

[REDACTED]

From: [REDACTED]
Sent: 11 February 2021 14:08
To: [REDACTED]
Subject: FW: Legal implications of a pause in ScotWind application window

[REDACTED]

Apologies – see below.

[REDACTED]

From: Simon Hodge <simon.hodge@crownestatescotland.com>
Sent: 09 February 2021 14:59
To: [REDACTED]@gov.scot>; Palmer MR (Mike) <Mike.Palmer@gov.scot>
Subject: Legal implications of a pause in ScotWind application window

[REDACTED]/Mike

Here is some information on the legal position with pausing ScotWind. It is a provisional interpretation and not necessarily our final position.

The ScotWind documentation states:

“Nothing in the document is, or should be relied upon, as a promise or representation as to Crown Estate Scotland’s ultimate decision in relation to the award of an Option Agreement or Lease, which will depend on the outcome of the leasing process and other external factors. For the avoidance of doubt nothing in the document constitutes an offer which is capable of acceptance by an Applicant.

Crown Estate Scotland cannot in any circumstances be held responsible for any costs incurred by an Applicant which relate in any way to the document or application. Crown Estate Scotland does not owe any duty of care to any Applicant in respect of matters arising in any way out of the document or such procedures and processes.”

[REDACTED]

[REDACTED]

[REDACTED]

Simon

Simon Hodge
Chief Executive
Crown Estate Scotland
0131 [REDACTED]
www.crownestatescotland.com

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[REDACTED]

From: [REDACTED]
Sent: 28 January 2021 10:08
To: Director of Marine Scotland Mailbox
Cc: [REDACTED] Palmer MR (Mike)
Subject: RE: Crown Estate Scotland - quarterly meetings - 4/2/21
Attachments: [REDACTED] annabel 2021 meeting - sent to [REDACTED] and Mike 27 Jan 21.docx

[REDACTED] – many thanks for the chaser, attached briefing as requested cleared with both Mike and [REDACTED]
Pre-mt to be arranged with Mike and [REDACTED]
[REDACTED]

From: [REDACTED]@gov.scot> **On Behalf Of** Director of Marine Scotland Mailbox
Sent: 19 January 2021 08:45
To: [REDACTED]@gov.scot>; Director of Marine Scotland Mailbox <Directormarinescotland@gov.scot>; [REDACTED]@gov.scot>
Subject: RE: Crown Estate Scotland - quarterly meetings - 4/2/21

Many thanks [REDACTED]

[REDACTED]
PS to Annabel Turpie (Director of Marine Scotland)
0131 [REDACTED]
marinescotland
Scottish Government | 1C-North | Victoria Quay | Edinburgh EH6 6QQ

From: [REDACTED]@gov.scot>
Sent: 19 January 2021 08:26
To: Director of Marine Scotland Mailbox <Directormarinescotland@gov.scot>; [REDACTED]@gov.scot>
Cc: [REDACTED]@gov.scot>
Subject: RE: Crown Estate Scotland - quarterly meetings - 4/2/21

Thanks [REDACTED] – we will ensure this is sent to you in time for this meeting
[REDACTED]

From: [REDACTED]@gov.scot> **On Behalf Of** Director of Marine Scotland Mailbox
Sent: 15 January 2021 12:09
To: [REDACTED]@gov.scot>; [REDACTED]@gov.scot>
Cc: Director of Marine Scotland Mailbox <Directormarinescotland@gov.scot>; [REDACTED]@gov.scot>
Subject: Crown Estate Scotland - quarterly meetings - 4/2/21

Hi [REDACTED] & [REDACTED]

Hope you're both well.

Just to let you know that Annabel's next quarterly meeting with [REDACTED] is on Thursday 4th February from 15:00 – 16:00. Can you please provide Annabel with some briefing prior to that meeting?

Many thanks

[REDACTED]
PS to Annabel Turpie (Director of Marine Scotland)
0131 [REDACTED]
marinescotland
Scottish Government | 1C-North | Victoria Quay | Edinburgh EH6 6QQ

From: [REDACTED] <[REDACTED]@crownstatescotland.com>
Sent: 15 January 2021 12:00
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Crown Estate Scotland - quarterly meetings

Great, thank you very much for your help.

