

## **FOI Request 203 – Due Diligence, ScotWind**

### **Request:**

*Further to your response FOI 199 (attached), please tell me:*

#### **Question 1.**

Upon what basis it was determined that requiring project partners\* to provide a “declaration providing written, formal assurance that they have not been convicted of unlawful activity in relation to a range of requirements, including corruption, bribery, fraud and human trafficking, within the last five years” was deemed a sufficient check of partners’ human rights records.

#### **Answer**

Our purpose in asking for Statements of Commitment from all the relevant bodies was to establish at this early stage that the commitments made in their applications, and upon which we are acting in reliance, will be honoured.

While this is not procurement, for this exercise, we referred to procurement statutory guidance as a relevant benchmark (see: [https://www.gov.scot/publications/statutory-guidance-2014-act-updated-june-2021/pages/5/#:~:text=Under%20regulation%2058\(3\),pay%20tax%20or%20social%20security](https://www.gov.scot/publications/statutory-guidance-2014-act-updated-june-2021/pages/5/#:~:text=Under%20regulation%2058(3),pay%20tax%20or%20social%20security))

#### **Question 2.**

Which procurement regulations this FOI response refers to when stating, “This is also consistent with Scottish Government’s procurement regulations.”

#### **Answer**

The procurement statutory guidance referred to includes Section 5.4.1. ‘Grounds for the exclusion of economic operators.’ [https://www.gov.scot/publications/statutory-guidance-2014-act-updated-june-2021/pages/5/#:~:text=Under%20regulation%2058\(3\),pay%20tax%20or%20social%20security](https://www.gov.scot/publications/statutory-guidance-2014-act-updated-june-2021/pages/5/#:~:text=Under%20regulation%2058(3),pay%20tax%20or%20social%20security)

#### **Question 3.**

Whether the Crown Estate will be providing any further checks upon or investigations into project partners to determine whether false information has been provided in these declarations, which the FOI response notes would be a basis for the Crown Estate “to void any application or agreement”

#### **Answer**

Further checks will be conducted if new and relevant information comes to light. We will also require applicants to provide updated statements of commitment prior to securing a full seabed lease. Applicants are also required to disclose to Crown Estate Scotland if at any time the company/organisation or any office holder or person with powers of representation, decision or

control within the company/organisation is convicted of an offence under replacement/amendment legislation to that listed in Appendix 1. (page 49, Guidance notes)

Only those companies that provided such assurances as part of their initial application were allowed to proceed in the ScotWind leasing. The ScotWind terms and conditions make clear that CES reserve the right to void any application or agreement if false information is found to have been provided, and CES will not hesitate to take the appropriate action if needed.

#### **Question 4**

Further to your response FOI 199 (attached), please tell me whether it was (a) the Crown Estate, (b) the Scottish Government or (c) any other body that decided upon or recommended the period of five years for the review. Please provide all documentation supporting the decision to choose the period of five years and any other time periods considered.

#### **Answer**

While this is not procurement, for this exercise, we referred to procurement statutory guidance as a relevant benchmark to inform our process. See [https://www.gov.scot/publications/statutory-guidance-2014-act-updated-june-2021/pages/5/#:~:text=Under%20regulation%2058\(3\)\(,pay%20tax%20or%20social%20security](https://www.gov.scot/publications/statutory-guidance-2014-act-updated-june-2021/pages/5/#:~:text=Under%20regulation%2058(3)(,pay%20tax%20or%20social%20security)

#### **Question 5**

Confirm whether the Crown Estate has maintained a record of checks carried out on Scotwind project partners\*, in line with the requirements detailed in the Scottish Government publication, Guidance on due diligence: human rights. \*\*

#### **Answer**

The approach taken to checks regarding human rights is as per our original response on February 15 2022. We have records of assurance documentation.

#### **Question 6**

Provide a complete copy of the record of checks carried out on Scotwind project partners.

#### **Answer**

We are not able to share assurance documentation. P49 of the ScotWind Leasing Guidance Notes indicates the type of information applicants had to submit.

The assurance documents contain a record of the checks carried out on ScotWind applicants. These are exempt from disclosure under Section 33(1)(b) of the Freedom of Information (Scotland) Act 2002. This exemption allows public authorities to refuse to disclose information if the disclosure would, or would be likely to, prejudice substantially the commercial interests of any person.

“Person” includes a public authority, company, and partnership.

Crown Estate Scotland is negotiating the signing of option agreements with the successful ScotWind applicants. The assurance documents are exempt from disclosure under Section 33(1)(b) as the release of this information would be likely to prejudice substantially the commercial interests of Crown Estate Scotland.

It is in the public interest to maintain this exemption as the release of this information could impact upon the willingness of organisations to provide Crown Estate Scotland with information. This would in turn impact upon Crown Estate Scotland’s ability to generate long-lasting value for Scotland.

### **Question 7**

What initial checks were undertaken into Scotwind project partners\*, in line with requirements in the Scottish Government publication, Guidance on due diligence: human rights, that “Initial checking should take place at the outset of the engagement, prior to any formal meeting or discussion.”

### **Answer**

While this is not procurement, for this exercise Crown Estate Scotland referred to the Scottish Government procurement statutory guidance as a relevant benchmark to inform our process. See: [https://www.gov.scot/publications/statutory-guidance-2014-act-updated-june-2021/pages/5/#:~:text=Under%20regulation%2058\(3\)\(,pay%20tax%20or%20social%20security](https://www.gov.scot/publications/statutory-guidance-2014-act-updated-june-2021/pages/5/#:~:text=Under%20regulation%2058(3)(,pay%20tax%20or%20social%20security)

### **Question 8**

The determinations or findings of any initial checks into Scotwind project partners.

### **Answer**

All applicants who have been offered option agreements have provided appropriate assurance.

### **Question 9**

Whether the Crown Estate, in line with the publication, Guidance on due diligence: human rights, conducted checks into any of the following regarding Scotwind project partners:

- a) “governance and internal control systems of the potential investor - does the organisation have policies or mechanisms in place that address its human rights obligations, e.g. through ethics, equalities or corporate social responsibility committees or programmes? Have steps been taken to improve its record and/or provide redress for any prior human rights issues?
- b) “ability to deliver – has the organisation a track record of delivering similar projects or investments of the type, size and complexity of the one proposed? Does it have staff and resources with both capacity and capabilities to deliver? Does it have a previous record of working successfully with Governments and agencies etc?
- c) “financial stability – can the organisation or investor provide assurance on financial viability? Does it have any past record of financial wrongdoing, for example bribery or

corruption? Are financial controls in place and are operating effectively? Does it have a robust internal or external audit function?

d) “downstream delivery - is there evidence that the organisation carries out its own due diligence checking on its partners, joint ventures, subsidiaries etc? How does it monitor, evaluate and control the risk of existing projects? Is there a record of any human rights concerns of any subsidiary or partner organisation?”

**Answer**

Applicants were required to provide assurance on a number of criteria. These can be found on page 49 of our ScotWind Leasing Guidance which has been attached for your information.

**Question 10**

The determinations or findings of any such checks into Scotwind project partners.

**Answer**

All applicants who have been offered option agreements have provided appropriate assurance.

\*For clarity, ‘project partners’ refers to the following organisations:

<https://www.crownstatescotland.com/resources/documents/scotwind-list-of-successful-project-partners-170122>

\*\* For clarity, this request refers to the requirement that a record be maintained of all the checks undertaken as part of the required due diligence, as laid out in the section of the document titled “The need to record the due diligence undertaken”