

# A&L Goodbody

REPG Legal Update

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**Key Legal Issues for NI  
Renewable Energy Projects**

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# A&L GOODBODY NORTHERN IRELAND LLP

## ENERGY TEAM

ALG is a leading all island law firm with market leading energy specialists in Ireland and Northern Ireland. The Belfast based energy team is the largest in the market comprising two dedicated energy partners and five additional lawyers with the support of specialists in various ancillary sectors.

ALG is embedded in the Northern Ireland energy sector with strong links to government, regulators and semi-state companies. We are also at the forefront of shaping energy policy through key roles in trade bodies such as RenewableNI, Hydrogen NI and the CBI.

We deliver the most extensive range of specialist legal services available to those investing in Northern Ireland. International legal directories place us at the top of the market in all core practice areas.

The team has advised on virtually all the significant projects in the energy sector in Northern Ireland and is the firm of choice for international investors. In recent years we have advised on the consenting, construction, regulation, development, project finance and corporate aspects of multiple large-scale energy projects.

### ABOUT A&L GOODBODY



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**OFFICES INTERNATIONALLY**  
Global reach with dedicated legal programmes. More US offices than any other NI firm.



#1

**TOP RANKED**  
Consistently ranked by Chambers and Legal 500 at the top of the NI market.



600

**INWARD INVESTORS**  
We have acted for >600 leading multinationals interacting with Ireland.



PE

**INVEST NI**  
We are a framework supplier to NI's regional economic development agency.



Reg

**CROWN COMMERCIAL SERVICE**  
We are a supplier on the Public Sector Legal Service framework for the region.



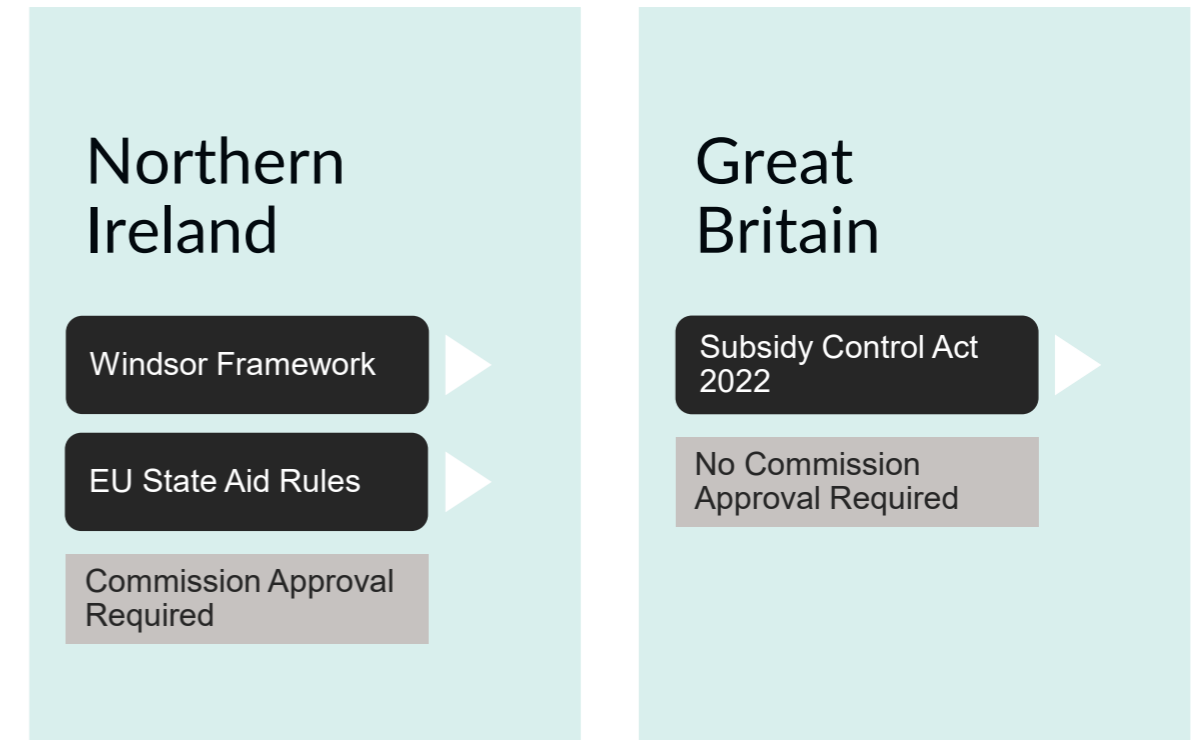
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**ENERGY TEAM**

