

An Overview of the Legal Mechanisms for Challenge and Redress by Those Potentially Affected by the Early Closure of the Renewables Obligation

Article By:

William Lowery

In the first [two parts](#) of this series, we considered how the RO operates, possible plans to close the RO in 2016, and the potential impact of those plans upon the onshore wind industry. In this final post, we outline two possible legal avenues for challenge and redress by those who may be affected by the early closure of the RO: through the national courts and under international investment treaties.

The first possibility is to challenge the Government's actions through the national courts. This route recently has been used by the solar industry, with mixed results. In 2012, the Supreme Court refused the Government's appeal to cut solar feed-in-tariffs before the completion of a consultation on the matter. However, in November 2014, the High Court refused an application for judicial review against the Government's decision to close the RO to ground and building mounted solar photovoltaic capacity above 5 megawatts in 2015 rather than 2017.

Affected investors could also consider commencing international arbitration proceedings under an investment treaty. If successful, an investor could obtain compensation for the loss of their investment as a result of measures introduced by the Government. However, this option would only be available to foreign investors from member States that have an investment treaty in place with the UK, and who have made a qualifying investment in the UK, as defined by the applicable treaty.

A number of European states, including Spain, are currently being sued by foreign investors under the Energy Charter Treaty as a result of changes to national solar subsidies. Marcus Trinick QC, representing Renewables UK, has warned Energy Minister Amber Rudd to "*be aware of the dangers of state aid discrimination and look at what is happening in international energy arbitration across Europe. In such a position we could not afford not to fight, especially if action is taken to interfere retrospectively.*"

Media reports suggest that, given the extent of industry opposition, DECC is delaying an announcement to allow for further refinement of the proposed measures and their impact, in order to reduce the scope for legal challenges. Marcus Trinick QC has emphasised the need for dialogue between the industry and the Government before action is taken, which could reduce the risk of legal challenges arising.

The message from industry representatives is clear: the early closure of the RO would be a major blow to the future of onshore wind in the UK, which could spark a legal battle with the UK Government. As Maf Smith, deputy chief executive of RenewableUK, has stated, “[t]he industry will fight against any attempts to bring in drastic and unfair changes utilising the full range of options open, including legal means if appropriate.”

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