

SUPPLEMENTAL MEMORANDUM FOR THE JOINT COMMITTEE ON HUMAN RIGHTS

Background

1. The Energy Bill 2015 was introduced to Parliament on 9 July 2015 and, alongside, this Department provided a memorandum to the Joint Committee on Human Rights (the “Memorandum”) which set out our analysis of how the Bill’s provisions are compliant with protected human rights under the European Convention on Human Rights (“ECHR”).
2. A supplemental memorandum was provided on 9 October 2015 after the Government tabled a number of amendments for debate on recommitment in the House of Lords. These amendments related to the measures in the Bill which provide for the early closure of subsidy arrangements under the Renewables Obligation (“RO”) to new onshore wind in Great Britain (“the early RO closure provisions”). The amendments were, however, defeated in the Lords.
3. The Government has now re-tabled the early RO closure provisions by way of amendments for debate in Committee in the House of Commons. These also include an additional amendment not previously tabled in the House of Lords relating to Northern Ireland. This supplemental memorandum provides an update on our ECHR analysis regarding this amendment.

Amendment relating to Northern Ireland

4. Since the announcement on 18 June 2015 of the Government’s intention to close the RO early to new onshore wind, DECC has engaged with the Northern Ireland Executive about the closure of the Northern Ireland RO (“the NIRO”). However, since renewable energy is a transferred policy area, any decision on closure of the NIRO is ultimately for the Northern Ireland Assembly. To ensure that new onshore wind projects in Northern Ireland are not in effect funded by consumers in Great Britain after the RO has closed to similar projects in Great Britain, the Government has decided to seek a power in the Energy Bill which would allow it to prevent the use by suppliers in Great Britain of renewables obligation certificates from projects in Northern Ireland (“NI ROCs”). The effect of exercising this power would be that suppliers in Great Britain could not present certain NI ROCs relating to onshore wind to the Authority (ie. Ofgem) in discharge of their renewables obligation. The Government’s intention is that this power would only be exercised in the event that Northern Ireland decided not to close the NI RO to onshore wind on terms equivalent to those which apply to generators in Great Britain, and only in relation to onshore wind projects which did not satisfy equivalent grace period conditions. The new power is introduced by a new clause which inserts new section 32LM (Northern Ireland certificates: onshore wind power) into the Electricity Act 1989.

Article engaged and potentially interfered with

5. The relevant provision is Article 1 Protocol 1 of the ECHR (“A1P1”).

Interference

6. The clause itself provides a power for the Secretary of State to prevent the use of “relevant Northern Ireland certificates”. These are defined as NI ROCs relating to electricity generated after a specified date (which is no earlier than 31 March 2016, which is the proposed RO early closure date for Great Britain) by Northern Ireland onshore wind generating stations accrediting under the Northern Ireland RO after that date. It is arguable that exercising this power may interfere with possessions in the form of contracts for the purchase of NI ROCs or in the form of power purchase agreements or in the form of investments made by persons on the basis that all NI ROCs would continue to be redeemable against their obligation by suppliers in Great Britain. It is our view that any interference would arise from the way in which the power is exercised not from the power as such.

Justification

7. The power in new section 32LM allows the Secretary of State to set out the circumstances in which “relevant Northern Ireland certificates” could still be used by suppliers in Great Britain. It is the Government’s intention that these circumstances would reflect the grace period conditions which would apply to new onshore wind generators in Great Britain under the RO early closure provisions in the Bill. The Memorandum of 9 July 2015 and the supplementary memorandum of 9 October 2015 set out the Government’s justification for the grace periods and explain that the Government is satisfied that these strike a fair balance between the legitimate aim of closing the RO early to onshore wind (as part of managing the deployment of new onshore wind, protecting the interests of consumers and bill-payers and maintaining an appropriate energy mix) and the property rights of onshore wind developers and investors who may be adversely affected by these measures. Similarly, the circumstances in which Northern Ireland certificates would be stopped from use in Great Britain would be aimed at protecting investors in onshore wind projects in Northern Ireland with significant financial commitments made on the basis of the current arrangements whilst ensuring that additional support for new onshore wind projects in Northern Ireland would not in future be funded by consumers in Great Britain. The Government therefore considers that the power is capable of being exercised in a manner which is compatible with A1P1 and that taking the power is justified by the public interest in a consistent approach to the support by consumers in Great Britain of onshore wind projects across the United Kingdom.

8. For the reasons set out above, the Government believes that these provisions are compatible with A1P1.

Department of Energy and Climate Change

26 January 2016