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BRIEFING PAPER

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The Energy Bill 2015-16: Background and changes in the Lords

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Summary

The Energy Bill has passed through the House of Lords and is due for Second Reading in the House of Commons on 18 January 2016.

The Bill mostly deals with fully establishing a new regulator, the Oil and Gas Authority (OGA), and how it regulates oil and gas companies in the UK's territorial waters. It implements recommendations of the Wood Review on Maximising the Economic Recovery of petroleum from the UK's Continental Shelf (UKCS). In so doing it would formally establish the OGA as an independent regulator and transfer a number of functions to it from the Secretary of State for Energy and Climate Change.

Additionally, the Bill would implement the Conservative Party's manifesto commitment to alter the planning law on onshore windfarms.

Significant changes were made to the Bill in the House of Lords. The Bill was to have ended subsidies for new onshore wind in Great Britain under the Renewables Obligation (RO) from 1 April 2016. This clause was removed by an Opposition amendment on division. Another new Opposition clause amended the way progress would be measured under the UK's carbon budgets.

Opposition amendments were also made that alter the "principle objective" of Maximising the Economic Recovery of oil and gas so that decommissioning and carbon capture and storage will need to be taken into account by operators in the offshore industry and by the OGA.

A new Part that also deals with infrastructure and decommissioning was added to the Bill by Government.

Government amendments were made to improve the functions of the OGA as set out in the Bill and bring in a new requirement for the Secretary of State to carry out reviews of the OGA's performance.

To summarise the Bill in its current form:

- Part 1 - formally establishes the OGA as an independent regulator, which will take the form of a government company. The OGA charged with the regulation of domestic oil and gas recovery; transfers the Secretary of State for Energy and Climate Change's existing regulatory powers in respect of offshore oil and gas to the OGA; provides the OGA with powers to charge fees and levy charges. And amends the 'principal objective' of maximising the economic recovery of UK offshore petroleum to include provisions on decommissioning oil and gas infrastructure and securing its re-use for transportation and storage of greenhouse gases (carbon capture and storage)
- Part 2 – gives the OGA additional powers including: access to company meetings; data acquisition, retention and transfer; dispute resolution; and sanctions.
- Part 3 - amends and provides for new legislation in relation to petroleum infrastructure and decommissioning of offshore facilities to maximising the economic extraction of oil and gas
- Part 4 - introduces provisions in relation to charges for the OGA's services to industry.

- Part 5 - makes legislative changes to remove the need for the Secretary of State's consent for large onshore wind farms (over 50 Mega Watt (MW)) under the Electricity Act 1989.
- Part 6 - makes an amendment to the Climate Change Act 2008 preventing, from 2028, the net UK carbon account taking into account carbon units derived from the European Union Emissions Trading System.
- Part 7 – set out provisions on the commencement of parts of the Bill and on regulatory making powers.

The Bill will have UK extent where it relates to oil and gas offshore in the territorial waters around the UK and in the Continental Shelf. It will apply onshore in England and onshore in Scotland and Wales with respect to the changing devolution position. The provision relating to onshore wind planning extends to Great Britain, but only makes changes in relation to England and Wales. This Clause has been certified by the Speaker as relating exclusively to England and Wales, so the 'English votes for English laws' procedure will apply to it in the House of Commons. The provision relating to the UK carbon account extends to the UK.

1. Previous stages

On 27 May 2015 it was announced in the Queen's speech that a Bill would be brought forward "to increase energy security".

The accompanying briefing provided further information on the Bill's intention:

- To ensure there will be affordable and reliable energy for businesses and families.
- To give the Oil and Gas Authority (OGA) the powers it needs to become a robust, independent and effective regulator, and enable it to maximise the economic recovery of oil and gas from UK waters.
- Change the law in line with the manifesto commitment to give local communities the final say on wind farm applications.

The Energy Bill 2015-16 was subsequently introduced to the House of Lords on 9 July 2015.

The Bill had its Second Reading in the House of Lords on 22 July 2015.[1]

It was considered in Committee in the House of Lords on 7, 9 and 14 September 2015.[2] An amended version of the Bill incorporating amendments made at the Committee stage was published on 15 September. [3]

It had its Report Stage in the House of Lords on 19 and 21 October.[4] Its Third Reading was on 4 November.[5]

The Bill had its First Reading in the House of Commons on 5 November.

This paper focuses on changes to the Bill as it passed through the Lords and key areas of debate.

A House of Lords Library Paper providing background on the Bill as introduced is also available online.

A closely related House of Commons Library Briefing on the UK Offshore Oil and Gas industry is also available online.

A Parliamentary Office of Science and Technology briefing, Measuring Performance in the Carbon Budgets is available.

A House of Commons Library Briefing on Oil prices is online.

An electronic copy of the Bill, Explanatory Notes, amendments, impact assessments and transcripts of debate in the Lords are all available online.

1 HL Deb 22 Jul 2015 c1118
2 HL Deb 7 Sept 2015 c1219, HL Deb 9 Sept 2015 c1435, HL Deb 14 Sept 2015 c1661
3 *Energy Bill (HL) (2015-16)* as amended in Committee (HL Bill 62)
4 HL Deb, 19 Oct 2015 c448, HL Deb, 21 Oct 2015 c667
5 HL Deb, 4 Nov 2015 c1641

2. Parts 1, 2 and 4 of the Bill: Maximising economic recovery and the Oil and Gas Authority

2.1 Background on the UK offshore oil and gas industry

The UK Offshore Oil and Gas industry is facing a challenging future. The rapid fall in oil prices since the middle of 2014 from over $100 per barrel (bbl) to near $30/bbl by 2016 has put significant pressure on the economics of the industry.

Analysis from Wood Mackenzie, reported in the Financial Times [subscription required], sets out that globally 68 large exploration and recovery projects have been postponed since the oil price peak in 2014. This amounts to a $380 billion dollars in capital spending. A representative from Wood Mackenzie commented on the analysis:

"It's going to be a brutal year [..] Most companies are going to be focused on short-term survival and cutting costs."[6]

The UK offshore oil and gas industry is important to the economy. The industry directly supports around 375,000 jobs in the UK; it contributed some 0.8% of GDP in second quarter 2015 down from a high of 2.5% in second quarter 2008. [7]

Production levels of oil and gas from the UK Continental Shelf (UKCS) are in decline. The remaining potential of the UKCS is dependent on the future levels of investment.

The industry body Oil & Gas UK and the Department of Energy and Climate Change (DECC) give an overview of the state of the oil and gas industry: [8]

- Oil and gas provided 68 per cent of the UK's total primary energy in 2014;
- In 2014 about 55% of oil was imported with the remainder from North Sea oil production;
- About 52% of natural gas was imported in 2014 with the remainder from UK gas production;

6 Financial Times, Delayed oil projects total nears $400bn, 14 January 2016 [subscription required]

7 ONS. GDP(O) Low Level Aggregates Quarter 2 (Apr to June) 2015 - Month 1

8 DECC energy statistics and Oil & Gas UK *Economic Report 2015*

- In 2014 the UK oil and gas industry produced an average of 1.42 million barrels of oil equivalent every day;
- The UK is the second largest producer of oil in Europe, after Norway, and the third largest producer of gas, after Norway and the Netherlands;
- The UK oil and gas industry in 2015 supports 375,000 jobs directly and indirectly down from 440,000 at the start of 2014;
- In 2014/15 oil and gas production provided around £2.2 billion to the Treasury in taxation, the lowest in over 20 years;
- In 2014 exploration activity was significantly worse than anticipated, with only 14 of the expected 25 wells actually drilled; in the first half of 2015 it was 7 exploration wells;
- In 2014 the oil and gas industry invested £14.8 billion of capital but this is expected to fall to £10-11 billion in 2015;
- The industry spent over £1 billion on decommissioning activity in 2013, the highest annual spend on record at the time but this is expected to rise to £8 billion in 2018.

Trends since 2000 are shown below. While oil and gas output volumes fell by almost half between 2000 and 2009, higher prices meant total income increased to 2008. Since then production has fallen by another 40% but continued higher prices, at least until 2013, meant revenues were around 15% higher than 2009.

However, the current fall in oil prices means that industry incomes are likely to be much lower in 2014 and into 2015.

Summary statistics for UK oil and gas production

	Industry income	Tax revenue (Financial years)	Oil production	Gas production	Brent oil price
	£million	£million	million tonnes	Twh	$/barrel
2000	25,486	4,402	126.2	1,260.2	28.50
2001	24,185	5,370	116.7	1,230.5	24.44
2002	24,118	5,054	115.9	1,204.7	25.02
2003	23,562	4,223	106.1	1,196.9	28.83
2004	23,397	5,115	95.4	1,120.4	38.27
2005	28,707	9,323	84.7	1,025.2	54.52
2006	32,689	8,864	76.6	929.8	65.14
2007	30,865	7,408	76.6	838.1	72.39
2008	39,733	12,393	71.8	809.6	97.26
2009	25,665	5,921	68.2	694.0	61.67
2010	32,165	8,322	63.0	664.4	79.50
2011	36,215	10,872	52.0	526.0	111.26
2012	32,860	6,149	44.6	452.1	111.67
2013	30,280	4,671	40.6	424.2	108.66
2014	..	2,148	39.9	424.9	98.95

Sources: DECC, Energy Trends, BP Statistical Review 2015
Notes:
Income includes oil, gas and natural gas liquids
Oil production includes natural gas liquids
Crude oil price in nominal prices

Employment in oil and gas

There were an estimated 36,600 employees in Great Britain working in companies engaged in the extraction of oil and gas or related support activities at the end of 2013.[9]

- 15,500 were working in businesses whose main activity was the extraction of crude petroleum or natural gas.
- 21,200 were working in businesses mainly engaged in support activities for petroleum and natural gas extraction (for example, exploration services or test drilling).

Around three quarters of these jobs (27,600 employees) were based in Scotland, and of these the majority were based in Aberdeen City (23,400 employees).

A further 8,200 employees were working in businesses mainly engaged in the manufacture of refined fuels from crude petroleum in 2013 – these are not counted in the figures above. If these employees are counted as part of the oil and gas industry, then the total number of people directly employed was 44,800.

The above estimates only reflect direct employment and do not include other jobs connected with the oil and gas industry – for example, in companies' supply chains. Industry estimates attempt to quantify these broader employment impacts.

[9] ONS, *Business Register and Employment Survey 2013* via ONS Nomis. Figures are rounded to the nearest hundred and may not sum due to rounding.

Research by OPITO, the skills body for the oil and gas industry, estimated that the inclusion of contractors, consultants and specialist suppliers (along with people directly employed by businesses engaged in exploration and production) raises the total number of people employed at 2013 to 131,000.[10]

Oil & Gas UK counts jobs associated with exports and employee expenditure to come up with an estimate at the start of 2014 of 450,000 jobs supported by the industry in total. This comprised:

- 36,000 people directly employed
- 200,000 jobs in industry supply chains
- 112,000 jobs associated with these employees' spending in the wider economy
- 100,000 jobs associated with the export of goods and services. [11]

Its most recent *Economic Report,* Oil and Gas UK has reduced this estimate to 375,000 jobs. [12]

More recently still it was reported on 12 January 2016 that in response to the sustained fall in the oil price BP is to cut 4,000 jobs across its business globally. It is expected that these reductions will include 600 job losses in its North Sea business over the next two years.[13]

More information is available in the Library Briefing on the UK Offshore Oil and Gas industry

2.2 Wood review

In June 2013, the then Secretary of State for Energy and Climate Change, Edward Davey asked Sir Ian Wood to conduct a review into the recovery of oil and gas (referred to as petroleum) from the UK's continental shelf – the area of the seabed over which the UK has ownership of oil and gas - (UKCS).[14]

The result of that review, *UKCS Maximising Recovery Review: Final Report* (the Review), was published on 24 February 2014. [15]

The Review's key recommendations can be summarised as follows:

- Government and industry should develop, and commit to, a new strategy for 'Maximising [the] Economic Recovery' of petroleum from the UKCS (a strategy referred to as MER UK).
- A new arm's length regulatory body should be created and charged with effective stewardship and regulation of UKCS

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[10] OPITO, Labour Market Intelligence survey, 2014, page 9
[11] Oil & Gas UK, *Economic Report 2014*, page 90
[12] Oil & Gas UK *Economic Report 2015*
[13] FT, BP to cut 4,000 exploration and production jobs, 12 January 2016[subscription required]
[14] Sir Ian Wood is the former Chairman of Wood Group, an international energy services company.
[15] Wood Review, UKCS Maximising Recovery Review: Final Report, 24 February 2014.

petroleum recovery. That body should also seek to maximise collaboration in the areas of exploration, development and production across the industry.

- The regulator should take on additional powers to facilitate the implementation of the MER UK strategy.
- Important Sector Strategies should be developed and implemented.

The Government published its response to the review in July 2014, in which it accepted all of the Review's recommendations. [16] The response also announced a call for evidence on how to implement the Review. This ran from 6 November to 31 December 2014, and the Government published its response on 20 March 2015.[17]

The Impact Assessment produced by the Government, *Implementation of the Wood Review Proposals for UK Offshore Oil and Gas Regulation,* 5 September 2014, explains that:

> The Government intends to implement all of the Review's recommendations, but full implementation will require multiple stages of legislation and policy development in order to fully incorporate stakeholder views and avoid unintended consequences. A phased approach will therefore be adopted.
>
> Phase 1 requires primary legislation to establish the framework for MER UK Principles and to create the power for the Secretary of State to raise a levy to fund the activities of the new Regulator which cannot currently be charged for.
>
> Phase 2 will require primary and secondary legislation to establish wider powers, an enforcement regime, setting the level of the levy itself, developing a detailed strategy for how the MER UK Principles will be implemented, and the creation and establishment of an arm's length regulator.[18]

The *Infrastructure Act 2015* established the framework for MER UK in primary legislation and provided the Secretary of State with the power to raise a levy to finance the Oil and Gas Authority (OGA). [19]

Parts 1 to 4 of the Energy Bill build on previous legislation and policy to fully implement these recommendations.

2.3 Oil and Gas Authority

In its response to the Wood Review, the Government said that it would establish the Oil and Gas Authority (OGA) to "undertake the licensing,

[16] DECC, Government Response to Ian Wood's UKCS: Maximising Economic Recovery Review, July 2014.

[17] DECC, Implementing the Wood Review Recommendations, 20 March 2015.

[18] Impact Assessment, Implementation of the Wood Review Proposals for UK Offshore Oil and Gas Regulation, 5 September 2014, p 1.

[19] Infrastructure Act 2015, section 42 and schedule 7.

exploration and development functions work currently carried out by DECC". [20]

It was established as an arm's length body accountable to the Secretary of State, DECC and became an executive agency on 1 April 2015. [21]

However, the Government explained that it did not believe that an executive agency is the best long-term structure for the OGA, arguing that it would be better established as a government company: [22]

> [...] this will give the Authority greater operational independence from Government and will provide a more suitable platform to provide the arm's length regulatory certainty Industry requires to invest in exploration and production activity to maximise economic recovery from the UK's oil and gas resources.[23]

During its transition between being an executive agency of DECC and an independent government company, the Government's intention was that the OGA would operate and act as closely as possible to its final form of a government company. Executive agencies are part of government departments, staffed by civil servants. Government owned companies are companies that are that are registered with Companies House, but are fully or partly-owned by the UK Government. The OGA's *Framework Document* states that "this principal has been reflected in the development of this *Framework Document*, so as to ensure that the OGA has sufficient operational independence to be effective from day one".[24]

The OGA is now an established body with a management team of eight people and offices in Aberdeen. [25] Progress on its main activities were outlined in September 2015.[26]

2.4 Maximising Economic Recovery and the "Principle Objective"

The second key recommendation from the Wood review was that Government and industry should develop, and commit to, a new strategy for 'Maximising [the] Economic Recovery' of petroleum from the UKCS (a strategy referred to as MER UK).

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20 DECC, Government Response to Ian Wood's UKCS: Maximising Economic Recovery Review, July 2014.

21 House of Lords, written statement: *Establishment of the Oil and Gas Authority*, 15 June 2015, HLWS34.

22 The Government defines a government company as a private company, limited by shares, under the Companies Act 2006, with the Secretary of State of DECC as the sole shareholder.

23 DECC, Government Response to Ian Wood's UKCS: Maximising Economic Recovery Review, July 2014.

24 DECC and OGA, Oil and Gas Authority Framework Document, 1 April 2015, p 2.

25 Oil and Gas Authority website

26 Oil and Gas Authority *Call to Action: Six months on* September 2015

MER UK is to achieve the "principal objective"[27] of maximising the economic recovery of UK petroleum. This will be achieved in particular through:

(a) development, construction, deployment and use of equipment used in the petroleum industry (including upstream [i.e. the exploration and production] petroleum infrastructure), and

(b) collaboration among the following persons —

> (i) holders of petroleum licences;
>
> (ii) operators under petroleum licences;
>
> (iii) owners of upstream petroleum infrastructure;
>
> (iv) persons planning and carrying out the commissioning of upstream petroleum infrastructure. [28]

Industry responded positively to this recommendation. The industry body Oil and Gas UK saw the recommendations as a "necessary catalyst for change" and regarded the new tripartite strategy as crucially important:

> All three parties have a role to play, with the industry, the new regulator and HM Treasury sharing a common vision of the steps that must be taken to deliver the maximum economic benefit for the industry and the country in this critical next phase of the UKCS' life.[29]

The Government's response to this recommendation, published in July 2014, was equally positive:

> The Government therefore […] supports Sir Ian's call for a new tripartite approach to Maximising Economic Recovery of the UKCS (MER UK) between a new Authority (see recommendation 2), HM Treasury and Industry. The Secretary of State for Energy and Climate Change will remain a key partner in this approach through his role in setting the policy and strategic framework and objectives for the new Authority.[30]

The Infrastructure Act 2015 gives the Secretary of State a duty, in consultation with industry, to publish a strategy for the achievement of MER UK and providing the Secretary of State with a power to raise a levy to provide stable funding for the OGA.

The Act altered the Petroleum Act 1998, so that it set out the legal framework for the MER UK Strategy. It established who it applied and created the Principal Objective of "maximising the economic recovery of UK Petroleum". It also created an obligation on the Secretary of State to

27 As defined by section 9A of part 1A of the Petroleum Act 1998—as inserted by the Infrastructure Act 2015.

28 Petroleum Act 1998, section 9A.

29 Oil and Gas UK press notice, "Wood Review Final Recommendations Can be Game Changers for UK Continental Shelf", 24 February 2014

30 DECC, *Government Response to Sir Ian Wood's UKCS: Maximising Economic Recovery Review*, July 2014

produce a Strategy for enabling this objective to be met, and for the first Strategy to be produced before 12 April 2016.

In the Lords Committee Stage of the Infrastructure Bill, the Government introduced two new clauses to implement the proposals. The result was for the Act to insert the following sections into the Petroleum Act 1998:

- New section 9A would provide for a principal objective of maximising the economic recovery of UK offshore petroleum and requiring the Secretary of State to produce a strategy;
- Section 9B would place a duty on the Secretary of State to carry out relevant functions in accordance with the strategy;
- Section 9C would place duties on licence holders, operators appointed under those licences and owners of upstream petroleum infrastructure to carry out certain identified activities in accordance with the strategy;
- Section 9D would place a duty on the Secretary of State to lay before Parliament a report at the end of each reporting period about performance against the strategy; and
- Sections 9F and G would make provisions about the production and revision of the strategy, with a requirement for the first strategy to be produced within one year of the date on which the sections come into force.

Draft MER UK Consultation

On 18 December 2015 the Government began public consultation on the Draft MER UK Strategy. However, the Energy Bill, as it stands, contains amendments to the Petroleum Act 1998 which would affect the principle object of MER UK (see following section on New Clause 8). The consultation document notes:

> In light of the legislative timetable that currently exists to produce a Strategy by 12 April 2016, Government considers it necessary to consult on a draft MER UK Strategy that meets the requirements of Part 1A of the Petroleum Act 1998 as that Part currently stands. Government will consider the implications for the Strategy, on account of any changes to those requirements made by the Energy Bill, once the will of Parliament on these matters is settled.

The draft Strategy sets out a number of obligations which would be imposed on companies involved in oil and gas operations. Most notably the strategy notes amongst its high level principles that:

> - all stakeholders should be obliged to maximise the expected net value of petroleum produced from relevant UK waters, not the volume expected to be produced;

And that:

> - compliance with the Strategy may oblige individual companies to reallocate value between them, matching risk to reward. However, while the net result should deliver greater value overall, it will not be the case that all companies will always be individually better off;

The implication of these statements have attracted attention. For example, CMS Law have commented that:

> It is not currently clear whether this might require a company to give up value to which it is currently entitled or only to accept a lower value than it might have anticipated for some new project. We understand that the latter is the intention, and we anticipate that the final version will clarify that.

The Draft MER UK Strategy goes on to set out a range of obligations which include:

- *Central Obligation* - Relevant persons must, in the exercise of their relevant functions, take all steps necessary to secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters.
- *Exploration* - that exploration is carried out in a manner which is optimal for maximising the value of economically recoverable petroleum and that Licencees carry our work programmes for explorations before surrendering licences
- *Development* - infrastructure is developed in a way that meets the optimum configuration for maximising the value of economically recoverable petroleum
- *Assets Stewardship* - owners and operators of infrastructure must ensure that it is maintained in such a condition and operated in such a manner that it will achieve optimum levels of performance,
- *Technology* - that technologies, including new and emerging technologies, are deployed to their optimum effect in maximising the value of economically recoverable petroleum
- *Decommissioning* - before commencing the decommissioning of any infrastructure in relevant UK waters, owners of such infrastructure must ensure that all options for their continued use have been suitably explored, including those which are not directly relevant to the recovery of petroleum such as the transport and storage of carbon dioxide.
- *OGA Plans* - the OGA may produce a plan or plans which set out its view of how any of the obligations in this Strategy may be met.
- *Relinquishing assets* - where operators decide not to ensure the recovery of the maximum value of economically recoverable petroleum from their licences or infrastructure they must relinquish or divest themselves of such licences or assets.

Operators are then provided with a number of safeguards which qualify these obligations:

- None of the obligations requires conduct which would otherwise be prohibited by other legislation (e.g. health and safety or environmental legislation).
- The strategy cannot require any person to fund activity where they will not make a satisfactory commercial return.
- OGA enter discussions with the relevant person before taking any relinquishment action.

- The Strategy cannot require conduct where the benefits to the UK are outweighed by the damage to the long term confidence of investors in oil and gas exploration and production projects in relevant UK waters.

Oil and Gas UK, the offshore industry trade body commented on the release of the draft Strategy. Oil & Gas UK's chief executive Deirdre Michie said at the time:

> "The Maximising Economic Recovery (MER) UK strategy will form the cornerstone of the tripartite approach being taken by the new Oil and Gas Authority, HM Treasury and the industry to extraction of the UK's oil and gas resources.
>
> The Secretary of State for Energy stated that energy security has to be the number one priority and that gas will play a key role in powering our future economy. It makes sense therefore to make the most of the country's own resources and the MER UK strategy, in tandem with the creation of the new Oil and Gas Authority, is designed to do just that. There are up to an estimated 20 billion barrels of oil and gas to be recovered from our offshore waters, around eight billion barrels of that is natural gas."

CMS Law conclude, with respect to the Strategy, that the high level wording means that in really much will depend "upon the approach that the OGA decides to take in practice". They add any unpredictability as a result of this should be managed by the requirement of the OGA to also achieve compliance with the strategy.

> Concerns that this makes for an unpredictable regulatory environment may be tempered by the OGA's own obligation to achieve compliance with MER UK (including to comply with the Strategy) and the Strategy's express reference to maintaining the long term confidence of investors. [...] The draft Strategy refers to the need for communication between the OGA and a relevant person before certain significant decisions are taken and, as the draft Strategy is developed and finalised, it seems that ongoing communication between DECC, OGA and the industry will remain key in determining the framework for successfully achieving the aims of MER UK.

2.5 Part 1 of the Bill

Establishing the OGA and transferring powers – Clauses 1-7

This section of the Bill underwent a number of technical changes during its passage through the Lords. At report Stage the Parliamentary Under-Secretary of State, Lord Bourne of Aberystwyth, set out the fundamental objectives of these sections when speaking for a number of these amendments.[31]

Clauses 1 and 2 and Schedule 1 of the Bill establish the OGA and transfer of functions from the Secretary of State to the OGA. Clause 2 also provides the Secretary of State with a power to transfer relevant functions to the OGA and make amendments by regulations.

The list of transferred functions from the Secretary of State to the OGA in Schedule 2 includes the duty to produce a MER UK Strategy.

Clauses 3 to 5 deal with the transfer of property, staff, rights, and liabilities to the OGA and provides that the Secretary of State can create and modify transfer schemes.

Clause 6 amends Schedule 1 of the Superannuation Act 1972 to insert "The Oil and Gas Authority," allowing certain employees of the OGA to participate in the Principal Civil Service Pension Scheme.

Clause 7 provides that where functions are contracted out to the Oil and Gas Authority by relying on Section 69 of the Deregulation and Contracting Out Act 1994, they may be contracted out for a period exceeding 10 years. Clause 7 also provides that Welsh Ministers may enter into a contract with the Oil and Gas Authority, authorising that body to exercise the functions of Welsh Ministers.

Maximising economic recovery, carbon capture and storage – New Clause 8

Clause 8 is a new opposition clause which was approved by the House of Lords during the Report Stage. It amends the 'principal objective' set out in section 9A of the Petroleum Act 1998 so that it relates not to maximising economic recovery, but to maximising economic return and also covers functions relating to decommissioning oil and gas infrastructure and carbon capture and storage. Under the changes the principle objective would become:

> the "principal objective" is the objective of maximising the economic return of UK petroleum, while retaining oversight of the decommissioning of oil and gas infrastructure, and securing its re-use for transportation and storage of greenhouse gases, in particular through—
>
> a) development, construction, deployment and use of equipment used in the petroleum industry (including upstream petroleum infrastructure), and
>
> b) collaboration among the following persons—
>
> (i) holders of petroleum licences;
>
> (ii) operators under petroleum licences;
>
> (iii) owners of upstream petroleum infrastructure;

[31] HL Deb, 19 Oct 2015 : Column 450

> (iv) persons planning and carrying out the commissioning of upstream petroleum infrastructure;
>
> (v) owners of offshore installations.

Baroness Worthington on introducing the new clause argued it more clearly defined the OGA's responsibilities. It was also argued that changes were required because of the shifting economic situation and the drop in oil prices since the Wood review reported.

> [The amendment] seeks to change those principal objectives to make them much more in line with what we now know to be the set of activities that will be undertaken by the OGA. I have no doubt that when Sir Ian Wood wrote his review in 2012-13, he had a great vision of simply needing a little government intervention to make sure that investment was happening in a logical way, which would keep the oil and gas flowing, and that some element of dispute resolution would be needed, but that by and large everything would be relatively rosy if people would just get talking to each other, and that is what led to those objectives.
>
> However, now we know that that is not the situation in the North Sea—far from it. We have a crisis. We have people exiting and not investing. It is an economic problem, for the country as a whole and for public receipts, and a social problem. As we heard from noble Lords, people are losing their jobs. There is a great deal of uncertainty. It is not at all clear what the strategy now is in the North Sea.

Lord Howell of Guildford argued that the amendment and its reference to carbon capture and storage (CCS) would impose economic burdens on an industry that was "running out of money".[32] The Minister Lord Bourne argued against the amendment on wider grounds:

> I fear that expanding that principle to cover decommissioning and carbon capture and storage specifically would create significant knock-on effects for other aspects of this Bill and the Infrastructure Act 2015, particularly the strategy to maximise economic recovery of United Kingdom petroleum. It would also have repercussions on at least the meetings-access powers and the dispute-resolution powers in the Bill by opening them up to a raft of additional industry activity. It would also cut across many of the amendments that we have tabled in relation to the information and samples powers, which I will discuss later, which clearly and specifically address CCS, rendering them of uncertain effect. I fear that by expanding the OGA's remit to those new and significant areas of regulatory activity, we risk weakening the overall approach that the organisation can take towards supporting the industry for the short, medium and long term.

The amendment was agreed to on division, Contents 251; Not-Contents 179.

[32] HL Deb, 19 Oct 2015 : Column 469

Exercise of functions and Carbon Capture and Storage – changes to Clause 9

Clauses 9 -12 provide further description of the powers and duties available to the OGA.

Clause 9 sets saw the only significant amendment amongst these clauses. It sets out a non-exhaustive list of the matters to which the OGA must have regard when exercising its functions. This covers:

- Minimising future public expenditure
- Security of supply
- Storage of carbon dioxide
- Collaboration
- Innovation
- System of regulation

The point above on storage of carbon dioxide was included as a Government amendment during the Lords Report Stage. Lord Borne explained that the amendment was to require that the OGA had regard to 'the development and use of carbon storage facilities'. This would create a duty upon the OGA when exercising 'any of its functions' to give due consideration to the development and use of CCS facilities and the storage chain.[33] The amendment was debated directly after the opposition amendment referred to above that inserted CCS into the 'primary objective'.

A number of previous amendments on the subject of CCS had previously been tabled during the committee stage of the Bill. In particular a number tabled by Lord Oxburgh had attempted to provide the OGA with explicit responsibilities on this issue. Lord Oxburgh welcomed the Government amendment but argued that further coordination on carbon capture and storage was still required, particularly in light of a recent Government decision to no longer fund the White Rose CCS project. He said:

> We need some kind of strategic framework within which private industry can operate in the CCS area [...] Had there been more time—as a number of noble Lords have said, for a variety of reasons we have been rushed over this Bill—I would have liked [CCS] to have been made the subject of an informal all-party discussion with the Government and officials. I feel there is significant support for this idea both within the House and probably within the Government.[34]

Clauses 10 and 11 gives the Secretary of State the power to give directions to the OGA to exercise of any of its functions in the interests of national security or are otherwise in the public interest and directions to the OGA specifying matters with respect to which the OGA must notify the Secretary of State when they arise. Clause 12 allows the

[33] HL, Deb, 19 Oct 2015 : Column 481
[34] HL Deb, 19 Oct 2015 : Column 483

Secretary of State to acquire from the OGA information or samples held by or on behalf of the OGA.

Fees and Payment – New Clauses 13-16

On 23 March 2015, the Government announced its intention to undertake a consultation on the specific implementation of a levy on industry to fund the OGA. In a written statement the then Secretary of State, Edward Davey, explained that:

> Whilst the Government has agreed to contribute £3 million per year for five years starting from April 2016 to ensure the OGA is well funded from the outset, the OGA's ongoing costs will be met by a combination of the extant fees and charges regime, and a new levy on industry. We agree with industry that it is important that the levy is simple, transparent and cost-reflective.
>
> This consultation sets out details of the allocation methodology and the proposed levy rates. In line with the early focus of the OGA, we have determined that initially we will levy only offshore petroleum licence holders as (in the short term) the OGA will incur costs related to these licence holders. We intend that the OGA will begin collecting the levy in October 2015, subject to regulations. [35]

The Government's response to its call for evidence on implementing the Wood Review stated that the levy structure and amounts would be introduced via secondary legislation under the powers contained within the *Infrastructure Act 2015*. [36] The Impact Assessment published alongside the consultation on the levy provided further detail, saying that:

> Schedule 7 to the Infrastructure Act 2015 illustrates how the levy power may be used. As with fees and charges, levies should be designed to recover full costs. However, to ensure the levy is cost-reflective of the work carried out on behalf of licence holders, it may be appropriate to charge different levy rates to different kinds of licensees.[37]

Clauses 13-15 deal with fees and levies for the OGA. They were introduced during the Committee stage of the Bill in the Lords as Government amendments. Baroness Worthington raised one concern about the amendments in that Clause 16 provides a "liability on the public purse at a time when so many people are being asked to tighten their belts."[38]

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35 House of Commons, written statement: Funding of the Oil and Gas Authority: Consultation on Levy Design, 23 March 2015, HCWS443.

36 DECC, Implementing the Wood Review Recommendations, 20 March 2015, p 24.

37 Impact Assessment, Funding the Oil and Gas Authority (OGA): Levy Design, 25 March 2015, p 8.

38 HL Deb, 7 Sep 2015 : Column 1274

Clause 13 provides the OGA with the power to charge fees for certain services it provides to the oil and gas industry,

Clause 14 provides the Secretary of State with a power to make regulations imposing a levy on the holders of certain licences. The levy will fund the Oil and Gas Authority's functions and costs of providing a Tribunal Service to consider appeals against decisions of the OGA.

Clause 15 sets out what the regulations made by the Secretary of State under clause 14 may make provision for.

Clause 16 provides a general power for the Secretary of State to make payments and provide financial assistance, through grants, loans guarantees or indemnities or any other kind of financial assistance, to the OGA.

Performance reviews – New Clause 17

New Clause 17 requires the Secretary of State to carry out reviews of the OGA's performance each year. A review must be undertaken for each review period. The first review period will begin the day on which Clause 1 of the Bill comes into force and ends one year after this, unless the Secretary of State specifies an earlier date.

The requirement was inserted as a Government amendment during the Lords Report Stage. The amendment initially would have required reporting to be undertaken every 3 years. This amendment was itself amended by an opposition amendment to reduce the reporting cycle to 1 year. All these amendments were agreed without a vote.[39]

2.6 Part 2 of the Bill: other functions of the OGA

Part two of the Bill sets out further details on the functions of the OGA. This section of the Bill was largely unchanged and non-controversial in the Lords. They are covered in more detail in section 3 of the Lords Library Note published as the Bill was introduced.

- Chapter 1 (Clause 19) introduces these provisions.
- Chapter 2 (Clauses 20-27) establishes a disputes process.
- Chapter 3 (Clauses 28-37) provide provision relating to information and samples obtained from oil and gas recovery and exploration.
- Chapter 4 (Clauses 38-42) provide the procedure for organising meetings and meetings from meeting between operators when relevant to the OGA and MER UK.
- Chapter 5 (Clauses 43-61) provides the OGA with new powers to impose civil sanctions in compliance with the conditions of offshore petroleum licences and compliance with the duty to act in accordance with the 'MER UK Strategy'.

39 HL Deb, 19 Oct 2015 : Column 538

This includes powers to provide enforcement notices and fines of up to £1 million and revocation notices to revoke licences and removal notices.

It also creates a right of appeal against the OGA's sanctions through the First-tier Tribunal (the "Tribunal").

An appeals process is set up in Clauses 51-53.

Chapter 6 (clauses 62-70) provide a procedure for the disclosure and protection of certain information obtained under the preceding chapters by the OGA. This Chapter was created as the result of Government amendments at Report Stage which consolidated the existing clauses relating to the disclosure of information. At the same time provisions were introduced to provide authority for the OGA to disclose information if required for civil or arbitration proceedings or to law enforcement bodies for the investigation or prevention of criminal activities.[40]

2.7 Part 4 of the Bill: Fees

Part 4 of the Bill sets out further details on the functions of the OGA. This section of the Bill was largely unchanged and non-controversial in the Lords. They are covered in more detail in section 4 of the Lords Library Note published as the Bill was introduced.

Clause 77: enables DECC to make secondary legislation to set fees or charges to recoup the costs associated with providing functions under the various provisions. The detail of the regime will be set through secondary legislation.

Clause 78: validates charges already made by the Secretary of State for carrying out functions under the Part 4 of the Marine and Coastal Access Act 2009. The charges that are validated under the clause relate to activities regulated under the oil and gas regimes.

[40] HL Deb, 19 Oct 2015 : Column 540

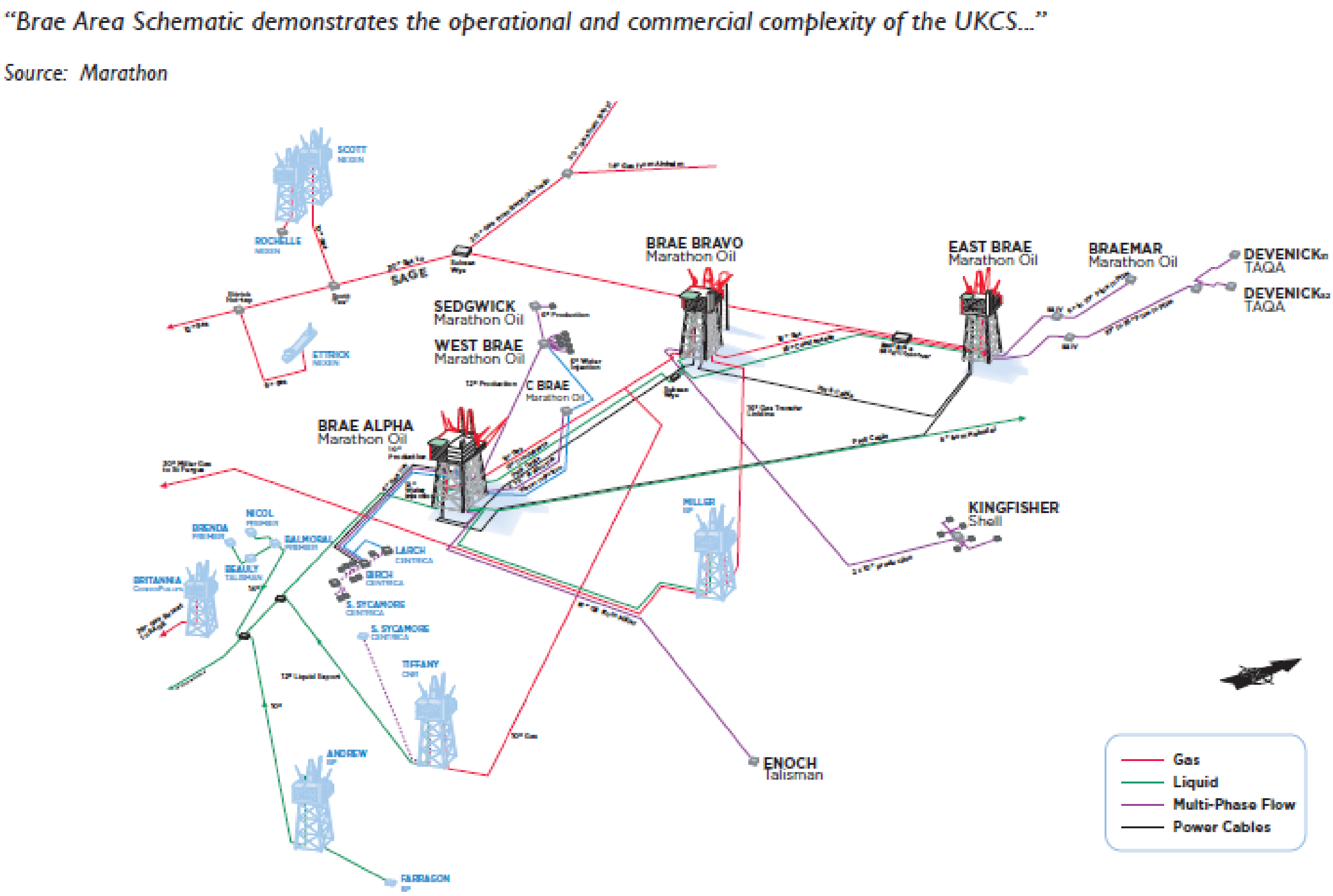
3. Part 3 of the Bill: Oil and gas infrastructure

Part 3 of the Bill contains clauses that relate to sharing and decommissioning oil and gas infrastructure. The Part was introduced by the Government at the Lords Report Stage

3.1 Access to infrastructure

Infrastructure on the UK Continental Shelf is principally the processing, transport and export of the UK's offshore oil and gas resources. In the early days of production, in the 1970s and 1980s, a small number of very large fields dominated UKCS production. Today production comes from more than 300 fields operated by an increasingly diverse mix of companies who are far more independent than before with 20,000 km of pipelines connecting these fields and platforms to onshore terminals.

The schematic of the Brae area of the North Sea on the following page shows the complexity of the existing infrastructure in the North Sea.[41]



Source: Wood Review

41 Sir Ian Wood UKCS Maximising Recovery Review: Final Report. 24 February 2014

The extensive coverage of infrastructure in the UKCS offers a competitive advantage allowing new fields to be developed more cheaply via existing infrastructure and enabling smaller fields to be developed which would otherwise be uneconomic if developed on a standalone basis. The Wood review called for the management of the existing ageing infrastructure to be managed efficiently as part of the wider MER UK strategy. To do that it is important that all parties gain access to infrastructure on an appropriate commercial basis.[42]

Infrastructure in those areas of the North Sea with the much older assets is under increasing pressure as maintenance costs increase and throughput diminishes. There is evidence that early decommissioning is likely to put existing infrastructure at risk. At the same time there is a need for the development of new infrastructure particularly West of the Shetlands and in the Central North Sea which should be developed on a collaborative basis either by existing incumbents or new players. [43]

There are increasing constraints on new developments as a result of the inability of third parties to negotiate appropriate technical and commercial terms to achieve access to existing infrastructure. As a result developments are taking longer to implement and may end up being sub-optimal.[44]

The major issue appears to be a misalignment of commercial and technical interests between the owner of 'hub' platform and infrastructure and the party seeking access to process and transport their outputs of oil or gas. The hub owner may well see the opportunity as offering little commercial advantage

As a result there is little commercial incentive for the hub owner to negotiate access in an arrangement for access that may possibly add risks and possibly costs to its existing business. Smaller operators have relatively little commercial leverage to secure access to the facility or an ability to offer the financial means to counter risks that are seen by the hub owner.

The map on the following page shows the current extensive number of producing oil and gas fields and pipelines in the UKCS.

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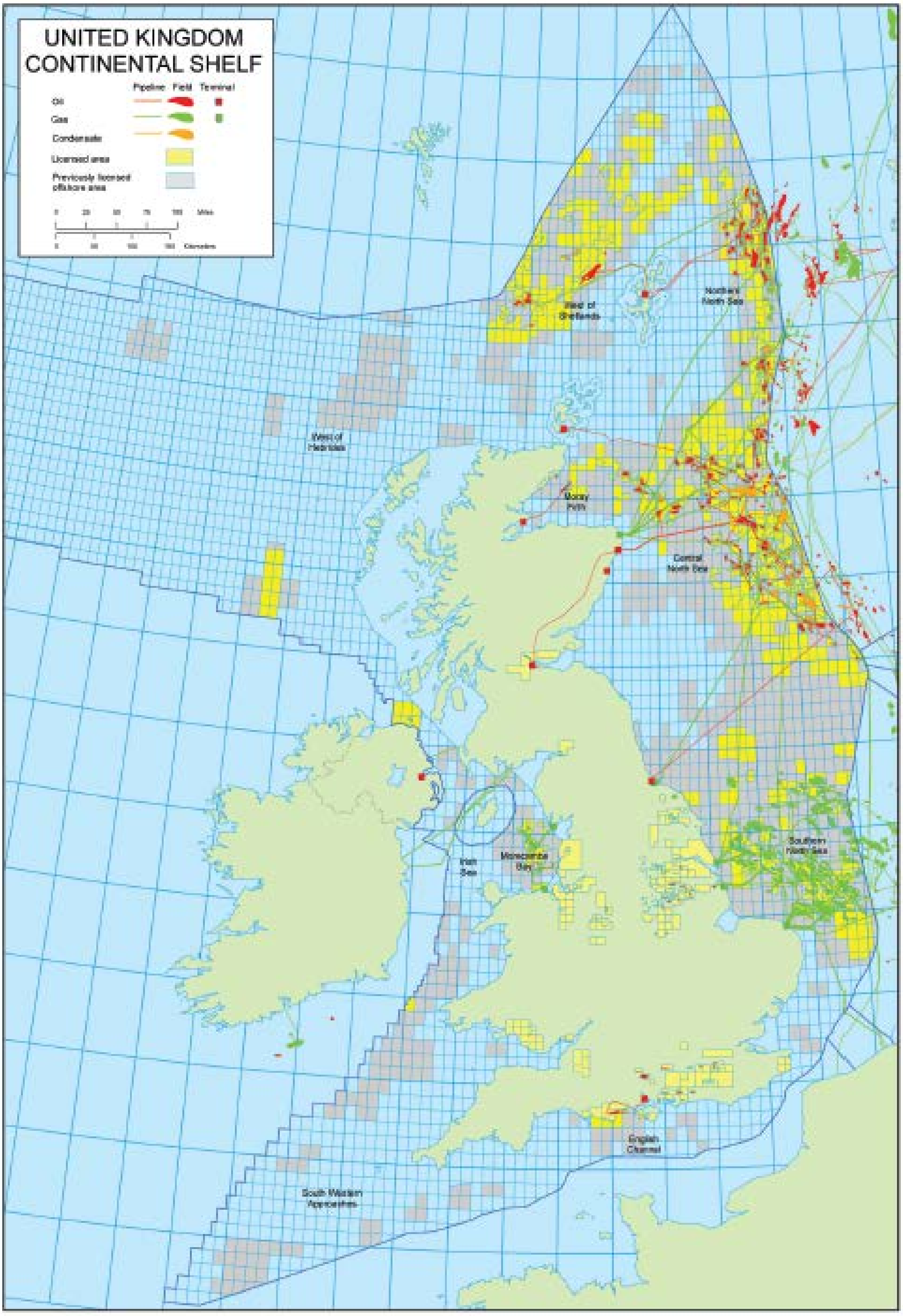
42 Ibid
43 Sir Ian Wood *UKCS Maximising Recovery Review: Final Report*. 24 February 2014
44 Ibid



