Energy Act 2016

2016 CHAPTER 20

PART 5

WIND POWER

Renewables obligation

79 Onshore wind power: closure of renewables obligation

(1) In Part 1 of the Electricity Act 1989 (electricity supply), after section 32LB insert—

"**32LC Onshore wind generating stations: closure of renewables obligation**

(1) No renewables obligation certificates are to be issued under a renewables obligation order in respect of electricity generated after the onshore wind closure date by an onshore wind generating station.

(2) Subsection (1) does not apply to electricity generated in the circumstances set out in any one or more of sections 32LD to 32LL.

(3) In this section and sections 32LD to 32LL—

"the onshore wind closure date" means the date on which the Energy Act 2016 is passed;

"onshore wind generating station" means a generating station that—

(a) generates electricity from wind, and

(b) is situated in England, Wales or Scotland, but not in waters in or adjacent to England, Wales or Scotland up to the seaward limits of the territorial sea.

(4) The reference in subsection (1) to a renewables obligation order is to any renewables obligation order made under section 32 (whenever made, and whether or not made by the Secretary of State).

(5) Power to make provision in a renewables obligation order or a renewables obligation closure order (and any provision contained in such an order) is subject to subsection (1) and sections 32LD to 32LL.

(6) This section is not otherwise to be taken as affecting power to make provision in a renewables obligation order or renewables obligation closure order."

(2) The Renewables Obligation Closure Order 2014 (S.I. 2014/2388) is amended as follows.

(3) In article 2(1) (interpretation), after the definition of "network operator" insert—

""onshore wind generating station" means a generating station that—

(a) generates electricity from wind, and

(b) is situated in England, Wales or Scotland, but not in waters in or adjacent to England, Wales or Scotland up to the seaward limits of the territorial sea;".

(4) In article 3 (closure of renewables obligation on 31st March 2017)—

(a) in the heading, after "solar pv stations" insert "or onshore wind generating stations";

(b) in paragraph (1), after "solar pv station" insert "or an onshore wind generating station".

80 Onshore wind power: circumstances in which certificates may be issued after the onshore wind closure date

(1) Part 1 of the Electricity Act 1989 (electricity supply) is amended as follows.

(2) After section 32LC (inserted by section 79 of this Act) insert—

"**32LD Onshore wind generating stations accredited, or additional capacity added, on or before the onshore wind closure date**

The circumstances set out in this section are where the electricity is—

(a) generated by an onshore wind generating station which was accredited on or before the onshore wind closure date, and

(b) generated using—

(i) the original capacity of the station, or

(ii) additional capacity which in the Authority's view first formed part of the station on or before the onshore wind closure date.

32LE Onshore wind generating stations accredited, or additional capacity added, in the year after the onshore wind closure date: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning immediately after the onshore wind closure date and ending

with the first anniversary of the onshore wind closure date, and

(ii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before the onshore wind closure date,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning immediately after the onshore wind closure date and ending with the first anniversary of the onshore wind closure date, and

(iii) the grid or radar delay condition is met in respect of the additional capacity.

32LF Onshore wind generating stations accredited, or additional capacity added, on or before 31 March 2017: approved development condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited on or before 31 March 2017, and

(ii) in respect of which the approved development condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before the onshore wind closure date,

(ii) in the Authority's view, the additional capacity first formed part of the station on or before 31 March 2017, and

(iii) the approved development condition is met in respect of the additional capacity.

32LG Onshore wind generating stations accredited, or additional capacity added, between 1 April 2017 and 31 March 2018: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 April 2017 and ending with 31 March 2018,

(ii) in respect of which the approved development condition is met, and

(iii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before the onshore wind closure date,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2017 and ending with 31 March 2018,

(iii) the approved development condition is met in respect of the additional capacity, and

(iv) the grid or radar delay condition is met in respect of the additional capacity.

32LH Onshore wind generating stations accredited, or additional capacity added, between 1 April 2017 and 31 January 2018: investment freezing condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 April 2017 and ending with 31 January 2018, and

(ii) in respect of which both the approved development condition and the investment freezing condition are met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before the onshore wind closure date,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2017 and ending with 31 January 2018, and

(iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity.