[REDACTED]
Governance Manager
Crown Estate Scotland
0131 [REDACTED]

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From: [REDACTED] <[REDACTED]@gov.scot>
Sent: Friday, January 15, 2021 11:58 AM
To: [REDACTED] <[REDACTED]@crownstatescotland.com>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Crown Estate Scotland - quarterly meetings

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Excellent, yes I'll send the Teams invite shortly to [REDACTED]

Thank you

[REDACTED]
PS to Annabel Turpie (Director of Marine Scotland)
0131 [REDACTED]
marinescotland
Scottish Government | 1C-North | Victoria Quay | Edinburgh EH6 6QQ

From: [REDACTED] <[REDACTED]@crownstatescotland.com>
Sent: 15 January 2021 11:53

To: [REDACTED]@gov.scot>
Subject: RE: Crown Estate Scotland - quarterly meetings

[REDACTED]e

That would be ideal. Are you able to send the Teams invite directly to [REDACTED]@crownestatescotland.com)

Kind regards

[REDACTED]
Governance Manager
Crown Estate Scotland
0131 [REDACTED]

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From: [REDACTED]@gov.scot <Jacqueline.MacPherson@gov.scot>
Sent: Friday, January 15, 2021 10:55 AM
To: [REDACTED]@crownestatescotland.com>
Cc: [REDACTED]gov.scot
Subject: RE: Crown Estate Scotland - quarterly meetings

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Morning [REDACTED]

Happy new year to you too.

How about Thursday 4th February from 15:00 – 16:00? And if that's ok, is MS Teams ok?

Thank you

[REDACTED]
PS to Annabel Turpie (Director of Marine Scotland)
0131 244 6035
marinescotland
Scottish Government | 1C-North | Victoria Quay | Edinburgh EH6 6QQ

From: [REDACTED]@crownestatescotland.com>
Sent: 15 January 2021 08:47
To: [REDACTED]@gov.scot>
Subject: Crown Estate Scotland - quarterly meetings

Good morning – and, although a little late, a Happy New Year to you.

I wonder if we could start looking for some dates for the next meetings for [REDACTED] and Annabel? Over the coming weeks Thursdays are looking to be the clearest days for [REDACTED]

I look forward to hearing from you.

Kind regards

[Redacted]

[Redacted]

**Governance Manager
Crown Estate Scotland**

0131 [Redacted]

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Round 4 figures

Bidding Area (see map)	bidder	project capacity (MW)	bid (£/mw/annum)	annual fee
1	RWE Renewables	1500	£76,203.00	£114,304,500.00
1	RWE Renewables	1500	£88,900.00	£133,350,000.00
2	Green investment Group - Total	1500	£83,049.00	£124,573,500.00
4	EnBW and BP	1500	£154,000.00	£231,000,000.00
4	Offshore wind limited (cobra Instalaciones y services and floatation energy)	480	£93,233.00	£44,751,840.00
4	EnBW and BP	1500	£154,000.00	£231,000,000.00
Total Capacity		7980	TCE total (£) per annum	£878,979,840.00

Total income over 3,5,7 and 10 years

3 years	5 years	7 years	10 years
£2,636,939,520.00	£4,394,899,200.00	£6,152,858,880.00	£8,789,798,400.00
£2.6 Billion	£4.4 Billion	£6.2 Billion	£8.8 Billion

Need to add details on project timelines in Scotland (Beatrice, seagreen and NNG)

These annual fees are paid by the developers to effectively hold the seabed for their project until such time as they can progress to taking their full lease when consents and the necessary licences are achieved. A fee is then applied on the project at around 2% revenue (both in rUK and Scotland).

In Scotland, the fee paid for an Option Agreement is treated as an application fee. Different fee categories have been set and a maximum value of £86,000,000 (£10,000/km² * 8600 km²) can be received through the ScotWind leasing process.