Source: [Wood Review]

Wood Review and Infrastructure

The Wood Review recommended that the OGA should:

- provide an economic environment aimed at prolonging the life of existing infrastructure and promotes in investment in key new infrastructure
- incorporate stewardship of infrastructure within existing asset stewardship and promote collaborative infrastructure to provide additional capacity
- use more of the current legal powers to resolve disputes and facilitate access to infrastructure particularly through the *Infrastructure Code of Practice*
- encourage more competitive tariffs in co-operation with HM Treasury
- encourage the development of new business models e.g. companies that solely own and operate infrastructure as seen in other basins such as the Netherlands.[45]

The Coalition Government said in response to the Wood Review on access to information infrastructure:

> [...] the importance of good data to promote investments, create value and support safe operations. Whilst respecting the confidential nature of some data and competition law, it is committed to increasing the transparency and access to data and will therefore ensure appropriate powers, resources and enforcement procedures are in place to facilitate the sharing of data. The Government considered whether any further powers would be required, for example to encourage joint development plans, area unitisation and to ensure appropriate access to infrastructure without contravening competition law or weakening market incentives. [46]

The Government had originally legislated on third party access to offshore facilities including platforms and pipelines in the *Energy Act 2011*. Chapter 3.

The Government said in 2011 that access to infrastructure on fair and reasonable terms is "crucial" to maximising the economic recovery of the UK's oil and gas production. The 2011 Act therefore re-enacted and streamlined the existing provisions for third party access to upstream oil and gas infrastructure and replaced them with one set of requirements covering access to all relevant platforms, pipelines and terminals. It also gave the Secretary of State new powers to seek information about the progress of access negotiations, and where appropriate, for him to initiate a determination at his own discretion for example, if the

45 Sir Ian Wood *UKCS Maximising Recovery Review: Final Report*. 24 February 2014
46 DECC *Government Response to Sir Ian Wood's UKCS: Maximising Economic Recovery Review* July 2014

Secretary of State had reasonable grounds to believe that there was no realistic prospect of the parties reaching an agreement. [47]

Sharing Infrastructure – New Clauses 71-72

Clause 71 and Clause 72 were not originally part of the Bill and were introduced as amendments at the Committee stage in the House of Lords on 9 September 2015 [as Part 2A later amended to Part 3]; Lord Bourne said

> [Clauses 71 and 72] will increase the utility of the third-party access to upstream petroleum infrastructure regime, which is an important tool in the Oil and Gas Authority's pursuit of maximising economic recovery for the United Kingdom [48]

The Amendments were agreed without Division.

Clause 71 extends the third-party access to upstream petroleum infrastructure regime found in Chapter 3 of the *Energy Act 2011*. Specifically, it amends Section 87 of the 2011 Act, and requires that where the Oil and Gas Authority issues a notice under Section 87 of the 2011 Act requiring information to be provided, it must specify a time for compliance with that notice.

The clause also provides an appeal right to the First-tier Tribunal against the issuance of a notice on the grounds that the information required is not relevant to the Oil and Gas Authority's functions relating to third-party access or that the length of time given to comply with the notice is unreasonable.

The clause also allows for any requirements imposed by such a notice to be treated as petroleum-related requirements and therefore to be sanctionable under Chapter 5 of the Bill. However, the Oil and Gas Authority will not be able to revoke a licence or terminate an operatorship in relation to such breaches.

New Clause 72 adds two new sections into the Energy Act 2011. New Section 89A allows for applications for access to upstream petroleum infrastructure made under Section 82 of the 2011 Act to be assigned to another party.

New Section 89B allows for a new owner of infrastructure to which an application for access has been made to be treated as a party to that application. The Clause also ensures that where ownership of infrastructure is transferred, the obligations under the notice transfer as well.

Once such an assignment or transfer occurs, anything that was done by the original party is treated as having been done by the party to which the application was assigned or the ownership transferred.

The provisions allow for the third-party access regime to continue rather than having to restart on a change of party and facilitate the

47 Library Briefing paper (11/36) *Energy Bill [HL] No167 of 2010-12* 4 May 2011
48 HL Deb 9 Sept 2015 c1436

transfer of non-commercially sensitive information already provided to the Oil and Gas Authority, and ensure that all new parties are aware of the relevant history of the application.

3.2 Decommissioning of infrastructure

Decommissioning refers to the point in time when production of oil or gas ceases. Decommissioning is an integral part of the life cycle of oil and gas assets. Owners of offshore field infrastructure, including the platforms, processing plant and pipelines, are obliged by the *Petroleum Act 1998* (Part IV) to have in place an abandonment of infrastructure' plan when it wishes to decommission its facilities and is subject to approval by the Secretary of State.

With its substantial scale and costs (see Box 1), decommissioning is of fundamental importance to operators.

Box 1: The scale of decommissioning on the UKCS

- 4,000 wells to plug & abandon
- 290 fixed platforms
- 33 floating installations
- 370 subsea wellhead & structures
- 20,000 km of pipelines

Source: Oil and Gas Authority

With the expected continuing overall decline in UKCS oil and gas production as fields reach the end of their economic life, the pace of decommissioning of these fields will likely accelerate. Indeed the average age of North Sea installations is around 25 years.[49]

A number of fields have already been decommissioned and these listed are by DECC here.

Costs of decommissioning

The Wood review estimated that decommissioning will cost more than £35 billion (in 2012 money) over the 30 years from 2014 to 2044; though some estimates put the costs as high as £50 billion. The two elements with the highest costs and hence greatest potential for improvement, are well plugging and abandonment and offshore facilities lifting and transportation to shore. [50]

The Wood review said that the OGA will need to ensure that decommissioning is executed in a safe and environmentally sound and

49 Arup *Decommissioning in the North Sea* October 2014
50 Sir Ian Wood *UKCS Maximising Recovery Review: Final Report*. 24 February 2014

cost effective manner (consistent with the UK's international legal obligations) with sufficient early planning and co-ordination.

Taxation rules

Whilst the industry will carry out the decommissioning, more than half the costs (estimated at around 60%) will ultimately be borne by the Government through tax relief. Therefore improvement to decommissioning performance presents a major opportunity; for example a 25% reduction in costs could save the Treasury around £5 billion (2013 money). [51]

DECC's impact assessment said:

> Under taxation rules, elements of the costs of decommissioning of oil and gas facilities and wells fall to the taxpayer. We are considering options for decommissioning to be planned and carried out at least cost (while still meeting environmental and health and safety requirements) to protect the taxpayer's interests, and for ensuring that decommissioning is carried out in a timely manner in accordance with MER UK principles. [52]

In its Annual report for 2014-15, HMRC said

> Industry estimates of decommissioning costs are assumed to be the best available, though where provisions are shown in oil company accounts, the considerable level of uncertainty inherent in the cost estimating process is made clear.
>
> From the Oil and Gas UK survey reports the total costs of decommissioning for the period 2015-16 to 2019-20 are estimated to be £9 billion and for the period 2020-21 to 2040-41 the estimate is £32 billion, in today's prices.
>
> From this information the impact on PRT tax receipts for the two periods is estimated to be a cost to the Exchequer of £1.7 billion and £5.8 billion respectively. The total amount of £7.5 billion (£3.1 billion in 2013-14) is included in the provision for liabilities table.
>
> The provision is subject to a considerable level of uncertainty, being calculated using oil and gas survey information, itself an aggregation of industry acknowledged uncertain data. In addition to uncertainties around the cost of decommissioning, the timing of when those costs will be incurred is also uncertain and will be dependent on factors such as oil prices, which will have a bearing on how long a field will be able to generate profit and, therefore, on when it will be decommissioned.

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[51] Ibid

[52] DECC *Energy Bill – Oil and Gas Authority (OGA) Measures Impact Assessment*, 17 June 2015

Business opportunities

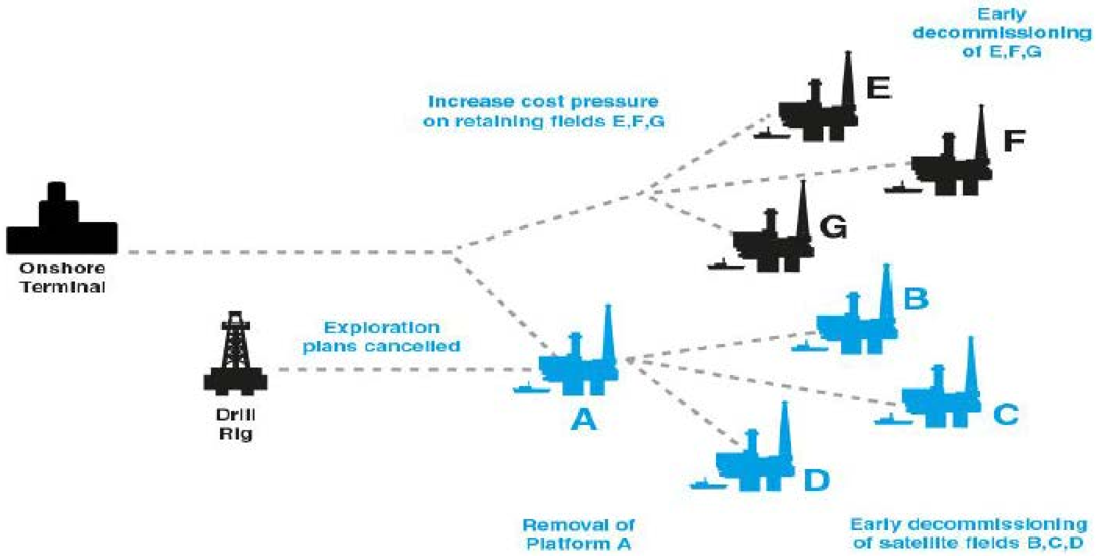
As decommissioning progresses, the UK has the potential to gain a significant competitive industrial capability that can be 'exported' to other oil and gas provinces over time. [53]

Avoidance of 'stranded' assets

The Wood review made it clear that it will be important for the OGA to ensure that key assets are not decommissioned prematurely to the detriment of production hubs and infrastructure and thereby achieve maximum economic extension of field life.

