



Department
of Energy &
Climate Change

RO Grace Periods Consultation

Nov 2013



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The Consultation can be found on the Government's website:

<http://www.gov.uk/government/consultations/renewables-obligation-ro-grace-periods>

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General Provisions

Purpose of this consultation

This consultation sets out the Government's proposals for the detailed arrangements for the closure of the Renewables Obligation to new generating capacity, including the arrangements for grace periods. The Department of Energy and Climate Change (DECC) invites interested parties to submit comments and evidence in response to these proposals.

Territorial extent

This consultation covers arrangements on the RO in England, Scotland and Wales.

Northern Ireland: Due to reforms to the Single Electricity Market in Northern Ireland, the Northern Ireland Executive does not plan to open its market to CfDs for projects commissioning before 2016 at the earliest. The transition period in Northern Ireland will therefore be shorter than in Great Britain. This consultation document does not cover the closure arrangements and associated secondary legislation for Northern Ireland, which will be the subject of a separate consultation from the Northern Ireland Executive in due course.

How to respond

Issued: 7 November 2013

Respond by: 28 November 2013

Enquiries to:

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Consultation reference: URN 13D/295

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Reasoning and evidence to support your answers will be particularly helpful. If you wish to include any long reports as part of your evidence, please identify the relevant sections.

Please use the proforma provided on the Government's website to record your response and evidence:

<http://www.gov.uk/government/consultations/renewables-obligation-ro-grace-periods>

Please send the completed proforma to rotransition@decc.gsi.gov.uk. Alternatively, hard copy replies should be sent to the Renewables Obligation (Transition) Team at the address above.

Additional Copies

You may make copies of this document without seeking permission. An electronic version can be found at:

<http://www.gov.uk/government/consultations/renewables-obligation-ro-grace-periods>

Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us at correspondence@decc.gsi.gov.uk to request alternative versions.

Confidentiality and Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at:

<http://www.gov.uk/government/consultations/renewables-obligation-ro-grace-periods>

This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality Assurance

This consultation has been carried out in accordance with the Government's Consultation Principles, which can be found here:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator

3 Whitehall Place

London SW1A 2AW

Email: consultation.coordinator@decc.gsi.gov.uk

Aims of the Consultation

In 2010/11 the Government consulted on proposals for the transition from the Renewables Obligation (RO) under the Electricity Market Reform. In the White Paper *Planning our electric future*, the Government set out the intention to close the RO to new generating capacity from 31 March 2017. Further consultations on the RO transition arrangements were published by DECC on 17 July 2013 in respect of England & Wales and by the Scottish Government on 2 September 2013 in respect of Scotland.

Following detailed analysis, and consideration of representations and consultation responses made to DECC, this further consultation sets out more detailed proposals on grace periods for the Renewables Obligations in Great Britain, and the mechanism by which the closure of the RO and the grace periods will be implemented across Great Britain.

The consultation covers:

- The use of the power by the Secretary of State to close the Renewables Obligations in England, Wales and Scotland to new generating capacity;
- Proposals for the eligibility criteria and lengths that will apply to the grace periods to be offered at the point of RO closure to new generating capacity across Great Britain.

Please note that the proposals within this consultation do not affect specific grace period arrangements on which policy has previously been confirmed. These are the grace period arrangements for the RO Banding Review 2013, and the innovative offshore wind grace periods set out in the Scottish Government's response to its consultation on a new band for innovative offshore wind generation in Scottish waters, published on 12 June 2013.

Subject to the responses received to this consultation, our aim is to implement the proposals set out within this document via a Renewables Obligation Closure Order 2014, to come into force in Spring 2014. The proposals set out in this document are subject to the Energy Bill, which is currently before Parliament. They are also subject to Parliamentary approval of the Order, and any State Aid clearances that may be required.

This consultation covers England, Scotland and Wales. Provisions for Northern Ireland will be consulted upon separately by the Northern Ireland Executive.

