

Energy Bill [HL]

AMENDMENTS TO BE MOVED ON CONSIDERATION OF COMMONS AMENDMENTS

[The page and line references are to Bill 92, the bill as first printed for the Commons.]

COMMONS AMENDMENT 2

Clause 2

- 2 Page 2, line 39, at end insert –
2 “() Chapter 9 of Part 8 of the Corporation Tax Act 2010,”

LORD BOURNE OF ABERYSTWYTH

[As an amendment to Commons Amendment 2]

Line 2, leave out “Chapter 9 of”

COMMONS AMENDMENT 7

After Clause 79

- 7 Insert the following new Clause –
“Onshore wind power: circumstances in which certificates may be issued after 31 March 2016

- (1) Part 1 of the Electricity Act 1989 (electricity supply) is amended as follows.
(2) After section 32LC (inserted by section [*Onshore wind power: closure of renewables obligation on 31 March 2016*] of this Act) insert –

“32LD Onshore wind generating stations accredited, or additional capacity added, on or before 31 March 2016

The circumstances set out in this section are where the electricity is –

- (a) generated by an onshore wind generating station which was accredited on or before 31 March 2016, and
(b) generated using –
(i) the original capacity of the station, or
(ii) additional capacity which in the Authority’s view first formed part of the station on or before 31 March 2016.

32LE Onshore wind generating stations accredited, or additional capacity added, between 1 April 2016 and 31 March 2017: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

- (a) generated using the original capacity of an onshore wind generating station—
 - (i) which was accredited during the period beginning with 1 April 2016 and ending with 31 March 2017, and
 - (ii) in respect of which the grid or radar delay condition is met, or
- (b) generated using additional capacity of an onshore wind generating station, where—
 - (i) the station was accredited on or before 31 March 2016,
 - (ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2016 and ending with 31 March 2017, and
 - (iii) the grid or radar delay condition is met in respect of the additional capacity.

32LF Onshore wind generating stations accredited, or additional capacity added, on or before 31 March 2017: approved development condition met

The circumstances set out in this section are where the electricity is—

- (a) generated using the original capacity of an onshore wind generating station—
 - (i) which was accredited on or before 31 March 2017, and
 - (ii) in respect of which the approved development condition is met, or
- (b) generated using additional capacity of an onshore wind generating station, where—
 - (i) the station was accredited on or before 31 March 2016,
 - (ii) in the Authority's view, the additional capacity first formed part of the station on or before 31 March 2017, and
 - (iii) the approved development condition is met in respect of the additional capacity.

32LG Onshore wind generating stations accredited, or additional capacity added, between 1 April 2017 and 31 March 2018: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

- (a) generated using the original capacity of an onshore wind generating station—
 - (i) which was accredited during the period beginning with 1 April 2017 and ending with 31 March 2018,
 - (ii) in respect of which the approved development condition is met, and
 - (iii) in respect of which the grid or radar delay condition is met, or
- (b) generated using additional capacity of an onshore wind generating station, where—
 - (i) the station was accredited on or before 31 March 2016,
 - (ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2017 and ending with 31 March 2018,
 - (iii) the approved development condition is met in respect of the additional capacity, and
 - (iv) the grid or radar delay condition is met in respect of the additional capacity.

32LH Onshore wind generating stations accredited, or additional capacity added, between 1 April 2017 and 31 December 2017: investment freezing condition met

The circumstances set out in this section are where the electricity is—

- (a) generated using the original capacity of an onshore wind generating station—
 - (i) which was accredited during the period beginning with 1 April 2017 and ending with 31 December 2017, and
 - (ii) in respect of which both the approved development condition and the investment freezing condition are met, or
- (b) generated using additional capacity of an onshore wind generating station, where—
 - (i) the station was accredited on or before 31 March 2016,
 - (ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2017 and ending with 31 December 2017, and
 - (iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity.

