

## **Ofgem response to consultation on our guidance - Renewables Obligation (RO): Closure of the scheme to onshore wind in England, Scotland, Wales and Northern Ireland (Investment Freezing Declarations)**

On 11 May 2017, Ofgem published draft amendments to guidance on the closure of the Renewables Obligation to onshore wind generating stations in Great Britain and Northern Ireland for consultation. It had 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 on the closure of the Renewables Obligation to onshore wind generating stations did not reflect the intent of the relevant legislation as properly construed. For that reason, we consulted on amending these declarations.

The consultation period closed on 12 June 2017. We have duly reviewed all responses and, where appropriate, have updated the guidance documents. The final version of these documents were published on 20 December 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 guidance documents. [Table 1](#) lists the changes we made to the template declarations and explains why we made them. When we published the declaration template for comment, we proposed not to make changes to the body of the guidance, but have deemed that some changes are necessary to ensure consistency with the updated template declarations. [Table 2](#) documents these changes. We received a number of queries and comments that we did not feel required changes to the declarations or guidance but have addressed them in [Table 3](#).

### Terminology

NIRO SS OSW refers to the '[Northern Ireland Renewables Obligation: Closure of the scheme to "small" onshore wind \( \$\leq 5\text{MW}\$ \)](#)' guidance document

NIRO LS OSW refers to the '[Northern Ireland Renewables Obligation: Closure of the scheme to "large" onshore wind \( \$> 5\text{MW}\$ \)](#)' guidance document

RO OSW refers to the '[Renewables Obligation: Closure of the scheme to onshore wind in England, Scotland and Wales](#)' guidance document.

Table 1 - Changes to the declaration templates

Section of the final guidance documents	What has changed?
Throughout NIRO SS OSW and NIRO LS OSW	Corrected references to article numbers in the relevant legislation
Throughout all documents	Clarified that the definition of "planned grid/radar works completion date" is as per the relevant legislation
Throughout all documents	Clarified that the definition of "relevant grid/radar works" is as per the relevant legislation
Throughout all documents	Amended all references to "Template 1" to "Template AD", "Template 2" to "Template GD", and "Template 3" to "Template IF"
Template GD in all documents	Amended, to provide further clarity as to which template to use in each instance
Template GD in all documents	Divided into four separate templates, titled GD1 to GD4
Template IF in all documents	Amended, to provide further clarity as to which template to use in each instance
Template IF in all documents	Divided into three separate templates, titled IF1 to IF3
Summary of Templates GD1- GD4 and IF1-1F3 in all documents	Added footnotes clarifying that the definition of "commissioned" is as per the relevant legislation
Templates IF2 and IF3 in all documents	Inserted "relevant" before "grid/radar works" in point (ii) to provide clarity that the grid works discussed in the declaration template are the same grid works as referred to in the "grid/radar delay condition" declaration template, as per the relevant legislation

Table 2 - Changes to the body of the guidance documents

Section of the final guidance documents	What has changed?
Throughout documents	Changed references to "Template 1 in Appendix 3" within the evidence tables to "template AD in Appendix 3", to reflect the changes made to the declaration templates
Throughout documents	Changed references to "Template 2 in Appendix 3" within the evidence tables to "correct template in Appendix 3", to reflect the changes made to the declaration templates
Throughout documents	Changed references to "Template 3 in Appendix 3" within the evidence tables to "correct template in Appendix 3", to reflect the changes made to the declaration templates
Throughout RO OSW	Clarified that the Energy Act 2016 amended the Electricity Act 1989, by inserting various new sections
Footnote 1 in NIRO SS OSW and NIRO LS OSW, footnote 2 in RO OSW	Added a footnote referencing the wider closure of the RO/NIRO

Paragraph 3.3 in NIRO SS OSW and RO OSW	Added a sentence to clarify when certain grace periods are available
Paragraph 3.6 in all documents	Changed "grace period" to "condition" in the sections explaining the penultimate grace period
Paragraph 3.6 in all documents	Deleted "beyond that period" and "then" from the final grace period, to provide further clarity
Table 4 in all 3 documents	Inserted "or other document", to clarify that apart from letters, other types of document from a recognized lender may be considered as evidence for the "Investment freezing" condition.

