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**DfE Response**

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**Energy**

**DfE response to supplementary consultation on Closure of the Northern Ireland Renewables Obligation to new small scale onshore wind**

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# INTRODUCTION

# 1

## Background

- 1.1 On 24 March 2016, DETI published a 6 week consultation on proposed closure arrangements for new small scale onshore wind. The consultation closed on 9 May 2016 and this document is the Department's Response.

## DECC Backstop Power

- 1.2 The DECC SOS confirmed in December 2015 that should NI wish to continue to support new onshore wind generation in NI under the NIRO that she would take a backstop power to protect GB consumers.
- 1.3 A backstop power to give DECC powers to prevent GB suppliers from meeting their Renewables Obligation by redeeming NIROCs from projects that do not meet the closure eligibility criteria, has been included in the Energy Bill (now the Energy Act) which received Royal Assent on 12 May 2016.
- 1.4 While the timing and impact of DECC's action cannot be predicted with any certainty there is a risk that it could impact on investor confidence in all NI renewable projects (not just wind) and GB suppliers willingness to buy NIROCs.
- 1.5 The consequence of the power being exercised effectively would be that the only market for these restricted NIROCs would be the NI market. This could lead to a reduction in value of these NIROCs and subsequently impact on project viability.

## Responses to the Consultation

- 1.6 The consultation closed on 9 May 2016. In total, 126 responses were received from a range of stakeholders including members of the public, independent generators, developers, trade associations, energy suppliers, and Non Government Organisations (NGOs).
- 1.7 We are grateful to all those who took the time to respond. A list of respondents can be found at **Annex F**.
- 1.8 Approximately 93% of those who indicated a preference selected Option 1, 1% selected Option 2 and 6% selected Option 3. A number of other general responses were received, mostly critical of providing support for onshore wind.

## Decision

- 1.9 Taking account of the potential impact of DECC's 'backstop' power and the tenor of the majority of responses to the consultation, the DfE Minister has decided that **the NIRO will close to new small scale onshore wind generating stations and existing small scale generating stations adding additional capacity on 30 June 2016**. Small scale onshore wind projects seeking to accredit after 30 June 2016 will be required to meet the approved development grace period eligibility requirements set out in paragraph 2.19 of the consultation (the 'approved development' conditions) and detailed in Chapter 2 .
- 1.10 Small scale projects that do not meet the eligibility requirements for the approved development grace period in 2016/17 will still be eligible to accredit after 30 June 2016 if they meet the grid or radar delay grace period conditions (see **Annex D** for more detail).

## Summary of requirements for accreditation

- 1.11 The following is a summary of the conditions that have to be met:
- (i) Small scale onshore wind projects seeking to accredit under the NIRO between **1 July 2016 and 31 March 2017** must meet:
    - a) the approved development conditions (as set out in the consultation and listed at Annex B).
  - (ii) Small scale onshore wind projects seeking to accredit under the NIRO between **1 April 2017 and 31 March 2018** must meet the approved development conditions and must also meet:
    - a) the grid or radar delay conditions; or
    - b) the investment freezing conditions.

(iii) Small scale onshore wind projects seeking to accredit under the NIRO between **1 April 2018 and 31 March 2019** must meet the approved development conditions and must also meet:

- a) the grid or radar delay conditions; and
- b) the investment freezing conditions.

(iv) Projects which **do not** meet the approved development conditions, seeking to accredit under the NIRO between **1 July 2016 and 30 June 2017** must meet:

- a) the grid or radar delay grace period conditions.

1.12 **Annex A** sets out the above grace periods in terms of eligibility by year.

## **Implementation**

1.13 The legislation implementing the decisions in this response will be set out in a Renewables Obligation Closure (No.2) Order (Northern Ireland) 2016 which is intended to come into operation in June 2016, subject to the approval of the Northern Ireland Assembly.