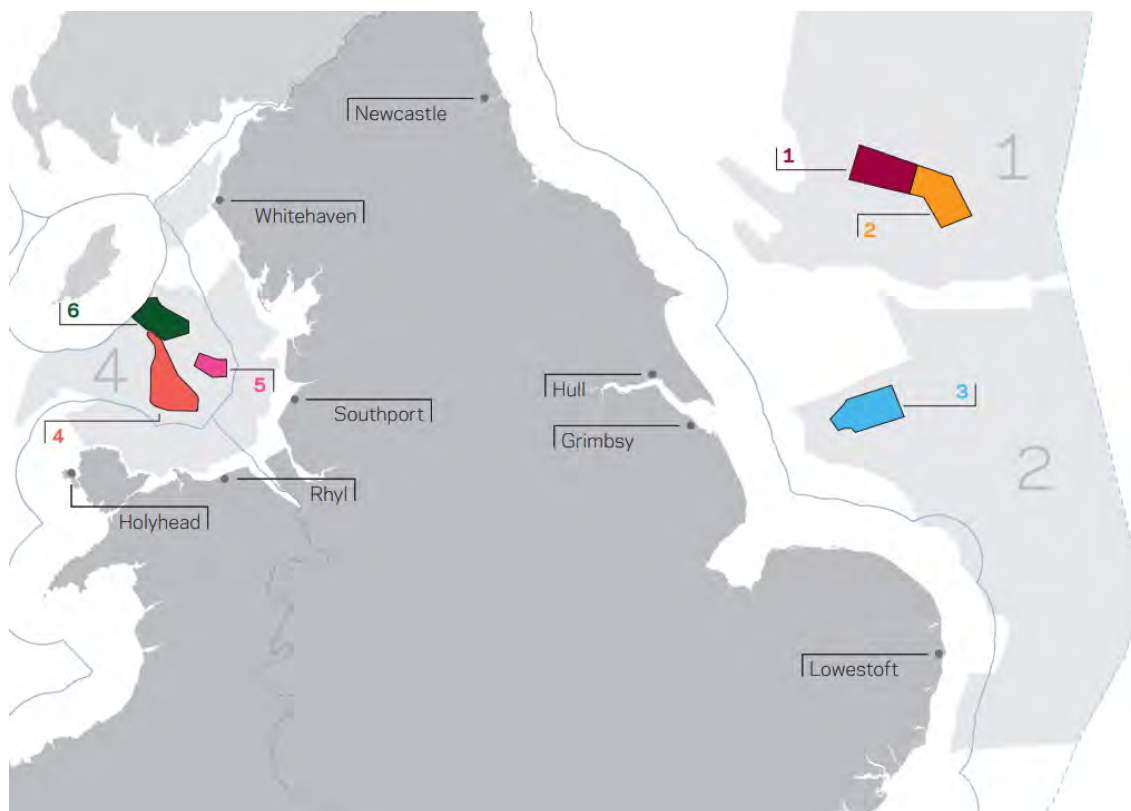
This means, given the previous project development timelines that rUK stands to receive considerable revenue over and above that which will be achieved in Scotland.

Beatrice, Scotland's largest operational offshore wind farm (588 MW) secured seabed in the 2008 round and became fully operational in 2019. They reached consent in 2014 and were then able to take their full seabed lease. It is not a true comparison given the different processes but over that timeline, on the fees quoted above, that could have produced 6 years' worth of fees ranging between £268 million¹ and £543 million². Many projects in Scotland (NNG and SeaGreen Alpha and Bravo) are working over a similar timeframe. This does not account for historical consenting challenges, better scientific data and research etc.

¹ (£76,203 * 588 MW) * 6 = £268,844,184

² (£154,000 * 588 MW) * 6 = £543,312,000

Map



Offshore Wind Leasing Round 4 projects

1	RWE Renewables 1500 MW capacity
2	RWE Renewables 1500 MW capacity
3	Green Investment Group - Total 1500 MW capacity
4	Consortium of EnBW and BP 1500 MW capacity
5	Offshore Wind Limited, a Joint Venture between Cobra Instalaciones y Servicios, S.A. and Flotation Energy plc 480 MW capacity
6	Consortium of EnBW and BP 1500 MW capacity

The four seabed Bidding Areas

1	Dogger Bank	3	South East
2	Eastern Regions	4	Northern Wales & Irish Sea

Centre for Energy Policy Advisory Note on ScotWind Leasing - Addendum March 2021

At the time of writing our previous advice in April 2020, significant uncertainty remained around the market appetite for offshore wind leasing in both Scotland and England and Wales. As noted in our advice – “*the timing and likelihood of the transition from a ‘buyers market’ to a ‘sellers market’ is difficult to judge*” (p.1). We described the ability to effectively gauge market demand as one of the key advantages of the open auction approach being taken forward in Round 4 in England and Wales. The announcement of winning developers in Round 4, where the successful sites have attracted unexpectedly high annual option fees¹, has somewhat fulfilled that role and signals a clear ‘sellers market’ where developers’ ability and desire to bid high to acquire the most attractive sites is now established. High bids may have been driven by an accelerated desire from oil and gas companies in particular to transition into new markets, due to the impact of the coronavirus pandemic, and more generally as a result of the rapidly strengthening ‘net zero’ policy environment being signalled by both UK and Scottish Governments particularly in the last 6 months.

However, without knowing the value and range of unsuccessful bids across all locations in Round 4, it remains difficult to understand the full market picture, most notably for less desirable sites. This is especially true for Scottish sites where the established development hurdles noted in our previous advice remain. BP, who in partnership with EnBW won 2 of 6 development sites, stated in a media response that ‘*location, location, location*’² was the key to ensuring that developments were worth the high option fee and could deliver the expected returns of 8-10%. It therefore remains somewhat uncertain as to whether Scottish sites could attract similarly high option fees (for those able to bid in the current ScotWind process). This is important given that understanding market demand remains one of the key components in considering whether the advantages of an open auction approach would outweigh those associated with a capped auction – as described in our original advice.

However, the desirability of Scottish sites may be higher than previously thought for a number of reasons. One criticism³ of the Round 4 process is that the acreage made available was too limited, which goes some way to explain the unexpectedly high bids. With new emerging market players - notably a number of oil and gas companies - bidding aggressively and securing sites, while some established developers missed out, it is likely that demand for limited leases remains high. Given that ScotWind presents the next opportunity for aspiring developers to enter the UK offshore wind market, some may now consider paying more than once anticipated for attractive sites in Scotland. Sites suitable for floating offshore wind may also remain attractive to oil and gas companies looking to utilise their significant skills and expertise, already well embedded in the Scottish economy, in operating in an offshore environment, and where changes to the CfD process may create more certainty around a route to market.

Given these points, and the magnitude of the annual options fees seen in the winning sites in Round 4, it is likely that the capped auction fees presented in the initial ScotWind offering do indeed underestimate the market value of sites in Scotland. The capped ‘one off’ option fees proposed for ScotWind and the ‘annual’ nature of option fees secured for Round 4 also significantly increase the difference between the cumulative leasing fees to be received in each jurisdiction. If the capped auction approach is to be retained, we recommend that Crown Estate Scotland explore whether the gap between cumulative fees expected in each jurisdiction can be reduced so that the option fees paid in Scotland represent figures closer to the expected market value. Moreover, efforts should be made to further understand the range of fees proposed for unsuccessful bids in Round 4 to aid in this process.

However, as noted in our original advice, one key advantage of the capped auction approach is that it allows the relevant administration to scrutinise development plans while selecting a preferential bidder. We reiterate our recommendation to ensure that life cycle benefits and returns to the Scottish tax payer are maximised. It is also important to note that the commercial viability remains important to all bidders. Thus, further analysis should be undertaken to understand the extent to which increasing option fees may impact the overall commercial viability and competitiveness of projects in Scotland, and, crucially whether increased option fees could lead to a risk of higher consumer energy prices. - Dr Jamie Stewart and Professor Karen Turner, 3rd March 2021

¹ <https://www.thecrownestate.co.uk/en-gb/media-and-insights/news/2021-offshore-wind-leasing-round-4-signals-major-vote-of-confidence-in-the-uk-s-green-economy/>

² <https://www.thetimes.co.uk/article/bp-splashes-out-with-huge-bet-on-wind-farms-in-the-irish-sea-jx508ln6c>

³ <https://renews.biz/66319/orsted-windeurope-issue-round-4-cost-warnings/>

ScotWind Quality meeting - 10/03/21

Attendees

██████████t – MS
██████████ – SG Procurement
██████████ - CES
██████████ – CES
██████████ – CES
██████████ –CES
██████████ - SG

Feedback from ██████████'s review of the ScotWind Overview, Guidance and Offer Documentation.

