

The legal and planning hurdles that must be overcome to get Great British Energy generating

22 August 2024  Ben Standing

This article was first published by [Business Green](#).

Great British Energy is Labour's flagship policy to deliver clean, affordable and secure energy supply for the UK – but its success relies upon successfully walking a tightrope of planning, environmental and competition regulation, writes lawyer Ben Standing.

If day one was anything to go by, Labour showed it is serious about transforming the UK's ability to generate renewable energy by lifting the effective ban on onshore wind in England.

But the hurdles it must jump through to achieve its net zero ambitions were highlighted on day two amid opposition to plans for accompanying energy infrastructure.

As Adrian Ramsay, Green Party co-leader and Waveney Valley MP, challenged National Grid's proposed 114-mile electricity pylon route from Norwich to Tilbury, it illustrated the competing priorities between net zero progress and other environmental protections.

A definitive tip of this green see-saw in one direction will be required if Labour is to have any success in one of its flagship manifesto policies – the creation of Great British Energy to "make Britain a clean energy superpower".

The publicly-owned company, armed with £8.3bn of funds generated by increasing the windfall tax on oil and gas drilling companies, will partner with industry and trade unions to co-invest in – and roll out – emerging green technologies.

Public funds will be used to attract private investments in burgeoning sectors such as floating offshore wind, tidal power and hydrogen to aid their evolution into established technologies.

Collaborations will also be forged with businesses to further implement mature renewables like wind, solar and nuclear, while partnerships with energy companies, local authorities and co-operatives will help develop community energy projects.

The ambition is admirable but a new publicly-owned company isn't a silver bullet on its own. Grid connections, skills development and governance must be considered, along with various legal obstacles that won't disappear due to a public body being involved.

Simplifying planning policy isn't quite that simple

The Government's redraft of the National Planning Policy Framework deleted footnotes stating that onshore wind could only be built if there was no local opposition, which had resulted in a de facto ban.

Its proposed planning reforms also include bringing large wind farms into the Nationally Significant Infrastructure Projects regime so that Energy Secretary Ed Miliband can sign them off without local authority approval.

Looking ahead, Labour will find one of the biggest obstacles to its net zero policy is, somewhat perversely, environmental policy, which is split between climate and biodiversity.

Delays to completing the Hinkley Point C nuclear power station are a case in point. A requested amendment to the development consent order approved in 2013 is not scheduled for a decision until 2026 – a decade after construction began – as some environmental

protections regarding the impact on the fish assemblages present on the site require removal.

Proposed wind farms in Wales have also encountered opposition due to the impact on irreplaceable habitats such as peat, while companies submitting plans for solar farms in both England and Wales have faced significant opposition due to the impact on land defined as “best and most versatile farmland”. This will become increasingly important as climate change is likely to have a negative impact of farming yields.

Adrian Ramsay’s opposition to the East Anglia pylons – which would carry 50 gigawatts of electricity generated by offshore windfarms – due to their impact on agricultural land further illustrated the contention over land use. However, not creating extra grid connectivity and capacity means that extra renewable sources can’t be connected to the grid.

Clear clarification is needed on what is prioritised by the planning system to enable consistent decision-making. This is especially true in relation to large linear infrastructure, such as electricity transmission cables, which span numerous planning authority areas. These pose issues like visual impact, so I’d argue there must be a clear weighting in favour of key renewable infrastructure in order to clear planning hurdles.

A more complex balancing act is between environmental impact, biodiversity and the need for renewable energy. There also needs to be a balancing between climate mitigation – the reduction of carbon emissions – and climate adaptation, for example protecting productive farmland as climate change is likely to reduce yields.

If Labour is to succeed in its planning reforms, it is not that the entire system needs to be redeveloped. It’s the nature of any planning system that it needs to weigh competing priorities. Labour needs to make some difficult decisions on a national level to make it clearer for decision-makers at a local level where they need to be placing weight.

Subsidy control and public decision-making considerations

Cost issues have also hampered the roll-out of new energy infrastructure until now. Last year, during a Government auction, there were no developer bids for offshore wind farms, with companies claiming the costs were too high and the Government’s contract price too low.

Labour plans to take a more active role in energy generation but it must beware of the subsidy control regime, which was implemented in January 2023 to ensure subsidies given by public authorities don’t fall foul of UK and international competition laws, including the EU-UK Trade and Co-operation Agreement.

Great British Energy’s funding activities are expected to comprise a blend of subsidy and non-subsidy support. Private sector operators receiving subsidies must be mindful of the risks associated with accepting this funding, as there is the potential for clawback if it’s not provided or used in accordance with subsidy control legislation.

There must also be acknowledgement that many of these initiatives are new and difficult to manage. We’ve seen several failures of wholly-owned subsidiary companies in the energy industry established by local authorities – such as Bristol’s BE 2020 Limited, Nottingham’s Robin Hood Energy and Portsmouth’s Victory Energy Supply Ltd – after running up combined losses totalling tens of millions of pounds.

Despite being set up with the best intentions of cutting energy bills, they received criticism for having insufficient sector or general commercial expertise within their boards.

To mitigate the risks associated with public ownership and large-scale investments, Great British Energy must establish robust governance structures to oversee its operations and partnerships.

The road ahead could be bumpy but Labour’s plans appear to answer the appeal in 2023 from Lord Deben, former chair of the Climate Change Committee, to “commit to bolder delivery” in net zero, with “pace prioritised over perfection”.

Having started the journey in decisive fashion by lifting the onshore wind ban, it must continue along this route with Great British Energy to make it an effective vehicle and usher in a new era of green energy generation.

Key contact



Ben Standing

Partner

ben.standing@brownejacobson.com

+44 0330 045 2400

Related expertise

Competition and anti-trust

Environmental

Planning

Public law

Subsidy control