the draft Tender Regulations clear and understandable? If not, which parts require clarification?
- Q4. Would you like to provide any further comments on the draft Tender Regulations and the proposed tender exercises that cannot be covered by the questions above?

2.1 In this chapter, we present our response to the feedback, queries and comments from respondents regarding the drafting of the Tender Regulations. Responses that went beyond the scope of the questions raised in consultation have not been addressed. We have, for example, not provided responses to queries raised about the processes/mechanisms pertaining to reimbursement of bid costs and security payments applicable to bidders as they do not pertain to the drafting of the regulations. Such aspects will be covered in separate guidance documentation related to the tender process to be shared with stakeholders in due course by the delivery body.

2.2 The majority of responses to the questions asked comprised of additional comments or follow-up questions to clarify aspects of the Tender Regulations. We have grouped the responses based on the subject matter or the common themes that emerged from them. For each paragraph capturing the respondents' views, our response is in the subsequent paragraph.

References to other legislation

2.3 A respondent suggested that for clarity, the definition of "the 1989 Act" in Regulation 2, Paragraph 1, Definition 1, could be changed to "means the Electricity Act 1989 as amended by the Energy Act 2023".

- **Ofgem response:** In line with the existing practice in this respect,⁷ we have decided to retain the original drafting of this definition.

2.4 A respondent recommended that the Tender Regulations should be modelled on the provisions of the Utilities Contracts Regulations 2016 ("UCRs"). Another respondent stated that they were of the view that the UCRs and the Procurement Act 2023 did not apply to the Tender Regulations and suggested that the Tender Regulations should make clear that UCRs and the Procurement Act do not apply to tendered projects.

- **Ofgem response:** We do not consider it necessary or appropriate to refer to other contract or procurement regimes that do not apply to the Tender Regulations. The Tender Regulations have been drafted in accordance with the enabling provisions in sections 6C-6CD of the Electricity Act 1989.

Qualifying Project

2.5 A respondent questioned why a project was being recommended ahead of the Tender Regulations entering into force and suggested waiting until the publication of NESO's transitional Centralised Strategic Network Plan 2 (tCSNP2)⁸ in 2026 to select the first and subsequent projects for the competitive tender exercise.

- **Ofgem response:** The Tender Regulations set out the process for undertaking a tender. The Criteria Regulations, which are in force, set out key criteria upon which projects can be recommended. No tender will commence until the Tender Regulations are in force. There is no benefit to consumers or TOs in delaying a decision until 2026 given the unnecessary industry uncertainty this would cause.

2.6 A respondent recommended selecting a pipeline of projects and proposed a 'default to competition' approach (based on an interpretation of the Criteria Regulations) for a tendering pipeline which would increase the number of projects suitable for

⁷ For instance, The Electricity (Criteria for Relevant Electricity Projects) (Transmission) Regulations 2024 defines "the Act" as "means the Electricity Act 1989" without reference to the Energy Act 2023, Regulation 2, Paragraph 1, Definition 1, [The Electricity \(Criteria for Relevant Electricity Projects\) \(Transmission\) Regulations 2024](#) (legislation.gov.uk).

⁸ [Beyond 2030 | National Energy System Operator](#) (www.neso.energy).

competition. Additionally, the respondent recommended inserting an obligation in the regulations for the tender parties to provide a report to the Secretary of State on specific actions to be taken and a timeline to complete to avoid a situation of insufficient competition.

- **Ofgem response:** Our consultation on the sub-component of WCN2⁹ as a potential first project for tender highlighted some of the potential issues of confirming the needs case for projects included in tCSNP2. Furthermore, there is no legal basis under the Electricity Act 1989 for a 'default to competition' approach and the submission of a report to the Secretary of State as suggested. We do note the consistent view from potential bidders that a project pipeline is an important factor in their consideration of whether to participate in onshore competition. We are engaging with NESO to better understand its approach to identifying pipeline projects.

Securities and Bid Costs

2.7 Respondents submitted several comments seeking clarification on the various aspects of bid cost reimbursements and security payments.

- **Ofgem response:** These details will be shared with the bidders by the delivery body ahead of each tender round in round-specific tender process guidance documentation.

2.8 A respondent recommended that unsuccessful bidders should have their bid costs reimbursed in order to drive market participation. Another respondent suggested that if Ofgem or NESO are to seek payments from a successful bidder for their own costs in running the tender process, these should be collected at financial close (i.e., after the preliminary works period).

- **Ofgem response:** Reimbursing bid costs for unsuccessful bidders will place all risk onto consumers, which is not the policy intent of early competition. Collecting payment at financial close would result in Ofgem and the delivery body being delayed by several years in recovering their respective costs. Ofgem and the delivery body would therefore be put at financial risk and under financial pressure which could negatively impact decision-making in the future. We want to ensure that the delivery body is not financially exposed in case a tender exercise fails and have decided not to further modify the regulations.

