The Autumn Statement 2015 for environment lawyers

25/11/2015

Environment analysis: With the Chancellor's speech still ringing in our ears, we bring together the most important features of the Autumn Statement 2015 for environment lawyers alongside expert analysis and industry comment.

What was relevant in the Autumn Statement for environment lawyers?

Autumn Statement 2015: Environment issues, LNB News 25/11/2015 157

A replacement for the Energy Companies Obligation (ECO), set to run for five years from April 2017, will save around 24 million households an average of £30 a year on their energy bills, the Chancellor announced in the 2015 Autumn Statement. In addition to this, the Warm Home Discount scheme has been extended to 2020/21, and spending on energy innovation research has been doubled.

Autumn Statement 2015: 300,000 homes better protected from floods, LNB News 25/11/2015 150

The government has pledged £2.3bn for more than 1,500 flood defence schemes across the country, which will protect around 300,000 homes from flooding by 2021. The announcement was made by the Chancellor at Autumn Statement 2015.

What does this mean for environment lawyers?

What are the headlines for this year's Autumn Statement for environment lawyers and why?

Matthew Germain, associate director, Osborne Clarke: There are no pre-Paris big climate change headlines in there that will materially help with our 2020 targets, which is a shame. However, the announcement of a 50% increase in climate finance over the next five years for climate change mitigation projects in developing countries will be interesting for environmental lawyers involved in climate finance, emission trading and international project finance work.

The anticipated changes to the ECO and the renewable heat incentive (RHI) will no doubt provide a stream of advisory work for environmental lawyers, as clients look to understand the new regimes. However, any material cuts to the RHI may affect environmental lawyers involved in asbestos removal or biomass schemes where the RHI is a fundamental part of the project's income stream. The same goes for environmental lawyers acting for energy suppliers and installers on ECO-based contracts.

The announcement of a big pot for nuclear energy research is good news for environmental lawyers with long-term nuclear practices, as it's clear this government is wholly committed to nuclear. While the announcement of the new Shale Wealth Fund clearly signposts that the government remains committed to shale gas energy production--as with nuclear--any lawyers with shale clients will welcome those price signals.

Christopher Badger, barrister, 6 Pump Court: The Department for Environment, Food and Rural Affairs (Defra) is now facing a 15% cut in its budget over the next five years, which will plainly have a significant impact on its operations and possible knock-on effects for environmental lawyers. This is already a department that has faced some of the deepest departmental cuts since 2010. It has already scaled back its work in the waste arena and lost staff, so any further cuts have the potential to impact significantly on the scale of the work undertaken by Defra and its linked organisations, including the Environment Agency (EA).

The Autumn Statement identifies that the cuts are to be delivered through efficiencies within the department and across its network. In particular, it shows that Defra will become a more streamlined, digital department, sharing back office functions like IT, HR and finance with its network bodies to reduce unnecessary bureaucracy, and devolving roles to the local frontline to ensure effective service delivery. By implementing these efficiencies, the aim is that Defra will reduce its administration budgets by 26% by 2019/20, saving £123m.

In contrast to the overarching cuts, another headline is the reform of the Landfill Communities Fund. As a result of reforms, £20m of additional landfill tax revenues raised will be allocated to the EA to address waste crime over the next five years. This is a significant ring-fencing of resources--this is in part a response to the concerns of industry to perceived failures in the effective enforcement of environmental compliance within the waste industry, but also part of the ongoing recognition of the serious economic and social impacts that waste crime can cause.

James Phillips, partner, and Sarah Farr, associate, Burges Salmon: Against a 15% fall in Defra's day-to-day budget over the period of the Spending Review, the government is committing £2.3bn towards more than 1,500 flood defence schemes, to protect homes and businesses from flooding. This is expected to benefit 300,000 homes by 2021. Defra is also expected to work with the EA to generate efficiencies, which will be reinvested to protect a further 4,000 homes.

In addition, the Statement confirms that the Flood Reinsurance Scheme has been designated. This scheme will ensure that affordable home insurance is available from April 2016 to those who are at high risk of flooding (subject to approval from financial regulators).

Defra will also receive £130m capital investment towards its science facilities by 2020/21, including a £5m allocation to CEFAS (the scientific research and advisory centre for fisheries management, environmental protection and aquaculture).

More than £350m in funding will be safeguarded for England's public forests, national parks and areas of outstanding natural beauty, with 11 million trees planted over the Parliamentary term.

A 50% increase in government spending was also announced through the International Climate Fund over the next five years, to assist developing countries in tackling the issue of climate change. Ahead of the climate change convention in Paris this December, the government has also restated its aim to achieve a strong global climate change agreement.

The government pledges more than £600m between 2015/16 and 2020/21 to support the ultra-low emission vehicles industry in the UK, with the aim of saving 65 million tonnes of carbon to improve urban air quality. At the same time, the government will delay the removal of the diesel supplement from the Company Car Tax until 2021.

There will be a reform of the Landfill Communities Fund. The cap on contributions by landfill operators is amended to 4.2%. £20m of the revenues from this change will be allocated to the EA for the purpose of tackling waste crime over the next five years.

The government has confirmed, once again, its support for the development of a shale gas industry and the creation of a sovereign wealth fund to benefit those communities that are hosting shale gas development. The Statement commits up to 10% of shale gas tax revenues to a 'Shale Wealth Fund' which could be worth up to £1bn.

