

Ofgem E-Serve response to consultation on our draft guidance “Northern Ireland Renewables Obligation: Closure of the scheme”

On 9 December 2016 Ofgem E-Serve published a draft of the ‘Northern Ireland Renewables Obligation: Closure of the scheme’ for consultation. The document was created to provide clear guidance on the closure of the Northern Ireland Renewables Obligation (‘the NIRO’) to all technologies (except onshore wind, which closed early) from 1 April 2017. We published the consultation to seek views from stakeholders on the clarity and detail of the draft guidance.

The consultation period closed on 10 February 2017. We have reviewed all responses and, where appropriate, updated the guidance document. The [final version of the document](#) was published on 13 March 2017.

The consultation period

We would like to thank all stakeholders who responded to the consultation. We have used your responses to make changes to the final guidance. Table 1 lists the changes we made and explains why we made them. We received a number of queries which we felt did not require changes to the guidance but which we have responded to in Table 2. Where appropriate we have responded directly to very specific queries.

Comments on the legislation

A number of responses related to the legislation, rather than Ofgem E-Serve’s administration of the scheme and grace periods. We administer the scheme on behalf of the Northern Ireland Authority for Utility Regulation¹ by agreement². We cannot change the NIRO or NIRO Closure legislation, and we must adhere to the requirements of the current legislation in full. All concerns regarding the legislation should be directed to the Department for the Economy in Northern Ireland. Any future changes to the administration of the NIRO and grace periods would require a change in legislation; our guidance relates to the current legislation.

Table 1 - Changes to the guidance

Section of the final guidance document	What has changed?
Throughout document	Updated text to reflect that the guidance is final, not draft.
Throughout document	Minor typing errors corrected. This does not affect the content or meaning of the document.
Throughout document	Added references to our response to call for evidence on industry standards and practices for commissioning fuel burning generating stations .
Executive summary, Figure 1	Inserted to show all grace periods open from 1 April 2017, for all technologies.

¹ <https://www.uregni.gov.uk/>

² Under section 121 Energy Act 2004

13 03 2017

Paragraph 3.8	Paragraph added to direct readers to our RO: Guidance for Generators for information about adding unsupported capacity to a NIRO station.
Paragraph 4.4, 4.24	Clarified that additional capacity is only eligible for the grid and/or radar works delay grace period. All other grace periods are only for new stations.
Table 1, Table 2	Removed "on or before 31 March 2017" from the grid/radar works agreement row, as this is not a requirement of the legislation.
Paragraph 4.9	Changed wording to reflect that letters confirming delays in completing grid or radar delays may, or may not, admit liability to the developer, but no declaration of liability is required for the purpose of our grace period assessment.
Paragraph 4.13	Added detail about the types of variations we would not expect to accept.
Paragraph 4.21	Added clarity that the EFD grace period letter does not need to have been issued to the same person as is applying for accreditation of the station.
Paragraph 5.8	Added link to our declarations user guide.
Paragraph 5.25, 26	Clarified that all applicable grace periods finish on the 31 March 2018.
Paragraph 5.27	Clarified that only the grid or radar delay evidence will be reviewed at the same time as your application
Paragraph 5.35	Clarified that if we are minded to reject your grace period application, you will be informed and given the opportunity to provide further information. There isn't an appeals process for our final decision.
Appendix 3	Updated to reflect the NIRO Closure Order 2015 wording: changed "planned grid work completion date" to "31 March 2017".

Table 2 - Our response to queries and suggestions from the consultation

<p>1. What happens if I need to replace generating equipment after the scheme closure and this will result in a small increase in total installed capacity?</p> <p>Any capacity added after the closure of the scheme (and that is not eligible for a grace period) will not receive Northern Ireland Renewables Obligation Certificates (NIROCs) on its output electricity. We will pro-rate your output electricity across the NIRO capacity and excluded capacity. Full details can be found in the updated RO: Guidance for Generators, published on 13 March.</p>
<p>2. What happens if I want to add more generating equipment after the scheme closure and meter its output separately?</p> <p>The NIRO orders do not allow for separate metering of any output at a NIRO accredited station. Therefore, even if you do implement separate metering, you still need to submit data for the whole station. We will pro-rate your output electricity across the NIRO capacity and unsupported capacity. Full details can be found in the updated RO: Guidance for Generators, published on 13 March.</p>
<p>3. Can you provide clarity on the types of changes generators can make to a generating station after the closure of the scheme? For example, major repairs or refurbishment, or changes to metering arrangements.</p> <p>We will publish further guidance on this in the RO: Guidance for Generators in due course. We will inform stakeholders when this information is available. In the meantime we would recommend generators seek their own legal advice, as we will always act in a way that is consistent with the legislation that is in force.</p>
<p>4. Can Ofgem E-Serve formally 'pre-accredit' a proposed change to an accredited generating station, in order to avoid freezing the issuance of NIROCs? Alternatively, can Ofgem E-Serve give an indication for the amount of time it will take to re-approve an amended application?</p>

