

Infrastructure & Energy

# HORIZON SCANNER

April/May 2022



## WELCOME

Welcome to the second edition of our quarterly horizon scanner. The purpose of this document is to keep you abreast of key legal and regulatory developments.

If you have any questions or require any more information then please don't hesitate to get in touch with us.

If you would like to receive this and other similar updates direct to your inbox, please click the link [here](#).

## WHAT WE WILL BE COVERING

Net Zero & Industry News	3
Renewables and Green Energy	6
Hydrogen and CCUS	8
Waste and Resources	8
Construction/Development	8
General / In-house Legal	10



## Infrastructure & Energy Group

## NET ZERO & INDUSTRY NEWS

Russia's invasion of Ukraine is inextricably linked to the global energy crisis. Concerns over energy security are particularly acute in Europe, which is heavily reliant on Russian exports of coal, oil and gas. Two major narratives have emerged in response: many leaders have emphasised the need to accelerate the roll out of clean energy technologies, whereas climate sceptics have made domestic oil and gas their sole focus, in some cases going so far as attempting to argue that clean energy is part of the problem. Significantly, the German government is reportedly aiming to accelerate a shift to a 100% renewable electricity system by 2035, and the UK government has launched a £375 million package of [support for innovative energy technologies](#) that will power British homes and businesses, alongside its new [energy security strategy](#).

In the [Spring Statement](#), Rishi Sunak announced: an extension of VAT relief available for the installation of energy saving materials including additional technologies (such as heat pumps) and the removal of complex eligibility conditions; a time-limited zero rate for the installation of Energy Saving Measures (ESMs) from April 2022; a temporary 12-month cut to duty on petrol and diesel of 5p per litre; bringing forward to April 2022 targeted business rates exemptions for eligible plant and machinery used in onsite renewable energy generation and storage to support the decarbonisation of non-domestic buildings; and 100% relief for eligible low-carbon heat networks with their own rates bill.

The Public Accounts Committee has published a [report into the government's funding of the net zero 2050 target](#). The Committee found that the government has 'no clear plan for how the transition to net zero will be funded' or how it will replace income from taxes such as fuel duty, and no reliable estimate of what implementing net zero policy is actually likely to cost consumers, households, businesses and government. The report sets out recommendations to ensure that commitments are met.

The Scottish Government has published a [letter](#) regarding Scotland's 81 [recommendations for achieving net zero by 2045](#), emphasising that UK government action is needed with regards to fiscal and pricing elements of



emissions trading, decisions on the gas grid, investment in the electricity network infrastructure, regulation on energy networks, vehicle standards, motoring taxes and the regulation of renewable energy investment.

**Electric vehicles (EVs)** are a hot topic. The UK government has published its [electric vehicle infrastructure strategy](#) which includes a £1.6 billion commitment to the expansion of the UK's charging network and a minimum expectation of 300,000 public chargers, offering comprehensive nationwide coverage, by 2030. Tesco has started using battery-powered delivery lorries in what it said was a UK supermarket first in a bid to reduce its carbon footprint. The John Lewis Partnership is replacing its home services fleet with electric vehicles as it strives to reach a target of transitioning 4,000 cars, vans and light trucks to EV by 2030. DAF has delivered five CF Electric trucks to Amazon UK. The trucks are the first electric middle mile trucks Amazon is operating in Europe. Bp has announced new plans to invest £1 billion in electric vehicle charging in the UK.

The UK government has agreed to invest £100m in Britishvolt to enable the car battery manufacturing startup to build Britain's first 'gigafactory' at Blyth in the north-east of England. Envision, the Chinese owner of the UK's only large-scale battery factory has also revealed plans for a big expansion that will put the plant in Sunderland among the biggest **electric vehicle facilities** in Europe.

EU countries have backed plans to impose a **world-first carbon dioxide emissions tariff** on imports of polluting goods. The EU wants to introduce CO2 emissions costs on imports of steel, cement, fertilisers, aluminium and electricity, a move aimed at protecting European industry from being undercut by cheaper goods made in countries with weaker environmental rules. The costs would not kick in until 2026, according to the European Commission's proposal for the measure, but a three-year transition phase would begin in 2023, so EU countries and the European parliament are racing to negotiate and approve the final rules in time.