⁹ [Onshore electricity transmission Early Competition: Consultation on the first project to be competitively tendered](https://www.ofgem.gov.uk) (ofgem.gov.uk).

Qualifying Bidders

2.9 A respondent has recommended that the number of qualifying bidders entering the invitation to tender (ITT) stage be limited to three.

- **Ofgem response:** This recommendation is based on the legal framework of another country, which is tailored to its market and the applicable legal framework. We want to ensure that there is sufficient competition and therefore competitive tension to drive down costs to consumers, so the number of qualifying bidders required to achieve this shall be determined by the delivery body by evaluating each completed pre-qualification questionnaire in accordance with the evaluation criteria set out in the pre-qualification documentation during the pre-tender stage.

Timelines

2.10 A TO suggested that the regulations would benefit from having minimum and maximum timelines at each part of the tender process to ensure the end-to-end process can proceed in a timely manner. Another TO requested for the indicative dates and times for key milestones in any given tender exercise to be set out at the stage of preliminary market engagement.

- **Ofgem response:** The timelines for various tender stages will be published in separate round-specific tender process guidance documentation. We consider this more appropriate than putting legislative obligations on timelines within the regulations and have decided not to include this within the regulations.

Withdrawal, Cancellation, Re-run, and Disqualification

2.11 A TO submitted that the interaction between the cancellation/re-run of tender mechanisms currently set out in the Regulations, and the requirement of the use of CATO of last resort mechanism, could result in significant delays to the development and delivery of projects.

- **Ofgem response:** we are conscious that the cancellation/re-run of a tender extends delivery timelines and could lead to delay. We will take steps to manage the risk of tender failure, such as the collection of comprehensive information regarding bidders in the pre-qualification stage. Any decision to re-run a tender will need to be justified by a cost-benefit analysis which demonstrates that even with a re-run tender and associated cost delays there is likely to be consumer benefit delivering through a CATO.

2.12 On Regulation 19(5), a respondent requested confirmation from Ofgem that the intent of the provision was to state that if a bidder participates in a tender then they do so at their own risk.

- **Ofgem response:** We confirm the respondent’s understanding of the provision is correct.

2.13 A respondent requested clarity on the roles and responsibilities of NESO and Ofgem as tender parties in the context of the following regulations:

- i. Re-run, and re-run leading to cancellation (Part 13, Regulation 20)
- ii. Cancellation (Part 13, Regulation 21)
- iii. Disqualification (Part 14, Regulation 23) and Events Of Disqualification (Schedule 9)

- **Ofgem response:** In response to this query, we have made changes to the relevant sub-paras of Regulation 20 and Regulation 21 to aid the clarity of the drafting. No changes have been made to Regulation 23 and Schedule 9 (pertaining to Disqualification) as the current drafting sufficiently addresses the roles and responsibilities of the tender parties.

Transparency

2.14 Respondents have sought greater transparency on pre-market engagement activities and have asked Ofgem and NESO to consult and notify respondents ahead of making decisions based on their assessments.

- **Ofgem response:** Undertaking pre-market engagement is optional under the Tender Regulations. Undertaking this engagement does not necessitate consultations from Ofgem and the delivery body, however we may consider consulting when necessary and appropriate. We agree with the general point raised that pre-market engagement should be conducted transparently.

2.15 On the pre-market engagement notice, a respondent sought clarity on (1) whether the delivery body is able to proceed with publishing the ‘preliminary market engagement notice’ or if permissions/approvals from OFGEM are required and; (2) why it would be published in retrospect highlighting that the wording “If a tender party conducts, or has conducted, preliminary market engagement [...]” would indicate that the ‘preliminary market engagement notice’ can be either published both prior to and after the engagement has been conducted.

- **Ofgem response:** The delivery body can publish a preliminary market engagement notice without the approval of Ofgem. On the second point, the text of the regulation addresses a situation where NESO has already conducted preliminary market engagement prior to publishing the preliminary market engagement notice. This is similar to preliminary market engagement notices under the Procurement Act 2023 whereby notices can be published pre and post market engagement. The policy intent is to encourage transparency as the delivery body prepares for the tender exercise. In doing so, it may be that the delivery body engages with a group of market participants. In such instances, the publication of the notice later would be intended to keep the wider market informed of the discussion.

2.16 A respondent asked whether TOs will be notified ahead of pre-market engagement if a project within their licence area is going to be selected for competition.

- **Ofgem response:** Yes, TOs will be informed about this ahead of pre-market engagement.

2.17 A respondent sought clarification on our proposal that a participant can be disqualified for “deriving an unfair advantage from having participated in preliminary market engagement”. They stated that “this risk should not be placed on participants as any unfair advantage would be created by either NESO or Ofgem.”