# GRACE PERIOD CRITERIA

## 2

### The 'approved development' condition criteria

- 2.1 Small scale onshore wind projects which seek to accredit under the NIRO after 30 June 2016 and which meet the approved development grace period eligibility criteria outlined below (also set out in **Annex B**) must be able to demonstrate to Ofgem at the time of accreditation that they were in possession of the following by the grace period eligibility date i.e. 30 September 2015:
- (i) Relevant planning permission dated no later than the grace period eligibility date;
  - (ii) A grid connection offer and acceptance of that offer, both dated no later than the grace period eligibility date or confirmation that no grid connection is required; and
  - (iii) A declaration confirming that, as at the grace period eligibility date, the developer or proposed operator of the station owns the land on which the station is to be situated or has an option or agreement to lease the land or is party to an exclusivity agreement in relation to the land.
- 2.2 Applicants should not submit their grace period evidence to Ofgem before they submit their full application for accreditation. Ofgem will not assess eligibility for a grace period until an application for full accreditation has been received. Ofgem will issue guidance explaining how to apply for accreditation and grace periods shortly, which will be similar to the recently published 'NIRO: Closure of the scheme to onshore wind >5MW' guidance.

## **‘Grid or radar delay’ condition criteria**

- 2.3 Projects will be able to avail of a 12-month grace period for grid or radar delays if they are able to demonstrate that they meet the eligibility criteria set out in **Annex D**.
- 2.4 It should be noted that the grid or radar delay grace period may apply to several scenarios depending on whether the project meets the eligibility criteria of other grace periods i.e. approved development, investment freeze.

## **‘Investment freezing’ condition criteria**

- 2.5 The policy adopted for small scale onshore wind projects will follow that already adopted for large scale projects and as proposed for GB developers. Projects which satisfy the investment freezing condition must also demonstrate that they satisfy the approved development grace period conditions.
- 2.6 The time period for small scale wind projects will be equivalent to the length of time from DECC’s 18 June 2015 announcement until the NI legislation is in place. As the Minister has decided to close the NIRO to small scale onshore wind on 30 June 2016, the time period will be 12 months on the assumption that legislation will be in place.
- 2.7 The investment freezing condition criteria (set out in **Annex C**) requires operators of affected projects to provide a declaration stating that, to the best of the operator’s knowledge and belief that as at the date of coming into operation of the NIRO closure legislation for small scale onshore wind:
- (i) funding from a recognised lender was required before the station could be commissioned or additional capacity could form part of the station;
  - (ii) the recognised lender was not prepared to provide funding until the NIRO closure legislation for small scale onshore wind was made because of uncertainty over whether the Order would be made, or its wording if made; and
  - (iii) the station would have been commissioned, or the additional capacity would have formed part of the station, on or before 31 March 2017 if the funding had been provided before the NIRO closure legislation for small scale onshore wind was made.
- 2.8 The operator of the project will also be expected to secure a letter or other document, dated on or before the date which is 28 days after the NIRO closure legislation for small scale onshore wind is made, from a recognised lender confirming (whether or not the confirmation is subject to any conditions or other terms) that the lender was not prepared to provide funding in respect of the station or additional capacity until the legislation

is made, because of uncertainty over whether the legislation would be made or its wording if made.

- 2.9 A 'recognised lender' is 'a provider of debt finance which has been issued with an investment grade credit rating by registered credit rating agency'.
- 2.10 The investment freezing condition is intended to work in the same way as existing grace periods relating to the closure of the NIRO. There is no separate application to determine eligibility for the grace period – projects will need to submit the required evidence to demonstrate eligibility at the time they apply to Ofgem to accredit under the NIRO.



# Eligibility Clarifications

## 3

- 3.1 This consultation did not specifically seek views on the eligibility and evidence criteria for the early closure grace periods. However, the closure of the NIRO to large scale onshore wind generated a number of points of clarification which may apply equally to small scale onshore wind projects and have therefore been included in this response.

### Planning

#### **Amendments to existing planning approvals**

- 3.2 In relation to amendments to an existing planning approval for a wind turbine, DfE will not move to legislate on this issue. Instead, it will be up to developers to satisfy Ofgem at the time of accreditation that the evidence they have provided for the 'approved development' condition relates to the station their accreditation application is for.