**Climate change litigation** is on the rise. Activist shareholders have given notice of a claim against Shell's directors, claiming they are personally liable for failing to devise a Net Zero strategy in line with the Paris Agreement. This is a potential milestone in climate litigation - one to watch. Three campaign groups, Friends of the Earth, ClientEarth and the Good Law Project, have been given permission to bring a legal challenge in the High Court over the



UK government's Net Zero and Heat and Buildings Strategies. The legal challenge will be considered on the basis that the Net Zero Strategy does not comply with the Climate Change Act 2008. A full hearing is expected to take place towards the end of 2022. In *Plan B Earth v Prime Minister*, however, permission to bring a judicial review claim based on the UK government's alleged failures to take appropriate action in meeting climate change commitments was refused.

**Green lease terms** are increasingly prevalent. However, a recent commercial landlord and tenant case (*Clipper Logistics v Scottish Equitable*, 2022, unreported) confirms that terms imposing new and additional burdens on tenants so as to reduce landlords' liability under energy performance and energy efficiency legislation will not be fair and reasonable. Such terms will not, therefore, be ordered by the courts in disputed 1954 Act lease renewals.

**Accusations of 'greenwashing'** against major oil companies that claim to be in transition to clean energy are well-founded, according to a recent study. The [research](#), published in a peer-reviewed scientific journal, found that Chevron and ExxonMobil were "laggards" compared to Shell and BP, but that even Shell's and BP's actions appeared to contradict their pledges. (For example, BP and Shell pledged to reduce investments in fossil fuel extraction projects, but both increased their acreage for new exploration in recent years, and Shell, BP, and Chevron all increased fossil fuel production volumes over the study period).

The **Oil and Gas Authority (OGA)** was renamed the North Sea Transition Authority, on 21 March 2022.

The Department for Business, Energy & Industrial Strategy (BEIS) has confirmed that, from March 2023, the UK government will increase the frequency of auctions for funding through the Contracts for Difference (CfD) scheme to every year rather than every two years.

**Proposals for a reduction in emissions trading allowances** issued to carbon-intensive businesses, a removal of free allowances for the aviation sector, and the expansion of carbon trading measures into new areas of the economy, including shipping and waste treatment, have been published. The [UK Emissions Trading Scheme consultation](#) is open until 17 June 2022.



## RENEWABLES AND GREEN ENERGY

From 14 February 2022, **renewables can provide stability services to National Grid ESO** in what the operator has said is a world first. Thanks to a new Grid Code modification, GC0137, converter connected technologies including renewables and interconnectors can offer the kind of stability services which have traditionally been delivered by conventional generators. In related news, the UK government has announced that it will bring part of National Grid back into public ownership to help Britain reach its climate targets. The nationalised unit will be folded into a new Future System Operator (FSO), an authority responsible for overseeing Britain's electricity systems.

Batteries can reduce use of fossil-fuelled plants that supplement renewable energy or support the grid at times of high demand. The Telegraph reports that forecasts of battery demand are prompting the upsurge in the construction of large-scale manufacturing plants (so-called 'gigafactories'). Investment is also pouring in to energy storage companies. In the first nine months of 2021, these companies raised \$5.5bn in venture capital, up from \$1.2bn across 91 deals in the same period of 2020, according to Mercom Capital Group. China currently dominates global production of lithium-ion battery cells. However the **global battery production landscape** is changing so substantially that Europe could have around a one-third global share of battery manufacturing capability by 2030.

24 projects have been awarded the first round of funding through the **Longer Duration Energy Storage competition** and will benefit from a share of over £6.7 million to develop new energy storage technologies. Successful projects could benefit from a greater tranche of funding from a second phase of the competition, which will support these projects towards commercialisation, encouraging private investment and creating new jobs.

In a new research request for advanced batteries, the **Consortium for Battery Innovation (CBI)** has launched a **call for proposals** focused on innovative applications of the technology. Targeting markets such as electric vehicles, energy storage systems and motive power applications, CBI has identified



key areas for growth opportunities for the advanced lead battery market and is calling on the industry to submit research proposals to enhance batteries in critical ways such as cycle life, service life, charge efficiency and operational cost.

Amp Energy has announced plans for **Europe's two largest grid-connected battery storage facilities**, with its 800 MW battery portfolio in central Scotland. The **Scottish Green Battery Complex** is due to be operational in April 2024.