13 03 2017

No. The legislation does not provide for a process whereby we must make a decision on a change to an accredited generating station in advance of the change occurring. It is not for Ofgem E-Serve to close participants' investment decisions for them or provide advice on how a proposed change might be interpreted in respect of the scheme's legislative framework. We rely on accredited participants adhering to the information declaration they make each year in that we will be notified of any changes made at a generating station within two weeks of the change occurring. It is at this point that we will assess the amended accreditation. In saying this, we fully understand the risks for participants in seeing interruptions to their cash flow whilst we undertake this assessment, and will endeavor to undertake assessments as quickly as possible. We have provided further guidance about the application re-approval process in the updated [RO: Guidance for Generators](#), published on 13 March.

5. Can I accredit under the grid delay grace period if NIE complete the grid works after my original offer but too close to 1 April 2017, and therefore there is no time to commission the station before the closure of the scheme?

No, this is not a scenario that is provided for in the legislation. The legislation requires the Distribution Network Operator (DNO) to confirm that works were completed after 31 March 2017, in order for a station to be eligible to accredit under the grid delay grace period. If grace period criteria cannot be met the station needs to commission on or before 31 March 2017.

6. A generator may face other delays to commissioning outside of their control, that are not covered by the existing grace periods. Can Ofgem E-Serve exercise discretion in these cases?

No, we must act in accordance with the legislation that is in force. The Department for the Economy in Northern Ireland have set the type of delays that enable a generator to accredit after the closure of the scheme. While we understand generators may face other delays that they feel are outside of their control, we do not have the authority to act outside of the legislation.

7. I submitted an application to NIE for a connection some time ago but have yet to receive a connection offer. Can I still use the grid delay grace period?

The grid delay grace period requires you to have an agreement with the DNO to complete grid works, and the station to commission before 31 March 2018. The legislation does allow for scenarios where the agreement is not entered in to until after 1 April 2017.

8. Can I commission my fuelled station with fossil fuels?

The definition of commissioned is silent on the fuel type, and focuses on the generating station being capable of commercial operation. Therefore, we consider that it could be possible that a station is commissioned on alternative fuels, including fossil fuel, so long as the commissioning activity for the station is not dependent on fuel type.

If commissioning activity for a station is dependent on fuel type, for example ACT (standard and advanced gasification or pyrolysis) stations, then such activity must be completed before the definition of commissioned can be regarded as having been met.

9. Can generators submit grace period evidence prior to the closure of the scheme, in order to gain certainty around eligibility and facilitate investment decision making?

No, the legislation is clear that, with the exception of the Enabling Financial Decisions grace period, assessment of grace period eligibility is to take place at the point of application for full accreditation. We have outlined in our guidance the type of evidence we would expect to see to satisfy the legislative requirements, but if you believe you have other evidence that meets the requirements of the legislation you may submit this when you apply for accreditation and we will consider it on a case by case basis.

The [Enabling Financial Decisions](#) grace period enabled generators to submit evidence for a set period, at the time of the legislation being made, in order to gain certainty about eligibility for a grace period. All generators who are eligible for this grace period will be aware. It is no longer possible to apply for this grace period.

10. What if the distribution network operator or radar works party won't provide the required evidence?

13 03 2017

The legislation is clear about the information you need to gain from the DNO or radar works party and we encourage you to speak to them about the required evidence. We cannot grant a grace period using the grid or radar delay condition without this information. It may be helpful to show the DNO or radar works party the legislation and our guidance. We have made clear in guidance that providing a letter confirming delays were outside the control of the developer is not admitting liability.

We are not able to accredit a station under a grace period if you are not able to provide the evidence stated in the legislation. We do not have discretion to take into account any ongoing disputes or extenuating circumstances.

11.I have a question that is not covered in your guidance. Can I contact you do discuss this?

You are welcome to get in touch with us to discuss any unusual or bespoke issues you are experiencing. We cannot provide legal or technical advice. However, we are happy to discuss the scheme, our guidance, conditions of your accreditation and may consider adding further clarity in our guidance. Please email renewable@ofgem.gov.uk, clearly stating the country, generating station name and technology in your email, or call 020 7901 7310 (option 2).