Proposals

Background: RO Closure

- 1.1 The 2010 consultation covering proposals for Electricity Market Reform included the proposal to close the Renewables Obligation to new capacity on 31 March 2017, as part of the overall transition to Contracts for Difference as the main support mechanism for large-scale renewable electricity generation. In the Government Response to that consultation, and our subsequent publications on EMR and the RO transitional arrangements, we confirmed our intention to close the RO to new generating capacity on 31 March 2017.
- 1.2 In order to ensure that the closure of the RO to new capacity is placed on a firm legislative basis, and to give certainty to the renewables industry about the way in which that closure will be effected across Great Britain, the Energy Bill has been amended to include a power to enable the Secretary of State to make a Renewables Obligation Closure Order setting the date of, and detailed arrangements for, the closure of the RO across Great Britain.¹
- 1.3 Subject to Royal Assent of the Energy Bill, we intend to lay a Renewables Obligation Closure Order before Parliament in Spring 2014. This Order would:
 - a. Set the date upon which the RO will be closed to new capacity in Great Britain as 31 March 2017;
 - b. Set out the detailed grace period arrangements, which constitute exceptions to that date of closure which will apply under certain specified circumstances.
- 1.4 We consider that putting the closure date of 31 March 2017, and the associated grace period arrangements, on a firm legislative basis as soon as possible will provide developers preparing for the transition period, and considering their choice of scheme, with a clearer basis on which to make that choice.

¹ The closure order would apply to both the RO (England and Wales) and the RO (Scotland).

Grace Periods

Background

- 2.1 In our July 2013 RO transition consultation document we proposed the following principles for grace periods:
 - a. Grace period arrangements must be consistent with the overarching policy of transition towards CfDs;
 - b. Grace period conditions must be straightforward to prove and assess, to ensure that Ofgem is able to determine whether a generating station is eligible for the grace period quickly, easily and without controversy;
 - c. The end date of the RO will not be extended beyond 2037 for those operators benefiting from any grace period, therefore more extensive grace periods will constitute a reduced length of support.
- 2.2 As we have stated previously, our position is that, in general, operators of projects which have commissioning dates on or close to 31 March 2017 have the option of applying for a Contract for Difference, which would give them clear assurance of receiving support even if the project suffers unexpected delay. This is subject to the long stop date within the contract and to the eligibility requirements and allocation arrangements for the CfD. Projects may also have had the option of applying for an Investment Contract under FID Enabling. It is not the Government's goal to ensure that the Renewables Obligation and the CfD offer the same level of assurance against the risk of delay throughout the transition period. Rather, we envisage that the balance of risk will change as the transition period progresses. This is consistent with the overarching policy of transition away from the RO.
- 2.3 Therefore, while we appreciate that the RO closure date is a more significant deadline than developers have previously experienced within the RO, because developers have known about this date for several years, we remain minded to keep grace period eligibility minimal. On the basis of our own analysis, of responses to the July 2013 consultation, and of discussions with industry representatives, we recognise that there are certain specific challenges which developers are experiencing at present, which we believe can best be addressed via more substantive grace periods. Our preference would be to target grace periods directly at those challenges, and where appropriate, rather than considering more extensive grace periods in general.
- 2.4 Following on from previous consultations by the UK Government and discussions with industry, this further consultation gives stakeholders the opportunity to comment and provide evidence on the merits of our detailed proposals for grace period criteria and lengths.

Preferred Arrangements

- 2.5 We are minded to offer four forms of clearly defined and limited grace period, as follows:
- a. 12-month grace period to address radar and grid connection delays, where the project was scheduled to commission on or prior to 31 March 2017;
 - b. 12-month grace period for projects which have signed Investment Contracts under FID Enabling, should these contracts fall away or be terminated under certain specific circumstances;
 - c. 12-month grace period for projects able to demonstrate that substantial financial decisions and investments have been taken prior to 31 July 2014, where the project is scheduled to commission on or prior to 31 March 2017. To be eligible these projects will have to undergo a notification process by 31 July 2014;
 - d. 18-month grace period for projects allocated a place under the 400MW dedicated biomass cap.
- 2.6 Our reasons for proposing these forms of grace period are set out below.

