

Dear Stakeholder,

CONSULTATION ON OFGEM E-SERVE'S GUIDANCE – RENEWABLES OBLIGATION: CLOSURE OF THE SCHEME TO ONSHORE WIND IN ENGLAND, SCOTLAND, WALES AND NORTHERN IRELAND (INVESTMENT FREEZING DECLARATIONS)

We're writing to let you know that we've published today for a four-week consultation period, draft amendments to guidance on the closure of the Renewables Obligation to onshore wind in Great Britain and Northern Ireland. The draft amendments are in Annex 1.

The amendments concern Templates 2 and 3 of Appendix 3, "Declaration of grid or radar delay condition" and "Declaration of investment freezing condition", of the following guidance documents:

- [Renewables Obligation: Closure of the scheme to onshore wind in England, Scotland and Wales](#)
- [Northern Ireland Renewables Obligation: Closure of the scheme to onshore wind \(>5MW\)](#)
- [Northern Ireland Renewables Obligation: Closure of the scheme to onshore wind \(≤5MW\)](#)

Why we're making changes

It has come to our attention that the wording of the templates for the "Declaration of grid or radar delay condition" and the "Declaration of investment freezing condition" in our published guidance documents in relation to the closure of the Renewables Obligation to onshore wind in Great Britain and Northern Ireland do not reflect the meaning of the relevant legislation as properly construed.

For this reason, we are consulting on amending these declarations.

Background

In 2016, legislation was introduced in Great Britain and Northern Ireland closing the Renewables Obligation to new onshore wind generating capacity:

- In England, Scotland and Wales, this was introduced by the "Energy Act 2016"
- For large scale onshore wind in Northern Ireland, this was introduced by "The Renewables Obligation Closure Order (Northern Ireland) 2016"
- For small scale onshore wind in Northern Ireland, this was introduced by "The Renewables Obligation Closure (No.2) Order (Northern Ireland) 2016".

In each case, we consulted upon and published guidance for operators of affected generating stations (links to this guidance are available at the top of this document).

Following the consultation on the draft guidance on the closure of the Northern Ireland Renewables Obligation to large scale onshore wind (24 March - 21 April 2016), some stakeholders expressed concern around the wording of the investment freezing condition declaration in the legislation, which had carried through into a template included in our draft guidance.

The concern was that the wording did not allow some projects to accredit under the "approved development AND investment freezing AND grid or radar delay" grace period, due to the interaction of the grid delay declaration and investment freezing declaration. Specifically, developers are required to declare that the station would have been commissioned by 31 March 2017, had it not been for investment freezing. However, this does not give effect to the primary date for the grid delay condition, which is *after* this date. Additionally, the declaration states that the delay was *only* due to investment freezing, which is not the case where the investment freezing and grid or radar delay conditions are met.

This was not the intention of the legislation so we made some amendments to the investment freezing condition template declaration, which can be seen in our [response to the consultation](#), published on 30 June 2016.

It has since come to our attention that the wording of the template declarations as published in the guidance documents is not consistent with the intention of the legislation as properly construed, for the following reasons:

- The declaration template cannot be used by generators applying under the "approved development AND investment freezing" grace period if they did not require grid works,
- It enables generators to accredit under the "approved development AND investment freezing" grace period, even if the delays beyond 31 March 2017 were due in part to grid delay that was caused by a breach by the developer, or if the "grid delay" condition is otherwise not complied with, or if the delays were for any other reason not permitted by the relevant legislation,
- It does not take account of the "primary date" (31 December 2017/31 January 2018/31 March 2018, depending on the relevant legislation) for generators applying under the "approved development AND investment freezing AND grid or radar delay" grace period, and
- It refers to "intention", without making clear whose intention is meant (for example, whether it is the developer's intent or a third party's).

