Summary:

This briefing paper:

- outlines the basis which The Crown Estate enters into agreements with developers of offshore renewable energy projects and the process for doing this;
- confirms that The Crown Estate does not issue a lease for a particular activity until a developer has obtained the necessary statutory consents;
- clarifies the difference between the initial rights The Crown Estate awards a developer at the outset of a proposed development, and the lease it may be awarded subsequently; and
- notes The Crown Estate's expectation that, in the process of considering site-specific consenting issues and as part of the statutory consenting process, developers will engage with stakeholders (including the public).[1]

1. The Crown Estate role in the use of the seabed for development of renewable energy generation projects:

The Crown owns or has vested in it the following (together referred to as the **"Marine Estate"**):

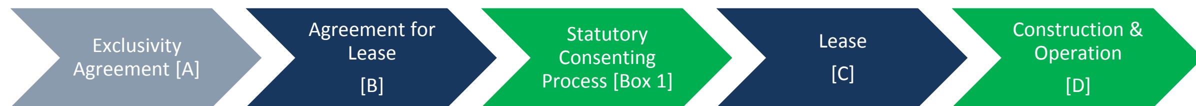
- over 50% of the foreshore of the United Kingdom (being the area between mean low water and mean high water on the coast and tidal waters);
- almost the entirety of the seabed to 12 nautical miles;
- rights to natural resources on the continental shelf (excluding fossil fuels) under the Continental Shelf Act 1964;
- rights to generate electricity from wind, waves and the tides on the continental shelf under the Energy Act 2004; and
- rights to the transportation and storage of natural gas and carbon dioxide on the continental shelf under the Energy Act 2008.

Under the Crown Estate Act 1961, The Crown Estate is entrusted to manage all of the above assets on behalf of the Crown; maintaining and enhancing its value and the return obtained from it. The Marine Estate is managed on a commercial basis in accordance with the principles of good estate management. The Crown Estate is guided in this respect by its core values of commercialism, integrity and stewardship and by its vision for sustainable development and management.

[1] Note to readers: This guideline is provided for information purposes only. It does not constitute advice and The Crown Estate assumes no duty of care or liability whatsoever in its provision and no warranty or representation is made as to its accuracy or completeness. Detailed professional advice should be sought before any decision is made as to the matters covered in this guideline. For the avoidance of doubt, The Crown Estate's provision of this guidance is not part of the statutory consenting process

2. The Crown Estate's commercial agreements through to operation:

Figure 1: Process of The Crown Estate commercial agreements through to development:



The leasing process for renewable energy developments comprises at least two stages. The principle agreements comprise an Agreement for Lease (**"AfL"**); stage B, which provides a conditional right (see below for details of the conditions) for the developer to request a **Lease**, stage C, for a seabed site and/or seabed rights.

In some cases, The Crown Estate includes a further initial stage, in the form of an exclusivity agreement (this would be stage A). The different stages, together with a description of the rights awarded at each stage are defined below:

1) Exclusivity Agreements [A]

An exclusivity agreement is a form of 'reservation' over an area of seabed or over seabed rights. A developer does not gain the ability to carry out a development through an exclusivity agreement, but it does gain a contractual commitment that The Crown Estate will not permit any other developer (of the same technology e.g. offshore wind farms) to use the specified area of seabed or seabed rights for the duration of the exclusivity agreement. The exclusivity agreement will also specify a mechanism under which the developer may exercise an option to call for an AfL, subject to certain milestones (which are a point of negotiation between the developer and The Crown Estate) being achieved.

The Crown Estate may choose to award exclusivity agreements where it is necessary for strategic assessment to be undertaken prior to the development of a series of renewable generation projects or a programme. This was the case in the exclusivity agreements awarded to developers in the "Scottish Territorial Waters" offshore wind programme. These were agreements to provide each developer with exclusivity over a specific area of seabed, following a competitive tender process. This process was subject to the findings of the Strategic Environmental Assessment (**"SEA"**) undertaken by the Scottish Government. Following publication of the Scottish Government's "Sectoral Marine Plan for Offshore Wind Energy in Scottish Territorial Waters" in March 2010, sites were awarded an AfL by The Crown Estate.

The Crown Estate may also choose to award exclusivity agreements where the precise locations of offshore renewable generation projects are yet to be determined. In this case, the agreement provides exclusivity over an area of search. This allows a developer to undertake environmental and engineering studies to identify the most appropriate sites for individual projects, following which a developer may apply to The Crown Estate for an AfL for a defined project.

An example of this is the "Zone Development Agreement" (**"ZDA"**) structure used with developers in the "Round 3" offshore wind programme. In Round 3, nine offshore wind farm "zones" of varying sizes were identified within UK waters to deliver the capacity identified in the UK Offshore Energy SEA. In 2010, offshore wind developers were, under a series of ZDAs, awarded exclusivity in relation to the development of wind farms within the highlighted zones and were also granted an option to receive an AfL from The Crown Estate (subject to approval by The Crown Estate) over identified projects within the zone.

