

# Citizen Participation and Public Petitions Committee

2nd Meeting, 2023 (Session 6), Wednesday 8  
February 2023

## PE1885: Make offering Community Shared Ownership mandatory for all windfarms development planning proposals

<b>Lodged on</b>	19 August 2021
<b>Petitioner</b>	Karen Murphy
<b>Petition summary</b>	Calling on the Scottish Parliament to urge the Scottish Government to make Community Shared Ownership a mandatory requirement to be offered as part of all planning proposals for windfarm development.
<b>Webpage</b>	<a href="https://petitions.parliament.scot/petitions/PE1885">https://petitions.parliament.scot/petitions/PE1885</a>

### Introduction

1. The Committee last considered this petition at its meeting on [29 June 2022](#). At that meeting, the Committee agreed to write to the Minister for Public Finance, Planning and Community Wealth and the Cabinet Secretary for Net Zero, Energy and Transport.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received responses from the Minister for Public Finance, Planning and Community Wealth, the petitioner and the Cabinet Secretary for Net Zero, Energy and Transport which are included at **Annexe C**.
4. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.

6. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).

## Action

The Committee is invited to consider what action it wishes to take.

**Clerk to the Committee**

## Annexe A

### PE1885: Make offering Community Shared Ownership mandatory for all windfarm development planning proposals

#### Petitioner

Karen Murphy

#### Date lodged

19 August 2021

#### Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to make Community Shared Ownership a mandatory requirement to be offered as part of all planning proposals for windfarm development.

#### Previous action

Residents of Kintyre and Knapdale have engaged with 6 Community Councils who have in turn been in contact with Argyll and Bute Council.

The Cabinet Secretary for Rural Affairs, Fergus Ewing has been approached and representation has also been made to Jenni Minto MSP regarding some of the companies who are refusing shared ownership asking her to email a particular company about their stance. It is understood she is arranging a meeting with Michael Matheson, Cabinet Secretary, to discuss this.

#### Background information

Currently, Community Shared Ownership is a recommendation of the revised Scottish Government 'Good Practice Principles for Community Benefits from Onshore Renewable Energy Developments' (2019), but many opportunist developers do not offer shared ownership on agreements to offer fair and effective CSO opportunities to impacted communities.

Because of the unprecedented scale of windfarm development, a piecemeal approach to securing CSO is beyond the scope of small communities. Given that development is a national occurrence, a coherent political response is required which mandates that developers must offer and secure 15% CSO investment. Unless this is in place Government will fail local communities and will not achieve the target for Community and locally owned energy. Increasingly windfarm developers build windfarms to immediately sell them on to Capital Investment Firms, and, with no requirement to offer CSO, it is a seemingly added and unnecessary complication to their ability to sell, so offers are withheld. This is compounded by subsidies no longer being available.

## Annexe B

### Extract from Official Report of last consideration of PE1885 on 29<sup>th</sup> June 2022

**The Convener:** The next petition, PE1885, was lodged by Karen Murphy. It calls on the Scottish Government to make community shared ownership a mandatory requirement to be offered as part of all proposals for wind farm development.

We considered this petition, too, on 15 June. During the evidence session, the committee raised the importance of community shared ownership as a method of raising funds at local level for people and their communities. The committee questioned whether the minister had engaged with the UK Government—these are issues again that Paul Sweeney has just raised—to seek approval for amendments to the Electricity Act 1989 so that it can mandate community shared ownership. The minister indicated that such conversations had not taken place in relation to community energy. We have also had a recent submission from the petitioner reiterating her view that raising a land tax could be a route to mandate community shared ownership.

I am happy to suggest that we write to the Minister for Public Finance, Planning and Community Wealth to follow up on those outstanding issues and, again, to raise the issue of any recent discussions that the Scottish Government may have had with the UK Government in relation to the issues that are raised in the petition. I am happy to ask the minister what role he thinks that local place plans and early community engagement in the planning process can play. I am also happy that we ask the minister for his views on the petitioner's suggestion that developers must offer and secure 15 per cent community shared ownership investment. Are there any further suggestions from the committee? I think Fergus Ewing wants to come in.

**Fergus Ewing:** I was not sure if you could hear me, convener. While agreeing to the courses of action that you have just outlined in relation to PE1885, given that energy is a policy issue that rests substantially with the Cabinet Secretary for Net Zero, Energy and Transport, we should also write to him as well. In writing to both ministers, we should ask whether the Scottish Government has any plans to provide additional funding to enable communities to pursue an interest in community ownership and, in particular, whether the Scottish National Investment Bank, which operates commercially but has a green mandate, could be requested to provide an element or a tranche of funding from which communities might be able to draw, as well as raising money from other sources, such as private banks and so on.

It occurred to me that, in order to pursue what the petitioner wants, those related aspects are also relevant and are perhaps ones that we could seek the Scottish Government's views on with regard to whether it has an additional plan to enable community ownership of renewable energy projects to become far more prevalent than it is at the moment.