The issue of possible 'stranded' assets is illustrated in the following diagram

Schematic diagram of offshore fields and infrastructure



If the operator and owner decides to decommission Platform A, it will mean early decommissioning of fields B, C and D and increase the cost pressures on fields E, F and G while leading to cancellation of plans for exploration at the satellite platform to the original platform A. [54]

Powers for the OGA

The Wood review says that the OGA will need to have the necessary statutory powers to gather the required information to understand the progress of possible decommissioning, require the owners and operators to maintain the necessary facilities and infrastructure in order to ensure continued economic production at various satellite fields and pipelines.

On decommissioning, the Wood Review recommended that the OGA should:

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53 Sir Ian Wood *UKCS Maximising Recovery Review: Final Report*. 24 February 2014

54 OGA *Decommissioning From the beginning not the end* 18 November 2015

- establish a single decommissioning forum for delivering cost reductions and promoting greater innovation and co-operation (the OGA has already done this [55])
- include decommissioning cost reduction as part of an industry technology strategy
- ensure assets are not prematurely decommissioned making the necessary linkage between decommissioning and access to infrastructure
- promote new business models that combine the skills of operator and decommissioning practitioner [56]

In its response to the Wood Review, the Coalition Government said

> [...] the OGA should have a role to play in ensuring the maximum economic extension of field life as well as ensuring key assets are not decommissioned early, to the detriment of regional hubs and infrastructure. The strategy should focus on ways to reduce the costs of decommissioning but at the forefront, ensuring it is done safely, cost effectively and with utmost regard to the environment. [57]

The Secretary of State's functions in relation to decommissioning of offshore installations and submarine pipelines will ***not*** be transferred to the OGA. The OGA's role in relation to decommissioning will be to seek to reduce the costs of decommissioning or retention of facilities. [58]

Decommissioning – New Clauses 73 - 74

The Government's New Clause 73 and Schedule 2 were introduced as Amendment 84 on the first day of the Report Stage on 19 October 2015. It was agreed to on 21 October 2015 on the second day of the Report Stage. [59]

Clause 73 and Schedule 2 make provision about the abandonment of offshore installations by amending Part 4 of the *Petroleum Act 1998* and section 30 of the *Energy Act 2008.*

All the changes to the *Petroleum Act 1998* and *Energy Act 2008* are contained in Schedule 2. The main changes are to:

- place restrictions on the abandonment or decommissioning of offshore facilities including pipelines unless an abandonment programme has been agreed by the Secretary of State and make it an offence to , without reasonable excuse, decommission a relevant installation

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55 Ibid
56 Sir Ian Wood *UKCS Maximising Recovery Review: Final Report*. 24 February 2014
57 DECC *Government Response to Sir Ian Wood's UKCS: Maximising Economic Recovery Review* July 2014
58 DECC *Energy Bill – Oil and Gas Authority (OGA) Measures Impact Assessment*, 17 June 2015
59 HL 21 Oct 2015 c731

- require operators to consult with the OGA before submitting a programme of abandonment
- create a duty on operators to frame an abandonment programme in such a way as to enable decommissioning at the lowest practicable cost without prejudice to any existing statutory obligations including environmental and health and safety
- create a duty on the Secretary of State to take into account the costs of the abandonment programme when reaching a decision on the programme; also if the Secretary of State has to prepare a programme because of a failure to do so by an operator, also take into account the need to ensure the programme is at the lowest practicable cost; in preparing this programme the OGA is consulted.
- create a duty on those parties who are amending an abandonment programme to ensure that costs are kept to the minimum reasonably practical and to ensure that the Secretary of State consults the OGA

Clause 74 relates to new duties concerning maximising economic recovery of UK petroleum when planning and carrying out decommissioning of infrastructure.

This was introduced as Amendment 74 on the first day of the Report Stage on 19 October 2015. Lord Bourne said

> Government Amendment 74 inserts a new clause [Clause 74] adding a further duty on owners of relevant offshore installations and upstream petroleum infrastructure beyond those in section 9C of the Petroleum Act 1998, to act in accordance with the MER UK strategy when planning and carrying out decommissioning of such infrastructure. [ ] ensuring the preservation and viable reuse of infrastructure—for example, to facilitate use for carbon capture and storage—as well as reducing the cost of carrying out decommissioning, is of crucial importance in [the] quest to maximise economic recovery from the North Sea. This amendment, coupled with the decommissioning obligations to be included in the draft strategy to maximise economic recovery of UK petroleum, will provide a clear legislative framework within which these vital decommissioning goals can be met.
>
> This amendment, seeks to address this by ensuring that all owners of relevant offshore infrastructure are obliged to act in accordance with the strategy when planning and carrying out decommissioning of that infrastructure. Importantly, this amendment also clarifies that consideration of alternative uses of such infrastructure—including its reuse for purposes other than that to which the infrastructure was originally put, such as carbon capture and storage—plays a crucial role in this process [60]

[60] HL Deb 19 October 2015 c533

Amendment 74 [Clause 74] was agreed to on 19 October 2015 on the first day of the Report Stage. [61]

Northern Ireland – New Clause 75

Clause 75 amends Part 1A of the *Petroleum Act 1998* ("the MER UK provisions") to ensure that the provisions within that Act extend to Northern Ireland (as well as to England and Wales and Scotland).. [62]

Amendment 75 [Clause 75] was introduced on 19 October 2015 on the first day of the Report Stage.

Lord Bourne explained

> Amendment 75 relates to MER United Kingdom and Northern Ireland. The Oil and Gas Authority will be formally established so that it is an effective, robust and independent regulator of the petroleum industry. The first steps in this direction were taken in the Infrastructure Act 2015, which made provision, among other things, for a strategy to maximise the economic recovery of petroleum from the United Kingdom territorial sea and the United Kingdom continental shelf.
>
> In relation to Northern Ireland, those provisions were created with a mismatch between their territorial extent and application. They apply to Northern Ireland's territorial sea: however, they do not form part of the law of Northern Ireland. Amendment 75, therefore, amends the MER UK provisions so that they form part of the law of Northern Ireland as well as of England, Wales and Scotland, which is currently the case.[63]

Amendment 75 [Clause 75] was agreed to on 19 October 2015.[64]

International Agreements – New Clause 76

There are seven countries that border the North Sea – UK, Norway, Denmark, Germany, Netherlands, Belgium and France. The UK has Treaties and Agreements with each country as regards the dividing lines between them and thus where the UK can award licences to explore for and produce oil and gas.

There are also pipelines between the UK, Belgium, the Netherlands, Norway and the Republic of Ireland all subject to international agreements. [65]

All these agreements contain provisions for the exchange of information between the respective governments and agencies responsible for licensing oil and gas activities. [66]

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61 HL Deb 19 Oct 2015 c554
62 Explanatory Notes to the Energy Bill 2015-16 (Bill 92) paragraph 170
63 HL Deb 19 Oct 2015 c463
64 HL Deb 19 October c555
65 See Professor Alex Kemp *The Official History of North Sea Oil and Gas*, 2012, Routledge, ISBN 978-0-415-44754-6
66 For example see *Agreement between the Government of the United Kingdom of Great Britain and*

Clause 76 provides the OGA and the Secretary of State with the power to disclose information to foreign governments for the purposes of giving effect to international treaties concerning cooperation in relation to oil and gas activities. The Secretary of State or the OGA must be content that adequate safeguards are in place regarding the applicable information exchange requirements and the law in force in that territory.

Amendment 76 [Clause 76] was introduced on 19 October 2015 on the first day of the Report Stage.

Lord Bourne explained:

> This amendment provides the authority for the Oil and Gas Authority, as a representative of the Government, to continue to disclose information under the existing licensing arrangements and under the powers in Part [3] of the Bill for the purposes of giving effect to such treaties. This amendment also provides the Secretary of State with a similar power to share information with foreign Governments.
>
> There are a number of conditions attached to any disclosure to ensure that information is protected. The treaty must include provisions governing information exchange, and the Secretary of State, or the Oil and Gas Authority as applicable, must be content that adequate safeguards are in place in the receiving nation to ensure that information is protected before disclosing. In addition, no onward disclosure of the information. [67]

In response to questions, Lord Bourne clarified on the types of information that might be shared

> The examples that I gave of Norway, Ireland, the Netherlands and so on are probably in relation to interconnectors. There may be a need to share information about where pipelines are at the moment, and so on. That is the sort of thing, rather than anything of an operational nature; I do not anticipate there being anything in any way sinister about this.[68]

Amendment 76 was agreed to on 19 October 2015. [69]

Northern Ireland and the Government of the Kingdom of Norway relating to the delimitation of the continental shelf between the two countries, 10 March 1965

67 HL Deb 19 Oct 2015 c542

68 HL Deb 19 Oct 2015 c542

69 HL Deb 19 October c555

4. Part 5 Wind Power

Part 4 of the Energy Bill includes as single clause that would amend planning legislation to return planning decisions on large wind farms (over 50MW) to local authorities. It also included, until it was removed at Report stage by an Opposition amendment, a clause legislating for the early closure of the Renewables Obligation.

4.1 Government policy on renewables

The Conservative Party 2015 Manifesto included the following pledge on onshore wind:

> *We will halt the spread of onshore windfarms*
>
> Onshore wind now makes a meaningful contribution to our energy mix and has been part of the necessary increase in renewable capacity. Onshore windfarms often fail to win public support, however, and are unable by themselves to provide the firm capacity that a stable energy system requires. As a result, we will end any new public subsidy for them and change the law so that local people have the final say on windfarm applications.

Following the election there was speculation around the options for implementing this pledge. This focused on an early closure of the Renewables Obligation; how the removal of subsidies that were stated Government policy would be legally implemented; and on the considerations for EU state aid if specific renewable technologies were excluded from support.

Box 2: The Renewables Obligation

The Renewables Obligation provides support for large scale renewables (5MW and over) in the form of Renewable Obligation Certificates (ROCs) which are create by renewable generators per MW of electricity generated. ROCs have a market value and are tradable. Electricity suppliers have to present a set amount of certificates to the regulator Ofgem at the end of each year, or pay a penalty.

As a result, renewable electricity generator has two sources of income:

- Income generated from the sale of electricity to the wholesale market (which does not distinguish between renewable and non-renewable energy)
- Income from the sale of ROCs.

Announcements affecting renewables and energy efficiency

Following the May 2015 elections, a series of announcements were made throughout the summer with an impact on renewable generation:

- On 18 June there was an announcement by the Government of its intention to close the Renewables Obligation for onshore wind one year early, in 2016. This would apply to all developments over 5MW in size.

