EXPLANATORY MEMORANDUM TO

THE RENEWABLES OBLIGATION CLOSURE (AMENDMENT) ORDER 2015

2015 No. 920

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument provides for the closure of the renewables obligation to solar pv generating stations, where the generating capacity of the station is over 5 megawatts ('MW') in size. The 5 MW threshold does not include additional capacity added to the station after 31 March 2014 if the additional capacity has not been registered under the renewables obligation scheme. The instrument makes a number of exceptions to the closure, for existing generating capacity and for new generating capacity meeting the criteria set out in the instrument. The exceptions for new generating capacity are sometimes known as grace periods.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 An application for judicial review was dismissed against the consultation proposals relating to this instrument in *Solar Century Holdings Limited v Secretary of State for Energy & Climate Change* [2014] EWHC 3677 (Admin). This judgment may be subject to appeal.

4. Legislative Context

4.1 The renewables obligation ("RO") is an obligation imposed on licensed electricity suppliers. Suppliers must produce, by a specified day, a certain number of renewables obligation certificates ("ROCs") in respect of each megawatt hour of electricity that each supplies to customers in Great Britain during a specified period known as an obligation period. The RO is administered by the Gas and Electricity Markets Authority ("the Authority") who issue ROCs to renewable electricity generators in respect of their eligible renewable output.

4.2 The RO is provided for in relation to England & Wales by the Renewables Obligation Order 2009[1] which is made by the Secretary of State, and in relation to Scotland by the Renewables Obligation (Scotland) Order 2009[2] which is made by the

[1] S.I. 2009/785.
[2] S.S.I. 2009/140.

Scottish Ministers. There is also a renewables obligation in Northern Ireland, which is provided by the Renewables Obligation Order (Northern Ireland) 2009[3] made by the Northern Ireland Department of Enterprise, Trade & Investment. These complementary renewables obligation orders together in effect create a UK wide renewables obligation.

4.3 Article 3 of the instrument inserts article 2A into the Renewables Obligation Closure Order 2014, which prevents ROCs from being issued in respect of electricity generated by large solar pv stations after the early closure date. There are a number of exceptions in article 2B (for the original capacity of large solar pv stations) and in articles 2C and 2D (for additional generating capacity at large solar pv stations). It is possible that more than one of the exceptions may apply, in which case any one of them may be satisfied.

4.4 The new article 2B ensures ROCs can continue to be issued for electricity generated by the original capacity of stations accredited by the early closure date. It also provides:

- a grace period for stations granted preliminary accreditation by 13th May 2014,
- a grace period for stations whose commissioning is delayed until after 31st March 2015 due to certain grid delays.
- a grace period designed to protect significant investments in new stations made on or before 13th May 2014.

4.5 The new article 2C provides a grace period designed to protect significant investments in additional capacity added after the closure date to stations that were accredited on or before 13th May 2014.

4.6 The new article 2D ensures ROCs can continue to be issued for electricity generated by additional capacity added to stations before the early closure date. It also provides a grace period where additional capacity is delayed in being added to the station due to certain grid delays.

4.7 The early closure date is intended to be 31st March 2015, but if the instrument is not made before this date, the early closure date will be the last day of the month in which the instrument comes into force.

4.8 The Renewables Obligation Closure Order 2014 does not set the final end date of the RO after which no ROCs may be issued to any generating station. As a result of article 17A(1) of the Renewables Obligation Order 2009 (as inserted by article 8 of S.I. 2010/1107), it is already the case that in England & Wales, no ROCs can be issued in respect of electricity generated after 31 March 2037. Article 17A of the Renewables Obligation (Scotland) Order 2009 (as inserted by S.S.I. 2010/147) makes similar provision for Scotland.

[3] S.R. 2009/154.

4.9 State Aid approval for the RO was given in 2009 (case N414/2008) and most recently in 2013 (case SA.35565 (2013/N)). This instrument does not make any changes that affect the state aid approval.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

5.2 Any legislation for closure of the RO in Northern Ireland would be made by the Northern Ireland Department of Enterprise, Trade & Investment.

6. European Convention on Human Rights

Matthew Hancock, Minister of State for the Department of Energy and Climate Change has made the following statement regarding Human Rights:

In my view the provisions of the Renewables Obligation Closure (Amendment) Order 2015 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The RO is being closed early to large scale solar pv capacity due to large scale solar PV deploying more rapidly than we originally estimated and the need to control the costs of large scale solar pv in order to ensure it is affordable within the Levy Control Framework.[4] This is in the context of government objectives for long-term decarbonisation of electricity and security of supply at the least cost to consumers.

