

The Infrastructure Bill 2014-15: Local communities right to shared ownership of commercial renewables projects

The Infrastructure Bill 2014-15 is currently allocated to a Public Bill Committee in the House of Commons, where it will be debated during December 2014 and January 2015.

Part 5 and Schedule 5 of the Bill (which is likely to be debated in early January 2015) gives the Secretary of State significant powers to stipulate ownership of renewable energy facilities by local communities. Known as the 'Community Electricity Right Provisions' (CER) they could provide local community groups rights to purchase a stake in certain renewable energy projects located in their community (if it is a land-based facility); or adjacent to their community (if it is an offshore-based facility). Other sources of energy such as shale gas and nuclear will not be affected.

These CER provisions, if passed into law in their current form, will not of themselves give rise to a community right to buy since they are only enabling provisions. Under section 33 of the Bill the Secretary of State would need to exercise his powers, which do not come into force until 1 June 2016 (if the Bill becomes law in its current form), to introduce secondary legislation which will give effect to the community right to buy. However, DECC has indicated that it views these powers as 'backstop powers' and, indeed, if or when these powers come into force there is nothing forcing the Secretary of State to exercise them on that date or at any time thereafter.

Since the Infrastructure Bill is currently being debated by the Public Bill Committee it is possible to 'have your say' on the Bill by submitting written evidence via the Parliament website. At present the submission deadline is 15th January 2015, which is when the Committee is expected to report to the House of Commons.

CER requirements under the Infrastructure Bill

Schedule 5 of the Bill includes specific requirements and restrictions on a CER arrangement. However, much of the detail of these arrangements would need to be developed through consultation within the industry and local communities. Schedule 5 states that the implementing secondary legislation must:

- indicate the kind of facilities to which the right to buy is to apply (known as 'qualifying facilities'). This might be achieved, for example, by reference to the renewable energy used at the facility or its capacity. The minimum threshold for a qualifying facility is a total installed capacity of at least 5 megawatts (MW), which therefore excludes facilities eligible for feed-in tariffs (FITs);
- specify the kinds of stake or interest a local community could purchase in qualifying facilities. This might be through company shares or other company interests, a loan, an equitable interest, or a right to a royalty;
- require the value of the stake or interest offered to be equal to or greater than the minimum amount stated in the regulations. That minimum amount is to be expressed as a percentage of the qualifying facility's total capital costs, and (as currently drafted) it must not exceed 5%; and
- make provisions about the price setting procedure for an available stake or interest in a qualifying facility, with the 'desirability' of those prices, reflecting fair market value, being regarded by the Secretary of State.



The introduction of provisions that will enable the Secretary of State to make it mandatory for developers to offer a share of their renewable energy projects to local communities is contrary to the recommendations of the Shared Ownership Taskforce, as discussed below.

DECC Shared Ownership Taskforce final report for community ownership of onshore renewables

In its Community Energy Strategy published in January 2014, DECC anticipated that local communities being offered opportunities for shared ownership of new onshore renewable energy projects would be standard practice by 2015. The following month, using representatives from the community energy sector and the renewables industry, DECC set up the Shared Ownership Taskforce; responsible for publishing a report on achieving a voluntary approach to shared ownership of onshore commercial renewable energy projects. Led by RenewableUK, the Taskforce prepared its draft report and proposals which were consulted on between June and August 2014.

The Taskforce published its Shared Ownership Framework, its final report on achieving voluntary shared ownership of renewable projects, on 3 November 2014. The final report encourages renewable energy developers to consult and offer opportunities for shared ownership to interested local communities. Developers of onshore renewable projects with the primary purpose of exporting energy onto a public network and with over £2.5million in project costs are recommended to offer shared ownership to interested local communities.

The final report also recommends possible models for shared ownership such as split ownership, shared revenue or joint venture, provides advice on the procedure of consulting and making an offer to local communities, as well as suggestions to government on necessary policy changes for the successful application of shared ownership.

Also, developers are encouraged to start discussions with communities early in a project's development, ideally during planning or pre-planning consultation, with final arrangements to be confirmed later. This is to limit the exposure of local community investors to the risks of a project not going ahead.

The Taskforce will conduct a light-touch review in 4 months' time and a full review in 10 months' time to assess the success of the shared ownership scheme.

Details on the Shared Ownership Framework

The Framework provides guidance on the shared ownership process. This includes:

- **The types of renewable energy project that should make an offer:**
It states that commercial project developers should offer shared ownership to interested local communities if they are intending to develop a renewable energy project(s) above £2.5 million in project costs for the primary purpose of exporting energy onto a public network. Certain terms are defined in the framework to make it clear exactly what type of project is recommended to make an offer.
- **Recommended models for shared ownership:**
These might include:
Split ownership – in which a proportion of the physical assets of a development project are purchased by a legally-constituted community enterprise (for example, 20 PV panels or a wind turbine);



Shared revenue – where the rights to a portion of future virtual revenue, calculated as if the community had purchased the underlying infrastructure, are purchased by a legally-constituted community enterprise;

Joint venture – where the commercial project developer and a legally-constituted community enterprise work together to develop, own and manage a project;

Debt based debentures and bonds – for individuals, presumably with high net worth, who want to invest.

- **The shared ownership setting up process:**

As mentioned, open consultation discussions with local community group(s) are recommended at the earliest practical time in the project's development process. However, developers are not expected to present formal offers at this early stage. Also, to make the offer appropriate, the commercial viability and size of the renewable energy project will determine the amount of the project offered for shared ownership. For example, this might be a 25% offer (a large share) to local communities for smaller projects, or a 5% offer for larger projects. In order to make shared ownership viable each project can set a minimum threshold for investment, below which the shared ownership offer does not go ahead; for example, a £500,000 minimum investment. It is also expected that offers of shared ownership be made at fair market value.

- **Implementation and monitoring:**

In order to monitor and determine if the voluntary protocol is being followed, the framework recommends that a database be established by DECC through which the parties involved can provide information about the consultation process and eventual outcome for shared ownership of the projects. This database is to be used for the light-touch review after 4 months (approximately April 2015) and the full review after 10 months.

Recommendations on Policy Changes

In the report the Taskforce also sets out its views and recommendations on areas where it believes government policy changes are required to ensure the successful implementation of shared ownership. These include:

- **Planning Permission:**

Making it more likely for developers to acquire planning consent for renewable energy projects if it has an element of community ownership, and strengthening the link between local community support and planning permission.

- **Local Authorities:**

Encouraging local authorities to provide greater support to local communities intending to develop a community or shared ownership renewable energy scheme.

- **Finance and support:**

In order to promote bank flexibility and provide financial certainty to developers, the Taskforce recommends a more stable policy on renewables and the financial mechanisms supporting them, including feed-in tariffs (FITs) and the Renewables Obligation.

- **Registration:**

The requirement for Ofgem to engage early to ensure that shared ownership projects, in particular where the site is split and for FITs, are not disadvantaged by the registration process.

- **Tax incentives:**

For individuals who want to invest in shared ownership schemes.

- **Administrative costs:**

To be reduced for developers.