The Autumn Statement 2015 for energy lawyers

25/11/2015

Energy analysis: With the Chancellor's speech still ringing in our ears, we bring together the most important features of the Autumn Statement 2015 for energy lawyers alongside expert analysis and industry comment.

What was relevant in the Autumn Statement for energy lawyers?

Autumn Statement 2015: Environment issues, LNB News 25/11/2015 157

A replacement for the Energy Companies Obligation (ECO), set to run for five years from April 2017, will save around 24 million households an average of £30 a year on their energy bills, the Chancellor announced in the 2015 Autumn Statement. In addition to this, the Warm Home Discount scheme has been extended to 2020/21, and spending on energy innovation research has been doubled.

What does this mean for energy lawyers?

What are the headlines for this year's Autumn Statement for energy lawyers and why?

Simon Hobday, partner, Osborne Clarke: The Chancellor announced funds to support the UK's nuclear skills base and energy innovation. Tax breaks for energy generation have also been tightened further with the announcement that venture capital schemes can no longer be used for energy generation. However, the most striking package of announcements for me is the support for heat with the announcement of an increase in the renewable heat incentive (RHI) funding to £1.15bn and £300m for heat networks to drive heat delivery to 400,000 homes (assuming this is not double counting). With the launch of the Heat Trust, the role of heat and the efficiencies it drives will be a much greater presence than seen to date in the UK's energy mix and will play a role in increasing overall efficiency of the UK's energy system. We await the detail as to how these will be implemented across primary and secondary legislation as well as other levers such as planning policy.

Nuclear

Nuclear research and development is a clear winner today having been promised £250m to be invested over the next five years to pave the way towards building one of the world's first small modular reactors in the UK in the 2020s. On the downside for nuclear, the Nuclear Decommissioning Authority will need to find savings of more than £1bn which will mean some non-safety-critical projects will be mothballed.

Shale

Shale's tricky public relations problem is partly addressed by adding some flesh to the bones of the previously announced Shale Wealth Fund--up to 10% of shale gas tax revenues will be allocated to the fund which will invest in local communities hosting shale gas developments in the north of England and other shale-producing regions.

Heat

The RHI will receive an increase in funding to £1.15bn by 2020/21 but the scheme will be reformed to deliver value for money and strengthen cost control. Separately, the government will be providing over £300m of funding for up to 200 heat networks to generate enough heat to support the equivalent of more than 400,000 homes and leverage up to £2bn of private capital investment.

Energy efficiency

The government will provide £295m over five years to improve the energy efficiency of schools, hospitals and other public sector buildings. It will also be implementing what it calls a 'Domestic energy efficiency supplier obligation' for five years from April 2017 with a value of £640m per year rising with the consumer price index.

Tax advantaged investments

From 6 April 2016, all energy generation activities will be excluded from the following tax-advantage investment schemes:

- enterprise investment scheme
- venture capital trusts
- seed enterprise investment scheme, and
- social investment tax relief

Climate change levy

A crumb of comfort for the renewables industry--a transitional period for electricity suppliers to apply the climate change levy exemption on renewably sourced electricity generated before 1 August 2015 will run until 31 March 2018.

Landfill Communities Fund

The Landfill Communities Fund is to be reformed. A consultation has been published which includes removal of provisions for third-party contributions, simplification of record keeping requirements and changes to the scheme's objectives.

Sam Sandilands, senior associate, and Nick Churchward, partner, Burges Salmon: The government will amend the eligibility criteria of the venture capital schemes to exclude all energy generation activities. This will impact on financial models of schemes in development where developers had assumed the relief would remain available.

Spending on energy research and innovation will be doubled including at least £250m to be invested in a nuclear research and development programme. This will include a competition to identify the best value small modular reactor design for the UK. This further indicates a commitment to nuclear energy in the UK which we have already seen through the Contract for Difference (CfD) process and government support for Hinckley.

The government will increase funding for the RHI to £1.15bn by 2020/21, but at the same time deliver savings of £70om in reforming the scheme.

The Department of Energy and Climate Change's (DECC) central budget will be reduced by 22% which will inevitably result in more difficulty in getting input and insight into future policy and consultations.

The government will commit up to 10% of shale gas tax revenues to a Shale Wealth Fund, which is predicted to deliver up to £1bn of investment in local communities hosting shale gas developments. This support is clearly intended to further pave the way for a new shale gas industry in the UK in which energy lawyers will play a key role.

The Oil and Gas Authority will be given additional powers to scrutinise companies' offshore decommissioning plans and take action to ensure value for money.

A new domestic energy efficiency scheme is to be introduced from April 2017, to replace the current Energy Company Obligation (ECO). The new scheme will take an average of £30 off projected household energy bills from 2017. The ECO has come under criticism for its effectiveness and costs and as such energy lawyers will be interested to learn the details of the new scheme.

The government will spend more than £600m on the development of ultra-low emission vehicles, and will also provide an exemption for energy intensive industries, such as the chemical and steel industries, from the policy costs of the renewables obligation and feed-in tariffs.

Richard Banwell, barrister, 6 Pump Court: The headlines are:

- there will be a doubling of spending in nuclear research and development of at least £250m over the next five years, with the aim to revive the UK's expertise in nuclear technologies
- that investment includes a competition to identify the best value small modular reactor design for the UK, building the first in the UK by the 2020s
- permanent exemption for energy intensive industries, including the steel and chemical industry, from the policy costs of the environmental tariffs such as the renewables obligation and feed-in tariffs, to ensure that they have long-term certainty and remain competitive
- the government will commit up to 10% of shale gas tax revenues to a Shale Wealth Fund, which could deliver up to £1bn of investment in local communities hosting shale gas developments, in the north

- the government will provide over £11bn for the Nuclear Decommissioning Authority (NDA) to continue its vital work cleaning up historic nuclear sites--this includes making significant progress on the legacy ponds and silos at Sellafield, some of the most hazardous facilities in the UK
- the government will increase funding for the renewable heat incentive to £1.15bn by 2020/21, while reforming the scheme to deliver better value for money
- company car tax--the government is retaining the diesel supplement in company car tax until 2021, when EU-wide testing procedures will ensure new diesel cars meet air quality standards even under strict real world driving conditions

Were there any surprises?

