



## Making sense of the RO and FiT recent changes - Q&A

The last couple of months have seen a wide variety of proposed and implemented changes by the UK government to support mechanisms for renewable energy. To help our clients understand the impact of these, we set out below answers to some of the most frequent questions we are being asked.

### Renewables Obligation (RO) closure to large-scale solar

#### When did this take effect?

1 April 2015.

#### What schemes does it cover?

Solar PV generating stations above 5 MW total installed capacity; and extensions to existing PV solar generating stations that take the capacity over 5 MW or an extension to an existing PV generating station which already exceeds 5 MW.

#### Does it apply to Scottish projects as well?

Yes.

#### What other support options are there?

CfDs, but this is dependent on solar being eligible for the next allocation round. The next allocation round will be delayed. More news is expected on this in Autumn 2015.

#### Can I split projects up into 5 MW sites and apply for the RO?

Probably not since they are likely to be viewed as a single site by OFGEM. There are rules surrounding this that have been well rehearsed over the years revolving around site boundaries, common ownership and single grid connection etc. We recommend that you seek legal advice in relation to the definition of "Site" if you are considering this.

#### Does that mean I can still obtain the RO for a $\leq 5$ MW PV solar farm?

Yes, but subject to recent changes announced, see below.

#### If I extend my existing RO PV solar project to above 5 MW, can I get any support?

Yes, you may be able to obtain CfD support for the extension (subject to solar being supported under the CfD) and the whole plant will be deemed a "dual scheme" facility. There are rules governing how the RO and CfD parts need to operate and be separate. You should seek advice.

#### What grace periods are there?

There are 3 grace periods (A, B, C as follows) which will allow you to accredit under the RO up to 1 April 2016. To qualify for one of these you need to show that:

#### (A) Significant financial investment grace period

- i. a planning application was submitted on or before 13 May 2014 or a planning permission was granted on or before 13 May 2014 or no planning was required; and
- ii. a grid offer was made and accepted on or before 13 May 2014 or no grid works are required; and
- iii. a declaration from the station operator that on or before 13 May 2014, the project (or a connected person to the project) held land rights to the site – this could be, for example, a freehold interest, lease, an option or exclusivity agreement with the landowner.

#### In relation to this grace period (A), what documents do I need to present to OFGEM to evidence this?

These are detailed in OFGEM guidance (Burgess Salmon can assist you with this).

#### When do I provide these documents and the evidence?

At the point you wish to accredit the station.

#### Does that mean I won't know whether I qualify for the grace period until the point of full accreditation?

Yes, there will always be an element of risk but it is prudent to seek advice on the strength of your case. Ofgem do not provide early confirmations.

#### What if, since 13 May 2014, my planning or grid has been varied?

You may still be able to qualify. OFGEM accepts there may be changes to grid and planning. To some extent, it will depend on how extensive these changes are and whether they materially change the proposed station from that which was planned up to 13 May 2014. (Burgess Salmon's regulatory team can provide more details).

#### Does it matter if the grid or planning was in the name of another entity at the 13 May 2014?

No, not necessarily, OFGEM have said they don't scrutinise this.

#### (B) Grid delay grace period

To benefit from this grace period, evidence needs to be provided of:

- i. a grid offer and acceptance on or before 31 March 2015 and
- ii. clear evidence that the planned grid works were due to be completed on or before 31 March 2015; and
- iii. a letter/email from the DNO confirming the works were delayed other than as a result of the project's fault; and
- iv. a declaration from the project that but for the grid delay, the station would have been commissioned on or before 31 March 2015.

### (C) Preliminary accreditation grace period

The Project had RO preliminary accreditation on or before 13 May 2014, providing that there have been no material changes to the law or to the project since that time which would have meant that the preliminary accreditation would not have been granted had those changes applied at the time.

#### **Can OFGEM withdraw accreditation if the grace period documents or declarations are inadequate or misleading?**

Yes, OFGEM has the power to audit and revoke accreditation so declarations and evidence need to be carefully considered.

### RO closure to solar PV 5 MW and below

On 22nd July, DECC announced a consultation on changes covering the remaining categories of solar PV projects capable of accreditation under the RO. Projects up to 5 MW and added capacity to an already RO accredited station up to 5 MW, will be closed to the RO from 1 April 2016. DECC also announced grandfathering changes.

#### **Does this affect 5 MW plus solar PV projects?**

No, they are still subject to their own regime (see above).

#### **Does this apply to Scottish projects as well?**

Yes (in respect of the RO closure aspects).

#### **Does this mean I now have up until 1 April 2016 to build my project and qualify for the RO?**

Yes, subject to certain grace periods (see below). Note also the grandfathering changes below.

#### **Does this apply to community energy projects?**

Yes, but the government does have sympathy for community energy so this *may* change (although it is clear that the government would prefer to see small-scale community projects under the Feed-in-Tariff).

#### **What are the grace periods?**

There are 3 grace periods tests. If you qualify then you can still accredit up to 5 MW projects under the RO to the 31 March 2017. The 3 grace period tests are:

##### (A) Preliminary accreditation

Preliminary Accreditation under the RO on or before 22 July 2015; or

##### (B) Significant financial commitment

- i. a grid offer and acceptance with dates no later than 22 July 2015; and
- ii. a director's certificate confirming that the project owns the land, e.g. freehold, leasehold, option or exclusivity agreements as of and no later than 22 July 2015; and
- iii. a planning application for the project having been made on or before 22 July 2015 or confirmation that planning was not required; or

##### (C) Grid delay

- i. a grid offer and acceptance and documentation from the DNO demonstrating an estimated connection date of no later than 31 March 2016; and
- ii. a declaration from the generator that the project would have been commissioned on or before 31 March 2016, had the grid works been completed; and
- iii. confirmation from the DNO that there was a grid delay and that delay was not due to the fault of the project.