2) Agreement for Lease [B]:

An AfL between The Crown Estate and a developer provides the developer with the following:

- exclusivity over an area of seabed or over seabed rights, together with a restriction over the ability of The Crown Estate to grant rights over the relevant area for other uses (i.e. not just wind farm development – including, for example, rights to run cables and pipelines, or other uses such as natural gas storage);
- an enforceable option right to require The Crown Estate to grant a lease to the developer, subject to certain specified conditions being satisfied;
- temporary rights[2] to undertake ancillary activities in connection with potential development and the developer's statutory consent application(s) (such as surveying work or the deployment of anemometry equipment); and
- rights to call for the addition of an export cable route to the offshore AfL at the appropriate stage in development.

As referenced above, the AfL provides a developer with an enforceable option to call for a lease from The Crown Estate. That option is conditional and one of the key conditions will always be that the <u>developer obtains the necessary statutory consents for the project</u>. If the developer is unable to secure such consents by a specified date, then no lease will be granted for the site and the AfL will expire and terminate.

For offshore renewable energy developments, the AfL usually covers the offshore area where the generation project will be developed, but may not initially include the export cable route. This is because the export cable route is usually defined later in the project development process when a grid connection agreement has been put in place. Therefore, at the appropriate point in project development, an export cable AfL will be granted either to the developer or directly to an Offshore Transmission Owner (**"OFTO"**) (if within the OFTO regime and "OFTO build" is opted for). As set out above, grant of the leases for both the offshore area and the export cable route (which will be a lease of easement) will be contingent on the necessary statutory consents being in place.

An AfL enables a renewable energy developer to have the confidence to invest in the development of a site, knowing that it is protected from other competing interests for the period of the AfL. The developer will undertake all the appropriate technical and environmental studies at a project level

[2] The exercise of temporary rights is itself subject to the developer obtaining the necessary statutory consents for that proposed exercise – for example where the exercise of the temporary rights requires a marine licence from the Marine Management Organisation.

before bringing the project forward for statutory consenting within the planning system. The developer is solely responsible for applications within the statutory consenting process for its project (see 'The Planning Process', Box 1, below) and, in connection with that, to carry out all statutorily required consultation with stakeholders regarding the potential impacts of its specific project – this generally includes consultation with a number of different organisations, and with the general public.

Note: There is no right at this stage for a developer to begin construction or operation of its project. The Crown Estate does not grant rights for the carrying out of any activity within the Marine Estate unless the necessary statutory consents, permissions and agreements required to carry out that activity have been obtained.

3) Lease [C]:

A lease of the seabed or seabed rights is awarded for renewable energy generation developments to a developer. This will be granted once the developer has received the necessary statutory consents from the relevant planning authority (or authorities) and fulfilled all other conditions specified in the AfL. The Crown Estate leases are commercial agreements, which enable the construction and operation of projects for a specified period (for example – 50 years for Round 3 projects). In return for the grant of rights, the developer pays The Crown Estate a commercially negotiated rent.

The lease contains a number of controls and restrictions on the activity of the developer. This includes activities being carried out in accordance with the statutory consents which the developer has been obliged to achieve and in accordance with applicable laws and regulations.

A new lease which The Crown Estate has recently developed and is currently offering to the market for wave and tidal projects is for 'Third Party Managers' of 'Demonstration Zones'. A Demonstration Zone is an area identified by The Crown Estate for the potential testing and demonstration of new technologies. Within each Demonstration Zone, multiple test and/or demonstration projects may occur. The Crown Estate recently (from October 2013) invited organisations to bid to act as Third Party Managers of Demonstration Zones, a role which involves sub-leasing parts of the Demonstration Zone to developers of generation technologies and possibly also undertaking supportive development work (e.g. site surveys or infrastructure development). Projects involving generation technologies within a Demonstration Zone will initially receive 'Agreements for Sublease' from the Third Party Manager (which are similar in structure to the AfLs granted by The Crown Estate (see above)). Any infrastructure which a Third Party Manager/or developer elects to develop within the Demonstration Zone will be subject to their first obtaining the necessary statutory consents.

Box 1: The Planning Process:

In England and Wales, developers will submit applications for development consent for projects over 100MW of generation capacity in size to the Planning Inspectorate. In Scotland, applications for all marine projects are submitted to Marine Scotland (smaller projects in England and Wales would be submitted to the Marine Management Organisation or Natural Resources Wales respectively). These applications will include details on project design, an "Environmental Impact Assessment" where required, and evidence that the developer has undertaken detailed consultation with stakeholders on the project as it progresses.

Any concerns about the impacts of individual projects should be identified during the pre-application consultation, which often forms part of the statutory consenting process. Developers will then show how such concerns have been taken into consideration in the development of the project proposals, and in the preparation of the application.

It is then the role of the relevant planning authority to carry out consultation on the application and determine – by weighing up its benefits and adverse effects – whether a project can be built. Any outstanding concerns at the point of submission of application by the developer may be raised directly with the relevant planning authority as part of the examination process for the application.

The final decision on whether any renewable energy project can be developed rests with the relevant Planning Authority, who will issue a consent (a "Development Consent Order" for major offshore renewable energy projects in England and Wales) if it is satisfied that the project should proceed.

Further information:

Detail of the offshore wind portfolio can be found on The Crown Estate website:
http://www.thecrownestate.co.uk/energy-infrastructure/offshore-wind-energy/our-portfolio/

The Crown Estate's work in wave and tidal (W&T) energy is outlined on our website:
http://www.thecrownestate.co.uk/energy-infrastructure/wave-and-tidal/

For any enquiries on either programme, please email: enquiries@thecrownestate.co.uk