Simon Hobday: No real surprises. The government has been clear about its support for nuclear and shale gas and the announcements fit with that.

Sam Sandilands and Nick Churchward: An increase in funding for the RHI is a surprise given the direction of travel on the other renewable energy incentive programmes. However, the fact that the government has pledged to deliver £700m of savings indicates that reforms to the scheme are likely to be significant and wide-ranging.

While some of the announcements are significant, many of the key topics have been the subject of intense lobbying in the relevant sector or the subject of political scrutiny in recent months, such as energy intensive industry reliefs.

It is unfortunate that no further firm details were provided on the future for the CfD regime and the availability in the future of CfDs for technologies other than offshore wind. We have assumed that only offshore wind will be supported, but this has not be definitively confirmed.

Richard Banwell: The increased investment in nuclear research and development is of no particular surprise given that the UK's nuclear expertise has not been required to keep pace with that of other, developing economies for many years. Although a substantial investment, it might not be enough and is possibly too late to provide a meaningful boost to our expertise given that the Chinese are already at the forefront of small modular nuclear reactors (essentially those producing 300MWe or less).

But the benefits to the UK of being able to compete globally with the expertise currently existing is clear--the reactors are expected to have greater simplicity of design, the added economy of series production (largely in factories), short construction times, and reduced siting costs. Most are also designed for a high level of passive or inherent safety in the event of malfunction. Many are designed to be emplaced below ground level, giving a high resistance to terrorist threats. Since small reactors are envisaged as replacing fossil fuel plants in many situations, the emergency planning zone required is designed to be no more than about 300m radius. There are plants in operation already in China, Russia and India with many more planned in those countries and the US. There are opportunities for those who advise the designers of such plants and those who may be involved in developing such projects in the future, of ensuring that there is a system in place for obtaining funding and achieving the government's aims.

As for the permanent exemption from environmental tariffs for the steel and chemical industries, again this might be seen as unsurprising given the current precarious state of the steel industry, in particular in the UK, and the need to remain competitive globally. The National Infrastructure Plan contains a significant number of projects which will use British steel, eg Crossrail--with four UK-based companies providing over 50,000 tonnes of steel--and HS2--where the government has already given notice of the thousands of tonnes of steel that will be needed. The announcement today was foreshadowed by the joint Department for Business, Innovation & Skills (BIS) and DECC consultation on electricity intensive industries and relief from the indirect costs of renewables which consulted upon the eligibility criteria for compensation as well as the recent Steel Summit of 16 October 2015. That was followed by a meeting between the Secretary of State for BIS with the Competition Commissioner on 23 October 2015 where approval was sought for state aid assistance.

The Shale Wealth Fund sounds impressive but it is important to remember that there are no operational wells in the UK so the commitment to supporting communities in this way is not based upon any actual tax revenues received.

The Treasury settlement for DECC includes doubling DECC's innovation programme to £500m over five years and a £1.7bn share of the government's £5.8bn International Climate Fund, with the aim to help the poorest and most vulnerable countries decarbonise and adapt to the effects of climate change.

DECC itself is committed to resource savings of 22% by 2019/20 delivered in corporate services and reducing the cost of contracts. It is thought that this will amount to £220m of savings through efficiencies from pooling back office and corporate services, and reducing the costs of contracts to manage the country's historic coal and nuclear liabilities.

What actions should energy lawyers be taking as the dust settles?

Simon Hobday: The policy announcements around heat and energy efficiency need fleshing out and energy lawyers should keep an eye out for forthcoming consultations on these topics.

Sam Sandilands and Nick Churchward: Keeping informed on the detailed proposals for reform to the RHI and advising clients to act quickly on ongoing projects to ensure they benefit from the current incentive rates. The RHI appears to be the last energy incentive scheme to be saved from direct cuts, which will likely push it to the forefront of energy clients' minds in making decisions on which projects to promote.

Reviewing the detail of how the promise of a doubling in support for 'low carbon energy' will be delivered and what this means for renewables in light of the Secretary of State for Energy and Climate Change, Amber Rudd's previous announcement on energy reforms.

Understandably, the announcements are light on detail, and despite there being very few major surprises, energy lawyers will need to keep a keen eye on the implementation of the policies that will follow.

What has been the reaction from industry?

Jayne Harrold, indirect tax senior manager at PwC

'The detail behind the Autumn Statement suggests that government will take offsetting action to mitigate the impact on household energy bills. It's not clear whether the energy intensive industries will indeed be better off or who will end up footing the bill for the government saving.

'Given the challenges that the DECC) is facing in delivering its energy policy objectives, in particular its commitment to invest in renewable heat, the proposed 22% cut to DECC's own budget combined with proposed reform to the Renewable Heat Incentive, will increase this challenge further.

'The government faces a tough challenge to meet its energy and environmental targets without blowing the budget.'

Want to know more?

A full overview of the Autumn Statement 2015 can be found here: Autumn Statement 2015: Overview of tax announcements, LNB News 25/11/2015 137.

A full overview of the Autumn Statement 2015 can be found here: Autumn Statement 2015: Overview of tax announcements, LNB News 25/11/2015 137.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor