What’s next for the renewables sector?

News & insight

Welcome

For more information about the issues covered in the newsletter or our wider renewables capability please contact me.

Maria Connolly
Partner and Head of Energy & Renewables
maria.connolly@TLTsolicitors.com
+44 (0)333 006 0109

Connect with me on LinkedIn

Our team

We have continued to grow our team. The addition of Qasim Mohammed and Kay Hobbs has strengthened our renewables offering, expanding the expertise and sector insight we can draw on to help our clients keep one step ahead of the complex issues that often arise in the renewables sector.

Qasim advises on the legal aspects relating to real estate renewables matters, and has particular expertise in biomass. He has been involved with some significant projects including advising on one of the largest onshore wind farms in England. View Qasim’s profile.

Kay specialises in renewable energy projects across several technologies and her experience includes working on some of the world’s largest renewable energy projects. She recently advised bidders on over 50% of the UK Round 3 Offshore Wind Programme. View Kay’s profile.

Biomass as a future energy source

Many sources predict that energy from biomass will make a major contribution to the UK’s renewable energy and carbon reduction targets; indeed recent research by The University of Manchester suggests that the UK could produce 44% of its energy from biomass by 2050.

Whilst biomass conversion was dealt a blow by the recent Court of Appeal ruling in the Drax case, new biomass plants with combined heat and power capability can seek support under the CfD regime and could play an important part in the overall energy mix alongside weather-dependent renewable technologies.

Previously concerns have been raised around feedstock availability and security, regulation and funding. This has forced developers and funders to look at ways of mitigating and managing those risks which, as well as resulting in practical changes to supply chain management, has led to the development of specific insurance products for the sector.

We are currently seeing renewed activity in the biomass sector with various clients looking at the acquisition of new development schemes. TLT has recently provided support on the construction and funding aspects of a number of biomass projects. These include working with:

- A developer and installation contractor in connection with biomass installations. Our work included the preparation of heat, fuel supply, EPC and O&M contracts together with ancillary documents such as bonds, warranties and guarantees.
- A commercial bank in connection with a due diligence exercise relating to a large CHP installation plant. Our work included reviewing and reporting on the lease, construction documentation, heat contract, fuel supply contract and grid documentation.
- An ethical bank in connection with a due diligence exercise relating to a large AD plant. Our work included reviewing and reporting on the lease, construction documentation, heat contract, fuel supply contract and grid documentation.
- A major contractor in relation to biomass installation projects for large housing association clients. Our work includes advising on the construction contracts and the warranties associated with the installation works.
- A regional power station on its proposed 1GW coal to biomass conversion project which included the implementation of all development aspects of the project and advising on the regulatory implications applicable to the project.
- A major developer on the co-development of a portfolio of 40 AD projects which included undertaking legal due diligence of the project assets held by the co-developer, negotiating a joint venture co-operation agreement and advising on the funding structure.

About the author

Qasim Mohammed
Associate
qasim.mohammed@TLTsolicitors.com
+44 (0)333 006 1153

Connect with me on LinkedIn
The news in brief from NI

The renewables market in Northern Ireland is seeing some interesting and exciting changes. Here are some of the issues to look out for over the coming months:

1. The NI Utility Regulator is currently consulting on contestability in grid connection applications. In very brief terms this will allow large scale renewables developers to construct their own grid connections. In certain circumstances this may be faster and possibly cheaper than relying on Northern Ireland Electricity.

2. The latest Department of Enterprise Trade & Investment consultation on Northern Ireland Renewables Obligation (NIRO) rates signals that AD, small wind and small hydro will remain at four NICROs per MWh from April 2015, giving a strong signal to investors / developers until at least to 2016.

3. Planning appeals for large scale wind are increasing in the face of increased refusals or delays by the Department of Energy (DOE) planning. Article 30 non-determination appeals are becoming more common place as developers seek to sidestep decisions by DOE altogether and take the risk that a decision by the Public Accounts Committee will be more robust and faster.

4. Planning reform looks set to push all but the very largest renewable schemes out to decision by local councils from April 2015. The consequences are unknown at present but could lead to some local councils being more pro-wind than others.

5. Solar NIRO rates are falling but this has not dented the appetite for rooftop and ground development up to 5MW as the decreases in incentives are matched by falling panel costs.

6. Domestic rooftop installation is still hampered by the failure of council of mortgage lenders to provide guidance for lenders where rent-a-roof schemes are proposed. There is no end in sight to this.

