

International Comparative Legal Guides



Renewable Energy 2021

A practical cross-border insight into renewable energy law

First Edition

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1 Overview of the Renewable Energy Sector

1.1 What is the basis of renewable energy policy and regulation in your jurisdiction and is there a statutory definition of 'renewable energy', 'clean energy' or equivalent terminology?

Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 (the **Renewable Energy Directive**) on the promotion of the use of energy from renewable sources defines “energy from renewable sources” as energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases, each of which are then defined separately within the Renewable Energy Directive.

Under the Renewable Energy Directive, the UK must ensure that renewable energy accounts for at least 15% of its total energy needs by 2020. This requirement is incorporated into UK law under the Promotion of the Use of Energy from Renewable Sources Regulations 2011 (SI 2011/243). In addition, 10% of the UK's transport energy consumption must come from renewable sources (such as biofuels) by 2020.

There are various other policies, incentives and regulations that are detailed throughout the answers below.

1.2 Describe the main participants in the renewable energy sector and the roles which they each perform.

Governmental participants

The Department of Energy and Climate Change (**DECC**), formed in 2008, was the ministerial department responsible for making decisions, setting policy and implementing legislation affecting the renewable energy sector. Following the EU Referendum held on 23 June 2016, DECC was merged together with the Department for Business and Innovation to create the Department for Business, Energy and Industrial Strategy (**BEIS**).

BEIS is supported by other public bodies, including:

- **The Gas and Electricity Markets Authority (GEMA):** GEMA has primary responsibility for regulation of the energy sector. GEMA's powers and duties are largely provided for in statute (such as the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Acts of 2004, 2008, 2010 and 2011) as well as arising from directly effective European Community legislation.

- **The Office of Gas and Electricity Markets (Ofgem):** a non-ministerial government department and an independent National Regulatory Authority recognised by EU Directives. Regulation of the renewable energy sector is delegated by GEMA to Ofgem. Ofgem administers environmental programmes and sustainability schemes on behalf of the government (please see questions 3.5 and 3.7 for more detail). Key duties and functions concerning electricity include:

- the regulation of distribution and transmission networks;
- granting licences;
- protecting interests of existing and future electricity (and gas) consumers;
- ensuring that electricity wholesale and retail markets are competitive; and
- managing the commercial tender process for offshore transmission projects.

Private participants

- **Generation companies:** following the privatisation of the generation industry in the 1990s, an increasing number of generating companies have been established, including the “big six” – British Gas, e.on, EDF, RWE npower, Scottish Power and SSE.
- **Transmission companies:** the transmission network is owned and maintained by regional transmission companies: National Grid Electricity Transmission plc (**NGET**) for England and Wales; Scottish Power Transmission Limited for southern Scotland; and Scottish Hydro Electric Transmission plc for northern Scotland and the Scottish islands groups. The National Grid Electricity System Operator (**NGESO**) is responsible for controlling the stable and secure operation of the national electricity transmission system as a whole.
- **Suppliers:** energy is purchased from the wholesale market by suppliers (or self-supplied by the “big six”), and then sold to customers.

1.3 Describe the government's role in the ownership and development of renewable energy and any policy commitments towards renewable energy, including applicable renewable energy targets.

As stated in question 1.1, the UK has binding renewable energy targets under the Renewable Energy Directive and the Promotion of the Use of Energy from Renewable Sources Regulations 2011.

In January 2019, BEIS published the UK's draft National Energy and Climate Plan (**NECP**) for 2021 to 2030. The NECP is required as part of the EU Clean Energy For All

legislative package, adopted in 2018, which sets ambitious 2030 objectives for energy efficiency, decarbonisation, energy security, the internal energy market and competition. In the NECP, the government states that it expects to invest around £900 million of public funds between 2015 and 2021 in research and innovation in the power sector, including around £177 million to further reduce the cost of renewables in a number of areas.

2 Renewable Energy Market

2.1 Describe the market for renewable energy in your jurisdiction. What are the main types of renewable energy deployed and what are the trends in terms of technology preference and size of facility?