Proposed changes

We propose to change the wording in Template 3 of Appendix 3, "Declaration of investment freezing condition" in the guidance documents to reflect the meaning of the legislation as properly construed. Ofgem must administer the Closure in accordance with the intent of the legislation. This change in wording is intended to:

- Enable operators who meet both the "approved development AND investment freezing" and "approved development AND grid or radar delay" grace periods to sign both the investment freezing and grid/radar delay declaration templates, as our proposed declarations allow for more than one permitted cause of delay, and

- Give effect to the “primary date” for generators applying under the “approved development AND investment freezing AND grid or radar delay” grace period, so projects with a planned grid works completion date between 1 April 2017 and the relevant “primary date” (31 December 2017/31 January 2018/31 March 2018) are able to sign the declaration.

Since the points above also concern the “grid or radar delay” declaration template (Template 2 of Appendix 3 in the guidance), we are proposing amendments to this declaration template so that it also allows for more than one permitted cause of delay.

We do not propose to make any other changes to the published guidance, or to the other declaration templates.

We have set out our draft amendments in Annex 1. As the wording of the declarations for England, Scotland and Wales and the small scale closure in Northern Ireland are the same as in the Northern Ireland Closure Order for large scale onshore wind, we are proposing to implement these changes in our guidance on those declarations, too.

We hope that these changes will increase clarity for developers. However, it is important to remember that the guidance document(s) and proposed templates are for guidance only and are not a legal guide. Reading this guidance is not a substitute for seeking your own legal or technical advice.

We’d like your feedback on the draft amendments. The closing date for responding to the consultation is 12 June 2017.

How to respond

The purpose of this consultation is to obtain your views on the proposed changes to the declarations, set out in the annexes of this document. In responding, please answer the following questions:

1. Do you have any concerns relating to the proposed declarations as set out in this document? If so, please provide specific comments.
2. Are there any aspects of the declarations that could be made clearer or improved? If so, please provide specific comments.

Email your response to:

REDevelopment@ofgem.gov.uk

Or send it to:

RE Development Team
Ofgem
9 Millbank
London SW1P 3GE

Please be aware that this is not a consultation on the policy underpinning the Renewables Obligation, but on our understanding of the intention of the legislation regarding the declarations, and the clarity of our proposed amendments to give effect to the legislation as properly construed.

If you want your response to be kept confidential, please clearly mark the document/s to that effect and include your reasons. (However, this may be subject to any obligations on

us to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004).

Next steps

Once we have duly considered any responses to this consultation, we'll publish our decision and the final guidance documents as soon as possible.

If you have any comments or concerns about how this consultation has been conducted, please refer to Annex 2.

Yours sincerely,

Renewable Electricity Development Team

Annex 1: Draft declaration templates

Declaration of investment freezing condition (example)

This template declaration (amended as per footnotes for the three different guidance documents) will replace Template 3 of Appendix 3 of each of the following documents:

- [Renewables Obligation: Closure of the scheme to onshore wind in England, Scotland and Wales](#)
- [Northern Ireland Renewables Obligation: Closure of the scheme to onshore wind \(>5MW\)](#)
- [Northern Ireland Renewables Obligation: Closure of the scheme to onshore wind \(≤5MW\)](#)

Declaration of investment freezing condition (example)

Generating station name:
.....

I confirm that, to the best of my knowledge and belief, as at the date the [relevant legislation]¹ was made:

- the station named above required funding from a recognised lender before it could be commissioned/additional capacity could form part of the station [delete as appropriate],
- the recognised lender was not prepared to provide that funding until the [relevant legislation]¹ was made, because of uncertainty over whether the Order would be made and its wording if enacted,

AND Where a station is applying for the "approved development + investment freeze" grace period,

- the station would have been commissioned/the additional capacity would have formed part of the station [delete as appropriate] on or before 31 March 2017 if the funding had been provided before [insert relevant date]², the date the [relevant legislation]¹ was made.

OR, where a station is applying for both the "approved development + investment freeze" AND "approved development + grid/radar delay" grace periods,

- the station would have been commissioned/the additional capacity would have formed part of the station [delete as appropriate] on or before 31 March 2017, if:
 - i) the funding had been provided before [insert relevant date]², the date [relevant legislation]¹ was made, and
 - ii) the grid/radar [delete as appropriate] works had been completed on or before the planned grid/radar works completion date.

