STATUTORY INSTRUMENTS

2016 No. 457

ELECTRICITY

The Renewables Obligation Closure Etc. (Amendment) Order 2016

Made - - - - 24th March 2016

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(**1**).

The Secretary of State has consulted the Gas and Electricity Markets Authority, Citizens Advice, Citizens Advice Scotland(**2**), 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(**3**).

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 Etc. (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(**4**).

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

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

(**1**) 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).

(**2**) 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.

(**3**) 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.

(**4**) S.I. 2014/2388 as amended by S.I. 2015/920 and S.I. 2015/1947.

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 for planning permission which is either—

(i) a "valid application" within the meaning of article 34(4) of the Town and Country Planning (Development Management Procedure) (England) Order 2015(**5**); 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, an application for planning permission which is a "valid application" within the meaning of article 22(3) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012(**6**);

(c) in relation to an application made in Scotland, an application for planning permission made in accordance with regulation 9 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013(**7**)

(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—

(**5**) S.I. 2015/595.
(**6**) S.I. 2012/801.
(**7**) S.S.I. 2013/155.

"**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.

(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(**8**))—

(i) was an owner or lessee of the land on which the station is situated,

(ii) had entered into an agreement to purchase or 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

(**8**) 2010 c.4.