The UK is particularly well placed to take advantage of wind power, with some of the best conditions in Europe and high average wind speeds. Both onshore and offshore wind farms are therefore an important renewable energy source for the UK, with 32.4% of aggregate UK renewable generation coming from offshore wind projects and 31.4% from onshore wind projects in the first quarter of 2020. Examples include Orsted's Hornsea One, located 120km off the Yorkshire coast in England, which is the world's largest offshore wind farm with a capacity of 1.2GW, and the Walney Extension Offshore Wind Farm with a capacity of 659MW.

Bioenergy (biomass or waste-fuelled plant) projects are the UK's second largest contributors to renewable energy generation. These include the Drax Power Station in Yorkshire, formerly the UK's largest coal-fired power station, where three of the five remaining operational units are entirely dedicated to biomass, with a combined capacity of 1.9GW.

Hydropower and solar PV projects contribute a smaller (but still significant) percentage of UK renewable energy, and tend to be smaller-scale (the majority being less than 10MW).

2.2 What role does the energy transition have in the level of commitment to, and investment in, renewables? What are the main drivers for change?

In 2019, following Parliament's declaration of a "climate emergency" and recommendations from the independent Committee on Climate Change (CCC), the government legislated for net zero greenhouse gas emissions by 2050. One of the principal ways in which the UK proposes to meet the 2050 net zero target is by increasing the use of renewable energy. The CCC has advised that the UK could require four times the amount of renewable generation from current levels.

A government Energy White Paper is expected to be published in the autumn of 2020 by BEIS, having previously been due in the summer of 2019 and then again by the end of spring 2020. The White Paper is expected to provide an insight into the government's plan for the UK to achieve net zero by 2050, by promoting the use of technologies such as "blue" hydrogen and carbon capture and storage, alongside renewable technologies, to support a green recovery.

2.3 What role, if any, has civil society played in the promotion of renewable energy?

The private sector has been subject to increasing awareness and implementation of "green" or "socially responsible" investment policies (from both equity and debt providers). For example, in November 2019, the European Investment Bank announced

that it will end financing for fossil fuel energy projects, including gas projects, from the end of 2021. Instead, it plans to increase support for investments that accelerate clean energy innovation, energy efficiency and renewables.

In addition, at a community level, there has been a noticeable growth of on-site distributed renewable generation projects in recent years (both residential and commercial), which is underpinned by general environmental concerns and technological innovation, as well as by government policy.

2.4 What is the legal and regulatory framework for the generation, transmission and distribution of renewable energy?

The Energy Act 2013 (**Energy Act**) is the principal legislation relating to renewables, establishing a legal framework with a key aim to secure affordable and low-carbon electricity. The central provisions of the Energy Act relating to renewable energy include the introduction of:

- provisions to enable the Secretary of State to set a 2030 decarbonisation target range for the electricity sector in secondary legislation;
- a statutory framework for contracts for difference (please see question 3.2 for more detail);
- the Capacity Market, being a market to ensure the security of electricity supply based on the government's forecast of electricity demand; and
- access to markets via long-term contracts for independent renewable generators (including power purchase agreements), and through liquidity measures to enable the government to improve the liquidity of the electricity market.

The Electricity Act 1989 (**Electricity Act**) is the principal legislation governing electricity generation – including from renewable sources. Subject to applicable exemptions, an electricity generator requires a generation licence from Ofgem to operate. Please see question 4.1 for more detail.

2.5 What are the main challenges that limit investment in, and development of, renewable energy projects?

The challenges include:

- Uncertainty as to the long-term laws, policies and the related incentives relating to the renewable sector that may be adapted by successive governments is a challenge to any investment modelling. For example, onshore wind projects benefitted from certain government subsidies which were then removed in 2016, and then, in early 2020, onshore wind subsidies were revived.
- Intermittency of output (given that renewable sources, by their nature, will vary and not be continuous) presents an issue for renewables integrating into a stable power supply. This can be mitigated, to some extent, with energy storage systems. However, whilst the technology is developing rapidly and the costs are falling, such storage systems can be expensive (particularly on large-scale projects).
- Much of the technology involved with renewables projects is new or rapidly evolving, and there is an investment risk associated with any nascent technology including in respect of deployment issues and risk of obsolescence.
- Grid inflexibilities mean that integration of variable renewable sources into grid infrastructure creates increased complexity including with respect to balancing supply and demand.