32LI Onshore wind generating stations accredited, or additional capacity added, between 1 January 2018 and 31 December 2018: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

- (a) generated using the original capacity of an onshore wind generating station—
 - (i) which was accredited during the period beginning with 1 January 2018 and ending with 31 December 2018,
 - (ii) in respect of which both the approved development condition and the investment freezing condition are met, and
 - (iii) in respect of which the grid or radar delay condition is met, or
- (b) generated using additional capacity of an onshore wind generating station, where—
 - (i) the station was accredited on or before 31 March 2016,
 - (ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 January 2018 and ending with 31 December 2018,
 - (iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity, and
 - (iv) the grid or radar delay condition is met in respect of the additional capacity.

32LJ The approved development condition

- (1) This section applies for the purposes of sections 32LF to 32LI.
- (2) The approved development condition is met in respect of an onshore wind generating station if the documents specified in subsections (4), (5) and (6) were provided to the Authority with the application for accreditation of the station.
- (3) The approved development condition is met in respect of additional capacity if the documents specified in subsections (4), (5) and (6) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station.
- (4) The documents specified in this subsection are—
 - (a) evidence that—
 - (i) planning permission for the station or additional capacity was granted on or before 18 June 2015, and
 - (ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,

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- (b) evidence that—
- (i) planning permission for the station or additional capacity was refused on or before 18 June 2015, but granted after that date following an appeal or judicial review, and
 - (ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,
- (c) evidence that—
- (i) an application for 1990 Act permission or 1997 Act permission was made on or before 18 June 2015 for the station or additional capacity,
 - (ii) the period allowed under section 78(2) of the 1990 Act or (as the case may be) section 47(2) of the 1997 Act ended on or before 18 June 2015 without any of the things mentioned in section 78(2)(a) to (b) of the 1990 Act or section 47(2)(a) to (c) of the 1997 Act being done in respect of the application,
 - (iii) the application was not referred to the Secretary of State, Welsh Ministers or Scottish Ministers in accordance with directions given under section 77 of the 1990 Act or section 46 of the 1997 Act,
 - (iv) 1990 Act permission or 1997 Act permission was granted after 18 June 2015 following an appeal, and
 - (v) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached, or
- (d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, planning permission is not required for the station or additional capacity.
- (5) The documents specified in this subsection are—
- (a) a copy of an offer from a licensed network operator made on or before 18 June 2015 to carry out grid works in relation to the station or additional capacity, and evidence that the offer was accepted on or before that date (whether or not the acceptance was subject to any conditions or other terms), or
 - (b) a declaration by the operator of the station that, to the best of the operator's 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 or the additional capacity to form part of the station.
- (6) The documents specified in this subsection are a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at 18 June 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.

(7) In this section –

“the 1990 Act” means the Town and Country Planning Act 1990;

“1990 Act permission” means planning permission under the 1990 Act (except outline planning permission, within the meaning of section 92 of that Act);

“the 1997 Act” means the Town and Country Planning (Scotland) Act 1997;

“1997 Act permission” means planning permission under the 1997 Act (except planning permission in principle, within the meaning of section 59 of that Act);

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“exclusivity agreement”, in relation to land, means an agreement by the owner or a lessee of the land not to permit any person (other than the persons identified in the agreement) to construct an onshore wind generating station on the land;

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“planning permission” means –

- (a) consent under section 36 of this Act,
- (b) 1990 Act permission,
- (c) 1997 Act permission, or
- (d) development consent under the Planning Act 2008.