32LI Onshore wind generating stations accredited, or additional capacity added, between 1 February 2018 and 31 January 2019: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 February 2018 and ending with 31 January 2019,

(ii) in respect of which both the approved development condition and the investment freezing condition are met, and

(iii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before the onshore wind closure date,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 February 2018 and ending with 31 January 2019,

(iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity, and

(iv) the grid or radar delay condition is met in respect of the additional capacity.

32LJ The approved development condition

(1) This section applies for the purposes of sections 32LF to 32LI.

(2) The approved development condition is met in respect of an onshore wind generating station if the documents specified in subsections (4), (5) and (6) were provided to the Authority with the application for accreditation of the station.

(3) The approved development condition is met in respect of additional capacity if the documents specified in subsections (4), (5) and (6) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station.

(4) The documents specified in this subsection are—

(a) evidence that—

(i) planning permission for the station or additional capacity was granted on or before 18 June 2015, and

(ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,

(b) evidence that—

(i) planning permission for the station or additional capacity was refused on or before 18 June 2015, but granted after that date following an appeal or judicial review, and

(ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,

(c) evidence that—

(i) an application for 1990 Act permission or 1997 Act permission was made on or before 18 June 2015 for the station or additional capacity,

(ii) the period allowed under section 78(2) of the 1990 Act or (as the case may be) section 47(2) of the 1997 Act ended on or before 18 June 2015 without any of the things mentioned in section 78(2)(a) to (b) of the 1990 Act or section 47(2)(a) to (c) of the 1997 Act being done in respect of the application,

(iii) the application was not referred to the Secretary of State, Welsh Ministers or Scottish Ministers in accordance with directions given under section 77 of the 1990 Act or section 46 of the 1997 Act,

(iv) 1990 Act permission or 1997 Act permission was granted after 18 June 2015 following an appeal, and

(v) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached, or

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, planning permission is not required for the station or additional capacity.

(5) The documents specified in this subsection are—

(a) a copy of an offer from a licensed network operator made on or before 18 June 2015 to carry out grid works in relation to the station or additional capacity, and evidence that the offer was accepted on or before that date (whether or not the acceptance was subject to any conditions or other terms), or

(b) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, no grid works were required to be carried out by a licensed network operator in order to enable the station to be commissioned or the additional capacity to form part of the station.

(6) The documents specified in this subsection are a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at 18 June 2015 a relevant developer of the station or additional capacity (or a person connected, within the meaning of section 1122 of the Corporation Tax Act 2010, with a relevant developer of the station or additional capacity)—

(a) was an owner or lessee of the land on which the station or additional capacity is situated,

(b) had entered into an agreement to purchase or lease the land on which the station or additional capacity is situated,

(c) had an option to purchase or to lease the land on which the station or additional capacity is situated, or

(d) was a party to an exclusivity agreement in relation to the land on which the station or additional capacity is situated.

(7) In this section—

"the 1990 Act" means the Town and Country Planning Act 1990;

"1990 Act permission" means planning permission under the 1990 Act (except outline planning permission, within the meaning of section 92 of that Act);

"the 1997 Act" means the Town and Country Planning (Scotland) Act 1997;

"1997 Act permission" means planning permission under the 1997 Act (except planning permission in principle, within the meaning of section 59 of that Act);

"exclusivity agreement", in relation to land, means an agreement by the owner or a lessee of the land not to permit any person (other than the persons identified in the agreement) to construct an onshore wind generating station on the land;

"planning permission" means—

(a) consent under section 36 of this Act,

(b) 1990 Act permission,

(c) 1997 Act permission, or

(d) development consent under the Planning Act 2008.

32LK The investment freezing condition

(1) This section applies for the purposes of sections 32LH and 32LI.

(2) The investment freezing condition is met in respect of an onshore wind generating station if the documents specified in subsection (4) were provided to the Authority with the application for accreditation of the station.

(3) The investment freezing condition is met in respect of additional capacity if the documents specified in subsection (4) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station.

(4) The documents specified in this subsection are—

(a) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at the Royal Assent date—

(i) the relevant developer required funding from a recognised lender before the station could be commissioned or additional capacity could form part of the station,

(ii) a recognised lender was not prepared to provide that funding until enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted or its wording if enacted, and

(iii) the station would have been commissioned, or the additional capacity would have formed part of the station, on or before 31 March 2017 if the funding had been provided before the Royal Assent date, and

(b) a letter or other document, dated on or before the date which is 28 days after the Royal Assent date, from a recognised lender confirming (whether or not the confirmation is subject to any conditions or other terms) that the lender was not prepared to provide funding in respect of the station or additional capacity until enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted or its wording if enacted.

(5) In this section—

"recognised lender" means a provider of debt finance which has been issued with an investment grade credit rating by a registered credit rating agency;

"the Royal Assent date" means the date on which the Energy Act 2016 is passed.

(6) For the purposes of the definition of "recognised lender" in subsection (5)—

"investment grade credit rating" means a credit rating commonly understood by registered credit rating agencies to be investment grade;

"registered credit rating agency" means a credit rating agency registered in accordance with Regulation (EC) No 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies.

32LL The grid or radar delay condition

(1) This section applies for the purposes of sections 32LE, 32LG and 32LI.

(2) The grid or radar delay condition is met in respect of an onshore wind generating station if, on or before the date on which the Authority made its decision to accredit the station, the documents specified in subsection (4), (5) or (6) were—

(a) submitted by the operator of the station, and

(b) received by the Authority.

(3) The grid or radar delay condition is met in respect of additional capacity if, on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station, the documents specified in subsection (4), (5) or (6) were—

(a) submitted by the operator of the station, and

(b) received by the Authority.

(4) The documents specified in this subsection are—

(a) evidence of an agreement with a network operator ("the relevant network operator") to carry out grid works in relation to the station or additional capacity ("the relevant grid works");

(b) a copy of a document written by, or on behalf of, the relevant network operator which estimated or set a date for completion of the relevant grid works ("the planned grid works completion date") which was no later than the primary date;

(c) a letter from the relevant network operator confirming (whether or not such confirmation is subject to any conditions or other terms) that—

(i) the relevant grid works were completed after the planned grid works completion date, and

(ii) in the relevant network operator's opinion, the failure to complete the relevant grid works on or before the planned grid works completion date was not due to any breach by a generating station developer of any agreement with the relevant network operator; and

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant grid works had been completed on or before the planned grid works completion date.

(5) The documents specified in this subsection are—

(a) evidence of an agreement between a generating station developer and a person who is not a generating station developer ("the radar works agreement") for the carrying out of radar works ("the relevant radar works");

(b) a copy of a document written by, or on behalf of, a party to the radar works agreement (other than a generating station developer) which estimated or set a date for completion of the relevant radar works ("the planned radar works completion date") which was no later than the primary date;

(c) a letter from a party to the radar works agreement (other than a generating station developer) confirming, whether or not such confirmation is subject to any conditions or other terms, that—

(i) the relevant radar works were completed after the planned radar works completion date, and

(ii) in that party's opinion, the failure to complete the relevant radar works on or before the planned radar works completion date was not due to any breach of the radar works agreement by a generating station developer; and

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant radar works had been completed on or before the planned radar works completion date.

(6) The documents specified in this subsection are—

(a) the documents specified in subsection (4)(a), (b) and (c);

(b) the documents specified in subsection (5)(a), (b) and (c); and

(c) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if—

(i) the relevant grid works had been completed on or before the planned grid works completion date, and

(ii) the relevant radar works had been completed on or before the planned radar works completion date.

(7) In this section "the primary date" means—

(a) in a case within section 32LE(a)(i) or (b)(i) and (ii), the onshore wind closure date;

(b) in a case within section 32LG(a)(i) and (ii) or (b)(i) to (iii), 31 March 2017;

(c) in a case within section 32LI(a)(i) and (ii) or (b)(i) to (iii), 31 January 2018."

(3) In section 32M (interpretation of sections 32 to 32M)—

(a) in subsection (1), for "32LB" substitute "32LL";

(b) at the appropriate places insert the following definitions—

""accredited", in relation to an onshore wind generating station, means accredited by the Authority as a generating station which is capable of generating electricity from renewable sources; and "accredit" and "accreditation" are to be construed accordingly;";

""additional capacity", in relation to an onshore wind generating station, means any generating capacity which does not form part of the original capacity of the station;";

""commissioned", in relation to an onshore wind generating station, means having completed such procedures and tests in relation to the station as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of generating station in order to demonstrate that it is capable of commercial operation;";

““generating station developer”, in relation to an onshore wind generating station or additional capacity, means—

(a) the operator of the station, or

(b) a person who arranged for the construction of the station or additional capacity;”;

““grid works”, in relation to an onshore wind generating station, means—

(a) the construction of a connection between the station and a transmission or distribution system for the purpose of enabling electricity to be conveyed from the station to the system, or

(b) the carrying out of modifications to a connection between the station and a transmission or distribution system for the purpose of enabling an increase in the amount of electricity that can be conveyed over that connection from the station to the system;”;

““licensed network operator” means a distribution licence holder or a transmission licence holder;”;

““network operator” means a distribution exemption holder, a distribution licence holder or a transmission licence holder;”;

““the onshore wind closure date” has the meaning given by section 32LC(3);”;

““onshore wind generating station” has the meaning given by section 32LC(3);”;

““original capacity”, in relation to an onshore wind generating station, means the generating capacity of the station as accredited;”;

““radar works” means—

(a) the construction of a radar station,

(b) the installation of radar equipment,

(c) the carrying out of modifications to a radar station or radar equipment, or

(d) the testing of a radar station or radar equipment;”;

““relevant developer”, in relation to an onshore wind generating station or additional capacity, means a person who—

(a) applied for planning permission for the station or additional capacity,

(b) arranged for grid works to be carried out in relation to the station or additional capacity,

(c) arranged for the construction of any part of the station or additional capacity,

(d) constructed any part of the station or additional capacity, or

(e) operates, or proposes to operate, the station;”.

81 Onshore wind power: use of Northern Ireland certificates

(1) The Electricity Act 1989 is amended as follows.

(2) Before section 32M insert—

"**32LM Use of Northern Ireland certificates: onshore wind power**

(1) The Secretary of State may make regulations providing that an electricity supplier may not discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a relevant Northern Ireland certificate, except in the circumstances, and to the extent, specified in the regulations.

(2) A "relevant Northern Ireland certificate" is a Northern Ireland certificate issued in respect of electricity generated after the onshore wind closure date (or any later date specified in the regulations)—

(a) using the original capacity of a Northern Ireland onshore wind generating station accredited after the onshore wind closure date (or any later date so specified), or

(b) using additional capacity of a Northern Ireland onshore wind generating station, where in the Authority's view the additional capacity first formed part of the station after the onshore wind closure date (or any later date so specified).

(3) In this section—

"NIRO Order" means any order made under Articles 52 to 55F of the Energy (Northern Ireland) Order 2003;

"Northern Ireland certificate" means a renewables obligation certificate issued by the Northern Ireland authority under the Energy (Northern Ireland) Order 2003 and pursuant to a NIRO Order;

"Northern Ireland onshore wind generating station" means a generating station that—

(a) generates electricity from wind, and

(b) is situated in Northern Ireland, but not in waters in or adjacent to Northern Ireland up to the seaward limits of the territorial sea.

(4) Power to make provision in a renewables obligation order by virtue of section 32F (and any provision contained in such an order) is subject to provision contained in regulations under this section.

(5) This section is not otherwise to be taken as affecting power to make provision in a renewables obligation order.

(6) Regulations under this section may amend a renewables obligation order.

(7) Section 32K applies in relation to regulations under this section as it applies in relation to a renewables obligation order."

(3) In section 32M (interpretation)—

(a) in subsection (1), for "32LB" substitute "32LM";

(b) in subsection (7), for "32L" substitute "32LM".