¹ For England, Scotland and Wales, this will read "Energy Act 2016". For large scale onshore wind in Northern Ireland, this will read "The Renewables Obligation Closure Order (Northern Ireland) 2016". For small scale onshore wind in Northern Ireland, this will read "The Renewables Obligation Closure (No.2) Order (Northern Ireland) 2016"

² For England, Scotland and Wales, this is 12 May 2016. For large scale onshore wind in Northern Ireland, this is 16 March 2016. For small scale onshore wind in Northern Ireland, this is 28 June 2016.

OR, where a station is applying for the "approved development + investment freeze + grid/radar delay" grace period,

- the station would have been commissioned/the additional capacity would have formed part of the station [*delete as appropriate*] on or before 31 March 2017, if:
- i) the funding had been provided before [*insert relevant date*]², the date the [*relevant legislation*]¹ was made, and
- ii) the grid/radar [*delete as appropriate*] works had been completed on or before 31 March 2017.

Signed

Full name

Position/Job title

Date

Declaration of grid or radar delay condition (example)

This template declaration (amended as per footnotes for the three different guidance documents) will replace Template 2 of Appendix 3 of each of the following documents:

- [Renewables Obligation: Closure of the scheme to onshore wind in England, Scotland and Wales](#)
- [Northern Ireland Renewables Obligation: Closure of the scheme to onshore wind \(>5MW\)](#)
- [Northern Ireland Renewables Obligation: Closure of the scheme to onshore wind \(≤5MW\)](#)

Declaration of grid or radar delay condition (example)

Generating station name:

.....

I confirm that,

Where a station is applying for the "grid/radar delay" grace period,

- to the best of my knowledge and belief, the station named above would have been commissioned/the additional capacity at the station named above would have formed part of the station [*delete as appropriate*] on or before [*insert relevant date*]³ if the relevant grid/radar [*delete as appropriate*] works had been completed on or before the planned grid/radar [*delete as appropriate*] works completion date,

OR, where a station is applying for the "approved development + grid/radar delay" grace period,

- to the best of my knowledge and belief, the station named above would have been commissioned/the additional capacity at the station named above would have formed part of the station [*delete as appropriate*] on or before 31 March 2017 if the relevant grid/radar [*delete as appropriate*] works had been completed on or before the planned grid/radar [*delete as appropriate*] works completion date,

OR, where a station is applying for both the "approved development + investment freeze" AND "approved development + grid/radar delay" grace periods,

- to the best of my knowledge and belief, the station named above would have been commissioned/the additional capacity at the station named above would have formed part of the station [*delete as appropriate*] on or before 31 March 2017 [*delete as appropriate*] if:
 - i) the relevant grid/radar [*delete as appropriate*] works had been completed on or before the planned grid/radar works completion date, and
 - ii) funding had been provided before the [*relevant legislation*]¹ was made,

OR, where a station is applying for the "approved development + investment freeze + grid/radar delay" grace period,

³ For England, Scotland and Wales, this date will read 12 May 2016. For large scale onshore wind in Northern Ireland, this date will read 31 March 2016. For small scale onshore wind in Northern Ireland, this date will read 30 June 2016.

- to the best of my knowledge and belief, the station named above would have been commissioned/the additional capacity at the station named above would have formed part of the station [*delete as appropriate*] on or before [*insert relevant date*]⁴ if:
- i) the relevant grid/radar [*delete as appropriate*] works had been completed on or before the planned grid/radar works completion date, and
- ii) funding had been provided before the [*relevant legislation*]¹ was made,

AND

- I am the operator of the generating station stated in this declaration.

Signed

Full name

Position/Job title

Date

⁴ For England, Scotland and Wales, this date will read 31 January 2018. For large scale onshore wind in Northern Ireland, this date will read 31 December 2017. For small scale onshore wind in Northern Ireland, this date will read 31 March 2018.

Annex 2 – Consultation process

We are keen to consider any comments or complaints about how this consultation has been conducted and to gain your views on the following:

Question 1: Do you have any comments about the overall process of this consultation?

Question 2: Was it easy to read and understand? Or could it have been better written?

Question 3: Do you have any further comments?

Please send your comments to stakeholders@ofgem.gov.uk.