



Health and Safety in Renewable Energy Projects

"Mind the gap"

The Crown Estate is now well into the process of evaluating bids for Round 3 offshore wind farms in the UK. Whilst Round 1 consisted of largely near-shore demonstrator wind farms, Rounds 2 and 3 will result in wind farms being constructed outside the 12 mile limit of UK territorial waters.

The scale of the Round 3 projects is such that huge levels of time, effort and investment will be required in all areas, including procurement, construction, infrastructure, power and energy arrangements and off-takes, grid connection and fuel supply arrangements.

Developers are however having to concentrate on health and safety both in a practical sense but also because there is a major emphasis being placed on it by the Crown Estate for Round 3 bids. Offshore health and safety law has always lagged behind somewhat but was brought into sharp focus with the Piper Alpha disaster and consequent public inquiry. Now the UK faces a new breed of energy project in what can be a fairly hostile environment; Notwithstanding Piper Alpha the situation in respect of applicable health and safety laws is still not however completely clear and, surprisingly, there is currently a regulatory "gap" for offshore renewables projects situated outside territorial waters.

Projects situated within territorial waters (for example, Round 1 and most of Round 2 offshore wind projects as well as wave and tidal) are subject to what may be termed as "normal" health and safety law such as the Health and Safety at Work etc Act 1974 ("HSWA") and the Construction (Design and Management) Regulations 2007 ("CDM Regulations").

However, renewable projects situated outside UK territorial waters (such as in the Renewable Energy Zones – REZs – set up under the Energy Act 2004) are not currently covered by these laws. The HSWA (Application Outside Great Britain) Order 2001 (the "Order") extends the effect of health and safety law, such as HSWA and the CDM regulations, outside the territorial sea in specific cases but it does not currently include renewable projects situated in REZs.

The HSE's response

The HSE is aware of this regulatory gap. Its initial reaction was to start a consultation on the proposed regulatory amendments. This would have resulted in an amended law coming into force in April 2010 so that projects situated outside territorial seas would also be covered by UK health and safety law.

Amendments to the Order were in fact laid before parliament on 15 July 2009 and are due to come into force on 5 August 2009. There is therefore no time for consultation with the industry before the amended Order comes into force.

It is perhaps disappointing that the industry has not been given the opportunity to participate in this change as initially envisaged. This step does however provide more clarity on health and safety issues to those who are involved in projects located outside territorial waters.

A further briefing will follow once the Health and Safety Executive has published guidance relating to this change in the law. In the meantime, for more information about this and health and safety in renewable energy projects in general, please contact:



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Disclaimer: This briefing is not intended to be a complete coverage of the law in this area. Legal advice should always be taken in any particular case.

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