

Government response: Consultation on local authority power to sell electricity from renewables

Local authorities given the power to sell electricity generated by them from renewable resources

9 August 2010

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GOVERNMENT RESPONSE: CONSULTATION ON LOCAL AUTHORITY POWER TO SELL ELECTRICITY FROM RENEWABLES.

Executive summary

1. A consultation on whether local authorities should be given the power to sell electricity generated by them from renewable resources closed on 2 June this year. An overwhelming majority of the responses to the consultation were in favour of making the necessary legislative changes, arguing that they would allow local authorities to participate fully in meeting climate change targets and to benefit from Feed in Tariffs and other incentives to renewable generation.
2. A number of caveats were raised by a small number of respondents but none of these were significant enough to persuade the Government from going ahead with the proposal to allow local authorities to sell electricity which is produced from renewables.
3. In view of the positive outcome of the consultation, the Government therefore decided to proceed with making the necessary legislative changes in the form of an Order under the Local Government (Miscellaneous Provisions) Act 1976.

Introduction

4. The Local Government (Miscellaneous Provisions) Act 1976 as amended by the Electricity Act 1989 gives local authorities power to sell heat, but includes a provision preventing local authorities from selling electricity which is produced otherwise than in association with heat. The position is slightly different in Scotland. Section 170A(3) of the Local Government (Scotland) Act 1973 as amended by Schedule 15, paragraph 13 of the Environmental Protection Act 1990 allows Scottish local authorities to sell electricity produced in association with heat and waste.
5. DECC has been in contact with a number of local authorities seeking to develop renewable projects and sell the electricity produced over the last couple of years.
6. Local authorities are proscribed from undertaking any activity unless given a specific legal power to do so. Currently section 11(3) of the Local Government (Miscellaneous Provisions) Act 1976 as amended says:
7. "Except in such cases as may be prescribed, a local authority shall not be entitled to sell electricity which is produced otherwise than in association with heat."

8. DECC, with the Welsh Assembly Government, launched a consultation on 2 March 2010 requesting views on whether to prescribe a power to sell electricity generated from renewable as well as combined heat and power sources. This would be done through a negative statutory instrument under the powers in section 11(3) of the Local Government (Miscellaneous Provisions) Act 1976 for England and section 170A(3) of the Local Government (Scotland) Act 1973 for Scotland. The consultation closed on 2 June and asked one question:

'Should local authorities be given the power to sell electricity generated by them from all forms of renewable generation as defined in the Renewables Directive?'

Summary and Evaluation of responses

9. DECC received 74 responses to the consultation. 70 respondents were fully in favour of DECC making the legislative changes to allow local authorities to sell electricity. 4 respondents were in favour of making legislative changes but with certain reservations regarding the nature and extent of LA participation in the electricity market.
10. Of the 70 respondents fully in favour of making the necessary legislative changes, the majority saw the changes as an opportunity for local authorities to:
- contribute to Government climate change targets both nationally and at the local level;
 - benefit from incentives to renewables generation, including Feed in Tariffs and the Renewables Obligation;
 - raise revenue from the sale of renewable electricity that could be fed back to communities;
 - enter into partnership with the private sector or local communities to invest in renewable projects