# Why EU State Aid Rules matter to the REPG

- Windsor Framework: EU State Aid rules apply to NI wholesale electricity production (Art. 10(1) “electricity limb”)
- REPG in scope: DfE must comply with full EU framework
- Standstill obligation: No auctions, contracts or payments until Commission approval (Art. 108(3) TFEU)
- Different from GB CfD: GB operates under UK Subsidy Control Act 2022
- Key details deferred: Notification strategy, eligibility criteria, prior works categorisation all in T&Cs

Article 10(1) Windsor Framework; Article 108(3) TFEU

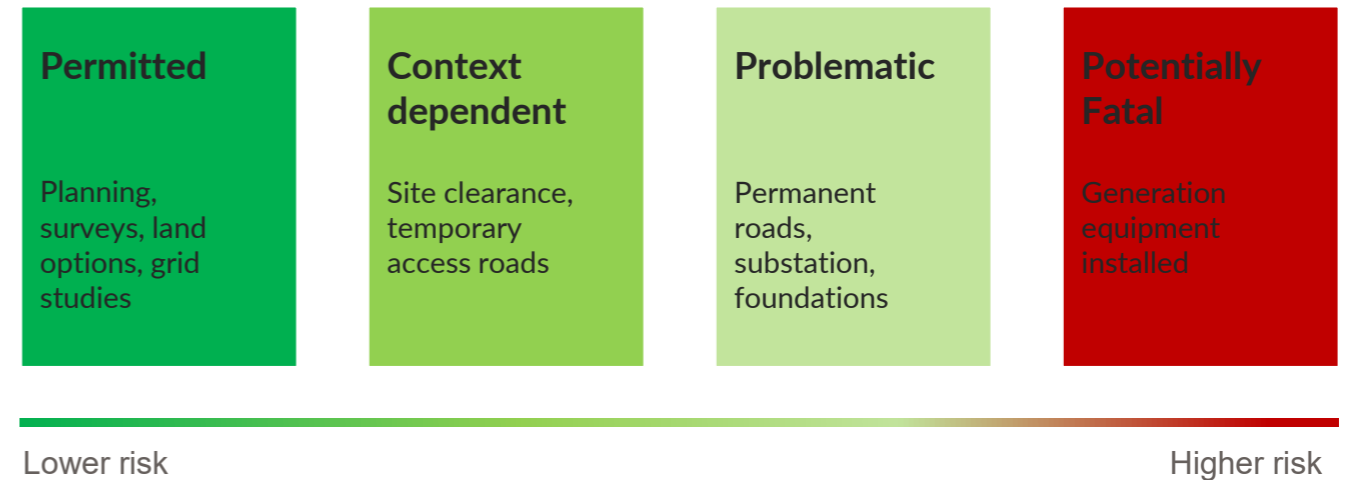
## NI vs GB: Different Regulatory Paths



# The Incentive Effect and Prior Works

- Aid must incentivise behaviour that would not otherwise occur
- If investment decision already taken, the subsidy is a windfall — project ineligible
- Commission categorises prior works on a spectrum (see right)
- NI context: no long-term support mechanism for ~10 years — developers preserved consents, not committing to build

Prior Works Risk Spectrum



**Key Principle:** The closer works are to “commencing main build,” the harder it becomes to demonstrate that the aid provided the incentive to invest. NI’s ~10-year gap without a support mechanism is a mitigating argument for developers who preserved consents but did not proceed.

# Compliance Routes: GBER vs Formal Notification

## GBER Route – Likely not viable

- Quantum - per-project cap may be exceeded by larger wind farms (15-year CPI-indexed contracts)
- Rigid “start of works” test — works are works, regardless of rationale

## Formal notification – Expected path

- GB CfD precedent (2014): commissioning-based threshold accepted
- BUT: REPG assessed under CEEAG (2022), not 2014 Guidelines
- CEEAG untested for scheme with NI’s legacy pipeline

**Commission approval is sequential and on the critical path to Auction 1.**  
GB CfD notification took ~9 months.

## Sequential approval pathway



# What Developers Should Do Now

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## Developer Action Plan

- ✓ **Cease or limit further works**  
Nothing that could be characterised as commencement of main build
- ✓ **Build your documentary record**  
Board minutes, conditional financing, models showing REPG dependency
- ✓ **Categorise and audit prior works**  
Map against permitted / context-dependent / problematic framework
- ✓ **Manage timing risk**  
Stress-test against 9–12+ month notification; negotiate consent extensions

## Why act now

Commission approval is on the critical path. Every action you take now either strengthens or weakens your eligibility case when the formal assessment begins.



Thank you

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