

Wind farming has become a growth industry in Scotland – and area of legal practice – to the extent that in September the Society holds its first Update seminar on the subject. In the first of two articles DAVID BONE assesses the current outlook for the industry



A blow for the FUTURE



David Bone
Head of Renewable
Energy,
Wright, Johnston &
Mackenzie LLP

Scotland has long possessed a wind and wave resource second to none in Europe. Unlike countries like Denmark, Germany and Spain, however, which have developed growing renewable industries from far less favourable geographic conditions through tax breaks and other forms of governmental assistance at an earlier stage and with considerable vigour, commercial wind farms only became economically viable in Scotland following the passing of three Scottish Renewable Orders in the 1990s. These led to the commissioning of our first commercial windfarm at Hagshaw Hill in Lanarkshire in 1995, quickly followed by Windy Standard in Dumfries and Galloway in 1996, Novar in Highland in 1997 and Beinn Ghlas in Argyll in 1999.

The establishment of the Scottish Parliament, with its willingness to see

the possibilities of a new, vibrant industry and its reform of National Planning Policy Guideline 6 (NPPG6 – Renewable Energy) in 2000, added further momentum. Further wind farms followed at Dun Law, Hare Hill, Deucheran Hill, Beinn an Tuirc, Bowbeat and others between 2000 and 2002, so that by the end of 2002 around 194 megawatts (MW) of capacity had been installed.

The UK Government then set targets for the first time. Its Energy white paper, published in February 2003, called on the industry to supply 10% of UK electricity from renewables by 2010, with an aspiration to double that by 2020. Scotland is the UK country with the most favourable geographic conditions to contribute towards that target (and it also has a long-established hydro industry), so the

Scottish Executive set its own targets in a 2003 policy document ("Securing a Renewable Future: Scotland's Renewable Energy"), of generating 18% of Scotland's electricity from renewable sources by 2010 and generating 40% by 2020.

The political momentum generated by that policy document and the reform of the NPPG6 Guideline has encouraged all the major developers to beat a path towards Scotland's door. In 2004, large wind farms were developed at Ardrossan, Cruach Mhor, Crystal Rig and Causeymire, and in 2005 Scotland's most powerful wind farm to date, at Rothes near Elgin, has been commissioned. The British Wind Energy Association statistics reveal that at present 25 commercial wind farms are operating in Scotland (although nine are small scale, with three



© NATIONAL WIND POWER LTD

Despite what one might read in the press, Scotland is not at present overrun with wind farms, as can be seen from the figures... and there is a good deal of scope for new sites to come on board

turbines or less), consisting of 381 turbines between them of over 409 MW in capacity and, according to industry figures, capable of supplying electricity to almost 245,000 homes.

To meet the targets, the Future Generation sub-group set up by the Forum for Renewable Development in Scotland, reporting in June 2005, calculated that about 6 gigawatts (GW) of installed capacity is required to meet the 40% target by 2020 (the 18% target by 2010 is likely to be met before that date). Existing hydroelectricity accounts for about 1.4GW of current installed capacity, existing onshore wind for about 0.4 GW, and consented on- and offshore wind, hydro and biomass for a further 1.1GW. Therefore over 3GW of further capacity requires to be installed to meet this target and, as we shall see, just because 1.1GW has made its way through the planning system does not mean it is automatically going to be built.

Onshore wind farms will make by far the largest contribution towards the target. There are several reasons for this. The first is that

there is now in place a fairly developed and sophisticated model on which wind farms operate, with power purchase agreements and an ROC (renewable energy certificate) mechanism for providing payment with which financial institutions funding these projects now seem comfortable. The second is that, despite what one might read in the press, Scotland is not at present overrun with wind farms, as can be seen from the figures quoted above, and there is a good deal of scope for new sites to come on board. There are, however, a considerable number of sites "in the queue", either under construction, consented but not yet constructed, or in the planning system so we are not short of proposed new sites at present. Thirdly, the other renewable technologies either lag behind in development terms (biomass, wave and tidal) or are unlikely to contribute significantly to the targets because we have most of what we need (hydro) or conditions are not ideal (offshore wind – interestingly, the industry recognises that if the UK target is to be met by 2010, which is a

challenge, there will need to be a lot of new Scottish onshore wind and a lot of new English and Welsh offshore wind, because conditions south of the border are more favourable for the offshore variety).

Opportunities for lawyers

My own team has been lucky enough to assist in the largest number of the built wind farms in Scotland of any legal firm. We have acted, mainly for the developer, on nine of the large wind farms mentioned above, which between them consist of 206 turbines and have over 257 MW installed (over half of the total Scottish figures). These include the three biggest (at Causeymire in Caithness, Crystal Rig in the Borders and Rothes near Elgin) so we like to think that we are helping make a considerable contribution towards the targets.

I mentioned above that there are a considerable number of potential sites in the queue, and this explains why the newspapers and particularly the letters columns constantly seem to be giving the impression that we soon will not be

able to walk across Scotland without bumping into turbines every step of the way.

Our own internal statistics show the efforts which developers are making to find sites in Scotland. Acting for several of the major developers, plus a few landowners, we have to date worked on over 120 sites. Of these, only 12 have been dropped as not worth pursuing, on 40 of them option agreements are being negotiated, on 58 legal agreements are concluded between the owner and developer and are at various stages of the planning process, two are consented and under construction and on one (the largest) a planning consent is imminent, all in addition to the nine already built. Bodies like the Scottish Renewables Forum, Scottish Executive and SNH keep their own statistics of applications of which they are aware, and the total numbers are considerable.

Will they all be built?

Not all of these sites will, however, make their way through to completed wind farms. The reasons