The UK energy secretary has granted **development consent for a gas-fired power station and battery storage facility on green belt land** in Essex, concluding that harm to the green belt was outweighed by the scheme's benefits.

South Cornelly is to be **Wales' first low-carbon village** as part of the Low Carbon Communities Initiative, which has seen the installation of solar and battery storage. The project aims to see how locally generated renewable electricity generated by solar PV can be shared with other homes nearby.

EDF Renewables is looking to develop a 49.9MW **solar farm to power a new green hydrogen production facility** in Teesside.

Walker Morris has prepared a **briefing** which highlights potential **tax issues associated with solar farm developments**. It is intended to facilitate initial negotiations between developers and landowners at the outset of a development, and to prompt and inform discussions between landowners and their advisors.

The **Selkie Project** is a new €5.2m cross-border initiative aiming to **boost the marine energy industry** in Wales and Ireland. Selkie is bringing together leading researchers and businesses to improve the performance of wave and tidal marine energy devices to help deliver commitments to net-zero targets.

The EU has launched a **legal case against the UK over British subsidies for offshore wind farms**, which it claims favour those using turbines sourced domestically over imports, thus breaching World Trading Organisation (WTO) rules. The EU has requested dispute settlement consultations. If they do not lead to a satisfactory solution within 60 days, the WTO can set up a panel to rule on the matter.



## HYDROGEN AND CCUS

The UK government has [published](#) the projects which have met the **Phase 2 CCUS cluster sequencing competition criteria**.

## WASTE & RESOURCES

Veolia has invited Welsh businesses to take part in a [‘single line’ recycling trial](#) to help the country transition towards a circular economy.

The long-awaited **extended producer responsibility (EPR) system** will come into force in 2024. EPR will force producers to pay the full costs of disposal for the packaging they place on the market. The system was expected to include plans for both household and business waste, however the Department for Environment, Food & Rural Affairs (DEFRA) has now said it will not include business waste. Instead, DEFRA plans to introduce an interim solution for business waste which will be based around the current system, where packaging producers purchase the Packaging Waste Recovery Note (PRN) or Packaging Waste Export Recovery Note (PERN) to demonstrate that recycling obligations have been met for the packaging they have placed on the market, and to support investment in reprocessing.

## CONSTRUCTION/DEVELOPMENT

In terms of further [building regulation changes](#), government plans to tackle climate change include the **Future Buildings Standard** and the **Future Homes Standard** and the aim that new homes and buildings in England should produce nearly a third less carbon. For information and practical advice, see [Walker Morris’ briefing](#).



Mandatory [requirements to disclose climate-related risks](#) are coming into force in April 2022 (and see Climate/ESG section below). The UK Green Building Council has published a new **framework providing businesses with a consistent methodology for measuring climate-related risks** across their built assets, as well as empowering asset owning businesses of all sizes to better understand and plan for the physical risks of climate change.

The UK Green Building Council, the World Green Building Council, seven European Green Building Councils, Climate Alliance and the Buildings Performance Institute Europe have published the [Build Upon Framework](#). The framework aims to help cities and local authorities measure the impact and benefits that the **retrofitting and renovation** of buildings can have on their area, as well as helping them meet their net zero targets. In related news, The Guardian has reported that [planning officials are challenging developers over the carbon footprint of new buildings](#), with retrofitting being seen as a more sustainable option.

The **minimum energy efficiency standards (MEES)** were first introduced in 2018 with a phased implementation to April 2023. The government has now indicated its intention to increase the minimum standard over the next decade, proposing to set the minimum EPC rating at Band B for non-domestic property and at Band C for domestic property. The government favours a phased approach and, under current proposals, new leases of domestic premises would be caught from 2025 and existing leases from 2028; for non-domestic premises, Band C would apply in 2027, then Band B in 2030. Some commentators are of the view that regulation as it is proposed now will not deliver the hoped-for environmental benefit. Further regulatory developments are expected and this area is therefore ‘one to watch’.



## GENERAL/IN-HOUSE LEGAL

### Climate/ESG

The [Companies \(Strategic Report\) \(Climate-related Financial Disclosure\) Regulations 2022](#) came into force on 6 April and apply in respect of any financial year of a company that commences on or after that date. All publicly quoted companies and large private companies will be required to make **climate-related financial disclosures** as recommended by the [Task Force on Climate-related Financial Disclosures](#). The BEIS published [guidance](#) to help companies and limited liability partnerships understand how to meet the new mandatory climate-related financial disclosure requirements which apply to reporting for financial years starting on or after 6 April 2022. See also Walker Morris' [recent briefing](#) on **ESG and climate reporting** generally.

