

EXPLANATORY MEMORANDUM TO
THE RENEWABLES OBLIGATION CLOSURE ETC. (AMENDMENT)

ORDER 2016

2016 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The instrument provides for the closure of the renewables obligation to solar pv generating stations, where the generating capacity of the station is below or equal to 5 megawatts ('MW') in size ("small solar pv stations"). The 5MW threshold does not include additional capacity added to the station after 31st March 2014 if the additional capacity has not been registered under the renewables obligation scheme. The instrument makes a number of exceptions to the closure, for existing generating capacity and for new generating capacity meeting the criteria set out in the instrument. The exceptions for new generating capacity are sometimes known as grace periods.
- 2.2 The instrument also amends article 91 of the Renewables Obligation Order 2015¹ (registration of offshore wind turbines) to permit an application for registration of offshore wind turbines until 31st March 2018 in circumstances where an exception from the closure under the Renewables Obligation Closure Order 2014² ("the Closure Order") applies.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 An application for judicial review was dismissed against the closure of the renewables obligation to large solar pv stations (above 5MW)³ in size in *Solar Century Holdings Limited v Secretary of State for Energy & Climate Change* [2014] EWHC 3677 (Admin). This judgment is subject to an appeal.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland except for the provisions which amend the Renewables Obligation Order 2015, which apply to England and Wales only.

¹ S.I. 2015/1947 revoked the Renewables Obligation Order 2009 (S.I. 2009/785).

² S.I. 2014/2388 as amended by the Renewables Obligation Closure (Amendment) Order 2015 S.I. 2015/920

³ <http://www.legislation.gov.uk/ukxi/2015/920/contents/made>

4. Legislative Context

- 4.1 The renewables obligation (“RO”) is an obligation imposed on licensed electricity suppliers. Suppliers must produce, by a specified day, a certain number of renewables obligation certificates (“ROCs”) in respect of each megawatt hour of electricity that each supplies to customers in Great Britain during a specified period known as an obligation period. The RO is administered by the Gas and Electricity Markets Authority (“the Authority”) who issue ROCs to renewable electricity generators in respect of their eligible renewable output.
- 4.2 The RO is provided for in relation to England & Wales by the Renewables Obligation Order 2015 which is made by the Secretary of State, and in relation to Scotland by the Renewables Obligation (Scotland) Order 2009⁴ which is made by the Scottish Ministers. There is also a renewables obligation in Northern Ireland, which is provided by the Renewables Obligation Order (Northern Ireland) 2009⁵ made by the Northern Ireland Department of Enterprise, Trade & Investment. These complementary renewables obligation orders together in effect create a UK wide renewables obligation.
- 4.3 Article 3 of the instrument inserts article 2E into the Closure Order, which prevents ROCs from being issued in respect of electricity generated by small scale solar pv stations after the small solar pv closure date. There are a number of exceptions in article 2F (for the original capacity of small solar pv stations) and in articles 2G and 2H (for additional generating capacity at small solar pv stations). It is possible that more than one of the exceptions may apply, in which case any one of them may be satisfied.
- 4.4 The new article 2F ensures ROCs can continue to be issued for electricity generated by the original capacity of stations accredited by the early closure date. It also provides:
- a grace period for stations granted preliminary accreditation by 22nd July 2015,
 - a grace period for stations whose commissioning is delayed until after 31st March 2016 due to certain grid delays,
 - a grace period designed to protect significant financial commitments in new stations made on or before 22nd July 2015.
- 4.5 The new article 2G provides a grace period designed to protect significant financial commitments in additional capacity added after the closure date to stations that were accredited on or before 22nd July 2015.
- 4.6 The new article 2H ensures ROCs can continue to be issued for electricity generated by additional capacity added to stations before the early closure date. It also provides a grace period where additional capacity is delayed in being added to the station due to certain grid delays.
- 4.7 The small solar pv closure date is intended to be 31st March 2016, but if the instrument is not made by this date, the closure date will be the last day of the month in which the instrument comes into force.

⁴ S.S.I. 2009/140.

⁵ S.R. 2009/154.

- 4.8 The Closure Order does not set the final end date of the RO after which no ROCs may be issued to any generating station. As a result of article 44(1) of the Renewables Obligation Order 2015⁶, it is already the case that in England & Wales, no ROCs can be issued in respect of electricity generated after 31st March 2037. Article 17A of the Renewables Obligation (Scotland) Order 2009 (as inserted by S.S.I. 2010/147) makes similar provision for Scotland.
- 4.9 Article 5 amends article 91 of the Renewables Obligation Order 2015 (registration of offshore wind turbines) and removes an inconsistency between the Closure Order and the Renewables Obligation Order 2015 to make it clear that when one of the exceptions in the Closure Order applies to an offshore wind station, an application to the Authority for registration of offshore wind turbines may be made until 31st March 2018. This is a technical amendment and is not implementing new policy.
- 4.10 State Aid approval for the RO was given in 2009 (case N414/2008) and most recently in 2013 (case SA.35565 (2013/N)). This instrument does not make any changes that affect the state aid approval.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales and Scotland, except for the provisions which amend the Renewables Obligation Order 2015 which extend to England and Wales only.
- 5.2 The territorial application of this instrument is England and Wales and Scotland, except for the provisions which amend the Renewables Obligation Order 2015 which extend to England and Wales only.
- 5.3 Any legislation for closure of the RO in Northern Ireland would be made by the Northern Ireland Department of Enterprise, Trade & Investment.