2.6 How are large utility-scale renewable power projects typically tendered?

The Contracts for Difference (CfD) scheme is the government's main mechanism for supporting low-carbon electricity generation (please see question 3.2 for more detail).

CfDs are awarded in a series of competitive auctions, which drives efficiency and cost reduction. To date, there have been three successful CfD allocation rounds (2015, 2017 and 2019). The fourth allocation round, planned for 2021, is expected to include auctions for "established" technologies (including onshore wind, which was excluded from the previous round) and less-established technologies (such as floating offshore wind).

2.7 To what extent is your jurisdiction's energy demand met through domestic renewable power generation?

The share of UK electricity generated from renewable sources has increased considerably in recent years; from 35.9% in the first quarter of 2019 to 47% in the first quarter of 2020, which was the highest quarterly value on the government's published data series (where quarterly renewables share has never previously exceeded 40% of total electricity generation). This was driven by large increases in generation for wind and solar, with the largest increase for offshore wind generation.

3 Sale of Renewable Energy and Financial Incentives

3.1 What is the legal and regulatory framework for the sale of utility-scale renewable power?

The Energy Act and related secondary legislation provides the main legal and regulatory framework for the sale of utility-scale renewable power in the UK and implements the UK's Electricity Market Reform (EMR) policy. The Energy Act supplements the Electricity Act and the Utilities Act 2000 which provide a legal and regulatory framework for the wholesale electricity market generally in the UK.

3.2 Are there financial or regulatory incentives available to promote investment in/sale of utility-scale renewable power?

The primary incentive schemes related to renewable energy include:

The Renewable Obligation (RO): the RO scheme, which came into effect in 2002 in England, Wales and Scotland, followed by Northern Ireland in 2005, was previously the main financial mechanism to incentivise large-scale renewable electricity projects in the UK (please see question 3.7 for more detail). The RO scheme closed to all new generating capacity on 31 March 2017, and has now been replaced by the Contracts for Difference scheme.

Contracts for Difference: the CfD scheme is the primary mechanism to incentivise new low-carbon electricity generation. The CfD is a quasi-power purchase agreement between an eligible generator and the Low Carbon Contracts Company (LCCC), a wholly government-owned company established under the Energy Act. Generators with a CfD sell their electricity into the wholesale electricity market in the normal way; the CfD then pays the difference between an estimate of the market price for electricity and the generator's lowest estimate for the costs of developing, financing and operating the given technology (the

strike price). When the market price is below the strike price, the generator receives a top-up payment from the LCCC for the additional amount. However, when the market price is above the strike price, the generator must pay back the difference to the LCCC. Although a CfD is a private law contract between a low-carbon electricity generator and the LCCC, it is issued under a detailed statutory framework under the Energy Act.

The Offtaker of Last Resort (OLR): this scheme aims to promote the availability of power purchase agreements (PPA). It is intended as a last resort to help independent renewable generators who cannot get a PPA through the usual commercial means by providing eligible generators with a guaranteed "back-stop" route-to-market at a specified discount to the market price.

3.3 What are the main sources of financing for the development of utility-scale renewable power projects?

The offshore wind sector currently represents the primary source of financing activity for large-scale renewable projects in the UK. A low interest rate environment coupled with a large number of lenders looking to participate in this sector has provided project developers with favourable conditions to finance their projects in recent years. To date, the main source of debt financing has been commercial banks, although we have seen participation from export credit agencies (the Japanese ECA JBIC lent to the Moray East offshore wind farm in 2018). In recent years, we have also seen investment activity from new entrants to the market, such as pension funds (Danish pension funds PFA and PKA invested in the Walney Extension offshore wind farm in 2017) and infrastructure investors (Dalmore Capital Limited and Pensions Infrastructure Platform acquired a minority stake worth £701 million in 24 UK wind farms owned by EDF in 2018).