7. More funders are entering the NI market for AD and small wind schemes. Barriers previously have been mismatch between funders’ requirements for warranties and performance guarantees and what technology providers were prepared to offer. More technology providers are now moving to fund friendly contract.

TLT will be holding a series of events to look at the issues impacting the renewables sector in Northern Ireland. If you or your colleagues would be interested in joining us, or to find our more about the NI renewables market, please register your interest by clicking here.

Recent projects

Over the last year we have been involved in some really exciting projects including working with:

- Renewable Energy Generation (REG) Solar on the development, build and operation of three solar projects with Veolia UK, the UK’s leading waste management company. <read more>

- Ecotricity, Britain’s first green energy company, in its joint venture with Skanska, a global construction firm, to build wind farm projects in Britain. The joint venture, called Skylark, aims to put 350 megawatts of wind farms into the UK planning system within five years, representing up to £500 million of investment and providing enough green power capacity for 200,000 homes. <read more>

- Inazin Power Ltd and Low Carbon Group, leading developers of large renewable energy projects in the UK, on the development of the 21MW Lackford Estate Solar Park. This development achieved industry recognition at the Solar Power Portal Awards 2014, winning the Award for best utility scale solar farm >10MW. <read more>

In other news...

- TLT advises Tidal Lagoon Power on the world’s largest power-generating lagoon.

- TLT has advised the landowners on the development of a 72-acre solar farm at Nova Scotia Farm, West Caister.

This year’s CfD application process has concluded. Considering the results of this process will enable us to establish best practice for 2015. We have actively been involved in the 2014 auction, advising a number of clients on their CfD applications.

About the author

Kathryn Forde  Partner
kathryn.forde@TLTsolicitors.com  +44 (0)333 006 0016

Connect with me on LinkedIn.
Community Energy: Renewing the sector?

In January 2014, DECC published its Community Energy Strategy which aims to support and expand the community energy sector. One focus of the strategy is shared ownership and DECC states that ‘by 2015 it should be the norm for communities to be offered the opportunity of some level of ownership by commercial developers’.

Shared ownership is viewed by many as a win-win for community bodies and commercial developers alike, but it also raises questions around how shared ownership projects might be structured and funded.

The Shared Ownership Taskforce report set out expectations around shared ownership and outlines a proposed framework for governing the process.

Key take-outs from the report

- The report recommends that commercial developers looking to develop projects with costs of £2.5 million or above should offer interested communities shared ownership.
- Developers will be expected to engage with the local community energy group (whether it’s legally constituted or not) at the earliest practical point in the project.
- Developers will be expected to publicise the opportunities for shared ownership alongside the normal planning consultation process.
- The amount of the project offered for shared ownership should be appropriate to the size and commercial viability of the project. This could range from 25% of smaller projects to 5% of larger projects.
- Each project can set a minimum threshold for investment. If this is not met the developer can choose not to progress with the shared ownership offer.
- In order for the Taskforce to determine if protocol is being followed, developers will be required to provide information on how communities were consulted.

Ownership structures

The Shared Ownership Taskforce report suggests that commercial developers should offer one of the following models of shared ownership:

- Split ownership, in which a legally constituted community enterprise buys a proportion of the development’s physical assets (e.g., one wind turbine).
- Shared revenue, in which a legally constituted community enterprise buys the rights to a future virtual revenue stream.
- Joint venture, in which a commercial developer and a legally constituted community enterprise create a joint venture to develop, own and manage the renewables project.

The report also suggests that debt-based debenture funding could be used either in conjunction with the above models, either where a community group is keen to engage in shared ownership discussions; or where no community group exists as a stand-alone method to engage with individuals from the community. This could allow individual members of the community to invest for as little as five pounds.

What next?

The Shared Ownership Taskforce intends to monitor the progress made on shared ownership of commercial renewables projects by conducting six and twelve month reviews.

The level of uptake of shared ownership offers will be considered. If the findings show that take-up is limited, the Taskforce will make recommendations as to how this can be improved upon and it is possible that legislation might follow which would require commercial developers to offer a shared ownership element to communities.

Learning lessons from Scotland?

Community ownership of renewable energy projects is very strongly supported by Scottish Government. Local Energy Scotland, a consortium made up of the Energy Saving Trust, Changeworks, The Energy Agency, SCARF and The Wise Group aims to help support collaborative projects by giving support to both community groups and renewable energy developers.