Radar and Grid Connection

- 2.7 Delays due to radar and grid connection were the criteria on which grace periods were offered at the point at which support levels changed following the most recent RO Banding Review.² Both these forms of delay remain a substantive risk to projects, which can occur at short notice, and which are outside the developer's control. We therefore propose to offer grace periods to any project which suffers from one of these causes of delay, and which was previously expecting to commission on or before 31 March 2017.
- 2.8 In recognition of the fact that these delays can last longer than 6 months (the previous grace period length), and of the fact that missing the RO closure date at the last moment would have a more significant impact on a project than missing the point of change in support level had previously, we propose that projects which demonstrate that they are eligible for this grace period would then have a full 12 months to obtain RO accreditation, starting on 1 April 2017.
- 2.9 We propose that developers would be required to demonstrate their eligibility for this grace period by providing Ofgem with the following evidence, which is similar to that required under the grace period provisions introduced for the recent RO Banding Review:
- a. Grid connection:
 - i. A signed grid connection agreement, showing a grid connection date on or before 31 March 2017;
 - ii. A written declaration by the generator that to the best of their knowledge, the generating station would have been commissioned on or before 31 March 2017 if the connection had been made on or before the grid connection date;
 - iii. A letter from the network operator confirming that the grid connection was made after the grid connection date, and that in the network operator's opinion, the failure to make the grid connection on or before the grid connection date was not due to any breach of the grid connection agreement by the generator / developer.

² The relevant legislative provisions can be found in article 58ZA of the Renewables Obligation Order 2009 (as amended by S.I. 2013/768) and article 58ZA of the Renewables Obligation (Scotland) Order 2009 (as amended by S.S.I. 2013/116).

b. Radar upgrades:

- i. A copy of a radar works agreement specifying a radar works completion date which is no later than 31 March 2017;
- ii. A letter from a party to the radar works agreement who is unrelated to the generator / developer confirming that the radar works were completed after the agreed date and that the failure to complete the radar works on time was not due to any breach of the radar works agreement by the generator / developer;
- iii. A written declaration by the generator that, to the best of their knowledge and belief, the station would have been commissioned on or before 31st March 2017 if the radar works had been completed on or before the radar works completion date.

2.10 We propose that this grace period only would be open to additional capacity at existing RO-accredited stations, as well as to new stations.

Investment Contracts

2.11 Developers of projects which are offered and sign Investment Contracts within the currently ongoing FID Enabling for Renewables Phase 2 application process, are likely to be making their choice of scheme in advance of Investment Contracts receiving State Aid clearance, and at a time when EMR has not yet been implemented in full. In recognition of the risk to such developers we propose to offer a 12-month RO grace period to Investment Contract signatories, enabling them to have an additional 12 months after 31 March 2017 in which to obtain RO accreditation, if their Investment Contract falls away or is terminated under certain specific circumstances.

2.12 At this stage, we propose that these circumstances be limited to lack of State Aid approval, to be defined on terms to be set out within the Investment Contract. We may consider extending the circumstances for the grace period if there are other areas of uncertainty in the Investment Contract.

2.13 Developers would be required to demonstrate their eligibility for this grace period by providing Ofgem with a letter from the Secretary of State or the CfD Counterparty confirming that the relevant project was the subject of a signed Investment Contract, and that Investment Contract has ceased to have effect or has been terminated due to the circumstances above. DECC would commit to providing such a letter to developers which have signed Investment Contracts, should these circumstances arise.

Further Steps to support Investment Decisions prior to CfD Introduction

2.14 We are minded to offer developers making substantial financial decisions and investments prior to 31 July 2014, in relation to projects which are scheduled to commission on or prior to 31 March 2017, the opportunity to participate in a notification process, which makes them eligible for a 12-month grace period if delayed at a later stage. This approach would require developers to provide sufficient evidence that the decisions above were being taken in the period prior to the launch of the CfD scheme. Developers making decisions after that point should be able to make those decisions on the basis of a CfD application or award, therefore allowing entry to a grace period of this sort after the CfD scheme has been launched would undermine the transition to the CfD scheme.