3.4 What is the legal and regulatory framework applicable to distributed renewable energy?

Distributed renewable energy facilities are subject to the same legal and regulatory framework as utility-scale renewable energy facilities with respect to the sale of electricity, participation in the wholesale market and connection to distribution and transmission networks.

3.5 Are there financial or regulatory incentives available to promote investment in distributed renewable energy facilities?

Available incentives include:

Feed-in Tariffs (FIT): the FIT scheme supports investment in small-scale renewable and low-carbon electricity generation projects up to 5MW capacity. It offers long-term support to projects and provides generation and export tariffs based on the costs of generation for the following technologies: solar PV; onshore wind power; hydropower; anaerobic digestion; and micro-combined heat and power (up to 2kW). The FIT scheme closed to new entrants on 31 March 2019, but continues to support existing generation for up to 25 years.

Smart Export Guarantee (SEG): following the closure of the FIT scheme to new installations, the supplier-led SEG was introduced on 1 January 2020. Under the SEG, licensed electricity suppliers (with 150,000 domestic customers or more) are required to offer small-scale low-carbon generators a price per kWh for electricity exported to the grid. Remuneration is available to solar PV, wind, anaerobic digestion, hydro, all up to 5MW in capacity, and micro-combined heat and power installations,

up to 50kW. Mandated suppliers are required to provide at least one SEG compliant tariff. They are free to determine the price and length of contract, provided that remuneration must be greater than zero at all times.

3.6 What are the main sources of financing for the development of distributed renewable energy facilities?

The majority of smaller-scale distributed renewable energy facilities have been financed on balance sheet, but project finance has grown in importance for investments in this sector. To date, the majority of this project finance debt has been provided by commercial banks, either on a standalone project or portfolio basis.

3.7 What is the legal and regulatory framework that applies for clean energy certificates/environmental attributes from renewable energy projects?

The Renewables Obligation scheme applies to large-scale renewable electricity projects in the UK creating a market for the sale of environmental attributes. The scheme obliges UK electricity suppliers to source an increasing proportion of the electricity supplied to customers from renewable sources.

Ofgem issues Renewable Obligation Certificates (**ROCs**) to qualifying renewable generators in respect of the electricity they generate. Such generators can then sell those ROCs to suppliers or traders as tradable commodities. Different renewable types receive different numbers of ROCs depending on their costs and size. Suppliers are then obligated to meet individual targets by purchasing ROCs either from renewable generators directly or from the ROCs market. Ultimately, ROCs are used by suppliers to demonstrate that they have met their annual obligation.

This scheme closed to all new generating capacity on 31 March 2017. Projects that have been accredited before this date will be supported until the earlier of 20 years from the date of accreditation and 31 March 2037.

3.8 Are there financial or regulatory incentives or mechanisms in place to promote the purchase of renewable energy by the private sector?

The Renewable Heat Incentive (**RHI**) is a financial incentive to encourage the uptake of renewable heat by businesses, public sector and non-profit organisations and homeowners. The non-domestic RHI was introduced in 2011, with the domestic RHI following in 2014. The schemes are designed to help bridge the gap between the costs of fossil fuel heating technologies and low-carbon alternatives. Participants receive a tariff, set in pence per kilowatt hour of heat used, for either seven (domestic RHI) or 20 years (non-domestic RHI), which is set at a level to cover the additional costs of the renewable heating system.

4 Consents and Permits

4.1 What are the primary consents and permits required to construct, commission and operate utility-scale renewable energy facilities?

In England, utility-scale projects with more than 50MW of capacity or 100MW for offshore wind are subject to the Planning Act 2008 (**Planning Act**) and are deemed “nationally significant infrastructure projects” requiring specific consent from the Planning Inspectorate which acts on behalf of the Secretary of State for BEIS.

