

## RENEWABLE ENERGY

### – INTERESTING TIMES

Welcome to the latest edition of our Highlight magazine. The focus of this edition is Renewable Energy which seems perpetually to be in the news these days whether in relation to Scottish Government initiatives or the views of Donald Trump! Mackinnons has an increasing involvement in the various legal aspects of renewables from advising on projects, employment aspects and dispute resolution to incident investigation

following accidents which have occurred during turbine construction and maintenance.

This edition focuses on certain specific areas of renewable energy law, policy and practice. Hopefully there is something of interest for everyone.

All the best for 2013 from everyone at Mackinnons.

**Bruce Craig** *Managing Partner*

[bruce@mackinnons.com](mailto:bruce@mackinnons.com)

### In this issue...

Energy Bill 2012

Winds of Change

What's in a name?

Best laid plans for Onshore Projects

Landlords' Energy Obligations

ISSUE  
02

## Energy Bill 2012

The launch of this much anticipated Bill on 29th November 2012 by the coalition Government may have been overshadowed by the release of the Leveson Inquiry Report, but its impact for the UK economy cannot be underestimated.

Whilst the UK and Scottish Governments may not always be in harmony, there is clear agreement that energy saving home improvements and reduction in the use of energy by consumers are needed across the UK.

Some key elements of the draft Bill are:-

- Emission Performance Standards (EPS) – this will curb the most polluting fossil fuel power stations.
- Electricity Market Reform (EMR) – Its objective is to replace current energy infrastructure with lower carbon mix whilst minimising consumer bills.
- Contracts for Difference (CfDs) – These are designed to bring investment in low carbon generating plants such as commercial onshore/offshore wind farms and even nuclear plants.
- Possible financial incentives for consumers/businesses who demonstrate reduced energy demands.
- The need to balance energy intensive industries by providing exemptions from extra costs of the general expectation to switch to Renewable Energy.

As 2020 draws nearer and the UK targets for the cutting of greenhouse gases must be attained, renewable energy in Scotland holds a vital key to that success.

For further advice, please contact Martin Sinclair or our Marine and Renewables teams on 01224 632464.

[martin@mackinnons.com](mailto:martin@mackinnons.com)

## Winds of Change

UK Government incentives have been provided to people prepared to invest in renewable energy schemes. These have taken 2 main forms:-

- The Renewable Obligation Certificate (ROC), for electricity schemes over 5 megawatts (MWh); and
- The Feed-In Tariff (FIT) for smaller schemes.

A generator of renewable energy therefore derives its income from two sources. The first is the 'traditional' way. Income from the sale of electricity to the wholesale market. The second is income from the sale of ROCs.

When the *Renewables Obligation Order 2009* (SI 2009/785) came into force, it fixed a rate of return of 1 ROC to 1 MWh of onshore wind generated, but the Government are now seeking to reduce this.

Offshore wind was initially set at 2 ROC per 1 MWh generated. This will reduce to 1.8 ROC by April 2016.

When the various planning, legal and financing issues involved in setting up a renewable energy scheme are considered, it may be prudent to take a conservative view of ROC figures for the purposes of viability/financial projections.

As a general observation, with the UK economy stretched fairly thinly, the state-backed incentives for investors in wind appear likely to continue to diminish through to 2020.

For further advice, please contact Neil Smith or our Marine and Renewables teams on 01224 632464.

[neil@mackinnons.com](mailto:neil@mackinnons.com)



Martin Sinclair - Partner



Neil Smith - Partner

## Mackinnons Supports Local School

Mackinnons were delighted to have been able to assist a team of senior pupils from Aboyne Academy successfully take part in the Aberdeenshire Schools Mock Trial Competition, held at Aberdeen Sheriff Court and High Court on Saturday, 6 October.