DEFRA has [consulted](#) on implementing due diligence requirements which are intended to help **tackle illegal deforestation by imposing controls on the UK's international supply chain**. The consultation closed in March 2022. Walker Morris will monitor developments.

In its [Nature Recovery Green Paper](#), the government said that it wants to simplify and streamline environmental regulation, with a focus on delivering the legally binding targets now enshrined in the Environment Act. Underpinning various proposals in which the government aims to work with the private sector to design an economic and regulatory system that ensures private funding and finance flows away from harmful activities and actively encourages investment in nature-positive activity, are plans to consolidate DEFRA's environmental regulatory functions. The consultation, which runs until 11 May 2022, can be accessed [here](#).

### People

The UK government has [published](#) proposed **benefit and pension rates 2022 to 2023**.



Government-sponsored committee, Leaders as Change Agents, has published a [guide](#) to help deliver **better inclusion, fairness, opportunity and value for every UK employer and employee**. Among other things, it suggests eight tangible commitments for adoption as the cornerstone of a better workplace.

On 21 March 2022, [Neurodiversity in Business \(NiB\)](#) was launched to **support neurodiverse employees in the workplace**. Between 15% and 20% of the population are estimated to be neurodivergent. NiB and founding members, such as Accenture, AstraZeneca, Bank of England, Capita, Network Rail, Sky and Unilever, recognise that reasonable modifications can enable more neurodiversity in the workplace and also benefit sustainability.

Right to work checks have changed dramatically over the last couple of years, with further changes implemented on 6 April 2022. See Walker Morris' [briefing](#).

See [Walker Morris' briefing](#) on **Homes for Ukraine** and how UK businesses may be able to help.

### Corporate/Commercial

The government is reviewing the **Electronic Communications Code. 2022** is likely to see a combination of reform and court decisions which may continue to tip in favour of operators' rights and powers by virtue of the significant public interest in having powerful digital infrastructure offering the latest technology and consumer choice. All of this may result in developers having less bargaining power when entering into new agreements and where existing equipment needs to be removed or relocated to facilitate development, the process will continue to require significant planning and management. Early engagement with operators is likely to be key. Walker Morris will report on developments. See our recent, [related briefing](#).

The Industry Working Group on **Electronic Execution of Documents** has published its interim [report](#), which explains the current situation in England and Wales (including how the formal requirements for some common



documents can be fulfilled), offers best practice guidelines based on existing technology, and includes recommendations for future reform. For all you need to know, see Walker Morris' [essential update](#).

The government published its white paper on [Corporate transparency and register reform](#) which sets out its plans to reform Companies House and to increase the transparency of UK corporate entities.

The Financial Reporting Council has published its first review of the application of the [Wates Corporate Governance Principles by large private companies](#).

The [Economic Crime \(Transparency and Enforcement\) Act 2022](#) came into force on 15 March 2022 and contains measures aimed at putting a stop to what has been described as the 'London laundromat of dirty money'. See [Walker Morris' briefing](#) for information.

HMRC has recently issued guidance on the [VAT treatment of fees and other amounts payable on early termination of a contract](#). This new guidance is a change to the previous position and means that many such payments which were treated as outside the scope of VAT **will now be subject to VAT**. The changes came into effect from 1 April 2022. See Walker Morris' [briefing](#) for further information.

If you manufacture or import 10 or more tonnes of plastic packaging within a 12 month period, you may need to register for the new [plastic packaging tax](#). See Walker Morris' [briefing](#).

See Walker Morris' briefing [Understanding blockchain, NFTs & smart contracts](#) for an explanation of some of the technologies dominating the tech news at the moment. You can also view our videos [What is a blockchain?](#) and [What is an NFT?](#) for a short introduction to these key concepts.

In a bid to crack down on £5.5bn of 'wasteful spending,' chancellor Rishi Sunak has [announced plans](#) to launch a [review of the government's arm's length bodies or 'quangos'](#) who will be expected to save at least £800m from their budgets.