Consent is required under the Electricity Act for utility-scale projects which are not subject to the Planning Act or the Town and Country Planning Act 1990 (**TCPA**), such as offshore wind projects with a generating capacity of greater than 1MW but less than 100MW. Applications under the Electricity Act are considered by the Secretary of State for BEIS.

The installation of the project will need to comply with development regulations, including the Construction (Design and Management) Regulations 2015 which sets construction requirements and restrictions.

The Electricity Act provides that it is an offence to generate electricity for the purposes of supply to any premises without a licence or exemption. Licences are granted by Ofgem. The Secretary of State for BEIS may grant specific or class exemptions to this requirement.

The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (Class Exemptions Order), SI 2001/3270 (**Class Exemptions Order**), provides a number of class-based exemptions to the general licensing requirements under the Electricity Act. Smaller utility-scale generators may benefit from the “Class A” exemption, for facilities which do not at any time provide electric power in excess of 10MW (for facilities with a declared net capacity of greater than 100MW) or 50MW (for facilities with a declared net capacity of less than 100MW).

In addition, generators must comply with relevant health and safety legislation and industry codes in order to operate their facilities, such as the Balancing and Settlement Code, Connection and Use of System Code and the Distribution Use of System Agreement.

4.2 What are the primary consents and permits required to construct, commission and operate distributed renewable energy facilities?

In England, distributed renewable energy facilities are likely to fall beneath the 50MW threshold under the Planning Act and will instead be subject to approval under the TCPA. Onshore wind farms, including facilities with generating capacity in excess of 50MW, are subject to the TCPA planning regime due to the perceived increased local impact caused by their construction and operation. Planning applications under the TCPA are made by generators to the local planning authority.

Certain microgrids with a generating capacity of 50kW or less may benefit from permitted development rights where planning permission is deemed to have been granted without the need for an application to the local planning authority.

The requirement for a generation licence under the Electricity Act applies equally to distributed renewable energy facilities, although distributed renewable energy facilities are likely to benefit from the Class A exemption under the Class Exemption Order.

Generators of distributed renewable energy must also comply with relevant industry codes in order to operate their facilities, as described in question 4.1.

4.3 What are the requirements for renewable energy facilities to be connected to and access the transmission network(s)?

In England, the Conditions of Electricity Transmission Licences (**CETL**) provides the standard terms of the licence, and the Connection and Use of System Code (**CUSC**) provides the commercial framework between NGESO and the users of the National Grid.

Generators seeking access to the Grid must make an application under the CETL to NGENSO. If the application meets the requirements of CETL and CUSC, NGENSO must make an offer to the applicant as soon as practicable offering connection to the Grid. The offer of connection comprises:

- a construction agreement in respect of the relevant connection facilities;
- a connection agreement governing the relationship between the generator and NGENSO; and
- an accession agreement to CUSC.

4.4 What are the requirements for renewable energy facilities to be connected to and access the distribution network(s)?

The UK's distribution networks are operated by two sets of operators: 14 distribution network operators (**DNOs**), who operate larger distribution networks; and independent distribution network operators (**IDNOs**), who operate smaller networks within areas covered by DNOs.

In order to be connected to and access distribution networks, the renewable energy facility must apply to the relevant DNO or IDNO in accordance with the requirements of the Electricity Act. The DNO or IDNO must then offer connection terms to the facility as soon as practicable, subject to certain exemptions.

4.5 Are microgrids able to operate? If so, what is the legislative basis and are there any financial or regulatory incentives available to promote investment in microgrids?

Microgrids may operate in the UK and are subject to the same legal and regulatory regime as distributed renewable energy facilities.

Until 2019, generators using microgrids were able to benefit from the FIT scheme, now replaced by the SEG scheme (please see question 3.5 for more detail).

5 Storage

5.1 What is the legal and regulatory framework which applies to energy storage and specifically the storage of renewable energy?