A grant of up to £20,000 is available for community groups looking to share ownership of a renewables project. This is designed to cover early pre-feasibility costs.

Local Energy Scotland has assisted 70 community projects so far and its community customer base is likely to continue to grow quickly.

What do our clients say about TLT?

“The experienced team at TLT, led by Maria Connolly and ably assisted by Kerri Ashworth and Qas Mohammed, always provides a well-informed, commercially-astute and diligent service which provides huge reassurance and comfort when negotiating land agreements.” REG Windpower

“Long term infrastructure development JV’s such as Skylark invariably give rise to complex legal and commercial issues. TLT’s advice and support was essential to the successful outcome of these negotiations.” Ecotricity

“It has been a pleasure working with TLT, who gave us expert commercial advice and always delivered on time. The team’s responsiveness and understanding on what are often complex issues made the whole process much easier for the management team.” Inazin Power

About the author

Kerri Ashworth Associate
kerri.ashworth@TLTsolicitors.com
+44 (0)333 006 0423

Connect with me on LinkedIn
Solar PV: a review of the permitted development rights consultation

Solar PV on commercial and industrial buildings is seen by DECC as a target area for significant growth, but in order to encourage businesses to increase large Solar PV deployment on their rooftops planning permission changes need to be made.

At the moment permitted development rights currently allow for solar PV to be installed up to a 50kW capacity without the need to apply for full planning permission. Yet planning permission is required for deployment over 50kW and, as a result, in the period between June 2013 and June 2014 only 65MW was installed in the 50kW to 4MW band in the UK.

The Department for Communities and Local Government (DCLG) has produced a consultation which will extend more relaxed planning rules allowing up to 1MW capacity to be installed on commercial rooftops without the obligation to apply for full planning permission.

The permitted development right would apply to all non-domestic buildings; however its scope will be limited in some circumstances:

- To minimise the impact of glare on neighbouring or overlooking properties prior approval will be required to consider the siting and design. A fee of £80 will be applicable.
- There will be restrictions on the protrusion of the panel beyond the roof slope and the height of the solar PV equipment.
- The new right will not be permitted on a roof slope which fronts a highway in land within a National Park, the Broads, and Area of Outstanding Natural Beauty, a conservation area and land within World Heritage Sites.
- The right would exclude development on or in listed buildings and buildings within the curtilage, and scheduled monuments and land within the curtilage.

The period of consultation ended in September 2014, and it is expected that legislation to implement the changes will be introduced ‘at the earliest opportunity’.

Unlocking the barriers to commercial solar rooftop

The market is seeing a big push towards commercial solar rooftop, yet there are still a number of issues which need to be resolved in order for the development opportunities to be viable.

Whilst it makes commercial sense for the rooftop system to provide electricity to an occupied building there are a number of commercial and legal issues to consider if the building is, or may be, tenanted:

- When occupied by a tenant, it is the tenant who consumes most of the electricity which is supplied on-site and benefits from the reduction in cost of its electricity consumption.
- Who will be responsible for paying the project company for electricity which is consumed on site?
- The project company is likely to want some control over the counterparty to any power purchase agreement (PPA) and they may consider that the building owner represents the counterparty.
- A structure of this kind would make the building owner responsible for power consumed by their tenants which may not be commercially viable.
- Any structure in which power from the PV system is sold to one person (i.e. the building owner) for onward supply to someone else as ultimate consumer (i.e. the tenant) needs to be assessed for compliance under the rules governing the basis on which unlicensed electricity suppliers (i.e. the project company) are allowed to operate.
- The fundamental dependency in any project of this kind on the building itself continuing to be structurally sound so it can provide a stable support for the PV.
- The obligations imposed on the building owner and/or any PPA counterparty in relation to the operation of the building’s electrical infrastructure and grid connection. Is the amount of electricity generated by the PV system maximised? Can any power not taken on-site be exported to the grid?
- The impact on the project if the building owner was to become insolvent, leaving the property vacant.

Whilst the issues outlined above should not be a barrier to a commercial rooftop project going ahead, they do flag the importance of ensuring that key legal agreements, including the lease and any PPA, are structured and drafted carefully.

TLT Solar rooftop events

We will be running a series of events which will consider the strategy for unlocking these barriers. To register your interest in attending these events please click here.