**The Convener:** I am happy to incorporate that as well. Are members content with that proposed action?

**Members** *indicated agreement.*

## Annexe C

# Minister for Public Finance, Planning and Community Wealth submission of 18 August 2022

## PE1885/G: Make offering Community Shared Ownership mandatory for all windfarm development planning proposals

Thank you for your letter of 7 July, following up on my attendance at the Citizen Participation and Public Petitions Committee on 15 June 2022 to discuss these two petitions.

### Correction

Following discussions with officials, I would take this opportunity to apologise and address some incorrect technical information that I, and officials that were present, inadvertently provided on the 15<sup>th</sup> June 2022 on the matter of Electricity Act thresholds.

The Committee asked whether the Scottish Government has competence to increase or abolish the 50MW threshold for renewable energy developments that can be considered by planning authorities. The Committee were informed that the Scottish Government does not have any competence to do anything with the provisions of the Electricity Act 1989, which is a reserved piece of legislation, that there is a general reservation of energy in the Scotland Act 1998, and that the processes that pertain to Electricity Act consenting are, in line with that, also reserved.

Matters pertaining to generation, transmission, distribution and supply of electricity are reserved in the Scotland Act 1998, and therefore it is not within the powers of the Scottish Parliament to introduce primary legislation in relation to these matters. It is not within the power of Scottish Ministers to alter the Electricity Act 1989 itself. Certain executive functions in the Electricity Act 1989, as far as these may be exercised in Scotland, are however exercisable by Scottish Ministers. These include functions under section 36 of the Electricity Act 1989 – ‘consent required for the construction etc. of generating stations.’

Section 36 (1) provides that a generating station shall not be constructed, extended or operated except in accordance with a consent granted by “the appropriate authority”. The “appropriate authority” in relation to a generating station in or to be constructed in Scotland is the Scottish Ministers. This provision is subject to subsection (2) which states that subsection (1) does not apply to a generating station whose capacity does not exceed the ‘permitted capacity’ which is 50 megawatts; and, in the case of a generating station which is to be constructed or extended, will not exceed the permitted capacity when it is constructed or extended.

Powers are available to the Scottish Ministers under section 36 to make subordinate legislation to alter the “permitted capacity” threshold in section 36(2).

Section 36(2) and (3) enables the Scottish Ministers by order to ‘provide that subsection (2) shall have effect as if for the permitted capacity... there were substituted such other capacity as may be specified in the order’. Section 36(4) enables the Scottish Ministers by order to direct that section 36(1) shall not apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order.

The summary of the above is that by order, Scottish Ministers are in a position to make different provision in terms of the generating capacity of all, or of certain specific types, of generating station which would not require consent under section 36(1).

I hope this is helpful to the Committee as to the correct position on the matter of thresholds and what powers Scottish Ministers have available to them.

### Requests for Clarification

You sought clarification on a number of specific matters and I have set out the Scottish Government’s response on those points below.

#### **The Scottish Government’s current position regarding the benefits/disadvantages of altering the 50MW threshold for determining applications for renewable energy developments**

The Scottish Government has not explored the benefits or disadvantages of altering the 50MW threshold for renewable energy developments.

#### **Which discussions, if any, have taken place between the Scottish Government and UK Government regarding:**



- **The 50MW threshold**
- **Possible amendments to the Electricity Act 1989, which would enable the devolution of the consent process to local planning authorities for developments over 50MW**

No discussions have taken place between the Scottish and UK Governments regarding the 50MW threshold.

The Cabinet Secretary for Net Zero, Energy and Transport wrote to the Secretary of State for Business, Energy and Industrial Strategy at the UK Government on 23 May 2022, requesting devolved powers for energy consenting. In response, the Secretary of State advised that he would be content for matters to be discussed between officials. Mr Matheson subsequently, on 28 June, wrote to request a Ministerial meeting regarding both Electricity Act devolution and Habitats Regulations devolution, relating to onshore and offshore wind matters.

As set out above, devolution of legislative competence is not required to set thresholds differently and it is possible to provide that more planning proposals for renewable energy developments are dealt with at a local authority level. The request for legislative devolution in this area seeks to address other matters within the Electricity Act process, which are not within the power of the Scottish Parliament to change, and where there is currently no scope for modernisation or alignment with wider Scottish planning processes.

### **The role Local Place Plans and early community engagement in the planning process can play in encouraging Community Shared Ownership**

The new right for communities to produce local place plans enables and encourages them to set out their aspirations for the future development of their places. When they do so, there is a requirement on planning authorities to take local place plans into account when preparing their local development plans. While it is for community bodies to produce the content of their local place plans, there is not a direct role for those plans in encouraging community shared ownership schemes to be delivered through the planning system, given the restrictions on requiring such schemes within the terms of a planning permission. However, at the pre-application stage, planning authorities may be able to direct a renewable energy business towards sources of information about known community aspirations.

**Your views on the petitioner's suggestion, in relation to PE1885, that 'developers must offer and secure 15% Community Shared Ownership investment'**

Shared Ownership can generate lasting social and economic benefit for local communities across Scotland, as well as support the Scottish Government to realise its 2GW by 2030 community and locally owned energy target.