Electricity storage (including the storage of renewable energy) is currently treated as a type of electricity generation. Accordingly, the applicable legal and regulatory framework that applies to electricity storage is currently the same as that applicable to electricity generation. Although the Electricity Act does not currently include a specific definition of electricity storage, this is currently the subject of government consultation.

The provisions relating to generation licences (and exemptions), planning permission and construction described at question 4.1 also apply to electricity storage projects.

All electricity storage projects will also need a completed lease on satisfactory terms in relation to the land in which it is located and, in respect of battery storage projects, must comply with various UK, European and international standards on battery matters.

5.2 Are there any financial or regulatory incentives available to promote the storage of renewable energy?

Energy storage systems benefit from the FIT scheme (provided

that applications have been submitted prior to 31 March 2019) and the RHI scheme as described at question 3.5.

Additionally, in early 2019, BEIS launched the Storage at Scale competition for up to £20 million to be awarded to up to three projects offering large-scale energy storage solutions using innovative technologies which offer a market competitive alternative to conventional energy storage. The target for these projects is to be capable of operating cost-effectively with a target minimum output power of 30MW or minimum capacity of 50MWh for electrical energy storage technologies. Successful projects will be built and tested by December 2021.

6 Foreign Investment and International Obligations

6.1 Are there any special requirements or limitations on foreign investors investing in renewable energy projects?

There are no particular restrictions on foreign investment in UK renewable energy projects.

However, Ofgem, currently together with the European Commission (subject to any Brexit-related developments), is required to undertake an assessment as to whether foreign ownership or control of a renewable power project poses a risk to security of supply.

Additionally, in July 2018 the government published a White Paper setting out proposals to strengthen its powers to scrutinise transactions and projects on national security grounds, particularly in "core areas" (including certain parts of energy sector, and specifically organisations owning large-scale power generation of greater than 2GW). Following voluntary notification or "call-in" by the government, a full national security assessment may be made, which may result in the transaction or project being blocked or allowed subject to certain conditions.

6.2 Are there any currency exchange restrictions or restrictions on the transfer of funds derived from investment in renewable energy projects?

No exchange control restrictions affect inward or outward investment (direct or portfolio), the repatriation of income or capital, the holding of currency accounts, or the settlement of currency trading transactions.

6.3 Are there any employment limitations or requirements which may impact on foreign investment in renewable energy projects?

No sectors of the economy are restricted to UK nationals or require majority equity holdings or other specified holdings by UK nationals. In practice, foreign companies can obtain work permits for foreign employees by demonstrating that their skill level or experience cannot be found among UK nationals.

6.4 Are there any limitations or requirements related to equipment and materials which may impact on foreign investment in renewable energy projects?

Whilst the UK remains a member of the EU customs union, UK companies can buy most goods from other EU member countries without restriction, although VAT and excise duty will usually still apply. In respect of imports from outside the EU, there may

be a requirement to comply with import licensing requirements and common customs tariffs that apply across the EU.

Aside from general restrictions applicable to materials that are harmful to health and safety and to the environment, there are no other legal restrictions that apply to equipment or materials required to construct or operate renewable energy projects.

7 Competition and Antitrust

7.1 Which governmental authority or regulator is responsible for the regulation of competition and antitrust in the renewable energy sector?

The relevant authorities are:

- the European Commission (at least until the end of the Brexit transition period on 31 December 2020);
- the UK Competition and Markets Authority (CMA); and
- Ofgem.

Under the Enterprise and Regulatory Reform Act 2013, both the CMA and Ofgem have concurrent powers to apply competition law in the renewable energy sector.

7.2 What power or authority does the relevant governmental authority or regulator have to prohibit or take action in relation to anti-competitive practices?

The CMA and Ofgem have a broad range of powers in respect of actual or suspected anti-competitive behaviour. These include the ability to:

- conduct market studies and, if appropriate, make a market investigation reference under which the CMA conducts an in-depth investigation into any feature, or combination of features, of a market in the UK;
- investigate suspected infringements (including by conducting “dawn raids”);
- give specific directions to end anti-competitive behaviour;
- impose financial penalties of up to 10% of an undertaking’s annual group worldwide turnover; and
- apply to the court for an order to disqualify an individual from acting as a director for up to 15 years.