The Oil and Gas Authority--the regulator for both onshore and offshore oil and gas operations in the UK--will be given additional powers to scrutinise companies' offshore decommissioning plans and take action to ensure they represent value for money.

Were there any surprises?

Matthew Germain: The phasing out of ECO with a 'cheaper' replacement scheme, a reform of the RHI and a funding pot for non-domestic public sector energy efficiency projects stand out, but otherwise it's as expected--big cuts to the budgets of the Department of Energy and Climate Change and the Department for Environment, and Rural Affairs, and big increases (£2bn) for flood defences.

Christopher Badger: The initiatives set out above are no real surprise, nor were many of the other measures set out in the Autumn Statement.

Following consultation, a transitional period for electricity suppliers to apply the climate change levy exemption on renewably sourced electricity generated before 1 August 2015 will end on 31 March 2018.

The government has also indicated that it will establish a Shale Wealth Fund from shale gas revenues which will see up to 10% of the tax revenues from shale gas spent in local areas--a commitment that appeared in its 2015 manifesto.

The Autumn Statement also made clear that Defra will continue to reduce costly bureaucracy and red tape, with a view to securing net savings to business of £470m by the end of the Parliament. As one specific part of this commitment, Defra will set up a single farm inspection taskforce to reduce the burden on farmers, aiming to cut farm inspections by 20,000 by 2019/20--but once again this was also an announcement we had seen from earlier in the year.

James Phillips, partner, and Sarah Farr, associate, Burges Salmon: A number of the announcements simply repeat or develop pledges previously made by the Conservative government. For example, the focus on flooding defences, the push for a strong global climate deal in Paris, the shale gas sovereign wealth fund and the promise to plant 11 million trees were all pledged in the Conservative Manifesto prepared for the May 2015 General Election.

One slight surprise relates to the Company Car Tax and the 3% diesel supplement which many expected to be removed from April 2016, however the government has now confirmed that it will be retained until April 2021. This is in light of the slower than expected introduction of more rigorous EU emissions testing.

Potentially, the government could have used the Statement to give some more steer on its current review of the business energy efficiency tax and reporting landscape, which includes reviewing the CRC Energy Efficiency Scheme and Energy Savings Opportunity Scheme, however there is an ongoing consultation looking at these issues.

What actions should environment lawyers be taking as the dust settles?

Matthew Germain: Make sure clients are up to date with anticipated fundamental changes to regulatory regimes that impact their businesses and, of course, from a commercial standpoint, make sure they are 'following the money' in terms of where significant funding is going, especially in terms of big infrastructure and energy projects.

Christopher Badger: Environment lawyers will want to take stock following the Autumn Statement and identify not only those areas that are likely to impact upon their work, but also those opportunities that are created by new announcements.

For example, the government has announced that it will invest over £3bn to enhance England's countryside through the Common Agricultural Policy and funding for public forests will be safeguarded, with 11 million trees planted over the Parliament. Funding for national parks and areas of outstanding natural beauty will also be protected, and national parks will be given legal flexibilities to allow them to build sustainable, long-term revenue streams and boost growth in rural areas. Quite how this works in practice and how that investment is to be directed will be of interest to those that work in this field.

James Phillips, partner, and Sarah Farr, associate, Burges Salmon: Environmental lawyers should make sure they update clients in relevant sectors, for instance regarding the announcements relating to the Company Car Tax and the Landfill Communities Fund, so that clients can consider the potential impacts in more detail.

Environmental lawyers should work with Property lawyers to ensure that clients are aware of the potential availability of flooding insurance at more affordable premiums as a result of the confirmation of the Flood Reinsurance Scheme. Historically, obtaining insurance for flooding risk has been expensive and sometimes unavailable therefore this announcement in the Autumn Statement will undoubtedly be welcomed by those that are particularly vulnerable to flooding risk.

Devolution commitments to Wales, Scotland and Northern Ireland were repeated in the Autumn Statement. Lawyers should keep up to date on any legal implications and divergence of policies arising from this.

The announcement relating to additional powers for the OGA is relevant to environmental lawyers advising the offshore decommissioning sector. Such lawyers should keep an eye out for details concerning these as they become available.

What has been the reaction from industry?

Jayne Harrold, indirect tax senior manager at PwC:

'It was no surprise to see a real focus on value for money in relation to energy and climate change today. At first sight, the big winners in the Autumn Statement appear to be the UK's energy intensive industries, such as steel and chemicals, which will receive exemptions from the impact of environmental levies. However, this will come too late for some in the steel sector who have recently announced the closure of UK facilities, and all may not be as it seems. This exemption is to replace the existing cash compensation schemes and will save the government £410m per year.

'The detail behind the Autumn Statement suggests that government will take offsetting action to mitigate the impact on household energy bills. It's not clear whether the energy intensive industries will indeed be better off or who will end up footing the bill for the government saving.

'Given the challenges that the Department of Energy and Climate Change (DECC) is facing in delivering its energy policy objectives, in particular its commitment to invest in renewable heat, the proposed 22% cut to DECC's own budget combined with proposed reform to the Renewable Heat Incentive, will increase this challenge further.

'The government faces a tough challenge to meet its energy and environmental targets without blowing the budget.'

Want to know more?

A full overview of the Autumn Statement 2015 can be found here: Autumn Statement 2015: Overview of tax announcements, LNB News 25/11/2015 137.

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