

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. The Government has now tabled a number of amendments for debate on recommittal in the House of Lords. These amendments relate 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.
3. This supplemental memorandum provides an update on our ECHR analysis in light of these amendments.

Amendments

4. Following a period of industry engagement – referred to in paragraph 58 of the Memorandum – the Government is proposing to substitute the regulation-making power introduced by clause 66 of the Bill (which inserts a new section 32LC(3) into the Electricity Act 1989) with a provision which sets out the detail of a grace period on the face of the Bill. To be eligible for the grace period, developers would need to show that, as at 18 June 2015 (the date on which the policy was announced), their projects had planning consent, a grid connection offer and acceptance (or confirmation that no grid connection is required) and evidence of land rights for the site on which their project will be built. This grace period is intended to protect those onshore wind developers that have already made a significant financial commitment to projects which would have stood a reasonable chance of being able to accredit under the RO by 31 March 2017.
5. In addition to setting out the grace period on the face of the Bill, further amendments have been proposed which seek to make some additional changes to (i) provide projects which qualify for the grace period with additional time in which to accredit under the RO if the developer can provide evidence that it has experienced delays in its ability to secure financing between 18 June 2015 (the date of the initial announcement of the policy) and Royal Assent; (ii) to extend the grace period so that this would capture projects which either had planning permission refused on or before 18 June, or where the relevant planning authority failed to determine a planning application where a decision was due (under the relevant statutory timescales) by 18 June, and which are then subsequently granted consent at appeal; and (iii) to allow projects an additional 12 month

period in which to accredit where they are affected by unforeseen delays in grid and radar works (reflecting a grace period set out in the Renewables Obligation Closure Order 2014¹).

Article engaged and potentially interfered with

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

Interference

7. As set out in paragraphs 54 and 56 of the Memorandum, it is arguable that the provision closing the RO to new onshore wind a year earlier than previously legislated for may interfere with possessions in the form of investments made by persons who have invested on the basis of the current closure date.

Justification

8. As set out in paragraph 57 of the Memorandum, if the provision on early closure of the RO to new onshore wind is considered to be an interference with the use of property, the Government considers that such an interference is justified by the public interest in managing the deployment of renewable energy in line with public spending priorities and the policy choices of the Government as confirmed by Parliament.

9. The Government is satisfied that any interference is proportionate to the legitimate aim being pursued in the public interest. The Government considers that the grace period and associated supplementary amendments - which take into account the evidence gathered during the industry engagement exercise referred to above - ensure that the provisions strike a fair balance between the legitimate aim of closing the RO early to new 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. The Government also considers that any interference would be limited, as the grace period and associated amendments are designed to protect those projects that have already made a significant financial commitment and that would have stood a reasonable chance of being able to accredit under the RO by 31 March 2017.

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

Department of Energy and Climate Change

9 October 2015

¹ S.I. 2014/2388