

Petitioner submission of 6 December 2021

PE1885/E - Make offering Community Shared Ownership mandatory for all windfarm development planning proposals

The Scottish Government (SG) replied it is unable to use the Planning legislation to deliver Mandatory Community Shared Ownership (CSO) – the petitioner agrees with this.

I understand that the route open to the SG is to legislate via the devolved Scottish land transaction & tax laws.

Background:

- The SG has failed to meet its 1GW target of community-locally owned energy by 2020 - [report](#)
- To meet the SG's 2030 target of 2GW of community-owned energy will require 15% equity-stakes of ALL the planned 8-12GW onshore windfarm capacity to enter local ownership via CSO that meets the 2019 Good Practice Principles (GPP) (or 30% stakes of half of the planned capacity).
- The [EST response](#) shows that the 2030 target will be missed; a) only 1 CSO completion at 5% of the developed capacity (well below what is required to meet the target), b) only 59% of developments offering CSO – given normal offer failure rates, this means only 10-30% of these developments will actually result in CSO – failing to meet both of the SG's targets: the 2GW target and the “at least half of the renewable energy projects will have an element of shared ownership” (note, actual ownership, not an ‘offer’).
<https://climatepolicyinfohub.eu/community-energy-projects-europes-pioneering-task.html>

- To date the Kintyre Community has only received 1 promise of CSO that meets the SG's GPP (out of the 14 developments consented or in planning) – from RWE due to its lease with Forestry Land Scotland.
- The majority of developers are either;
 - not offering CSO or,
 - making offers which do not meet the SG's GPP criteria for CSO i.e. that “which involves a community group as a financial partner over the lifetime of a renewable energy project”.
- I understand that -
- one developer has refused to interact with the Community.
- Two developers have refused to offer CSO - these were ‘flip’ developers who then sell their development to third parties.
- I understand that when the company's CEO was challenged, the position changed to ‘it will consider offering CSO, at a later unspecified date’. I believe it is common knowledge that this ‘shared revenue offer’ which has been made to other Communities in Scotland but never taken up, does not meet the SG's GPP criteria for CSO.
- I understand another 3 developments are by a company that was a stakeholder in agreeing the SG's GPP for CSO. It promised the communities it would offer CSO but has reneged on this commitment, tabling a short-term investment with a rate-of-return determined on their terms. The Community's independent financial consultants stated ‘the offer being made...does not meet the definition of shared ownership per the SG definition’. Despite numerous engagements pointing out the Community and its financial adviser's view that the proposal completely ignores the GPP of “financial partnership for the lifetime of the development”, it has refused to change its position. This type of behaviour undermines not just the communities but also SG's target auditors - this ‘offer’ will be one of the ‘CSO offers’ reported by the EST, yet in my view it shouldn't be considered as such.

- I believe that the ‘shared revenue’ offer is fundamentally flawed, giving developers the fig-leaf of claiming a CSO offer, when they have done nothing that meets the GPP.

Recommendations to ensure delivery of CSO:

- Utilise the land tax powers granted to the SG to make an Financial Conduct Authority approved CSO offer in the windfarm development, a minimum requirement for ALL developments not yet consented.
 - the SG has the power to raise new land taxes on **any** transactions & transfers involving interests in land, (Part 4A Chapter 3 of the Scotland Act).
 - The Land Registration etc (Scotland) Act 2012 (and the concomitant 2012 Act Registration Manual of the Registers of Scotland) defines ‘transfer’ as being any ‘transfer of whole’ or ‘transfer of part’ which requires the creation of a new title sheet with the Registers of Scotland – this includes the creation of leases between 3rd party windfarm developers and landowners.
 - Thus the SG has the power to legislate for a new ‘tax’ – one that would require all developers who don’t own the land to make a CSO offer that fully meets the criteria of the GPP & which gives a level playing-field for all developers.
- The type of CSO offer mandated by this new tax should be limited to a % equity-stake offer;
 - % equity-stake offers force the developer to make a lifetime offer with the Community as a financial partner.
 - % equity-stake offers are standard commercial investments, well understood by banks and advisors, with well-defined, existing commercial practices and processes.
- This new land tax would tax leases taken out by commercial energy developers with land-owners and would consist of a binding, FCA approved, % equity-stake CSO offer that FULLY met the GPP.

- Any new tax should mandate a minimum of 15% equity-stake, in order for the SG to meet its 2030 2GW of community-owned energy from the proposed 8-12GW capacity and could be part of a Third Land Reform Bill or the proposed Community Wealth Building Bill.
- Since 2009 the Danish Renewable Energy Act has required all new wind project have at least 20% local ownership. This has delivered very high community ownership levels.