The Scottish Government has no powers to mandate shared ownership. However, we do have longstanding Good Practice Principles (GPPs) for Shared Ownership of Onshore Renewable Energy Developments (revised 2019). The GPPs set national standards, which we encourage renewable energy businesses and communities alike to adopt and observe, and include guidance for all parties about how to discuss and develop potential shared ownership opportunities.

Taking a stake in a commercial renewable development represents a significant long term investment for local communities. It can carry a number of risks which might result in losses or lower than expected profits. It is therefore essential that communities take their own independent advice, including independent financial advice, so that they can make an informed decision on whether the shared ownership opportunity is right for them. Support is available through the Scottish Government's Community and Renewable Energy Scheme (CARES) for communities considering shared ownership offers and opportunities.

I hope the Committee finds this response helpful.

**Petitioner submission of 19 August 2022  
PE1885/H: Make offering Community Shared  
Ownership mandatory for all windfarm  
development planning proposals**

I would humbly request that the Committee seeks specific clarification and an answer to the Petition's main focus (which the Scottish Ministers still haven't answered, but ignored) that a mandatory Community Shared Ownership offer for onshore windfarms could be implemented through the devolved Land & Tax powers as detailed in the petition (In order to assist the committee, these are detailed again below).

Furthermore, I thank the Committee in securing an answer (submission 18 Aug 2022 from Scottish Ministers) regarding the powers that the Scottish Ministers have under Section 36 - it is of note that the Scottish Government has now admitted that under Section 36 (1-4) it has the powers to a) 'Make different provisions in terms of generating capacity of all, or of certain specific types, and b) that one of the functions it may also exercise under this in relation to construction etc of generating stations in Scotland is the power of consent.

Given that the Scottish Ministers have stated that they have the powers under Section 36 to both change the terms of provision and to exercise the power of consent for the construction of generating stations in Scotland, I would ask that the Committee also seeks specific clarification and an answer to the following question - could these powers given to the Scottish Ministers under Section 36 offer an alternative route (to the use of the Land and Tax devolved powers) to implement mandatory Community Shared Ownership?

In order to assist the Committee, here are the specifics of the devolved powers that could be used to make CSO mandatory:

- the Scottish Government has the power to raise new land taxes on any transactions & transfers involving interests in land, (Part 4A Chapter 3 of the Scotland Act).
- The Land Registration etc (Scotland) Act 2012 (and the concomitant 2012 Act Registration Manual of the Registers of Scotland) defines 'transfer' as being any 'transfer of whole' or 'transfer of part' which requires the creation of a new title sheet with the Registers of Scotland – this includes the creation of leases between 3rd party wind farm developers and landowners.
- Thus the Scottish government has the power to legislate for a new 'tax' – one that would require all developers who don't own the land to make a CSO offer that fully meets the criteria of the Good Practice Principles.

# Cabinet Secretary for Net Zero, Energy and Transport submission of 7 October 2022

## PE1885/I: Make offering Community Shared Ownership mandatory for all windfarm development planning proposals

Thank you for your letter of 23 September 2022 concerning evidence heard by the Committee in relation to the above petition.

In your letter you ask if the Scottish Government plans to provide additional funding to enable communities to pursue community ownership, and whether the Scottish National Investment Bank could be asked to provide funding for communities for this purpose. I have set out the Scottish Government's response to these points below.

The Scottish Government continues to provide funding to community groups and organisations through our Community and Renewable Energy Scheme (CARES). Since 2010, CARES has offered advice to over 900 organisations and supported over 600 community and locally owned renewable projects throughout Scotland, offering funding of over £58 million to date.

The current CARES contract runs from 1 April 2021 through to 31 March 2025 and continues to help communities across Scotland engage with, participate in and benefit from the transition to net zero. CARES puts a particular focus on supporting communities to work together to address the challenges of heat decarbonisation at a local level, consistent with the Scottish Government's Heat in Buildings Strategy, while also continuing to provide advice and support to community groups and organisations looking to take forward renewables projects, to make the most of community benefit, and to explore offers of shared ownership.

The Scottish Government continues to encourage the renewable energy industry to consider, explore and offer shared ownership opportunities as standard on all new projects, including repowering and extensions to existing projects. The Committee will be aware that we have longstanding Good Practice Principles in place which provide a framework to support the delivery of successful shared ownership schemes, which we encourage the renewables industry, communities and other stakeholders to use.

CARES also provides support to help communities procure independent advice, including financial and legal advice, which is essential for communities to make an informed decision on whether or not a shared ownership opportunity is right for them.

We are also working with the Scottish National Investment Bank and Local Energy Scotland to assess the pipeline of shared ownership opportunities – alongside other appropriate community energy projects – and the ways in which those opportunities could be financed.

The Committee may also be interested to note that we will commence the review of our existing Good Practice Principles for Community Benefits from Offshore Renewable Energy Developments later this month and plan to consult on the draft guidance next year. We will ensure that we build any relevant lessons from this process into future updates to the equivalent guidance for onshore renewables.

I hope the Committee finds this response helpful.