32LK The investment freezing condition

- (1) This section applies for the purposes of sections 32LH and 32LI.
- (2) The investment freezing condition is met in respect of an onshore wind generating station if the documents specified in subsection (4) were provided to the Authority with the application for accreditation of the station.
- (3) The investment freezing condition is met in respect of additional capacity if the documents specified in subsection (4) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station.
- (4) The documents specified in this subsection are –
 - (a) a declaration by the operator of the station that, to the best of the operator’s knowledge and belief, as at the Royal Assent date –
 - (i) the relevant developer required funding from a recognised lender before the station could be commissioned or additional capacity could form part of the station,
 - (ii) a recognised lender was not prepared to provide that funding until enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted or its wording if enacted, 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 Royal Assent date, and
 - (b) a letter or other document, dated on or before the date which is 28 days after the Royal Assent date, 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 enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted or its wording if enacted.
- (5) In this section –
 - “recognised lender” means a provider of debt finance which has been issued with an investment grade credit rating by a registered credit rating agency;
 - “the Royal Assent date” means the date on which the Energy Act 2016 is passed.
- (6) For the purposes of the definition of “recognised lender” in subsection (5) –
 - “investment grade credit rating” means a credit rating commonly understood by registered credit rating agencies to be investment grade;
 - “registered credit rating agency” means a credit rating agency registered in accordance with Regulation (EC) No 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies.

32LL The grid or radar delay condition

- (1) This section applies for the purposes of sections 32LE, 32LG and 32LI.
- (2) The grid or radar delay condition is met in respect of an onshore wind generating station if, on or before the date on which the Authority made its decision to accredit the station, the documents specified in subsection (4), (5) or (6) were –
 - (a) submitted by the operator of the station, and
 - (b) received by the Authority.
- (3) The grid or radar delay condition is met in respect of additional capacity if, on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station, the documents specified in subsection (4), (5) or (6) were –
 - (a) submitted by the operator of the station, and
 - (b) received by the Authority.
- (4) The documents specified in this subsection are –
 - (a) evidence of an agreement with a network operator (“the relevant network operator”) to carry out grid works in relation to the station or additional capacity (“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 the primary date;
 - (c) a letter from 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 generating station developer of any agreement with the relevant network operator; and
 - (d) a declaration by the operator of the station that, to the best of the operator’s knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant grid works had been completed on or before the planned grid works completion date.
- (5) The documents specified in this subsection are—
- (a) evidence of an agreement between a generating station developer and a person who is not a generating station developer (“the radar works agreement”) for the carrying out of radar works (“the relevant radar works”);
 - (b) a copy of a document written by, or on behalf of, a party to the radar works agreement (other than a generating station developer) which estimated or set a date for completion of the relevant radar works (“the planned radar works completion date”) which was no later than the primary date;
 - (c) a letter from a party to the radar works agreement (other than a generating station developer) confirming, whether or not such confirmation is subject to any conditions or other terms, that—
 - (i) the relevant radar works were completed after the planned radar works completion date, and
 - (ii) in that party’s opinion, the failure to complete the relevant radar works on or before the planned radar works completion date was not due to any breach of the radar works agreement by a generating station developer; and
 - (d) a declaration by the operator of the station that, to the best of the operator’s knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant radar works had been completed on or before the planned radar works completion date.
- (6) The documents specified in this subsection are—
- (a) the documents specified in subsection (4)(a), (b) and (c);
 - (b) the documents specified in subsection (5)(a), (b) and (c); and

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- (c) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if –
- (i) the relevant grid works had been completed on or before the planned grid works completion date, and
 - (ii) the relevant radar works had been completed on or before the planned radar works completion date.
- (7) In this section “the primary date” means –
- (a) in a case within section 32LE(a)(i) or (b)(i) and (ii), 31 March 2016;
 - (b) in a case within section 32LG(a)(i) and (ii) or (b)(i) to (iii), 31 March 2017;
 - (c) in a case within section 32LI(a)(i) and (ii) or (b)(i) to (iii), 31 December 2017.”
- (3) In section 32M (interpretation of sections 32 to 32M) –
- (a) in subsection (1), for “32LB” substitute “32LL”;
 - (b) at the appropriate places insert the following definitions –
 - ““accredited”, in relation to an onshore wind generating station, means accredited by the Authority as a generating station which is capable of generating electricity from renewable sources; and “accredit” and “accreditation” are to be construed accordingly;”;
 - ““additional capacity”, in relation to an onshore wind generating station, means any generating capacity which does not form part of the original capacity of the station;”;
 - ““commissioned”, in relation to an onshore wind generating station, means having completed such procedures and tests in relation to the station as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of generating station in order to demonstrate that it is capable of commercial operation;”;
 - ““generating station developer”, in relation to an onshore wind generating station or additional capacity, means –
 - (a) the operator of the station, or
 - (b) a person who arranged for the construction of the station or additional capacity;”;
 - ““grid works”, in relation to an onshore wind generating station, means –
 - (a) the construction of a connection between the station and a transmission or distribution system for the purpose of enabling electricity to be conveyed from the station to the system, or

