

REA Suggested Amendments to the Finance Bill – Electricity Generator Levy



Briefing for: MP's considering the Finance Bill 2023

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Introduction: the need to amend the Electricity Generator Levy (EGL) legislation in the Finance Bill

The REA is the UK's leading trade association for the renewables and clean technology industry, with over 550 members. This includes generators impacted by the introduction of the Electricity Generator Levy (EGL) including solar, biomass, anaerobic digestion, energy from waste and landfill gas, as well as other clean technologies like energy storage.

The EGL is a new 45% tax on 'extraordinary returns' from low-carbon UK generation, which is being legislated to be in place until March 2028. The introduction of the EGL forms part of the Government's response to the energy crisis and is separate from the Energy Profits Levy (EPL), which is already in law and applies to companies involved in the production of oil and gas.

The legislation for this new levy is contained within the Finance Bill 2023, which was published following the spring statement. Once the Bill receives Royal Assent, the EGL will come into force, with a retrospective start date of the 1st January 2023.

The below briefing highlights suggested amendments to the design of the levy which will help to mitigate the impact of the levy on future investment in renewable and clean technologies, which are essential to energy security and keeping the UK aligned to our net zero targets.

The Need to Ensure Renewables are Treated Fairly Compared to the Oil and Gas Sector

Since the announcement of the EGL in the 2022 Autumn Statement, the industry has not opposed its introduction, recognising the importance of the sector playing its part in helping to reduce energy bills. However, the sector remains concerned about several design features of the EGL which, if not addressed, will make the UK less attractive for future low-carbon investments, at a time when the US and EU have both launched packages to accelerate the decarbonisation of their energy systems.

Significantly, the EGL is expected to tax renewable generation in a manner that is harsher than the Government's treatment of fossil fuel producers under the Energy Profits Levy. Key design differences include:

- In the EPL, oil and gas producers have been provided investment allowances of 29 – 80% against which the levy can be offset if profits are being invested in new production. These allowances have not been extended to the renewables sector under the EGL.

- The EGL is a tax on revenue, rather than overall profit in the EPL. This creates the EGL as an above-the-line cost of doing business, rather than just a reduction in profit.
- The EGL is not deductible from corporation tax. However, under the EPL the levy acts as an extension of the Oil and Mining Ring Fenced Corporation Tax (RFCT). This leads to a higher effective tax rate under the EGL than under the EPL.

The REA is promoting five amendments which will help to mitigate the negative impacts resulting from the introduction of the EGL. They will also help deliver a more even playing field between the treatment of renewables and the oil and gas sector.

Amendment 1: Provision of investment allowances within the EGL

It remains disappointing that there remains no provision for investment allowances within the EGL, despite the oil and gas sector receiving them in the Energy Profits Levy. The Government failed to make this change at the Spring Statement in March, despite clear calls from the industry to address the fact that the UK is starting to see investments for the UK being diverted to more attractive markets in the US and EU.

REA Members are reporting hundreds of millions of pounds of low-carbon investment having been stalled in recent months. Failure to provide such allowances threatens the delivery of the government's Energy Security Strategy and net-zero targets.

Suggested Amendment: The REA recommend that the draftsman of the Bill should align the provision of investment allowances to those already provided in the Energy (Oil and Gas) Profits Levy Act 2022, Clause 2¹.

Alternatively, if this cannot be supported within the Finance Bill, MPs should call on the Government to urgently set out plans to provide dedicated capital allowances for renewable and clean technology investments within a separate fiscal policy beyond the EGL.

Amendment 2: Bring forward the Sunset Clause of the EGL to 2026

The EGL is currently intended to continue until 2028, implementing the tax for 5 years. This is too long a time scale given the policy is intended to address short-term exceptional profits. Of particular concern is the fact that some renewable sites will start to come to the end of their Renewable Obligation (RO) accreditation in 2027. With RO revenue having been lost, but the levy continuing to apply, the commercial case for new investment and continuing generation of existing assets will be undermined.

The REA suggest that to prevent unintended consequences and promote new investment in existing assets, the EGL should end in 2026 at the latest.