In addition, the CMA has the power under the Enterprise Act 2002 to prosecute for criminal cartel offences (which covers agreements relating to price-fixing, market/customer sharing, output limitation or bid-rigging).

7.3 What are the key criteria applied by the relevant governmental authority or regulator to determine whether a practice is anti-competitive?

Both UK and EU competition law (which remains applicable in the UK until 31 December 2020) prohibit anti-competitive agreements and conduct which amounts to an abuse of a dominant position.

Anti-competitive agreements

Agreements and concerted practices which, by object or effect, appreciably prevent, restrict or distort competition are prohibited. This captures formal written agreements as well as informal oral agreements and even tacit understandings between businesses.

Some agreements, such as price-fixing or market-sharing cartels, are considered to be anti-competitive by nature, regardless of their actual effect. Other arrangements, such as exclusive purchasing or supply obligations, will only be prohibited where there is an actual anti-competitive effect. An exemption

is available in certain circumstances where it can be demonstrated that the anti-competitive effects of a particular agreement or conduct are outweighed by the pro-competitive benefits for consumers.

Abuse of a dominant position

An undertaking will be considered to hold a dominant position where it has the ability to behave independently of competitive pressures. Factors such as market share, size and number of competitors, barriers to market entry and customer buyer power are all relevant to assessing dominance.

Examples of abuse of a dominant position include charging unfair prices (either excessively high for consumers, or excessively low to drive out competitors), imposing other unfair trading conditions or refusing to supply existing customers without justification.

8 Dispute Resolution

8.1 Provide a short summary of the dispute resolution framework (statutory or contractual) that typically applies in the renewable energy sector, including procedures applying in the context of disputes between any applicable government authority/regulator and the private sector.

Judicial review in the national courts may be available to challenge decisions made by the government or other public bodies (including Ofgem). An application for judicial review must be made promptly and in any event within three months of the decision being challenged (subject to a few exceptions, where a shorter time limit applies). A number of such challenges have been brought in relation to renewables.

Where the rights and obligations of the participants in a renewables project are governed by contract, the agreed dispute resolution mechanism will apply. For example, the CfD standard terms and conditions provide for disputes to be finally resolved via LCIA arbitration or, for certain types of dispute, expert determination.

8.2 Are alternative dispute resolution or tiered dispute resolution clauses common in the renewable energy sector?

Yes. For example, the CfD standard terms and conditions provide for most types of dispute between the LCCC and the generator to be referred first to their senior representatives. If no amicable resolution can be achieved within a minimum period of 30 days, the dispute can then be referred to expert determination or LCIA arbitration as appropriate.

8.3 What interim or emergency relief can the courts grant?

The English courts have a broad discretion to grant interim or emergency relief. Such relief may take the form of: (i) interim injunctions ordering a party to refrain from doing a specific act (such as commencing proceedings in a foreign court) or to do a specific act; (ii) freezing orders preventing the dissipation of assets; (iii) orders for the preservation of evidence; (iv) orders for the disclosure of documents; and (v) orders in support of arbitral proceedings.

Some contracts related to the development of renewables projects provide for disputes to be resolved by arbitration. Where that is the case, the possibility of interim or emergency relief under the applicable institutional rules (if any) should be considered.

8.4 Is your jurisdiction a party to and has it ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and/or any significant regional treaty for the recognition and enforcement of judgments and/or arbitral awards?

The UK has signed and ratified both the New York Convention and the ICSID Convention.

Its ratification of the New York Convention is subject to the reciprocity reservation (meaning that it will only recognise and enforce awards made in the territory of another contracting state).

The UK left the EU on 31 January 2020 but, during the transition period, the UK continues to apply the Recast Brussels Regulation and the 2007 Lugano Convention, which deal with issues of jurisdiction and the recognition and enforcement of judgments between EU Member States and the European Free Trade Association. Following expiry of the transition period (on 31 December 2020), the Recast Brussels Regulation and the 2007 Lugano Convention will cease to apply to the UK, unless the UK and the EU jointly agree to continue the current regime.

