

DRAFT STATUTORY INSTRUMENTS

2016 No.

ELECTRICITY

**The Renewables Obligation Closure Etc. (Amendment) Order
2016**

Made - - - - - *****

Coming into force in accordance with article 1

The Secretary of State makes this Order in exercise of the powers conferred by sections 32, 32K and 32LA of the Electricity Act 1989(a).

The Secretary of State has consulted the Gas and Electricity Markets Authority, Citizens Advice, Citizens Advice Scotland(b), electricity suppliers to whom this Order applies and such generators of electricity from renewable sources and other persons the Secretary of State considered appropriate in accordance with sections 32L(1) and 32LB(1) of the Electricity Act 1989(c).

In accordance with sections 32L(2) and 32LB(3) of the Electricity Act 1989 a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State makes the following Order:

Citation, commencement, interpretation and extent

1.—(1) This Order may be cited as the Renewables Obligation Closure (Amendment) Order 2016 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).

(3) Subject to paragraph (4) this Order extends to England and Wales and Scotland.

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- (a) 1989 c.29. Sections 32 and 32K were 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) Sections 32L and 32LB(1) of the Electricity Act 1989 refer to “the Authority” and section 32L refers to “Citizens Advice” and “Citizens Advice Scotland”, these terms are defined in section 111(1) of the Electricity Act 1989 as amended by paragraph 40(a) of Schedule 6 to the Utilities Act 2000 (c.27) and S.I. 2014/631.
- (c) Section 32L was inserted by section 37 of the Energy Act 2008 and amended by S.I. 2014/631. 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 as amended by S.I. 2015/920 and S.I. 2015/1947.

(4) Article 5 extends to England and Wales only.

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) in the definitions of “additional capacity” and “developer” omit “large”.

(b) at the appropriate places insert—

““large solar pv closure date” means 31st March 2015”;

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

(a) 31st March 2016, and

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

““small solar pv station” means a solar pv station where the total installed capacity of the RO capacity of the station is less than or equal to 5 megawatts”;

““valid application for planning permission” has the following meaning—

(a) in relation to an application made in England, an application made under article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015^(a) which is either—

(i) a “valid application” within the meaning of article 34(4) of that Order; or

(ii) a “non-validated application” within the meaning of article 34(5) of that Order;

(b) in relation to an application made in Wales, the meaning given in article 22(3) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012^(b);

(c) in relation to an application made in Scotland, an application meeting the requirements for acknowledgment set out in regulation 17(1) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013^(c);

(c) in the definition of “planning permission” for “and 2C(2)” substitute “, 2C(2), 2F(3) and 2G(2);

(d) after the definition of “pre-2016 additional capacity” insert—

““pre-2017 additional capacity”, in relation to a small 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 2017”; and

(e) omit the definition of “solar pv closure date”.

Small solar pv stations

3. After article 2D of the Closure Order insert—

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

2E.—(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 small solar pv closure date by a small solar pv station.

(a) S.I. 2015/595

(b) S.I.2012/801

(c) S.S.I. 2013/155

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

Circumstances relating to the original capacity of small solar pv stations

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

- (a) which was accredited on or before the small solar pv closure date,
- (b) which was granted preliminary accreditation on or before 22nd July 2015 and which was accredited on or before 31st March 2017, or
- (c) which was accredited on or before 31st March 2017 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 2016;
- (c) a letter or email written by, or on behalf of, 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 station that, to the best of their knowledge and belief, the station would have been commissioned on or before 31st March 2016 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 a valid application for planning permission for the station was made on or before 22nd July 2015;
- (b) subject to paragraph (5)—
 - (i) a copy of an offer from a licensed network operator made on or before 22nd July 2015 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 22nd July 2015 (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 22nd July 2015 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,

(a) 2010 c.4.

- (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
- (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 station is accompanied by—

- (a) a copy of a planning permission for the station which was granted on or before 22nd July 2015, 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 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 licensed network operator in order to enable the station to be commissioned.

(6) In paragraph (1)(b), "preliminary accreditation" has the same meaning as in the Renewables Obligation Order 2015.