- (b) the carrying out of modifications to a connection between the station and a transmission or distribution system for the purpose of enabling an increase in the amount of electricity that can be conveyed over that connection from the station to the system;”;

““licensed network operator” means a distribution licence holder or a transmission licence holder;”;

““network operator” means a distribution exemption holder, a distribution licence holder or a transmission licence holder;”;

““onshore wind generating station” has the meaning given by section 32LC(3);”;

““original capacity”, in relation to an onshore wind generating station, means the generating capacity of the station as accredited;”;

““radar works” means –

- (a) the construction of a radar station,
- (b) the installation of radar equipment,
- (c) the carrying out of modifications to a radar station or radar equipment, or
- (d) the testing of a radar station or radar equipment;”;

““relevant developer”, in relation to an onshore wind generating station or additional capacity, means a person who –

- (a) applied for planning permission for the station or additional capacity,
- (b) arranged for grid works to be carried out in relation to the station or additional capacity,
- (c) arranged for the construction of any part of the station or additional capacity,
- (d) constructed any part of the station or additional capacity, or
- (e) operates, or proposes to operate, the station;”.

LORD FOULKES OF CUMNOCK

[As amendments to Commons Amendment 7]

Line 172, after second “Act” insert “or section 43A(8)(a) to (c) of the 2006 Act”

Leave out lines 174 to 177

Line 179, after “appeal” insert “or a review”

Line 186, at end insert –

“(e) evidence that –

- (i) an application for 1990 Act permission or 1997 Act permission was made on or before 18 June 2015 for the station or additional capacity,

- (ii) the relevant planning authority or appeal body made a decision on or before 18 June 2015 to grant or to intend to grant planning permission for the station or additional capacity, or made a decision to grant or to intend to grant planning permission for the station or additional capacity subject to the execution of a planning agreement,
 - (iii) planning permission was granted after 18 June 2015, and
 - (iv) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached;
- (f) evidence that—
- (i) an application for 1990 permission or 1997 Act permission was made on or before 18 June 2015 for the station or additional capacity,
 - (ii) planning permission was granted after 18 June 2015, and
 - (iii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached.”

Line 197, at end insert—

“(c) a copy of—

- (i) an application for an offer to carry out grid works in relation to the station or additional capacity submitted to a licensed network operator on or before 18 June 2015, and
- (ii) an offer from a licensed network operator made after 18 June 2015 to carry out grid works in relation to the station or additional capacity and evidence that the offer was accepted after 18 June 2015 (whether or not the acceptance was subject to any conditions or other terms).”

Line 223, at end insert—

““the 2006 Act” means the Planning etc. (Scotland) Act 2006;

“appeal body” means the Secretary of State or the Welsh Ministers except where the decision in question was made by the Secretary of State or the Welsh Ministers pursuant to a direction made under section 77 of the 1990 Act or a local review body constituted under section 43A of the 1997 Act and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations (S.I. 2013/157), or the Scottish Ministers except where the decision in question was made by the Scottish Ministers in exercise of their call-in powers under section 46 of the 1997 Act;”

Line 228, at end insert—

““planning agreement” means an agreement entered into, or a unilateral obligation pursuant to section 75 of the 1997 Act or section 106 of the 1990 Act;”

