



Important Sector Proposals Renewable Energy Shared Ownership Structures

Our previous **bulletin** back in March highlighted the Government's mission to force renewables developers to offer some form of community ownership for all their renewables developments. The Government's preference has always been for the renewable sector to take the initiative with voluntary arrangements to make sure that this happens, but the threat of legislation is in the background. Part 4 of the new Infrastructure Bill now contains enabling legislation to allow the Government to pass regulation to enforce a community right to buy scheme. The enabling legislation is worth reading. It applies not only to onshore projects but also, potentially, to offshore projects of 5MW and above and details the types of community ownership offerings which the Government intend to consider.

In response to the Secretary of State's call for voluntary action by the renewable industry, the "Shared Ownership Taskforce" was established. This Taskforce has met a number of times and has worked up proposals which will be reported back to the Secretary of State in an effort to avoid legislation. **These proposals are now under consultation and need careful review and input as they have the potential to become quasi-law. The window for responding to the Taskforce's consultation closes at the end of August.**

Key points from the proposals:

1. Any commercial developer of a renewables project above £2.5 million in project costs should offer a percentage of that project to the local community.

Points to note:

- The £2.5 million threshold equates to a size of project smaller than the 5MW threshold the Government was intending to apply. Many more developments will be covered.
- This voluntary scheme will cover all onshore renewable energy projects including renewable heat projects.
- Private wire projects are intended to be exempt from these provisions.

2. The community should be offered a stake at fair market value (which includes the concept of building in a development premium). The intention is to have a minimum stake offered to the community based on the percentage of the overall project costs.

Points to note:

- The minimum stake is still yet to be determined but is going to be anything between 5%-25%. Government legislation had looked at 5%.

3. The right to buy will be given to "a Legally Constituted Community Enterprise ("LCE") within the community.

Points to note:

- This goes beyond the intended legislation and will mean that a developer has to engage with a community company or entity which is either existing or to be established in a locality. Offering shares to the general public or to individuals in the community without first going through the LCE does not appear to count. Whilst there is some logic to this in terms of using the community companies that are already up and running, it does restrict down the options available to renewables developers.

4. The ownership models that qualify are, joint venture arrangements; split ownership of the project; or shared revenue from the project.

Points to note:

- Crowd funding direct to individuals in the community without going through the LCE appears not to qualify.

5. It is intended that a developer will be expected to engage with a LCE in advance of the planning application for the Project.

Points to note:

- The firm intention is that these proposals and right to buy offers will become a material planning consideration which will weigh heavily in consenting decisions. This means that although this is a voluntary initiative taken by industry, it will become the norm.

6. If there is insufficient interest from an LCE the developer can carry on with its Project without further offers.

7. Details of community right to buy offers that are made will be monitored and should be kept by the developer and be publicly available for a number of years.

8. Projects that are not yet in planning by the time the proposals are crystallised in September this year will be expected to follow these guidelines.

Wider Issues and Thoughts

- There is a narrow window within which to respond to the Shared Ownership Taskforce on the proposals.
- DECC will view these proposals as having been led “by industry”. Developers should have reviewed these proposals, got comfortable with them and be satisfied that they will work.
- These guidelines currently apply to all onshore renewable energy projects of £2.5 million CAPEX and above. That means biomass, wind, heat, solar, hydro etc.
- Community ownership is here to stay and is supported by all political parties. It is essential for developers to engage properly with communities and any right to buy rules in the future.
- Proper community engagement will undoubtedly help the renewables industry combat the vocal objectors to this form of energy generation.
- The Taskforce report appears to go beyond the initial Government thinking on legislative proposals for community right to buy.
- If the industry, alongside community entities, cannot agree on voluntary initiatives it is clear that the Government will legislate. There is therefore a significant “stick” hanging over all parties.

- Community energy entities are often established on a voluntary and unsophisticated basis. These entities will need themselves to think very carefully about their own rules, procedures and governance structures. If the proposals are followed and these entities end up managing and considering stakes in material, large scale renewables projects in their region, it will place considerable onus, responsibilities, duties and potentially liabilities on the directors and officers of these entities. They need to be properly advised, properly constituted and properly overseen.

Link to the Taskforce consultation is below.

<http://www.renewableuk.com/en/renewable-energy/communities-and-energy/shared-ownership/>

There are some key areas to think about in a short space of time.



For further information please contact:

Ross Fairley
Partner

0117 902 6351

ross.fairley@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burges-salmon.com

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is authorised and regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.

© Burges Salmon LLP 2014. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.