- **Ofgem response:** This text is intended to ensure that competition is not distorted under any circumstances. The words have their ordinary meaning. Similar wording can be found in the Procurement Act 2023.¹⁰ Under Regulation 4(3), Ofgem and the delivery body have an obligation to take steps to ensure no party is unfairly advantaged and we consider this obligation addresses the scenario raised by the respondent.

2.18 A respondent recommended that Ofgem should make available process documentation that will be used in the tender process such as pre-qualification documentation, ITT documentation, and the delivery body assessment report.

- **Ofgem response:** Process documentation will be prepared closer to the time of the launch of the relevant tender round by the delivery body. Ofgem's experience is that, although not consulted upon, these documents undergo changes with successive tender rounds based on an assessment of whether

¹⁰ Section 16(3)(a), [Procurement Act 2023](https://legislation.gov.uk) (legislation.gov.uk).

they can be improved to make the tender process more efficient. Improved iterations of the tender process documents can be expected from the delivery body with each successive tender round.

2.19 With respect to unsuccessful bidders, a respondent requested to know of the decision-making criteria along with a summary of the reasons why the bidder was unsuccessful.

- **Ofgem response:** In the notification of the provisional preferred bidder to qualifying bidders, the delivery body intends to provide details on the evaluation criteria and the reasons for determinations (Regulation 16(2)).

2.20 On regulations previously numbered as 37, 38, and 39 (now regulations 36, 37 and 38) which are intended to mitigate and manage conflicts of interests concerning the tender process, a respondent has suggested that to give bidders confidence in the conflicts assessment and transparency of adherence to the resulting protocols, the regulations be amended to also require the conflicts of interest assessment and protocols to be published early in the tender process (i.e. no later than the release of the prequalification documents).

- **Ofgem response:** We agree that the timing of when tender parties must provide confirmation of their conflicts assessments could be clearer. We have revised Regulation 38(4)(c) (what was Regulation 39(4)(c) in the consultation draft) to clarify that the tender parties are required to confirm that a conflicts assessment has been prepared (and revised where appropriate) when an intention to commence notice or a notice of a successful bidder is published.

2.21 A respondent suggested that any notices issued under Regulation 17(1) should identify both the preferred bidder and the reserve bidder, rather than only the preferred bidder.

- **Ofgem response:** It is not appropriate that notice of the preferred bidder also identifies the reserve bidder. Determination of a reserve bidder is an optional step and if a reserve bidder is determined, under Regulation 18, notice of that determination must only be given to the reserve bidder (whereas notice of a preferred bidder will be published). Based on this reasoning, we have not changed the text of the regulations.

Best and Final Offer Stage

2.22 A respondent has suggested making Best and Final Offer (BAFO) a compulsory stage for the reason that, as per current drafting, the decision on whether to hold

the BAFO stage after the ITT stage does not give fair notice of whether their ITT submissions will be taken to be their best offer, or if a further opportunity will be given to bid again.

- **Ofgem response:** The BAFO stage is optional as it can save the delivery body resources if the initial offers are sufficiently different that NESO can make a decision as to the selection of a provisional preferred bidder. The Tender Regulations provide that the BAFO stage will provide selected bidders another opportunity to submit a final bid (as per documentation approved by Ofgem in this respect in due course). Therefore, the ITT submissions will not be taken to be the selected bidders' BAFOs, in the event that it is decided to run an optional BAFO stage (Regulation 14). We have decided not to make further changes to the regulations with regards to the BAFO stage.

Licensing

2.23 Respondents have sought confirmation that Ofgem will be the sole assessor of TO compliance with licence obligations.

- **Ofgem response:** Ofgem is the sole decision maker on any decision to enforce against breach of licence conditions, not a third party.

2.24 A respondent requested clarity from Ofgem on the licensing arrangements. For example, whether the awarded licence be the electricity transmission licence (with specific parts switched on or off) or a new CATO licence.

- **Ofgem response:** We are currently developing the CATO licence and intend to consult on it in Spring 2025. It will be an electricity transmission licence for the purposes of the Electricity Act 1989, however specific details are still being considered by Ofgem.

2.25 A TO queried how the licence obligation would apply to a separate bidding unit of an incumbent TO. Would such a separate unit be awarded a separate transmission licence or would the existing TO licence be modified for such a unit?

- **Ofgem response:** We have not made a decision on this point but note that the Tender Regulations provide flexibility on the approach. Regulation 39 (what was Regulation 40 at the time of consultation) allows Ofgem to modify an existing licence to give effect to a tender exercise result and for all references in the regulations to applying/granting licences to be read accordingly.

Ofgem’s Involvement through the Tender Process

2.26 A respondent has suggested Ofgem be directly involved in the tender process. For example, if there are dialogue meetings discussing the trade-offs between risk allocation and cost, then Ofgem should be present and actively involved in those dialogues.