7.2 A grace period has been designed to protect existing significant financial commitments made in large scale solar pv projects on or before 13 May 2014, the date on which the consultation began. There is also a grace period to designed to protect projects against the risk of missing the early closure date due to delays in getting connected to the electricity grid, where the delays in completing the grid works were not due to breaches by the developer.

7.3 Most powers for the RO in Scotland are executively devolved to Scottish Ministers. However, the power to make a Renewables Obligation Closure Order is not executively devolved and the Government considers it is appropriate for the closure of the RO to large scale solar pv to be implemented on a consistent basis across Great Britain as a whole.

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[4] The Levy Control Framework places limits on the aggregate amount levied from consumers by energy suppliers to implement Government policy. Further detail can be found in Control Framework for DECC Levy-Funded Spending: Questions and Answers. 2011. URN 11D/675. Available at: https://www.gov.uk/government/publications/control-framework-for-decc-levy-funded-spending-questions-and-answers

- Consolidation

7.4 This is the first amending instrument to the Renewables Obligation Closure Order 2014. No consolidation of the Closure Order is planned at this time.

8. Consultation outcome

8.1 The Government carried out two public consultations on the early closure of the RO to large scale solar pv. The first on the closure itself and the significant financial investments grace period, which ran for over 7 weeks from 13 May to 7 July 2014 and the second on a further grace period for grid delay, which ran for 3 weeks from 2 to 24 October 2014.

8.2 The government received 65 responses to the first consultation and 29 to the second. In the first consultation, 57% of respondents were opposed to the early closure. 69% were opposed to the proposal to introduce a grace period based on the stage projects had reached by 13 May 2014, though not to the idea of a grace period itself. 86% disagreed with the forms of evidence to demonstrate eligibility for the grace period. Opinion was divided on whether a banding review would be a more effective means of controlling costs for this technology. Responses mentioned repercussions for investor confidence, and some developers - notably small and medium-sized enterprises - anticipated increased financial risks and potential losses from having already invested in developing project pipelines.

8.3 Having reviewed the evidence in light of the consultation, the government's assessment remained that large scale solar pv is deploying more rapidly than previously estimated and poses a significant risk of breaching the Levy Control Framework within the next two years. A number of adjustments were made to the evidence that has to be provided in order to benefit from the grace period to ensure the requirements are more aligned with the practical realities of solar pv project development processes and timelines.

8.4 In the light of the first consultation, the second consultation proposed an additional grace period to protect projects against the risk of missing the early closure date due to delays in getting connected to the electricity grid, where the delays in completing the connection were not due to breaches by the developer. The vast majority of respondents supported the need for a grid delay grace period and were content with the grace period's eligibility criteria. As a result of the consultation, the length of the grace period was increased to 12 months in line with that offered to other technologies in the Renewables Obligation Closure Order 2014.

8.5 Details are set out in the government responses published on 2 October[5] and 25 November 2014[6] respectively.

[5] https://www.gov.uk/government/consultations/consultation-on-changes-to-financial-support-for-solar-pv

9. Guidance

9.1 The Authority, as administrators of the RO, intend to publish draft guidance on the grace periods for informal consultation. A final version of the guidance will then be made available once this instrument comes into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is in relation to investment decisions on large scale solar pv projects. In some cases where there is uncertainty as to whether the project will be able to commission before the early closure date, it may lead the project to seek alternative means of support or not proceed. In other cases, the grace periods will give greater confidence that the project will be able to accredit under the RO even if it commissions after the early closure date, thereby enabling the project to proceed.

10.2 The impact on the public sector is a small additional burden on the Authority, in administering the grace periods. The Authority is able to recover its costs of administering the RO from the buy-out fund, which is a fund made up of payments by electricity suppliers for any shortfall in the number of ROCs they submit.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the criteria for the grace periods rely on evidence that should be straightforward to provide or that smaller projects would already require for other purposes.

11.3 The basis for the final decision on what action to take to assist small business was examination of the relevant consultation responses.

12. Monitoring & review

12.1 The Government will monitor the operation of the grace periods to inform the development of any other similar arrangements in future. Success measures will include: straightforward, low-cost operation and administration for both those projects seeking to benefit from a grace period and the Authority.

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[6] https://www.gov.uk/government/consultations/consultation-on-further-changes-to-financial-support-for-solar-pv

12.2 The closure date of 31 March 2017 will continue to apply to new solar PV projects at or below 5MW. The government will continue to monitor the small scale solar pv deployment pipeline and consider taking measures to remain within the Levy Control Framework if necessary.

13. Contact

Tom Luff at the Department of Energy and Climate Change Tel: 0300 068 6606 or email: tom.luff@decc.gsi.gov.uk can answer any queries regarding the instrument.