- Following this on 8 July, the Summer Budget included an announcement on the removal of the Climate Change Levy Exemption that applied to renewable electricity supplies. The Treasury also announced in its Productivity Plan Fixing the Foundations, on 10 July, that the introduction of the Zero Carbon Homes standard in 2016 would be scrapped.
- The Government announced on July 22 that DECC's latest forecasts under the Levy Control Framework, set up to limit cost to consumers of renewable energy, had shown that forecast spend on renewable energy subsidy schemes would be higher than expected and needed to brought under control.[70] This. At the same time DECC announced a package of measures, to "control the cost of renewable energy", including controlling subsidies for biomass and solar PV under the Renewables Obligation and changing accreditation rules under the Feed-in Tariff. The Secretary of State for Energy and Climate Change, Amber Rudd, also set out why renewable energy subsidies were being reviewed:

  > My priorities are clear. We need to keep bills as low as possible for hardworking families and businesses while reducing our emissions in the most cost-effective way.
  >
  > "Our support has driven down the cost of renewable energy significantly. As costs continue to fall it becomes easier for parts of the renewables industry to survive without subsidies. We're taking action to protect consumers, whilst protecting existing investment"[71]

- On July 23 DECC announced that funding for the Green Deal Finance Company funding would end, removing the financial support for Green Deal measures.
- On 27 August the Government published its consultation on its Review of Feed-in Tariffs, for projects smaller than 5MW, including onshore wind. Included in the proposals was the option of removing payments for the generation tariff (which is the larger portion of the scheme) if there was a surge of applications before the proposed changes come into force in January 2016, and retaining the payment for energy exported only. The outcome of the Review was published on 18 December 2015. The conclusion was there would be no significant change to structure of the scheme, but generation tariffs would be reduced. It will continue to include onshore wind.

New Direction for UK Energy Policy Announcement

The Secretary of State set her vision in a speech on 18 November 2015 for "an energy system that puts consumers first, delivers more

[70] There are currently three components to the LCF: Renewables Obligation; Feed-in-tariffs scheme (FITs); and Contracts-for-Difference (CfDs).
[71] DECC, Controlling the cost of renewable energy, 22 July 2015

competition, reduces the burden on bill-payers and ensures enough electricity generation to power the nation". This included:

- Consultation on ending unabated coal-fired power stations by 2025
- New gas-fired power stations a priority
- Commitment to offshore wind support completes commitment to secure, low-carbon, affordable electricity supplies
- Move towards a smarter energy system

The announcement also stated the Government's intention to focus on innovation for clean and cheap technologies and on market led choices, to keep costs as low as possible.

Box 3: Contracts for Difference (CfD)

Contracts for Difference (CfD) were introduced by the 2010 Coalition Government to replace the Renewables Obligation. They are a system of reverse auction intended to give investors the confidence and certainty they need to invest in low carbon electricity generation.

CfDs work by fixing the prices received by low carbon generation, reducing the risks they face, and ensuring that eligible technology receives a price for generated power that supports investment. CfDs also reduce costs by fixing the price consumers pay for low carbon electricity (known as the strike price). This requires generators to pay money back when electricity prices are higher than the strike price, and provides financial support when the strike electrify prices are lower.

Contract for Difference Auction Delay

The first CfD auction by the Government opened in October 2014 with the results announced in February 2015. In total 27 projects were selected to share £315m worth of contracts. This included 748.55 MW of onshore wind with a strike price between £79 and £83 MW/h, and 1162MW of offshore wind with a strike price of between £115 and £120 MW/h.

The Government's original stated intention was that the second contracts for difference would take place in autumn 2015. However in the energy policy reset announcement in November 2015 the Minister stated that the Government would make funding available for three auctions in this Parliament, with the intention of holding the first of these auctions by the end of 2016. There has not been any indication as yet as to whether any future auctions would include onshore wind.

Impacts of announcements

The potential impact of these changes on investor confidence was reflected in the UK dropping out of the top ten most attractive countries to invest in renewables (from eighth to eleventh) according to the EY Renewable Energy Country Attractiveness Index, The report concluded that "a wave of policies reducing or removing various forms of support for renewable energy projects has confused investors and consumers". The changes also led to the Energy and Climate Change Committee to launch an inquiry, which is ongoing, into Investor Confidence in the UK Energy Sector. This will "be looking at what steps Government must take to restore confidence in the UK's energy sector and improve DECC's policy making processes".

The changes have also led the Government's commitment to reducing emissions and tackling climate change being called into question. However, Ministers have been consistently reiterated that this is not the case, stating that unchecked climate change is one of the greatest long-term economic risks this country faces.[72]

4.2 Planning decisions for large onshore wind farms – Clause 79

The Conservative Party 2015 Manifesto contained a policy to give "local people" a "final say" on windfarm applications. In respect of this the Queen's speech 2015 announced the Government's intention to remove onshore wind farms (of over 50MW in size) from the nationally significant infrastructure project development consent regime, as established by the Planning Act 2008. Under the Planning Act 2008 regime the Secretary of State for Energy and Climate change is the final decision maker on whether to grant development consent to wind farms of this size. These onshore wind developments would instead require planning permission granted by the relevant local planning authority.

Once this change is made applications for wind farms over 50MW will have to follow the same procedures and policies as exists for smaller wind farm development. Planning policy introduced by the Government in June 2015, and set out in written statement, states that when determining planning applications for wind energy development involving one or more wind turbine, local planning authorities should only grant planning permission if:

- the development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan, and:
- that following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.[73]

There was some concern from the renewables industry when this policy was introduced that it would create uncertainty for developers of wind farms submitting planning applications, in particular about how the community backing test would be interpreted. A number of applications

[72] DECC, Secretary of State Amber Rudd's speech to the Aviva conference, 'Climate Change: The Financial Implications', 24 July 2015

[73] House of Commons: Written Statement (HCWS42), 18 June 2015

were withdrawn following it introduction.[74] A number of renewables developers are now reported to be working with local authorities to identify suitable sites.[75]

The Bill

Clause 79 removes the obligation to get consent from the Secretary of State, under section 36 of the Electricity Act 1989, to construct, extend or operate an onshore wind farm in England or Wales. When combined with later secondary legislation to amend the Planning Act 2008, this will mean that the developer of onshore wind greater than 50MW will need to apply for planning permission under the Town and Country Planning Act 1990 (TCPA 1990), generally to the local planning authority (subject to any changes made to the general planning regime in Wales by the Welsh Ministers, for a project in Wales).[76]

The Government has clarified that it expects that applications which have already been made under section 36 of the Electricity Act 1989 but not yet decided when clause 79 comes into force, will continue to be considered under that Act (i.e. with the Secretary of State for Energy and Climate Change taking the decision).[77] The impact assessment highlights that there are three onshore wind farms of over 50MW at a pre-application stage in England and Wales which would be affected by the change in the Bill and so would be considered by the relevant local authority.[78]

At Committee stage in the House of Lords concerns were raised by Labour and Liberal Democrat Members about what would happen to planning applications for onshore wind farms where there was not yet a neighbourhood plan in place. The Minister, Lord Bourne, said that there were a "transitional arrangement" for when a valid planning application for a wind energy development has already been submitted to a local planning authority and the development plan does not identify suitable sites and that:

> In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied that it has addressed the planning impacts identified by local communities and therefore has their backing.[79]

Further background can be found in the Library briefing paper on Planning Reform Proposals and Planning for Onshore Wind.

74 "How a wind energy policy shift is affecting local plans and applications" *Planning*, 4 September 2015
75 Ibid
76 Energy Bill [HL] Bill 92 2015-16 Explanatory Notes, para 176
77 Energy Bill [HL] Bill 92 2015-16 Explanatory Notes, para 177
78 Department of Energy and Climate Change, Energy Bill Impact Assessment: Transfer of consenting powers for onshore wind generating stations to local authorities, July 2015, p2
79 HL Deb 14 Sep 2015 c1668

Clause 79 has been certified by the Speaker as falling under the English Votes for English Laws (EVEL) procedure. Further details of what this means can be found in the Library briefing paper on EVEL.

4.3 Early closure of Renewables Obligation to onshore wind – removed Clause 66

As set out previously, larger wind energy projects (5MW and above) are supported through the Renewables Obligation, which was due to close in March 2017. The RO is in the process of being been replaced by Contracts for Difference and there has been one auction so far under CfD, which included onshore wind. There has not been any indication from Government whether onshore wind will be included in further auctions. The result of a review of Feed-in Tariffs (FITs) was announced by the Government in December. Following the FIT review, onshore wind will continue to qualify for support under the scheme.

The Bill

The Government intention had been to implement the manifesto pledge for no new public subsidy for onshore wind by early closure of the RO to wind. The original Energy Bill, as introduced included, a clause (Clause 60) which would have legislated for closure of the Renewables Obligation a year early, in March 2016. The Explanatory Notes summarise the provisions as follows:

> Clause 60 amends the Electricity Act 1989 to provide for the closure of the RO to new onshore wind generating stations located within Great Britain on 31 March 2016. It does this by preventing renewables obligation certificates from being issued for electricity generated by these generating stations after the closure date of 31 March 2016.

The Clause also included provisions for the Government to bring forward in regulations detailed provision in relation to the RO closure measure. This would flesh out the statement made by the Minister that the Government would give access to support under the RO to those projects which, as of 18 June 2015, already had planning consent, a grid connection offer and acceptance, and evidence of land rights for the site on which the project would be built.

There was a great deal of debate together with a large number of Government and Opposition amendments in the Lords, tabled for this part of the Bill. The result of this was that the clause (by then Clause 66) was removed through an Opposition amendment at Report stage, following a vote with 242 Members for and 190 against. This was in itself controversial as Ministers took the view that the clause fell under the Salisbury Convention by being a Manifesto commitment.

Box 4: The Salisbury Convention

The Salisbury Convention is generally understood to mean that the House of Lords should not reject, at Second or Third reading, Government Bills brought from the House of Commons for which the Government has a mandate from the nation. The Liberal Democrats take the view, restated in the debate, that the Salisbury Convention is a historical agreement between the Labour Party in the Commons and the Conservative Party in the Lords. Further details can be found in the Library Brief on Conventions on the relationship between the Commons and the Lords.

Baroness Worthington set out in detail during the debate why Labour did not agree that the Clause fell within the Salisbury Convention:

> I am aware of the Salisbury convention, but in this case we have a very ambiguous set of words which I am sure were thought about with care but certainly were not consulted on and no detail was applied. We are referring to a very short sentence. There are great ambiguities here. The actual phrase is,
>
> > "we will end any new public subsidy",
>
> for onshore wind. The word "public" is interesting because, strictly speaking, the payments come out of bills, not from the public purse. The word "new" is very interesting and open to very great interpretation. This was an existing support scheme and one that was already closing, and one on which, during the passage of the Energy Act 2013, in which I took part, there was a huge amount of consensus built, as well as engagement with industry, proper consultation and pre-legislative scrutiny to arrive at a suitable arrangement for winding-up the RO. That took many weeks and months of deliberation, and arrived at a line being drawn. The Government say that they need to draw the line somewhere. Actually, that line was drawn. It has now been moved and the process by which it was moved did not pay enough tribute to or treat with enough respect the investors in British industry whose confidence this is now undermining. It is for that reason that I do not interpret the Salisbury convention as applying to Clause 66.[80]

The Debate

The debate on this clause was wide-ranging with Peers expressing concerns both about the process, including the lack of consultation and the short notice provided be Ministers on amendments, and the content of the clause. Some of the major points of discussion are summarised below.