- Documents contain clear statements of process including an overview of the numerical score model and ranking
- Documents have a high degree of transparency, explaining to bidders re banding, easy for numerical or descriptive statements and judgements involved
- There is a similar (or identical) process for each question, providing consistency of approach
- No obvious unfairness or options for poor practice
- Good issues re clarification and differentiation
- Past case law on procurement notes that unsuccessful bidders usually challenge and in the end it is often judged on the eye of the beholder
- If unsuccessful bidders are unhappy they will need to be clear about where there is unfairness or a rational to their argument

Comments from ██████████

- Scoring for bids would be on 1-3 with only scored of 2 and 3 considered acceptable
- If a competing interest then the bid with the higher option fee would be successful
- If both parties have the same score and the same option fee then it would go on a random allocation (draw lots)
- ██████████ noted that it was good to get this firm view from ██████████ on Quality

Observation from ██████████

- All of the seabed awards until round 4 have assessed quality with the same approach therefore this approach is not unusual
- CES recognise the risks with whatever score is made and indicators can be disclosed therefore it would be more of a qualitative assessment for meaningful selection decisions but recognise the possibility of a challenge coming
- Recognition that R4 has caused this level of scrutiny

T: 0300 244 4000
E: scottish.ministers@gov.scot


Chair, Crown Estate Scotland
Quartermile Two
2nd Floor
2 Lister Square
Edinburgh
EH3 9GL

24 March 2021

I am writing with regard to the position reached by the CES Board following its rapid review of the ScotWind option structure undertaken over the last few weeks. You have concluded that the cap on lease option prices should be raised by a factor of ten.

You will also be introducing a rigorous clawback mechanism to forestall the potential development of a secondary market in seabed options. This is clearly necessary, given the importance of ensuring that a robust process is put in place to address such practices.

Finally, you will be adjusting the Supply Chain Development Statement mechanism to encourage supply chain development which can deliver greater socio-economic benefits to Scotland.

The efforts of the board and CES staff in undertaking this review and arriving at a clear outcome expeditiously are much appreciated.

We are all committed to supporting the growth of a successful offshore wind sector in Scotland. ScotWind is vital to realising our ambitions for achieving up to 11GW of offshore wind capacity by 2030 and thereafter reaching net zero by 2045. In order to minimise the pause in ScotWind you committed to delivering this review by 24 March and I am very grateful to you for adhering to this commitment, enabling the process to be re-activated without undue delay and providing early clarity to ScotWind applicants.

I note that in reaching its position the board has carefully considered achieving best value from both the option fee and all aspects of revenue and capital value over the lifetime of potential projects, including lease payments and an increase in the capital value of the Estate, which will only accrue if offshore projects are successful in being built out.

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You have stressed the importance of maximising the potential for ScotWind to deliver successful projects which contribute to the Government's ambitious Net Zero targets, in which offshore renewable energy has a significant role to play, and to increase offshore renewable energy's socio-economic contribution to Scotland via supply chain development, meeting your wider statutory duty in relation to furthering sustainable development.

In order to fully realise this potential it will be vital for the ScotWind process to conclude by awarding lease options within a timeframe that provides award holders with the best possible opportunity to put their projects forward for the next available Contracts for Difference bidding round. I would therefore ask you to ensure that all steps possible are taken to conclude the ScotWind timeously so as to maximise this opportunity.

ScotWind will play a key role in Scotland's clean, green economic recovery and in achieving Net Zero aspirations. Our shared goal is that ScotWind provides the best possible opportunity to generate offshore wind development in Scotland, leading to the successful completion of the largest number of projects feasible, suitably supported by a strong, resilient and flourishing Scottish supply chain, while seeking to achieve fair market value for Scotland's assets. In doing so it will also provide the platform for further leasing rounds to come in forthcoming years, as Scotland transitions to a new era of clean energy.

To these ends I acknowledge the position you have reached as a result of the rapid review of ScotWind and once again I would like to extend my thanks to the Board and to Crown Estate Scotland's staff for concluding this review timeously, enabling ScotWind to be re-started without further undue delay.

Roseanna Cunningham

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St Andrew's House, Regent Road, Edinburgh EH1 3DG
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