Assisted by Martin Sinclair and Lewis McDonald from our Dispute Resolution department, the team of 15 students, led by teachers Jenny Law and Thom Sherrington, prepared two cases, which they presented in competition against teams from across Aberdeenshire. On the day, the pupils presented 3 cases, winning two and coming a very close second to the eventual competition winners in the third.

The high standard of all the teams involved was praised by the judge of the final, Sheriff William Summers, and the Pupils from Aboyne were commended for their strong performance in their first outing in the competition. Both Martin and Lewis were thoroughly impressed with the team's quick grasp of what was involved, their application in preparing the cases and the performance they gave on the day and all the pupils can be justifiably proud of their efforts.



The Aboyne Academy team at Aberdeen Sheriff Court.

# What's In A Name? Employers Beware

The recent Court of Appeal case *Hospital Medical Group (HMG) -v- Westwood* shows that, in certain circumstances, some self employed contractors can claim workers' rights at the employment tribunal.

The issue of whether someone is an employee, worker or self-employed contractor, is not always judged by the title he uses. Any suggestion that this does not reflect the true position allows a tribunal to look behind the paperwork and consider the full circumstances. If these are inconsistent with the label attached to the arrangement or the terms of the contract between the parties, the tribunal may conclude that the individual has the status of a worker or even an employee. So, just because a person asserts they are self-employed, does not always make it so.

Dr Westwood was a plastic surgeon who exclusively contracted with HMG to carry out hair transplants at one of its clinics. It was accepted that he was in business on his own account. To the outside world, however, Mr Westwood was presented as being part of HMG. In HMG's marketing material he was referred to as "one of our surgeons." Mr Westwood was found to be a worker with the valuable right to paid holidays.



Katie Williams - Partner

Determining the true status of an individual dictates their rights at work, and the potential liabilities for your business.

- **Employees** benefit from the right not to be unfairly dismissed after a qualifying period of employment, the right to minimum notice periods and entitlement to statutory redundancy pay.
- **Workers** have fewer, but still important rights, such as the right to paid holidays and the right not to suffer any detriment because they have "blown the whistle" on unsafe practices.
- An individual may find it attractive to claim that they are an employee or a worker, when things turn sour, in order to benefit from these rights and protections.
- It does, of course, cut both ways as truly **self-employed** individuals benefit from more favourable tax treatment than employees or workers under PAYE.

This is a cautionary tale if you regularly use contractors or freelancers in your business. Proper steps must be taken to ensure that their name ties in with their legal status.

For further advice, please contact Katie Williams or our employment team on 01224 632464.

[katie@mackinnons.com](mailto:katie@mackinnons.com)

# Best Laid Plans for Onshore RE Projects

Addressing planning permission concerns prior to development is a necessity in RE (Renewable Energy) projects.

Consent for onshore projects can be obtained via two methods.

The following are matters that should be borne in mind when considering an application for a renewable project:-

1. **Applications to the Local Planning Authority**
  - a. In general, planning permission is required for carrying out any land development.
  - b. Developments of less than 20 MW output are delegated to the Chief Planning Officer. Larger developments will be referred to the local planning authority or Scottish Ministers.
  - c. If a small scale project, it can be deemed a minor development and no planning or consent is required. This is known as Permitted Development. Many individual developments to residential homes fall within this category.
2. **Applications under the Electricity Act 1989** – for all types of generating stations with an output greater than 50 MW
  - a. The process combines a formal application consultation process and occasionally a public inquiry.
  - b. Possible servitude rights or rights of access should always be considered at the outset of any application.
  - c. Deemed Consent under the Town & Country Planning (Scotland) Act 1997 avoids having to make a separate local authority application to permit development of the land.
  - d. Where the proposed output is greater than 300 MW, an Environmental Impact Assessment is mandatory. Below that level, an EIA is only required if significant environmental impact is likely.



Kirstin McPherson - Solicitor

Mackinnons' planning and renewable teams are happy to provide guidance on planning applications for RE projects.