Circumstances relating to pre-2017 additional capacity used by small solar pv stations accredited on or before 22nd July 2015

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

- (a) using pre-2017 additional capacity, and
- (b) by a small solar pv station—
 - (i) which was accredited on or before 22nd July 2015, and
 - (ii) in relation to 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 a valid application for planning permission for the pre-2017 additional capacity to form part of the station was made on or before 22nd July 2015;
- (b) subject to paragraph (4)—
 - (i) a copy of an offer from a licensed network operator made on or before 22nd July 2015 to modify the connection between the station and a transmission or distribution system in order to enable the electricity generated using pre-2017 additional capacity to be conveyed over that connection, and
 - (ii) evidence that the offer referred to in paragraph (i) was accepted on or before 22nd July 2015 (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 22nd July 2015 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 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

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

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

- (a) a copy of a planning permission which was granted on or before 22nd July 2015 for the pre-2017 additional capacity to form part of the station, 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-2017 additional capacity to form part of the station.

(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 licensed network operator in order to enable the electricity generated using pre-2017 additional capacity to be conveyed over that connection.

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

2H.—(1) The circumstances set out in this article are where the electricity is generated by a small solar pv station which was accredited on or before the small 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 small solar pv closure date, or
- (b) pre-2017 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 2016;
- (c) a letter or email written by, or on behalf of, 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 station that, to the best of their knowledge and belief, the pre-2017 additional capacity would have formed part of the station on or before 31st March 2016 if the relevant grid works had been completed on or before the planned grid works completion date."

Consequential amendments to the Closure Order

4.—(1) The Closure Order is amended as follows.

(2) In article 2A in the heading and in paragraph (1) after "the" insert "large".

- (3) In article 2B in paragraph (1)(a) after “the” insert “large”.
- (4) In article 2D in the heading and in paragraph (1) before “solar pv closure date” in each place it occurs, insert “large”.
- (5) In article 3 in the heading and in paragraph (1) omit “large”.

Amendments to article 91 of the Renewables Obligation Order 2015 (registration of offshore wind turbines)

- 5.—(1) Article 91 of the Renewables Obligation Order 2015(a) is amended as follows.
 - (2) In paragraph (4) at the beginning insert “Subject to paragraph (4A)”;
 - (3) After paragraph (4) insert (4A) “Where the generating station generates electricity in the circumstances set out in any one or more of articles 5, 6, 7 or 11 of the Renewables Obligation Closure Order 2014, the application must be received by the Authority on or before 31st March 2018.”; and
 - (4) In paragraph (6) for “paragraphs (3), (4) and (5)” substitute “paragraphs (3) to (5)”.

Signatory text

Address Date	<i>Name</i> Parliamentary Under Secretary of State Department
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EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Renewables Obligation Closure Order 2014 (“the Closure Order”) and the Renewables Obligation Order 2015.

Article 2 inserts new definitions into the Closure Order, including for “small solar pv station” and “valid application”. Small solar pv stations are generating stations which generate electricity from sunlight and which have an RO capacity below or equal to 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. A valid application is an application for planning permission which fulfils certain requirements of the planning legislation in England, Wales or Scotland as the case may be. Article 2 also makes consequential amendments to the definitions in the Closure Order relating to large solar pv stations.

Article 3 inserts articles 2E to 2H into the Closure Order. The new article 2E prevents renewables obligation certificates (“ROCs”) from being issued for electricity generated by small solar pv stations after the small solar pv closure date (“the closure date”) of 31st March 2016 (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 new articles 2F to 2H.

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

The new article 2G sets out an exception for electricity generated after the closure date using additional capacity which was added to a small solar pv station on or before 31st March 2017. The solar pv station must have been accredited on or before 22nd July 2015 and the documents specified in new article 2G must have been submitted to the Authority in relation to the station.

(a) S.I. 2015/1947

The new article 2H sets out two other exceptions for electricity generated after the closure date using additional capacity added to a small solar pv station. In both cases, the solar pv stations 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 2017, as long as the documents specified in the new article 2H have been submitted to the Authority in respect of the additional capacity.

Article 4 makes consequential amendments to the Closure Order including an amendment to article 3 of the Closure Order (no certificates to be issued in respect of electricity generated after 31st March 2017 by stations which are not large solar pv stations), so that the remainder of the Closure Order does not apply to any solar pv stations.

Article 5 amends the Renewables Obligation Order 2015 by inserting provision in article 91 (registration of offshore wind turbines) to permit an application to the Authority for registration of offshore wind turbines to be made until 31st March 2018, where the offshore wind station is able to generate electricity falling within the circumstances set out in articles 5, 6, 7 or 11 of the Closure Order.

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.