11. A number of respondents were advanced in their plans to invest in renewables but stated in their response that the restriction in their ability to sell electricity was holding them back. They welcomed the opportunity to progress with these plans.
12. Of those respondents with reservations, one believed that it was not sufficiently clear why change is being proposed or why it is necessary. They believed that the original prohibition on local authorities selling electricity was introduced as electricity supply was envisaged as primarily a private sector activity and it should remain that way.
13. Although the Government envisages electricity supply as remaining primarily a private sector activity, the electricity market has moved on considerably since 1976. Local authorities are fully capable of entering into the market for electricity and should be given a full opportunity to do so. In any case, local authorities were already able to sell electricity generated in association with heat, so the change to include electricity from renewable sources is not setting a precedent with regard to public sector participation in the market.
14. Another respondent stated that there should be a limit on the scale of generation local authorities are allowed to undertake. However, the Government sees no reason to impose arbitrary size limits on the scale of generation local authorities are allowed to take forward. Government anticipates that most generation will be sufficiently small scale to fall within the limits set out by The (Class Exemption from the Requirement for a Licence) Order 2001 – this reflects the examples quoted by local authorities who responded to the consultation. Larger generation projects will require a generation licence which will be strictly regulated by Ofgem. We can confirm that the Government is not considering any change to the exemption limits set out in The (Class Exemption from the Requirement for a Licence) Order 2001.
15. A further respondent was of the view that the proposal to allow local authorities to sell electricity should be revised and replaced with more tightly drawn relaxation to the rules, aimed at waste incineration or community scale renewable electricity projects.
16. The consultation proposal was designed to increase the options open to local authorities to contribute to the Government's climate change agenda. It is, of course, up to individual local authorities whether they decide to invest in renewables generation and to what scale.
17. Another respondent questioned how local authorities will engage with the electricity supply market.

18. The Government believes it is a commercial decision by LAs how they choose to engage with the electricity market. The Electricity Act 1989 is clear that the generation, distribution and supply of electricity is by virtue of a licence or an exemption from the need for a licence.

Conclusion

19. There is a clear desire by a significant number of local authorities to make a full contribution to meeting climate change targets while at the same time benefitting from incentives to renewables generation - this has been clearly demonstrated by this consultation.

20. Although there are a number of concerns regarding the extent of any involvement by local authorities in the electricity market, there are clear rules and guidelines governing such interaction. Local authorities will be subject to these rules and guidelines, just as all market participants are.

21. In conclusion, therefore, the Government has concluded that it should go ahead with making the necessary legislative changes to allow local authorities to sell electricity generated from renewable sources. This change is being made through two sets of regulations laid on 27 July which will come into effect in England, Scotland and Wales respectively on 18th August.

List of Respondents (listed in date order of response)

Ref	Organisation
1	Reigate and Banstead Borough Council
2	Aylesbury Vale District Council
3	Forum 21
4	Ashfield District Council
5	One Voice Wales
6	Luton Borough Council
7	The co-operative
8	South Staffordshire Council
9	South Ayrshire Council
10	Taunton and Deane Borough Council
11	The Energy Saving Trust
12	Policy Connect
13	Lancaster City Council
14	Wandsworth Borough Council
15	Calderdale Council
16	Environment and Development Consultant & Green Party District Councillor
17	Derbyshire County Council
18	Newport City Council
19	Wirral Council
20	Shropshire Council
21	West Oxfordshire District Council

22	Flintshire County Council
23	Derby City Council
24	Aberdeen City Council
25	David Mallard
26	Shetlands Islands Council
27	West Somerset Council
28	Convention Of Scottish Local Authorities
29	Austin Farm Primary School
30	London Borough of Waltham Forest
31	West Lothian Council
32	Fife Council
33	Guto Owen
34	English National Park Authorities Association
35	Highland Council
36	Boringdon Primary School
37	Coombe Dean School
38	Peter Filewod
39	Plymouth City Council
40	Gateshead Council
41	St Boniface's RC College
42	Friends of the Earth
43	Hampshire County Council
44	Shakespeare Primary School
45	Taunton Deane Borough Council

46	North Norfolk District Council
47	Suffolk County Council
48	SSE - Scottish and Southern Energy
49	Peterborough City Council
50	Aberdeenshire Council
51	Hounslow Homes
52	Nottinghamshire County Council
53	Rossendale Borough Council
54	Colbha Consulting
55	Devon County Council
56	Energy Action Scotland
57	RWE npower
58	Renewable Energy Association
59	Westminster City Council
60	Southampton City Council
61	ScottishPower
62	Local Government Association
63	E.ON UK
64	Worcestershire County Council
65	Katie Morrow
66	Good Energy
67	Merseyside Waste Disposal Authority
68	London Borough of Hammersmith and Fulham
69	Cofely District Energy

70	Birmingham City Council
71	Combined Heat and Power Association
72	East Lindsey District Council
73	Hambleton District Council
74	Victoria Road Primary School

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