2.15 In order to demonstrate that they had made substantial financial decisions or investments prior to 31 July 2014, developers of such projects would be required to provide evidence of this to Ofgem. We are aiming to set the evidence requirements for this notification process

at the most rigorous level that would still enable projects for which this approach was essential to access the grace period, to ensure that the grace period was not offered to any project which could instead have made decisions on the basis of the CfD. We also wish to ensure that:

- a. The evidence requirements are sufficiently clear that developers are able to reach a confident view as to their ability to meet the eligibility requirements, to facilitate investment decisions prior to the opening of the notification process itself;
- b. Ofgem could administer the notification process quickly and objectively, with confidence that their decisions would not be likely to be subject to later legal challenge;
- c. There is protection against any attempt on the part of developers to gain entry to this grace period for projects which in reality are on schedule to commission in financial year 2017/18 or beyond.

2.16 All these requirements mean that the evidence developers are asked to provide to Ofgem will need to be defined in detail, and to involve minimal subjective judgement or evaluation.

2.17 We propose that three categories of evidence would be required: that is, all three categories would be required in combination, rather than evidence of just one or two categories out of the three. Our proposals for the forms that this evidence would be required to take are set out below by category. It is possible that these evidence forms would be varied by technology, in order to ensure that the requirements set out in paragraph 2.15 above are met in every case:

- a. **Evidence of land availability and planning consents.** We propose that both the following forms of evidence would be required:
 - i. Signed agreement for Lease with the Crown Estate, or land use rights confirmed;
 - ii. Relevant Planning Consents that permit the construction and operation of the relevant development;
- b. **Evidence that grid connection can be made for a commissioning date on or before 31 March 2017.** Our proposed form of evidence is:
 - i. A signed grid connection agreement showing connection on or before 31 March 2017;
- c. **Evidence that substantial financial decisions or investments have been made prior to 31 July 2014.** Proposed forms of evidence, of which we envisage that at least two would be required, are as follows:
 - i. Disbursements or invoices demonstrating that 10% of project spend has been incurred;
 - ii. Formal (i.e. approved and signed) Minutes of the Project management board with a commitment to investment in the particular project;
 - iii. A financial commitment (e.g. letter of credit, guarantee) in relation to part orders, securing delivery of significant items (e.g. turbines or electrical infrastructure) so that the dates for commissioning falls prior to 31 March 2017;
 - iv. A signed loan or investment agreement for sufficient funds to enable construction of the particular project;
 - v. A comfort letter from the project's technical advisers, stating that the project schedule is realistic and deliverable, and listing any key risks that could lead to a delay that would require the grace period to be used;

vi. Other form of financial evidence, to be determined on the basis of consultation responses.

- 2.18 The above forms of evidence are based on some of those utilised and proposed within FID Enabling and CfD Allocations documents. We could also consider other evidence forms within those documents, apart from the ones listed above.³
- 2.19 We propose that participation in the notification process for this grace period would be open to all technologies and projects which can provide the relevant evidence, as we consider that this would be consistent with the overall objective for this grace period: that is, allowing substantial financial decisions and investments to be made prior to the launch of the CfD scheme where this is necessary.
- 2.20 However, it would also be possible to limit access to the notification process to a specific technology/ies with a greater than average risk of delay, or to projects above a certain size threshold, such as 50 MW, on the principle that larger projects require greater expenditure and longer construction periods, which increase their risk of delay and the impact of missing the RO closure date. Depending on the extent to which the proposed forms of evidence can be defined clearly enough to ensure that this grace period is only open to projects which are at clear risk of investment hiatus without it, we might need to reconsider restricting eligibility on a technology or size basis.
- 2.21 We are currently minded to set the deadline for inclusion within this grace period at 31 July 2014, at which point the secondary legislation governing CfDs can be expected to be in force, subject to the will of Parliament. Beyond this point we would expect developers to be confident in taking investment decisions on the basis of the CfD. We estimate that this would allow at least two months between the opening of the notification process when the secondary legislation governing RO closure comes into force, and the closure of the notification process.
- 2.22 The 31 July 2014 deadline means that developers wishing to take advantage of this grace period would need to provide the necessary evidence to Ofgem on or before that date. Participation in this notification process will not, of itself, prevent a project from applying for the CfD (i.e. it will not be treated as making a final choice for the RO).