- **Ofgem response:** We do not consider that this would be an appropriate role for Ofgem. Under section 6C of the Electricity Act 1989, decision-making in respect of the tender exercise itself sits with the delivery body.

Confidentiality Agreements

2.27 A respondent asked whether participants could suggest amendments to the confidentiality agreements and whether a blanket provision will be taken across all participants. The respondent added that any external persons NESO and Ofgem appoint for conducting reviews should also be subject to the same confidentiality agreement.

- **Ofgem response:** The delivery body will be managing confidentiality agreements and participants will need to engage with them directly, however, our understanding is that bidders will not be able to suggest amendments to confidentiality agreements. They will be provided as part of the tender documentation pack and need to be signed by the delivery body and TO as well.

Communication

2.28 With reference to “giving notice” as stated in the Tender Regulations throughout, a respondent asked how correspondence would be conducted between NESO and prospective participants.

- **Ofgem response:** the delivery body will maintain communication with prospective participants via an e-portal. NESO will provide further details in due course.

Challenging Ofgem/NESO decisions

2.29 Respondents sought clarification on the processes and forums to challenge Ofgem/NESO decisions.

- **Ofgem response:** Under the regulations, there are two standstill periods of at least 10 working days during which bidders may raise representations or objections in relation to determinations under the tender and licence processes respectively. The first occurs between the notice to each qualifying bidder of

the delivery body's determination of provisional preferred bidder and its determination of preferred bidder (see Regulation 16(1) and Regulation 16(4)(b)). The second occurs at the point in time that the Authority proposes to grant a licence to a successful bidder. The standstill commences from the date of when notice was given (see Regulation 28(1) and (2), what was draft regulations 29(1) and (2) at consultation).

- We also note the judicial review process for challenging decision-making under administrative law. Any bidders considering judicial review should seek and rely on their own legal advice.

2.30 A respondent considered Regulation 17(1) was overly prescriptive and should be changed to ensure appropriate challenge/objection routes are available.

- **Ofgem response:** We do not consider the drafting of Regulation 17(1) impacts on available challenge/objection routes as indicated.

Other Changes to the draft Tender Regulations

2.31 Additional changes in drafting have been made based on the feedback received from NESO. These changes are directed at making the tender process more efficient and aligning it better with the transmission licence application process that will be administered by Ofgem. They are as follows:

2.32 Removal of draft Regulation 28 concerning interim review of onshore transmission licence applications and other references to it throughout the regulations: As a step undertaken in the licence application process by Ofgem, interim review does not tie-in with or concern the delivery body's determination of the provisional preferred bidder. For this reason, conducting the review and informing the delivery body of its completion would add an unnecessary formality for Ofgem and the delivery body and potentially delay the completion of the tender process.

2.33 Removal of references to the "provisional reserve bidder" at the ITT stage (Part 8 of Tender Regulations) or the optional BAFO stage (Part 9 of the Tender Regulations) and throughout the regulations: NESO's feedback is that the inclusion of provisional reserve bidder elongates and does not add value to the tender process. We agree with this view and also consider that the option of selecting a "reserve bidder" alongside the "preferred bidder" would mitigate the risk of withdrawal/disqualification of the preferred bidder from the tender process.

2.34 Other changes to the text of the draft regulations include:

- Two respondents sought clarity on the purpose of Regulation 3(4), stating that, as currently drafted, it could lead to a perception that a bidder without a transmission licence could face barriers to participation. We agree with this and with their view that the information sharing arrangements between the TOs, NESO, and bidders participating in the tender exercise and the conflict mitigation measures applicable to incumbent TOs are sufficient to ensure a level playing field for all participants. Accordingly, we have removed paragraph (4) from Regulation 3.
- Two respondents identified the incorrect use of the word “developer” in Regulation 18(5). This now reads “bidder”.
- A respondent identified that the penultimate line of Regulation 29(6) (now Regulation 28(6)) referred to Regulation 29(1). This ought to have referred to Regulation 29(2) (now Regulation 28(2)) and has been amended as such.

2.35 Please note that some other specific drafting suggestions were made by a few respondents that Ofgem have considered and decided not to change the draft regulations in light of them in order to keep the drafting sufficiently clear and in line with current drafting practice.

3. Implementation of the Tender Regulations

3.1 Having considered respondents’ feedback, we have finalised the text of the Tender Regulations. The final version of the Tender Regulations has been reviewed by DESNZ and Ofgem and its governing body, the Gas and Electricity Markets Authority (GEMA). The regulations were signed by GEMA and approved by DESNZ and made available on www.legislation.gov.uk. The final version is attached with this decision document as Appendix 1 for reference.

3.2 The Tender Regulations formally come into force on 25 April 2025.

Appendices

Index

Appendix	Name of appendix	Page no.
1	Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025: Final legal text	Attached separately