6. European Convention on Human Rights

- 6.1 Andrea Leadsom, Minister of State for the Department of Energy and Climate Change has made the following statement regarding Human Rights:
- “In my view the provisions of the Renewables Obligation Closure Etc. (Amendment) Order 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The RO was closed early to large scale solar pv stations (above 5MW) on 1st April 2015 due to large solar pv stations deploying more rapidly than previously estimated and the need to control the costs of large solar pv in order to ensure it was affordable within the Levy Control Framework (LCF).⁷ This was in the context of the Government’s objectives for long-term decarbonisation of electricity and security of

⁶ Article 44(1) of the Renewables Obligation Order 2015 replicates article 17(1) of the Renewables Obligation Order 2009 (as inserted by article 8 of S.I. 2010/1107)

⁷ The Levy Control Framework places limits on the aggregate amount levied from consumers by energy suppliers to implement Government policy. Further detail can be found in Control Framework for DECC Levy-Funded Spending: Questions and Answers, 2011. URN 11D/675. Available at: <https://www.gov.uk/government/publications/control-framework-for-decc-levy-funded-spending-questions-and-answers>

supply at the least cost to consumers. Information available at the time suggested that projects of 5MW and below formed a relatively small part of the expected future solar pv deployment under the RO, with the rate of deployment of these smaller solar pv projects posing a lower risk to the LCF. However, DECC⁸ confirmed that we would consider taking measures to protect the LCF if monitoring indicated that deployment of projects at 5MW and below was growing more rapidly than expected under LCF projections. Current estimates now suggest significantly more potential deployment and as part of wider action to control LCF costs, we are closing the RO early to these smaller scale solar pv stations.

- 7.2 A grace period has been designed to protect existing significant financial commitments made in small solar pv projects on or before 22 July 2015, the date on which the consultation on the early closure of the RO to small solar pv stations⁹ began. There is also a grace period designed to protect projects against the risk of missing the early closure date due to delays in getting connected to the electricity grid, where the delays in completing the grid works were not due to breaches by the developer.
- 7.3 Most powers for the RO in Scotland are executively devolved to Scottish Ministers. However, the power to make a Renewables Obligation Closure Order is not executively devolved and the Government considers it is appropriate for the closure of the RO to small solar pv stations to be implemented on a consistent basis across Great Britain as a whole.

Consolidation

- 7.4 This is the second amending instrument to the Renewables Obligation Closure Order 2014. No consolidation of the Closure Order is planned at this time.

8. Consultation outcome

- 8.1 The Government carried out a public consultation on the early closure of the RO to small solar pv stations, which ran for 6 weeks from 22nd July to 2nd September 2015. The consultation also proposed the removal of grandfathering for small solar pv stations (a fixed level of support for the full lifetime of a generating station's eligibility under the RO, from the point of accreditation) and holding a solar specific banding review. These issues are not implemented through this instrument.
- 8.2 The government received 94 responses to the consultation. A majority of respondents was opposed to the small solar pv closure but believed that if implemented the grace periods should be consistent with those provided for the large solar pv closure. Responses mentioned repercussions for investor confidence, and some developers - notably small and medium-sized enterprises including community and civic projects - anticipated increased financial risks and potential losses from having already invested in developing project pipelines.
- 8.3 Having reviewed the evidence in light of the consultation responses, the Government's assessment remained that there is significantly more potential deployment of small solar pv projects than previously estimated so as to require

⁸https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360280/Government_response_RO-FIT_changes_to_Solar_PV_-_FINAL_2014-10-02.pdf

⁹<https://www.gov.uk/government/consultations/changes-to-financial-support-for-solar-pv>

action to control costs within the LCF. This instrument implements the decisions set out in the Government response relating to closure of the RO to small solar pv. This includes a clarification to the planning application evidence that has to be provided in order to benefit from the significant financial commitments grace period to ensure that it fulfils certain requirements of the planning legislation in England, Wales and Scotland.

8.4 Details are set out in the Government response published on 17th December 2015.¹⁰

9. Guidance

9.1 The Authority, as administrators of the RO, intends to publish draft guidance on the grace periods for informal consultation. A final version of the guidance will then be made available once this instrument comes into force.

10. Impact

10.1 The impact on business, charities, or voluntary bodies is in relation to investment decisions on small scale solar pv projects. In some cases where there is uncertainty as to whether the project will be able to commission before the early closure date, it may lead the project to seek alternative means of support or not proceed. In other cases, the grace periods will give greater confidence that the project will be able to accredit under the RO even if it commissions after the early closure date, thereby enabling the project to proceed.

10.2 The impact on the public sector is also in relation to investment decisions on small scale solar pv projects. There is also a small additional burden on the Authority, in administering the grace periods. The Authority is able to recover its costs of administering the RO from the buy-out fund, which is a fund made up of payments by electricity suppliers for any shortfall in the number of ROCs they submit.

10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the criteria for the grace periods rely on evidence that should be straightforward to provide or that smaller projects would already require for other purposes.

11.3 The basis for the final decision on what action to take to assist small businesses was examination of the relevant consultation responses.

12. Monitoring & review

12.1 The Government will monitor the operation of the grace periods to inform the development of any other similar arrangements in future. Success measures will include: straightforward, low-cost operation and administration for both those projects seeking to benefit from a grace period and the Authority.

¹⁰https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486091/20151216_Small_scale_solar_PV_government_response_FINAL.pdf

13. Contact

- 13.1 Chris Barrett at the Department of Energy and Climate Change Tel: 0300 068 8374 or email: chris.barrett@decc.gsi.gov.uk can answer any queries regarding the instrument.