For further advice, please contact Fiona Thomson or Kirstin McPherson or our Business and Renewables teams on 01224 632464.



# A New Lease of Energy

Key provisions within the Energy Act 2011 will require minimum energy efficiency standards for the rental sector.

As from **January 2013**, all properties advertised for lease must now display their Energy Performance Indicator. The sales market is already familiar with EPC ratings which are required for home reports but these appear to have had little bearing on house values to date.

The Scottish Government looks set to make it unlawful to rent out either private or commercial properties with EPC ratings poorer than "E".

Although the Scottish Ministers do not intend to look at fully regulating the leasing market on this issue until 2015, cornerstones have been put in place for implementing such changes thereby underlining its certainty.

EPC ratings will impact upon market rentals, valuations, rent reviews and even Schedules of Dilapidations upon termination.

With many properties let under long term leases, the window for compliance here is not limitless.

In this competitive market, our property and commercial teams are happy to guide and safeguard valuable landlord incomes for all our clients.

Your usual property contact at Mackinnons will be happy to provide further advice on 01224 868687.



Pat Gray - Private Client Partner

## STOP PRESS!

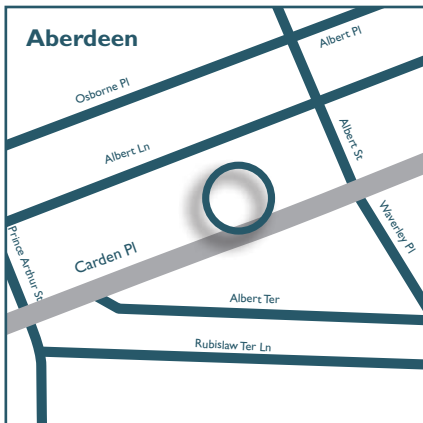
Mackinnons have again been shortlisted in the prestigious Scott & Co Legal Awards, which recognise excellence in the Scottish legal profession. This year, we are delighted to be considered for the Residential Property Team of the Year and Private Client Team of the Year awards, and are the only firm outside the central belt to have been shortlisted in any of the 17 awards categories. Winners will be announced at an awards dinner in Edinburgh in March.



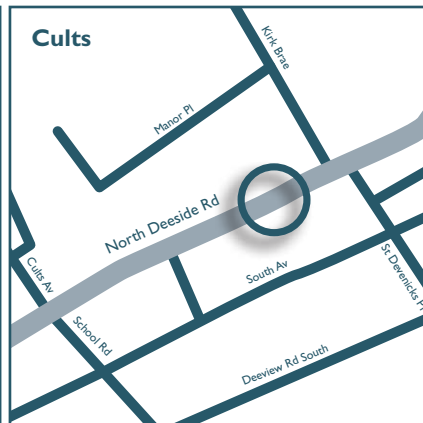
Use your smart phone to scan this code or visit [www.mackinnons.com](http://www.mackinnons.com) for more information.



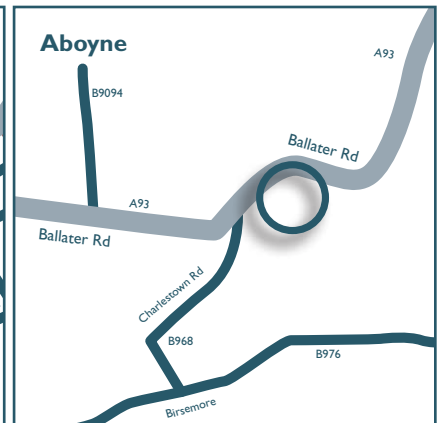
### Offices located at:



14 Carden Place  
Aberdeen AB10 1UR  
Tel: 01224 **632464**



379 North Deeside Road  
Cults, Aberdeen AB15 9SX  
Tel: 01224 **868687**



Ballater Road  
Aboyne, Aberdeenshire AB34 5HN  
Tel: 013398 **87665**