



For immediate release:

Pre-action letter asks Treasury to abide by previous undertakings on tax relief for community energy

Community Energy England yesterday served on HM Treasury a 'Letter before Action' in accordance with the Pre-Action Protocol for Judicial Review challenging the implementation of proposed changes to the Enterprise Investment Scheme (EIS) and Social Investment Tax Relief (SITR) for community energy enterprises.

The Treasury had confirmed in this year's budget that tax relief for community energy enterprises would be available under EIS until the relief was to be migrated to SITR with at least six months' notice beforehand. A wholly unexpected announcement on 26 October 2015 changed its previous policy and declared that all tax relief would end with barely one month's notice on 30th November.

Community Energy Scotland and Community Energy Wales, who are working with CEE, confirm that their purpose in taking this action is to make clear to the Government how seriously their collective members – from thousands of sustainable energy groups across the UK – could be affected if Government reneges on its promises in this way.

CEE Chairman Philip Wolfe says; "Our letter gives HM Treasury a final opportunity to reconsider its position in light of the legitimate expectations of the community energy sector arising from Government statements in the 2015 Budget. We have not taken the decision to challenge lightly, but believe it is important to seek the regulatory consistency necessary to inspire the billions of pounds of investment, which sustainable energy infrastructure needs to survive and thrive over the next decade and more."

The pre-action letter was served by law firm Bates Wells Braithwaite, whose Public & Regulatory Law Partner, Selman Ansari, pointed out that the government's change in approach had not been supported by any ministerial announcement, evidence or consultation. He noted that "after the budget statements, community energy groups had a legitimate expectation that the tax regime would remain unchanged for at least six months. The unexpected changes which Treasury now proposes could jeopardise all their investment in projects being developed on that understanding."

E N D S

Notes for editors:

The pre-action letter. Notes on, and key extracts from the 11-page letter are appended below

Community Energy England (CEE) was launched in June 2014, to provide a voice for the community energy sector. It has about 200 members encompassing social enterprises and community energy focused organisations from the private and public sectors. Details can be found on the CEE website at www.communityenergyengland.org.



Community Energy Scotland and Community Energy Wales together have over 450 members. Details can be found at:

www.communityenergyscotland.org.uk

www.communityenergywales.org.uk

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The pre-action letter:

Bates, Wells and Braithwaite (“BWB”), solicitors, acting on behalf of Community Energy England (“CEE”) have served a letter¹ on HM Treasury and its solicitors challenging the Government’s announcement on 26 October 2015, in the final stages of the Finance Bill, of:

- a. the removal of the Enterprise Investment Scheme (“EIS”) tax relief from community energy schemes with effect from 30 November; and,
- b. the reversal, without any prior warning, of the Government’s stated intention that there would be a period for community groups of 6 months once state aid approval of the enlargement of Social Investment Tax Relief had been obtained to allow certain community energy groups which provide social benefit to effect a smooth transition between the two reliefs.

The letter refers to and quotes a number of express representations regarding the proposed managed transition of the EIS by the Treasury including one in the **March 2015 Budget Statement** that

“2.77 Venture capital schemes: renewable energy – As announced at Autumn Statement 2014, companies benefiting substantially from subsidies for the generation of renewable energy will be excluded from also benefiting from EIS, SEIS and VCTs with effect from 6 April 2015, with the exception of community energy generation undertaken by qualifying organisations which will in future become eligible for the Social Investment Tax Relief (SITR). The government will allow a transition period of 6 months following state aid clearance for the expansion of SITR before eligibility for EIS, SEIS and VCT is withdrawn.” [Emphasis added]

¹ The date of the letter is 23 November 2015

CEE contends that these representations had created a “legitimate expectation” in law i.e. a series of clear assurances had been given by the Treasury that the Government would not remove the benefit of the EIS from community energy groups without implementing transitional provisions. It is CEE’s contention that these assurances could, as a matter of law, be relied upon by the community energy sector and that it was not open to the Treasury to simply reverse the proposals without due process.

The letter also deals with the effect of the Treasury’s renegeing on the legitimate expectation created, stating that:

“As a result of the Treasury’s representations prior to the Announcement and the Decision, CEEs have been developing projects in the expectation that they would be eligible for tax relief; initially under EIS, and in due course under SISR. They also had a reasonable expectation that changes to tax relief eligibility would not be made with less than six months’ notice.”

“No rationale has been properly elaborated by way of a public and/or parliamentary statement as to why the EIS is being withdrawn without a transitional period, and, why the SISR is not intended to be expanded as previously announced”

“The implementation of the Decision would be entirely unjust as it is being proposed to be done without warning and without proper elaboration of the reasons for the Decision.”

Community Energy England has said it reserves the right to commence judicial review proceedings, including injunctive proceedings (as well as raising the possibility of damages claims being made by affected parties), unless the Government takes immediate action to reverse its unlawful decision.