

DRAFT STATUTORY INSTRUMENTS

2015 No.

ELECTRICITY

The Renewables Obligation Closure (Amendment) Order 2015

Made - - - - *****

Coming into force in accordance with article 1

This Order is made by the Secretary of State in exercise of the powers conferred by sections 32K and 32LA of the Electricity Act 1989(a).

The Secretary of State has consulted the Gas and Electricity Markets Authority(b) and such generators of electricity from renewable sources and other persons as the Secretary of State considered appropriate in accordance with section 32LB(1) of the Electricity Act 1989(c).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Renewables Obligation Closure (Amendment) Order 2015 and comes into force on the day after the day on which it is made.

(2) In this Order, “the Closure Order” means the Renewables Obligation Closure Order 2014(d).

Amendments to article 2 of the Closure Order (interpretation)

2.—(1) Article 2 of the Closure Order is amended as follows.

(2) In paragraph (1)—

(a) at the appropriate places insert—

““additional capacity”, in relation to a large solar pv station, means any generating capacity which does not form part of the original capacity of the station;”;

““developer”, in relation to a large solar pv station, means a person who—

(a) constructed any part of the station,

(b) operates, or proposes to operate, the station, or

(c) arranged for the construction of any part of the station;”;

(a) 1989 c.29. Section 32K was inserted by section 37 of the Energy Act 2008 (c.32). Section 32LA was inserted by section 55(1) of the Energy Act 2013 (c.32).

(b) Section 32LB(1) of the Electricity Act 1989 refers to “the Authority”, this is defined in section 111(1) as inserted by paragraph 40(a) of Schedule 6 to the Utilities Act 2000 (c.27).

(c) Section 32LB was inserted by section 55(1) of the Energy Act 2013. Section 32LB(1) refers to “the Council”, this was defined in section 111(1) of the Electricity Act 1989, as substituted by section 30(4)(b) of the Consumers, Estate Agents and Redress Act 2007 (c.17) as the National Consumer Council. This definition was omitted by paragraph 5(20)(b) of Schedule 1 to S.I. 2014/631, with effect from 1st April 2014. Article 2 of S.I. 2014/631 abolished the National Consumer Council with effect from 1st April 2014.

(d) S.I. 2014/2388.

““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 a solar pv station on the land;”;

““large solar pv station” means a solar pv station where the total installed capacity of the RO capacity of the station is more than 5 megawatts;”;

““planning permission” has the meaning given in article 13 except that in articles 2B(3) and 2C(2) it does not include—

(a) outline planning permission within the meaning of section 92 of the Town and Country Planning Act 1990(a), or

(b) planning permission in principle within the meaning of section 59 of the Town and Country Planning (Scotland) Act 1997(b);”;

““pre-2016 additional capacity”, in relation to a large solar pv station, means any additional capacity which in the Authority’s view first formed part of the station from a date which is no later than 31st March 2016;”;

““RO capacity” has—

(a) in the case of a generating station located in Scotland, the same meaning as in the Renewables Obligation (Scotland) Order 2009(c), and

(b) in any other case, the same meaning as in the Renewables Obligation Order 2009(d);”;

““Scotland” has the same meaning as in section 32(2) of the Electricity Act 1989(e); and”;

““solar pv closure date” means the later of—

(a) 31st March 2015, and

(b) the last day of the month in which this Order comes into force; and”;

““solar pv station” means a generating station that generates electricity from the direct conversion of sunlight into electricity.”; and

(b) after the definition of “relevant date” omit “and”.

(3) In paragraph (2), after the entry for “regular biomass” insert—

““total installed capacity”;”.

Large solar pv stations

3. After article 2 of the Closure Order insert—

“No certificates to be issued in respect of electricity generated after the solar pv closure date by large solar pv stations

2A.—(1) Subject to paragraph (2), no renewables obligation certificates are to be issued under a renewables obligation order in respect of electricity generated after the solar pv closure date by a large solar pv station.

(2) Paragraph (1) does not apply to electricity generated in any one or more of the circumstances set out in articles 2B to 2D.