Suggested Amendment:

Amend 279 (2) as follows:

References in this Part to a "qualifying period" in relation to a generating undertaking means—

- the period, if any, between the beginning of 1 January 2023 and the commencement of the first accounting period of the undertaking that commences on or after 1 January 2023,*
- the first accounting period of the undertaking commencing on or after*

¹ <https://www.legislation.gov.uk/ukpga/2022/40>

1 January 2023

(c) every subsequent accounting period of the undertaking that ends on or before 31 March ~~2028~~ 2026, and

(d) the period, if any, between the end of the last accounting period ending on or before 31 March ~~2028~~ 2026 and the end of 31 March ~~2028~~ 2026.

And Amend 280 (3)

Before the commencement of each of the financial years ending in 2025 to ~~2028~~ 2026, His Majesty's Revenue and Customs (referred to elsewhere in this Part as "HMRC") must publish the benchmark amount for that financial year in such manner as they consider appropriate.

Amendment 3: Exclusion of non-profit making, late commissioning, assets from levy

The EGL legislation means that a renewable generation site can be subject to the levy despite not yet being profitable. Newly commissioned sites – especially those using complex innovative technologies such as Advanced Conversion Technologies (e.g. gasification or pyrolysis) – often generate at a loss in their early years of operation while they get up to full load. This period is referred to as late-stage commissioning.

Because the EGL is a tax on revenue, rather than profit, these sites remain subject to the levy. Given the purpose of the EGL is to capture extraordinary returns, non-profitable sites such as those using innovative technologies should be exempt from the levy.

The consequence of the current legislation could be the premature closure of generation and waste processing assets. This could also slow the development of the use of such technologies in other sectors, with advanced conversion technologies also being developed to produce low-carbon hydrogen and sustainable aviation fuels, which are critical to meeting the government's Net Zero Strategy.

Suggested Amendment:

Insert the end of clause 279 (1)

A generating station is "relevant"—

(a) if it generates electricity at a relevant place and is not a generating station that mainly generates electricity—

(i) as a result of the burning of oil, coal or natural gas, or 40 198 Finance (No. 2) Bill Part 5—Electricity generator levy

(ii) as a result of the use of plant driven by water, where the power is mainly a result of the hydrostatic head of the water having been increased by pumping,

(iii) as a result of a plant utilising the gasification or pyrolysis of feedstocks for power generation

Amendment 4: The exclusion of all energy storage technologies must be explicit within the EGL Legislation

The EGL Supplementary Technical Note makes clear that energy storage is to be exempt from the levy (Paragraphs 1.30 to 1.32)². However, legislation within the Finance Bill only refers to two

² <https://www.gov.uk/government/publications/electricity-generator-levy-technical-note>

forms of energy storage. This includes Clause 279 (1, aii), which excludes pumped hydro storage and Clause 311, which makes clear that generation does not include electricity from a battery.

However, there is a range of other storage technologies coming to market that could be built out during the period of the EGL. These include but are not limited to thermal storage, hydrogen (from electrolysis and bioenergy pathways), compressed air, and liquid air storage, as well as design side response. All forms of energy storage must be excluded from the levy calculation to avoid the levy disincentivising the development of these technologies in the coming years.

Suggested Amendment:

Insert at the end of clause 279 (1):

(279) A generation station is “relevant” -

(a) if it generates electricity at a relevant place and is not a generating station that mainly generates electricity—

(i) as a result of the burning of oil, coal or natural gas, or

(ii) as a result of the use of plant driven by water, where the power is mainly a result of the hydrostatic head of the water having been increased by pumping

(iii) from stored energy utilising energy storage technologies.

And Amend clause 311 as follows:

(311) “generation” does not include the release of electricity from a ~~battery energy storage technology~~.

Amendment 5: Exceptional Cost Allowance should allow for negative pricing.

Clause 284 (3a) states that the calculation of exceptional costs cannot be less than nil. This will negatively impact generation sites that previously received a gate fee for their feedstocks, such as anaerobic digestion or energy from waste generators.

Where these gate fees have disappeared, the sites are now paying for the feedstock. The total fuel cost for consideration in the allowance should therefore be both the loss of the gate fee (a negative cost) and the amount above zero that the sites now pay for the feedstock. As such, the calculation for allowable costs should allow costs that are less than nil.

Suggested Amendment:

Remove the following from clause 284 (3)a

(3) The baseline fuel cost of a relevant generating station is the lesser of—

(a) the average generation fuel costs of the station per megawatt hour for the reference period specified in the claim for allowable costs, determined on a fair and reasonable basis ~~(and which cannot be less than nil)~~,

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