**Table 3 - Our response to queries and suggestions from the consultation**

1. Can Ofgem confirm that planning evidence is not relevant to evidence requirements for meeting the standalone investment freezing and/or grid/radar delay conditions?
We do not require evidence relating to planning permission/conditions when assessing the "Grid/radar delay" or "Investment freezing" conditions. However, as all grace period applications from 1 April 2017 are required to meet the "Approved development" condition, we will consider the evidence relating to the "Approved development" condition on its own merit.
2. Can Ofgem clarify why the text in the final paragraph of the investment freezing declaration for the "approved development + investment freezing + grid/radar delay" grace period refers to 31 March 2017, whereas the equivalent paragraph in the grid/radar delay declaration refers to the planned grid/radar works completion date?
The legislation requires that, in order to meet the "investment freezing" condition, the station or additional capacity would have been commissioned by 31 March 2017, had it not been for the various permitted delays. We recognise that the "planned grid works completion date" may have been after this date, and therefore have allowed for developers to declare that, had their works been completed before 31 March 2017, they would have been able to commission the station by this date.
3. Can Ofgem clarify that the statement in the investment freezing declaration for the "approved development + investment freezing + grid/radar delay" grace period that "the station would have commissioned...on or before 31 March 2017 if:...i) the relevant grid/radar works had been completed on or before March 2017" is hypothetical?
We can confirm that this is a hypothetical statement.
4. Can Ofgem consider that the legislative requirement for a letter "dated on or before the date which is 28 days after the date" on which the relevant legislation was made, should be construed to be inclusive of either (i) a backward looking statement of fact confirming the policy position of the recognised lender at the time or (ii) an internal document dated prior to the date 28 days after the date on which the legislation was in force, confirming that the recognised lender had a policy of not lending to such projects.
The requirement for a letter or other document from a recognised lender to be dated within 28 days of the legislation being made is clear in the legislation. We do not view this requirement as being inconsistent with the rest of the legislation or the legislative intent. Therefore we continue to require that the letter or other document referred to in legislation be provided, as set out in our guidance.
We have sought to clarify in our guidance that a document other than a letter may, as set out in the legislation <sup>1</sup> , be considered as meeting the statutory requirements for the "investment freezing" condition.

<sup>1</sup> See for instance, article 12(4)(b) The Renewables Obligation Closure (Northern Ireland) Order 2016 at [http://www.legislation.gov.uk/nisr/2016/174/pdfs/nisr\\_20160174\\_en.pdf](http://www.legislation.gov.uk/nisr/2016/174/pdfs/nisr_20160174_en.pdf)

We will consider such other documents against the statutory requirements on a case-by-case basis.

5. It is our view that it is possible that market participants may progress projects based on backdated recognised lender letters.

We consider that backdated letters (letters dated on or before the date which is 28 days after the date on which the legislation is made but produced or issued after this date) do not meet the statutory requirements. We consider "dated" to mean "dated and issued". As our guidance already makes clear, if we find that information provided to us in support of the application or the grace period is incorrect, we can refuse to accredit the station.

We will also investigate allegations of suspected fraud, or if we consider that there is reason to believe that evidence may be incorrect.

This includes allegations or any suspicion we may have that a letter from a recognised lender presented to us to evidence the investment freezing condition criteria, may have been produced or issued after the required date.

6. Has Ofgem considered the impact of this change to guidance on developers who did not continue a project because they did not believe they could sign the March 2016 draft "Investment freezing" template declaration?

Ofgem has considered this issue, and representations about the effect of the statutory requirement that an operator be able to provide a letter/document from a recognised lender dated on or before 28 days after the legislation was made. However, we are making changes to the guidance in order to reflect the meaning of the legislation as properly construed; we are not changing the statutory requirements for operators to be issued certificates (and we do not have the power to do so). As the guidance states, the document(s) is for guidance only and is not a legal guide.