Dedicated Biomass

- 2.23 We recognise that dedicated biomass projects have in some cases had their timetables delayed while the detailed Government policy arrangements in relation to the 400MW cap were put in place. To support, and be consistent with, our policy on the 400MW cap, we therefore propose to offer an 18-month grace period to dedicated biomass projects (without CHP) which are allocated an unconditional place within the 400MW cap, enabling them to have an additional 18 months after 31 March 2017 in which to obtain RO accreditation.
- 2.24 The rationale for our proposal that the grace period for dedicated biomass should be longer than the other grace periods is that we have proposed that electricity only dedicated biomass projects will not be eligible to apply for the CfD, and are therefore subject to higher risk in financing terms. Should their timetables be delayed to the extent that they are unable to commission prior to the end of their grace period, they would no longer have access to

³ CfD Allocation Methodology: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226976/Allocation_Methodology_-_MASTER_-_6_Aug_v_FINAL.pdf

FID Enabling Update 2: <https://www.gov.uk/government/publications/increasing-certainty-for-investors-in-renewable-electricity-final-investment-decision-enabling-for-renewables>

any support mechanism. Our assessment is that an 18-month grace period is therefore necessary to allow such projects to achieve financial backing. This proposal is also on the understanding that all dedicated biomass projects within the cap will already be aiming to accredit before 31 March 2017 for financing reasons.

- 2.25 We propose that developers would be required to demonstrate their eligibility for this grace period by providing Ofgem with a copy of the letter they received from DECC informing them that their project had been allocated an unconditional place within the 400MW cap. Projects would cease to be eligible for this grace period if they lose their place within the 400MW cap before they accredit under the RO. For example, if they certify under the CHPQA Programme as a good quality CHP scheme.

Other Criteria

- 2.26 We are aware that some stakeholders have a strong interest in other, yet more substantive grace period criteria. However, we must emphasise that grace periods are not intended to make the RO a risk-free option for all, or even most, possible applicants in the final years before closure, and we are unable to consider grace periods designed with that intent.
- 2.27 The Government is committed to constraining the overall costs of financial mechanisms supporting low-carbon electricity generation, and the transition away from the RO is a key element of that commitment. We are therefore not minded to offer grace periods under circumstances other than those set out in this document.

Catalogue of consultation questions

Consultation Questions	
1.	<p>Do you agree with the proposal to offer a 12-month grace period for RO accreditation delays due to radar and grid connection?</p> <p>Please give your rationale and provide any associated evidence for your view.</p>
2.	<p>Do you agree with the proposal to offer a 12-month grace period to projects with an Investment Contract, in case of lack of State Aid approval?</p> <p>Please give your rationale and provide any associated evidence for your view.</p>
3.	<p>Do you agree with the proposal to offer a 12-month grace period to projects which participate in a notification process targeted at developers making investment decisions between now and 31 July 2014?</p> <p>Please give your rationale and provide any associated evidence for your view.</p>
4.	<p>Do you agree that the proposed forms of evidence are appropriate to the purpose of the above grace period, as defined in paragraph 2.14?</p> <p>Please give your rationale and provide any associated evidence for your view, specifically citing the form/s of evidence to which each comment relates.</p>
5.	<p>Do you agree with the proposal to offer an 18-month grace period to projects allocated a place within the RO 400MW cap for dedicated biomass projects?</p> <p>Please give your rationale and provide any associated evidence for your view.</p>
6.	<p>Do you have any other comments on the RO closure arrangements?</p>

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