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- (a) 1990 c.8. Section 92 has been amended by section 51(2) of the Planning and Compulsory Purchase Act 2004 (c.5). Functions of the Secretary of State under section 92, so far as exercisable in relation to Wales, have been transferred to the Welsh Ministers by S.I. 1999/672.
- (b) 1997 c.8. Section 59 was substituted by section 21 of the Planning etc (Scotland) Act 2006 (2006 asp 17) as amended by article 5(3) of S.S.I. 2009/256. It has been amended by article 2(5) of S.S.I. 2013/26.
- (c) S.I. 2009/785, as amended by S.I. 2010/1107, S.I. 2011/984, paragraph 29 of Schedule 4 to S.I. 2011/988, S.I. 2013/768 and S.I. 2014/893.
- (d) S.S.I. 2009/140, as amended by S.S.I. 2009/276, S.S.I. 2010/147, S.S.I. 2011/225, paragraph 22 of the Schedule to S.S.I. 2011/226, S.S.I. 2013/116 and S.S.I. 2014/94.
- (e) 1989 c.29. Section 32 was substituted by section 37 of the Energy Act 2008 (c.32).

Circumstances relating to the original capacity of large solar pv stations

2B.—(1) The circumstances set out in this article are where the electricity is generated using the original capacity of a large solar pv station—

- (a) which was accredited on or before the solar pv closure date, or
- (b) which was granted preliminary accreditation on or before 13th May 2014 and which was accredited on or before 31st March 2016, or
- (c) which was accredited on or before 31st March 2016 and in respect of which the documents specified in paragraph (2) or (3) were provided to the Authority with the application for accreditation of the station.

(2) The documents specified in this paragraph are—

- (a) evidence of an agreement with a network operator (“the relevant network operator”) to carry out grid works in relation to the station (“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 31st March 2015;
- (c) a letter or email 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 developer of the station of any agreement with the relevant network operator; and
- (d) a declaration by the operator of the generating station that, to the best of their knowledge and belief, the station would have been commissioned on or before 31st March 2015 if the relevant grid works had been completed on or before the planned grid works completion date.

(3) The documents specified in this paragraph are—

- (a) subject to paragraph (4), evidence that an application for planning permission for the station was made on or before 13th May 2014;
- (b) subject to paragraph (5)—
 - (i) a copy of an offer from a network operator made on or before 13th May 2014 to carry out grid works in relation to the station, and
 - (ii) evidence that the offer referred to in paragraph (i) was accepted on or before 13th May 2014 (whether or not such acceptance was subject to any conditions or other terms); and
- (c) a declaration by the operator of the station that, to the best of their knowledge and belief, as at 13th May 2014 a developer of the station (or a person connected with a developer of the station within the meaning of section 1122 of the Corporation Tax Act 2010^(a))—
 - (i) was an owner or lessee of the land on which the station is situated,
 - (ii) had entered into an agreement to lease the land on which the station is situated,
 - (iii) had an option to purchase or to lease the land on which the station is situated;or

(a) 2010 c.4.

(iv) was a party to an exclusivity agreement in relation to the land on which the station is situated.

(4) Paragraph (3)(a) does not apply if the application for accreditation of the generating station is accompanied by—

- (a) a copy of a planning permission for the station which was granted on or before 13th May 2014, or
- (b) a declaration by the operator of the station that, to the best of their knowledge and belief, planning permission is not required for the station.

(5) Paragraph (3)(b) does not apply if the application for accreditation of the generating station is accompanied by a declaration by the operator of the station that, to the best of their knowledge and belief, no grid works were required to be carried out by a network operator in order to enable the station to be commissioned.

(6) In this article, “preliminary accreditation” has the same meaning as in the Renewables Obligation Order 2009(a).

Circumstances relating to pre-2016 additional capacity used by large solar pv stations accredited on or before 13th May 2014

2C.—(1) The circumstances set out in this article are where the electricity is generated—

- (a) by a large solar pv station which was accredited on or before 13th May 2014, and
- (b) using pre-2016 additional capacity in respect of which the documents specified in paragraph (2) have been submitted by the operator of the station to the Authority.

(2) The documents specified in this paragraph are—

- (a) subject to paragraph (3), evidence that an application for planning permission for the pre-2016 additional capacity was made on or before 13th May 2014;
- (b) subject to paragraph (4)—
 - (i) a copy of an offer from a network operator made on or before 13th May 2014 to modify the connection between the station and a transmission or distribution system in order to enable the electricity generated by the pre-2016 additional capacity to be conveyed over that connection, and
 - (ii) evidence that the offer referred to in paragraph (i) was accepted on or before 13th May 2014 (whether or not such acceptance was subject to any conditions or other terms); and
- (c) a declaration by the operator of the station that, to the best of their knowledge and belief, as at 13th May 2014 a developer of the station (or a person connected with a developer of the station within the meaning of section 1122 of the Corporation Tax Act 2010)—
 - (i) was an owner or lessee of the land on which the pre-2016 additional capacity is situated,
 - (ii) had entered into an agreement to lease the land on which the pre-2016 additional capacity is situated,
 - (iii) had an option to purchase or to lease the land on which the pre-2016 additional capacity is situated, or
 - (iv) was a party to an exclusivity agreement in relation to the land on which the pre-2016 additional capacity is situated.

