

Energy and Infrastructure

A Legal 500 Tier 1 Practice: M&A and Acquisition Financing

Energy Act 2023 – six months on

What is the Energy Act and why does it matter?

In October 2023 the Energy Act 2023 (the “Act”), dubbed the “biggest piece of energy legislation in the UK’s history” received Royal Assent.

The Act contains wide ranging provisions in relation to energy networks (existing and future) and new energy technologies, and the Government’s plans to regulate them, support their implementation and development, and to incentivise private investment.

Where are we, six months on?

Whilst most of the provisions of the Act are already in force, there are a few that have still not been “commenced”.

More relevant is the fact that much of the detail required to fully implement the policies supported by the Act still remains to be finalised through secondary legislation and regulations, schemes and rules, which the Act gives Ministers and others powers to introduce.

What happens next?

Whilst the Act is the largest piece of energy legislation in over a decade, legislating in new areas and extending the scope and focus of existing regulatory regimes, a full assessment of its true scope and impact will only be possible as the detail is clarified through the secondary legislation and associated regulatory frameworks required to give it force.

It is clear that there is a lot of work still to do. It will be important for the Government to keep up the focus and pace in this area to ensure that the UK has the clear and transparent regulatory framework needed to drive forward the development of, and investment in, new and existing energy infrastructure.

To ensure the pace of investment and growth continues it must be hoped that any future election will not impact the speed at which necessary changes are progressed.

Deeper dive

Below, we look at the state of play in relation to some of the key infrastructure related areas covered by the Act and highlight possible next steps:

1. **Carbon capture, usage and storage (“CCUS”):**

The Act creates a framework for the introduction of revenue support contracts for carbon capture, transport, usage and storage. It also brings transport and storage activities under the regulatory supervision of Ofgem through the application of a licensing regime.

The Government's April 2023 CCUS Net Zero Investment Roadmap identified the critical role CCUS is expected to play in the Net Zero transition. As well as setting out plans for a supportive regulatory environment designed to attract private finance and remove market barriers to investment, it laid out two industrial CCUS clusters: Track -1 (initially 8 projects located across the East Coast Cluster and HyNet) to be delivered in the mid 2020s, and Track-2 (the Government announced in July 2023 that the Viking and Acorn transport and storage projects were being taken forward in Track 2) to be delivered by 2030.

In December 2023 the Department for Energy Security and Net Zero ("DESNZ") announced the following key developments:

- Launch of the Track-1 Expansion process for the HyNet cluster (the application window closed 28 March)
- Agreement of heads of terms with the East Coast Cluster transport and storage company (Northern Endurance Partnership) paving the way to launch the expansion process in 2024 targeting final investment decision in September 2024

Ofgem has stated that it will start its regulatory work after the Government grants the first carbon dioxide transport and storage licence to a company. This is expected to happen in 2024.

The Government published a further update in April 2024 which includes an update on Track 1 and Track 2 and business models, so things in this area are continuing to move forward rapidly.

2. Hydrogen

The Act covers hydrogen-based energy in a number of ways. It establishes a framework for the licensing, operation and support with funding for new UK low carbon hydrogen projects. It establishes a regime to bring the construction, alteration or operation of a hydrogen pipeline project under the existing licensing regime set out in the Gas Act 1986, and facilitates hydrogen heating grid conversion trials.

All of the relevant sections of the Act are in force and the first piece of secondary legislation made under the Act was the Hydrogen Production Regulations. These came into force in December 2023 dealing with the "low carbon hydrogen standard" and revenue support arrangements in relation to Hydrogen Allocation Round projects. 11 projects were selected under the HAR1 in December and HAR2 is currently open for applications.

Secondary legislation is needed, and awaited, in respect many other areas including the future competitive allocation process for hydrogen production (currently run by DESNZ), revenue support for hydrogen storage projects, and how funds should be raised to support hydrogen business models. Consultations are expected in all of these areas with legislation to follow.

3. Heat Networks

The Act brings the operation of heat networks under the regulatory supervision of Ofgem. The regulatory regime will be brought into force through secondary legislation and a licensing framework. The Government stated their intention for “heat networks regulation to come into force early in 2024. Following a period of being automatically authorised to operate, all heat networks will be required to notify to Ofgem to maintain their authorised status.”

Ofgem and DESNZ issued a joint the first consultation (focused on the consumer protection aspects of the proposed regulatory regime) in August 2023 with a joint DESNZ/Ofgem response due “in 2024”. Consultations on other aspects of the regime will follow.

4. Multi Purpose Interconnectors

The Act extends the scope of the Electricity Act 1989 to cover the operation of Multi-purpose interconnectors (“MPIs”) - electricity cables that run under the sea and connect offshore generation in Great Britain to shore and Great Britain to neighbouring markets. The Act will make the operating of MPIs a licensable activity, however the relevant sections of the Act dealing with MPIs have not yet come into force.

Ofgem stated that, “These provisions will come into force after DESNZ and Ofgem have undertaken a joint consultation in 2024 on the proposed MPI licence.” The consultation has not yet been published.

5. National Energy Systems Operator

The Act provides for the establishment of a new independent public corporation which will have responsibility for planning Britain’s electricity and gas networks and operating the electricity system. Referred to in the Act as the “Independent System Operator and Planner” and subsequently as the “Future System Operator”, it was announced in January that the organisation will be known as the “National Energy System Operator”.

The NESO will take over the National Grid’s electricity system operator functions. In addition to operating the electricity system it will be responsible for coordinating across the whole energy system and considering the connections between energy vectors and their relationship with the wider system. It will be licenced and regulated by Ofgem. The intention is for the NESO to be focused on key issues such as security of supply and progress towards net zero and to have a “long term” focus.

It was announced in January that the “new organisation will be operational in Summer 2024.”

DESNZ and Ofgem issued a joint consultation on the new NESO licence conditions and the consequential changes on other impacted licence conditions in March 2024. The final form of licences will establish the activities, operations, working and funding arrangements of the NESO and the consultation is a major step in the NESO implementation process. The consultation closed on 9 May 2024.