#### **When do I provide these documents and the evidence?**

At the point you wish to accredit the station.

#### **If I qualify for the grace periods, what is the deadline for RO accreditation?**

31 March 2017.

#### **What is meant by the removal of grandfathering?**

Grandfathering is the concept that once a station is accredited, the level of support awarded at the point of accreditation will not change in the future. The government has now proposed that unless a solar PV 5 MW or below project satisfies the "Significant Financial Investment" grace period in (B) above, even if it is built and accredited by 1 April 2016, it will not benefit from grandfathering.

#### **So there is a risk that even if I accredit before the 1 April 2016, my level of support may change over time?**

Yes, unless you satisfy the conditions in grace period (B) above, but this is only the case for 5 MW and below RO projects.

#### **Do the grandfathering proposed changes apply to Scottish Projects?**

No, only to England and Wales projects.

#### **The government mentions new banding, what is that?**

The government is going to gather evidence to assess whether it needs to publish new ROC banding support levels for 5 MW and below PV solar. If it does publish new banding levels, it is likely to reduce the support available under the RO for those projects that qualify for accreditation and this may also impact on those projects going forward that do not benefit from grandfathering.

#### **Do the banding proposals apply to Scottish Projects?**

No, only to England and Wales projects.

#### **When will we know if these plans will be implemented?**

Legislation implementing these decisions is likely before 1 April 2016. There are unlikely to be many changes to the proposals given the government's concern on managing the Levy Control Framework costs.

#### **What other support is available?**

The Feed-in-Tariff for smaller scale solar (although a FIT review will take place later this year).

### The RO closure to onshore wind (1 April 2016)

In June, the government announced it intends to close the RO to onshore wind in line with the Conservative Party manifesto commitment. The closure will be implemented by primary legislation.

#### **What is the timing of the legislation?**

It is unlikely to be finalised and in place until Q1 2016.

#### **Is all onshore wind covered?**

Yes, although grace periods are being considered and designed and the industry is lobbying hard.

#### **Does it apply to Scottish projects as well?**

Yes.

## What will be the likely grace period tests?

These are yet to be finalised but at present we know that DECC is considering offering projects that satisfy the criteria below, the ability to continue to accredit under the RO until 31 March 2017 (when they can also take advantage of the grid and radar delay grace periods which are already in place).

*The grace period criteria are:*

- i. planning permission has been obtained by the 18 June 2015 or there is confirmation that no planning is required; and
- ii. there has been a grid connection offer and acceptance by 18 June 2015 or no grid connection is required; and
- iii. a director's certificate confirming land rights for the project had been secured by 18 June 2015, e.g. lease, option, freehold, exclusivity.

## Are community projects exempted?

No, not at present. Though the government is considering how to continue to support community projects.

## How are the grace period criteria likely to be interpreted?

There are similarities between this and the solar grace period criteria (see above). However, the government may adopt a harder line for onshore wind as closure of subsidies to onshore wind was a Conservative Party manifesto commitment. So, for example, unlike solar, DECC may not be persuaded to adapt the planning test in (i) above to accept that as long as planning for the project was applied for rather than obtained by 18 June 2015, the grace period will operate.

## What if the planning permission or grid varies post 18 June 2015?

It is not clear, but we would expect DECC to follow aspects of the solar grace period which means that non material grid and planning variations will not necessarily disqualify a project from the grace period.

## What other support is available to onshore wind?

It has been made clear that onshore wind is unlikely to be eligible in future rounds for the CfDs. Again, this is in line with the Conservative's manifesto commitment. For smaller projects, the Feed-in-Tariff may be available.

## Other announcements

### Consultation on the withdrawal of FIT pre-accreditation 21 July 2015

The Government is proposing to remove pre-accreditation and pre-registration (for community projects) from the FIT scheme. Pre-accreditation etc. gives generators a guaranteed FIT tariff level in advance of commissioning their installation providing the project is commissioned and full accreditation is applied for within a specified window (6 months for solar, 12 months for wind etc.). Community projects have been able to benefit from an additional 6 months on top of these windows.

## Will this affect community projects?

Yes, although the Government has stated that they may relook at this.

## What should I do now?

If your project is capable of pre-accreditation it is sensible to apply. The consultation closes on 19 August and the Government also intends to carry out a review of the whole Feed-in-Tariff scheme later in 2015.

## Climate change levy exemption withdrawal

Electricity from renewables projects will no longer benefit from exemption from the Climate Change Levy (CCL) from 1 August 2015. This exemption operated to enhance revenue from a renewable project since Levy Exemption Certificates could be obtained by the generator. These in turn, could be traded alongside other certificates. The long term value of the CCL exemption and the longevity of the CCL, has been subject of much debate in recent years with many electricity offtakers taking a cautious approach. Nevertheless the impacts of this will need to be reflected in financial models. For those with existing projects and long term power purchase agreements advice should be obtained on areas such as "change in law" to assess whether the contracts can be or are likely to be reopened.

## Planning policy for onshore wind

Westminster has announced new policy aimed at giving the local community much greater say on decisions in relation to onshore wind planning applications. It is predicted that this will result in more refusals. This applies to all onshore wind projects including community projects. Burges Salmon's planning experts have advised on this for a number of its renewable energy developer clients.

If you would like to discuss any of the above, have further questions, or want to know more about Burges Salmon's award winning renewables team, please contact Ross Fairley or any of our renewables team detailed at [www.burges-salmon.com/sectors/energy\\_and\\_utilities/renewables/](http://www.burges-salmon.com/sectors/energy_and_utilities/renewables/).

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