(3) Paragraph (2)(a) does not apply if the operator of the station has submitted to the Authority—

(a) S.I. 2009/785, as amended by S.I. 2010/1107, S.I. 2011/984, paragraph 29 of Schedule 4 to S.I. 2011/988, S.I. 2013/768 and S.I. 2014/893.

Illustrative draft - to accompany the Government Response to the further consultation on changes to financial support for Solar PV. Drafting may be subject to change.

- (a) a copy of a planning permission for the pre-2016 additional capacity which was granted on or before 13th May 2014, or
 - (b) a declaration in writing by the operator of the station that, to the best of their knowledge and belief, planning permission is not required for the pre-2016 additional capacity.
- (4) Paragraph (2)(b) does not apply if the operator of the station has submitted to the Authority a declaration in writing that, to the best of their knowledge and belief—
- (a) the station is not connected to any transmission or distribution system, or
 - (b) no modifications to the connection between the station and a transmission or distribution system were required to be carried out by a network operator in order to enable the electricity generated by the pre-2016 additional capacity to be conveyed over that connection.

Circumstances relating to additional capacity used by large solar pv stations accredited on or before the solar pv closure date

2D.—(1) The circumstances set out in this article are where the electricity is generated by a large solar pv station which was accredited on or before the solar pv closure date and generated using—

- (a) additional capacity which in the Authority’s view first formed part of the station from a date no later than the solar pv closure date, or
 - (b) pre-2016 additional capacity in respect of which the documents specified in paragraph (2) have been submitted by the operator of the station to the Authority.
- (2) The documents specified in this paragraph are—
- (a) evidence of an agreement with a network operator (“the relevant network operator”) to carry out grid works in relation to the station (“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 31st March 2015;
 - (c) a letter or email 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 developer of the station of any agreement with the relevant network operator; and
 - (d) a declaration by the operator of the generating station that, to the best of their knowledge and belief, the pre-2016 additional capacity would have formed part of the station on or before 31st March 2015 if the relevant grid works had been completed on or before the planned grid works completion date.”.

Amendments to article 3 of the Closure Order (no certificates to be issued in respect of electricity generated after 31st March 2017)

- 4.**—(1) Article 3 of the Closure Order is amended as follows.
- (2) In the heading, at the end insert “by stations which are not large solar pv stations”.
 - (3) In paragraph (1), at the end insert “by a generating station which is not a large solar pv station”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Renewables Obligation Closure Order 2014 (“the Closure Order”).

Article 2 inserts new definitions into the Closure Order, including for “large solar pv station”. These are generating stations which generate electricity from sunlight and which have an RO capacity of more than 5 megawatts. The RO capacity of a solar pv station is the original capacity of the station, together with any additional capacity added to the station before 1st April 2014 and any additional capacity registered under a renewables obligation order.

Article 3 inserts articles 2A to 2D into the Closure Order. The new article 2A prevents renewables obligation certificates (“ROCs”) from being issued for electricity generated by large solar pv stations after the solar pv closure date of 31st March 2015 (or if later, the last day of the month in which this Order comes into force). A number of exceptions to this restriction on the issue of ROCs are set out in the new articles 2B to 2D.

The new article 2B sets out various exceptions for electricity generated after the closure date using the original capacity of a large solar pv station.

The new article 2C sets out an exception for electricity generated after the closure date using additional capacity which was added to a large solar pv station on or before 31st March 2016. The solar pv station must have been accredited on or before 13th May 2014 and the documents specified in the new article 2C must have been submitted to the Authority in respect of the additional capacity.

The new article 2D sets out two other exceptions for electricity generated after the closure date using additional capacity added to a large solar pv station. In both cases, the solar pv station must have been accredited on or before the closure date. One of the exceptions is for additional capacity added to the station on or before the closure date. The other exception is for additional capacity added to the station on or before 31st March 2016, as long as the documents specified in the new article 2D have been submitted to the Authority in respect of that additional capacity.

Article 4 amends article 3 of the Closure Order, so that the remainder of the Closure Order does not apply to large solar pv stations.

An explanatory memorandum is available alongside this Order on www.legislation.gov.uk. An impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available alongside the Order on that website.