8.5 Are there any specific difficulties (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against government authorities or the state?

Neither the UK government nor UK public bodies are immune to litigation in the UK. Both frequently appear as defendants in UK litigation and are often held to account by the national courts.

8.6 Are there examples where foreign investors in the renewable energy sector have successfully obtained domestic judgments or arbitral awards seated in your jurisdiction against government authorities or the state?

Various judicial review proceedings have been brought against the government to challenge decisions which it has made in relation to renewable energy policy and specific projects. Whilst we

have not seen examples of foreign investors successfully utilising this procedure to reverse a government decision, following the commencement of legal action against the Secretary of State for BEIS by Banks Renewables Limited, the UK government announced a policy U-turn that would lift its ban of onshore wind projects from government-backed contracts support, which resulted in Banks Renewables withdrawing its legal challenge.

9 Updates and Recent Developments

9.1 Please provide a summary of any recent cases, new legislation and regulations, policy announcements, trends and developments in renewables in your jurisdiction.

In an attempt to promote the development of more large-scale electricity storage projects, the government published draft legislation in July 2020 that removes electricity storage from the NSIP planning permission regime. This means that (with the exception of pumped hydro) electricity storage projects of any size would be progressed under the TCPA consent process rather than the more onerous and time intensive Planning Act consent process that previously applied to electricity storage projects in excess of 50 MW.

In 2017, the Planning Inspectorate recommended the rejection of an application for the expansion of a gas-fired power plant in Selby on climate grounds (the first time such a recommendation had been made). However, the project has subsequently been approved by the government (and in May 2020, the High Court dismissed a judicial review challenge against the government's decision).

Renewable energy made up 47% of the UK's electricity generation in the first quarter of 2020, breaking the record of 39% set in 2019. We expect this record to be broken repeatedly in the short term as the UK government continues to promote investment in renewable energy technology. We also expect that electric vehicles, residential solar and battery storage will continue to gain prominence in the UK as a medium for the ongoing transformation of the energy sector.



Oliver Irwin advises lenders and sponsors on the development and financing of cross-border projects across a broad range of industries, many of which are the first of their kind in their industry. He has significant experience advising on multi-sourced project financings involving export credit agencies, multilaterals and development finance institutions. He is also a regular speaker at industry conferences.

IFLR1000 has identified Oliver as a "Rising Star" or "Highly Regarded" every year since 2013, and he has been ranked by *Chambers UK* each year since 2012. Oliver is also ranked as a "Next Generation Partner" for Projects, Energy & Natural Resources: Infrastructure in *The Legal 500 UK* (2018–2020), and was nominated by in-house counsel and peers to appear in *Euromoney's* 2015, 2016 and 2017 "Rising Stars" Expert Guides. Oliver was recognised by *Law360* as a 2019 MVP for Project Finance and named to *Law360's* 2020 Project Finance Editorial Advisory Board.

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Robert Meade acts on international disputes in the energy sector, as well as disputes related to infrastructure, construction and international trade. His experience includes representing clients on construction disputes concerning renewable power projects and in relation to issues arising under CfDs. He has also acted on UK public procurement disputes and related judicial review challenges. Robert was recognised as a "Rising Star" in *The Legal 500's* 2019 International Arbitration Powerlist: United Kingdom and described as "one of the most promising young counsel on the London scene".

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Bracewell LLP is a leading law firm in the energy sector, headquartered in Houston, Texas, with offices across the United States and in London and Dubai.

With one of the largest dedicated energy legal teams in the world, Bracewell has been at the forefront of developments in renewable energy and sustainability. At the core of our renewables and sustainability practice are lawyers who have dedicated their careers to working in the energy industry. Their knowledge and experience are consistently recognised on the national and international level by independent directories such as *Chambers Global*, *Chambers UK*, *Chambers USA*, *IFLR1000*, *The Legal 500 UK* and *The Legal 500 US*.

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