#### **Planning appeals**

- 3.3 Clauses have been introduced in the Energy Act to allow GB projects which had planning permission refused at the time of the relevant grace period eligibility date but subsequently overturned on appeal to be eligible for the approved development grace period.
- 3.4 Consideration was given to the possibility of replicating the GB position however we have reluctantly concluded that the lack of a statutory time period for planning appeals to be heard in Northern Ireland combined with historically different planning/grid policy approach adopted in Northern until recently makes a comparison with GB unworkable.
- 3.5 Any NI projects which are successful in appeal after the eligibility date are in any case unlikely to be in possession of an accepted grid connection offer dated no later than the relevant grace period eligibility date. This is because up to 30 July 2015, evidence of planning permission was

required by NIE Networks as part of a grid connection application for generation connections. This policy was subsequently changed following a Determination by the Utility Regulator.

- 3.6 Any solution that would require a later eligibility date for accepted grid connection offers and/ or an elongated grace period, would be inconsistent with the eligibility criteria consulted on and hence is likely to be considered as ineligible by DECC. DECC has confirmed that GB suppliers will not be able to redeem NIROCs from any project that is considered ineligible.

### **Grid connection**

#### **Off-grid and zero export connection**

- 3.7 Off-grid connections are connections which are entirely without connection to the electricity network. As no grid connection is necessary, a declaration from the generator stating such will be required by Ofgem along with the other evidence demonstrating that the project meets the eligibility criteria when applying for accreditation.
- 3.8 If a project does not have an accepted grid connection offer for zero export by the relevant date, it will not meet the grace period eligibility criteria.
- 3.9 It will be up to developers to satisfy Ofgem at the time of accreditation that the generating station is off-grid/zero export.

#### **G83/1 Stage 1 and G83/1 Stage 2 connections for Small Scale Embedded Generators (SSEGs)**

- 3.10 The G83/1 Stage 1 process is where generators typically connect:
- Single phase wind technologies which generate up to a maximum of 3.68kW of electricity. These will typically be connected to domestic premises. An existing single phase connection must already be available.
  - Three phase wind technologies which generate up to a maximum of 11.04kW of electricity. These will typically be connected to a farm or small commercial premises. An existing three phase connection must already be available.
- 3.11 The G83/1 stage 2 process covers the connection of multiple SSEGs (other than within a single Customer's Installation) in what NIE terms as a 'Close Geographic Region', under a planned programme of work. In the case of projects where the proposal is to install multiple SSEGs in a close geographic region, NIE will need to assess the impact that these connections may have on the network and specify conditions for connection.

- 3.12 **Annex E** sets out which grace period conditions are applicable to onshore wind generating stations connecting by G83/1 Stage 1 and G83/1 Stage 2.

### **NIE Networks letter**

- 3.13 Where appropriate, NIE Networks and SONI may issue a letter to those projects which have not received an estimated connection date at the time of accepting a connection offer. This letter is intended to fulfil the legislative requirement for the developer to provide a copy of a document written by or on behalf of the network operator which estimated or set a date for completion of the relevant grid works.

### **Connection and accreditation gap**

- 3.14 Where a grid connection is made shortly before 30 June 2016/31 March 2017/31 March 2018 (whichever is applicable) the generating station will still need to commission and accredit under the NIRO by the eligible date. If this doesn't happen, the station will not be eligible for accreditation
- 3.15 There will always be an element of risk that developers must consider when seeking to accredit under the NIRO. The fact that a station must be commissioned and have submitted an application in order to be eligible for accreditation is a fundamental rule of the NIRO for all technologies in all circumstances.

### **Shared connections**

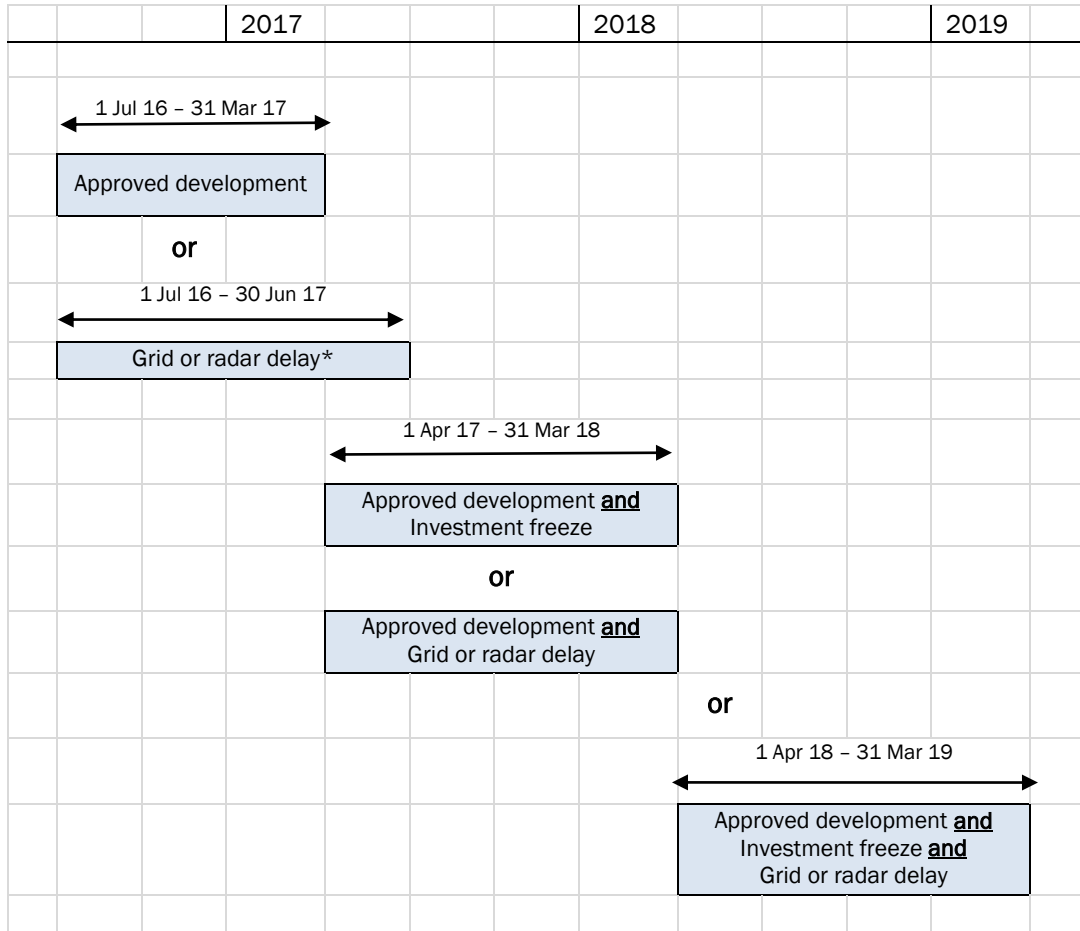
- 3.16 Clarification was sought on eligibility for shared grid connections. As a grid application is required for any further installations to an already approved connection, the project will still have to meet the grid connection eligibility criteria.

### **Land rights**

- 3.17 One of the approved development conditions criteria is a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at 30 September 2015 a relevant developer of the station or additional capacity (or a person connected, within the meaning of section 1122 of the Corporation Tax Act 2010, with a relevant developer of the station or additional capacity)—
- (a) was an owner or lessee of the land on which the station or additional capacity is situated,
  - (b) had entered into an agreement to purchase or lease the land on which the station or additional capacity is situated,

- (c) had an option to purchase or to lease the land on which the station or additional capacity is situated, or
- (d) was a party to an exclusivity agreement in relation to the land on which the station or additional capacity is situated.

**Grace periods available and conditions that must be met for a station to be eligible for accreditation under the NIRO grace periods from 1 July 2016**



\* This grace period applies to projects which do not meet the approved development eligibility criteria but can demonstrate a grid or radar delay due to unforeseen circumstances.

## Approved Development Condition Criteria

Type	Duration	Evidence
Approved development	8 months up to March 2017	<ol style="list-style-type: none"><li data-bbox="725 379 1733 411">1. Relevant planning permission dated no later than 30 September 2015;</li><li data-bbox="725 453 2018 523">2. A grid connection offer and acceptance of that offer, both dated no later than 30 September 2015 date or confirmation that no grid connection is required; and</li><li data-bbox="725 564 2024 667">3. A declaration confirming that, as at 30 September 2015, the developer or proposed operator of the station owns the land on which the station is to be situated or has an option or agreement to lease the land or is party to an exclusivity agreement in relation to the land.</li></ol>

## Investment Freezing Condition Criteria

Type	Duration	Evidence
Investment freezing	12 months	<ol style="list-style-type: none"> <li>1. A declaration stating that, to the best of the operator's knowledge and belief that as at the date of coming into operation of the NIRO closure legislation for small scale onshore wind:               <ol style="list-style-type: none"> <li>(i) funding from a recognised lender was required before the station could be commissioned or additional capacity could form part of the station;</li> <li>(ii) the recognised lender was not prepared to provide funding until the NIRO closure legislation for small scale onshore wind was made because of uncertainty over whether the Order would be made, or its wording if made; and</li> <li>(iii) the station would have been commissioned, or the additional capacity would have formed part of the station, on or before 31 March 2017 if the funding had been provided before the NIRO closure legislation for small scale onshore wind was made.</li> </ol> </li> <li>2. A letter or other document, dated on or before the date which is 28 days after the NIRO closure legislation for small scale onshore wind is made, from a recognised lender confirming (whether or not the confirmation is subject to any conditions or other terms) that the lender was not prepared to provide funding in respect of the station or additional capacity until the legislation is made, because of uncertainty over whether the legislation would be made or its wording if made.</li> </ol>

## Grid or Radar Condition Criteria

Type	Duration	Evidence
Grid Connection	12 months	<p>1. Grid connection agreement consisting of:</p> <ul style="list-style-type: none"> <li>• A grid connection offer;</li> <li>• Acceptance of that offer;</li> <li>• A letter from NIE Networks which confirms that at the date of receipt of the connection application for the proposed generating station it was the intention to complete the relevant grid works no later than 30 June 2016/31 March 2017/31 March 2018 (whichever is applicable).</li> </ul> <p>2. A written declaration by the generator that to the best of their knowledge, the generating station would have been commissioned on or before 30 June 2016/31 March 2017/31 March 2018 (whichever is applicable), if the connection had been made on or before the grid connection date.</p> <p>3. A letter from NIE Networks confirming that the relevant grid works were completed by 30 June 2017/31 March 2018/31 March 2019 (whichever is applicable), and, in NIE Networks' opinion, the failure to complete the relevant grid works on or before 30 June 2016/31 March 2017/31 March 2018 (whichever is applicable) was outside of the control of the generating station developer and was not due to any breach by a generating station developer of any agreement with the relevant network operator.</p>
Radar	12 months	<p>1. A copy of a radar works agreement specifying a radar works completion date which is no later than 30 June 2016/31 March 2017/31 March 2018 (whichever is applicable);</p> <p>2. A letter from a party to the radar works agreement who is unrelated to the generator/developer confirming that the radar works were completed after the agreed date and that the failure to complete the radar works on time was not due to any breach of the radar works agreement by the generator / developer; and</p> <p>3. A written declaration by the generator that, to the best of their knowledge and belief, the station would have been commissioned on or before 30 June 2016/31 March 2017/31 March 2018 (whichever is applicable) if the radar works had been completed on or before the radar works completion date.</p>



**Grace Period Conditions which could be met by Micro-generators connecting through G83/1 Stage 1 and G83/1 Stage 2**

Type	G83/1 Stage 1 connection	G83/1 Stage 2 connection
Approved Development	Yes	Yes
Investment freezing	Yes	Yes
Grid Delay	No	Yes
Radar Delay	Yes	Yes

**Index of NIRO Consultation Responses**

Ellesmere Renewables  
Carey Consulting  
First Trust Bank  
Simple Power Ltd, UFU and Renewable NI  
Action Renewables  
Breen Architects & Consultants  
Windwatch NI  
Air River Limited  
Kingspan Wind  
Clyde Shanks  
Air Core  
Rademon Renewable Energy Limited  
Windmills No1 Limited  
Windmills No2 Limited  
Energia  
The Consumer Council  
EWT  
Scrabo Energy Limited  
Ofgem  
West Tyrone Against Wind Turbines  
WindConnect  
Renewable Power Systems - RPS  
NIRIG  
Res  
Wind NI  
Farm Energy NI Ltd  
The GreenYard  
Residents of Broughberg, Davagh + Coneyglen  
Glenwherry Wind Ltd  
97 letters/emails from individuals

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