Impact Assessment and Consultation

Peers expressed concerns that about the timing and quality of the Impacts Assessment published by the Government on 8 September 2015, and the lack of a formal consultation on the proposal to close the RO early. Baroness Worthington stated:

[80] HL Deb, 21 October 2015, c681

> I am afraid that there is insufficient detail in the impact assessment. It does not give us any sight of the Government's numbers on this or explain why they are so concerned. More than that, the impact assessment makes me fear that the department does not even understand the energy policy that it is governing. When it comes to considering the benefits and costs of this intemperate change to policy, which was changing anyway, it considers only the positive benefit of a reduction in resources.

There was no formal consultation on the proposals. However the Government published an updated Impact Assessment on 7 October 2015 "following a review of evidence received during a stakeholder engagement exercise and changes to the final policy position as a result". The process was summarised as follows in the Assessment:

> An engagement exercise was held with hundreds of industry representatives, developers, investors and supply chain representatives, across Scotland, England and Wales, which concluded on 31st July 2015. The engagement process included a series of roundtable discussions with core industry representatives, a range of bilateral meetings and several large stakeholder events. In addition, DECC received a substantial amount of written evidence from stakeholders across the UK energy sector, including onshore wind developers, trade bodies, investors, supply chain companies, as well as from the Devolved Administrations.

Savings to customers

The revised Impact Assessment stated that the central estimate on the impacts on customers' bills was of 30 pence per year by 2017.

> Reduced risk to LCF from over-allocation of renewable energy subsidies, and benefit to consumers from reductions in consumer energy bills (in 2016/17 average household electricity bills could be up to £3.40 (0.6%) lower, with a central estimate of around £0.30 (0.05%), compared to the Do Nothing option) (2014 prices).

Baroness Worthington expressed concern that if offshore wind replaced the previously projected deployment of onshore wind there would be a net increase to customers' bills under this clause.[81] The Bishop of Chester pressed the Minister on the savings that would result from the early closure of the RO, who confirmed an upper limit of £270m a year.[82] This is the figure in the Impact Assessment high scenario. The central scenario estimates a saving of customers' electricity bills of £20m a year.

Territorial Extent

Baroness Worthington tabled an amendment at Committee to transfer back to Scottish Ministers the power to close the Renewables Obligation. This power was returned the UK Parliament by the previous Government in the Energy Act 2013, as part of legislating for the closure

[81] HL Deb, 14 Sep 2015 c1698
[82] HL Deb, 21 Oct 2015 c687

of the Renewables Obligation in March 2017. She explained the reason for the amendment was this return of powers had been done "on the clear understanding that and promise from the Government that there would be no policy implications".[83] In response Lord Bourne, speaking for the Government, stated that the 2013 change was introduced to ensure that the RO closure would take place consistently across Great Britain and that "those reasons still hold firm today"[84]

18th June 2015 cut-off date

The original clause as proposed, did not include any detail of how the cut-off date for qualifying projects would be applied. Peers were concerned about the lack of clarity in a number of areas. The Minister promised to return with amendments that would include these provisions in Bill, rather than the original intention of using secondary regulation.

Following a Committee session[85] during which the Government's first set of amendments was debated and then withdrawn, the following clarification was provided by Lord Bourne at Report when tabling an amended Clause:

- The cut of date for planning permission would remain 18th June 2015, rather than 8 October 2015, when the Government published full details, suggested by some Peers as a fairer approach.[86] .
- Successful appeals on refused planning decisions that were taken before 18th June 2105 would still qualify for the RO.
- Projects delayed because of work on radar stations or radar equipment, outside reasons their control would qualify for a 12 month grace period.
- An investment freeze condition where projects could qualify up to the date of Royal Assent of the Bill if they could show that a "recognised lender was not prepared to provide that funding until enactment of the Energy Act 2016". However, what would qualify as a recognised lender was still subject of ongoing work by the Department.[87]

The updated Impact Assessment stated that a high number of stakeholders suggested that the grace period should be open to projects that had submitted planning permission rather than achieved consent by the 18th June 2015. The Government was not sympathetic to this stating, in the Assessment, that it could result in an extra 7.1 GW of onshore wind:

> Our initial analysis in advance of the 18th June announcement suggested that there was approximately 7.1GW of onshore wind

[83] HL Deb 14 September c c1699
[84] Ibid 1674
[85] HL Deb, 14 October 2015
[86] HL Deb, 21 October 2015 c683
[87] Ibid c669

> in the planning pipeline (projects which have applied for planning permission). Not all of this is expected to build out in time for the original closure date of the 31st March 2017, but if we were to allow all projects which are at application stage, access to the grace periods, then up to 7.1GW of extra wind could be eligible for the grace period.

However, Full Fact has argued this would only be the case if all current planning applications were approved and generating power before March 2017.[88] The central estimate in the Impact Assessments, based on the average recent planning approval and construction rates, is an extra 0.2GW of deployment.

Lord Wallace, speaking for the Liberal Democrats, set out in Grand Committee several examples of projects that would be adversely affected by the proposed conditions.[89] Lord Deben, chair of the Climate Change Committee, did not take a position on the decision to close the Renewables Obligation early. He was of the view that the proposed amendments went a long way to address the "reasonable expectation on the part of business that if it invests, it will get certain advantages from the Government".[90] However, he expressed concerns about the number of particular examples which fell on the wrong side of the lines that have been drawn because they could "undermine the way in which the Government are seen" and called for a way through to be found.

[88] Full Fact, The proposed Renewables Obligation cut off: how much onshore wind capacity loses out, 19 November 2015
[89] HL Deb, 14 October 2015, GC5
[90] HL Deb, 14 October 2015, GC15

5. Part 6: United Kingdom Carbon Account

Part 6 of the Bill consists of one clause, Clause 80, which will amend the Climate Change Act 2008 to adjust the performance measure used in the UK's statutory carbon budgets. The new measure would use UK territorial emissions only. With this change, credits or debits from the EU Emissions Trading System would not contribute towards the UK's performance against its carbon budgets from 2028 onwards.

This is not a Government clause and was introduced in the Lords as an Opposition amendment.

Box 5: The Climate Change Act 2008 and Carbon Budgets

The Climate Change Act 2008 established a target for the UK to reduce its emissions by at least 80% from 1990 levels by 2050. To ensure that regular progress is made towards this long-term target, the Act also established a system of five-yearly carbon budgets. The first four carbon budgets, leading to the end of 2027, have been set in law. The second carbon budget commits the UK to reduce carbon emissions over the period 2013-17 to 29% below 1990 levels, the third budget 35% by 2018-22 and the fourth budget 50% by 2023-27.

5.1 The UK Fifth Carbon Budget

The Committee on Climate Change (CCC), is an independent statutory body established to advise Government and Parliament on meeting its obligations under the Climate Change Act. It published its advice to Government on the Fifth Carbon Budget in December 2015, covering the period 2028-2032. The CCC has recommended a 57% reduction from 1990 levels for this period. The Government will propose draft legislation for the fifth budget in summer 2016.

Under the Climate Change Act, performance against carbon budgets is measured by the 'net UK carbon account'. This measure allows carbon credits bought from the EU Emissions Trading System (ETS) to improve performance, by decreasing the measurement of emissions. Conversely, carbon credits sold to the EU ETS can worsen performance, by increasing the overall total emissions attributed to the UK account.

Box 6: The Net UK Carbon Account

As set out in Climate Change Act, the net UK carbon account is made up of the sum of emissions from the 'traded' and 'non-traded' sectors. The 'traded' sector refers to those sectors of the economy covered by the EU Emissions Trading System (EU ETS), primarily electricity generation and energy-intensive industry. The 'non-traded' sector covers all emissions outside the EU ETS, including transport, heating in buildings, agriculture, waste and some industry. Emissions from these two sectors are measured for the net UK Carbon account as follows.

- The emissions attributed to the non-traded sectors reflects the actual emissions from the UK in those sectors.
- The emissions attributed to the traded sectors is the UK's share of EU ETS cap (the total emissions permitted in the European traded sector), rather than the actual UK territorial emissions in those sectors.[91]

5.2 Investor Confidence and a Decarbonisation Target

The Energy Act 2013 includes a provision for a decarbonisation target to be put in place for 2030, any time after 2016. Such a target would limit the emission of carbon dioxide allowed per MW of electricity generated.

However, following the Conservative manifesto commitment not to support new targets for the power sector, the Government has made clear that it has decided not to take up this option. During Committee stage of the current Bill the Minister stated that the Government did not intend to introduce the decarbonisation target in 2016 as "the manifesto is absolutely clear that there will be no power sector target. That is the position of the Government."[92] The Minister confirmed that this was the case at Report stage in the Lords.[93]

Labour put forward a group of amendments at Report. They were aimed at addressing a lack of investor confidence in the period 2020 to 2030 in the light of the change in EU policy; and the Government's decision not to introduce a decarbonisation target in 2016; and the suspension of the CFD auctions in 2015:

> In the EU 2030 climate and energy package, there is no legally binding renewables target for member states from 2020. That leaves open what guidance there is that would give investors confidence that there will be a market or support for technologies that are not yet able to stand fully on their own two feet in competing in the market. The reason they are not able to stand fully on their own two feet is partly to do with the failure of another EU policy: the EU Emissions Trading Scheme. For many reasons which I will not bore the House with, the EU Emissions Trading Scheme has failings and has not been sending a strong enough carbon price signal to enable low-carbon technologies to

[91] Committee on Climate Change, The fifth carbon budget November 2015,
[92] HL Deb 14 Sep 2015 c1711
[93] HL Deb 21 Oct 2015, c719

> compete with the more emitting technologies. So we have a potential signal in the form of the EU Emissions Trading Scheme, but that signal is not sufficient or stable enough to give investors confidence—hence the need for domestic policy and the UK Energy Act 2013 to supplement it.[94]

Amendment 78S would have introduced an obligation on the Government to bring forward regulations for decarbonisation obligation within six months. Amendment 78T would have required CfD auctions to be held annually as long as the carbon intensity of the electricity generation was above a certain level. Both were withdrawn following debate, the first on the basis of the Government's manifesto commitments for no new targets for the power sector.

Carbon Account - New Clause 80

Part 6 of the bill has only one clause, Clause 80, which was originally Amendment 78UA at Report stage in the Lords . The clause was inserted by Baroness Worthington, Lord Grantchester and Lord Teverson. The amendment was agreed by 189 votes to 166. [95] The clause states:

> In section 27 (net UK carbon account) of the Climate Change Act 2008, after subsection (2) insert—
>
> "(2A) No carbon units deriving from the operation of the EU Emissions Trading System may be credited to or debited from the net United Kingdom carbon account for any period commencing after 31 December 2027."

It seeks to adjust the performance measure used in the carbon budgets so that performance is measured using actual UK territorial emissions only. With this change, credits or debits from the EU ETS would no longer contribute towards the UK's performance against its carbon budgets.

The Government Explanatory Note summarised the measure as follows:

> Clause 80 restricts the power which the Secretary of State has under section 27(1) of the Climate Change Act 2008 ("the 2008 Act") to make regulations prescribing how carbon units are to be debited or credited in calculating the "net UK carbon account". The target set under section 1 of the 2008 Act for 2050 is expressed by reference to the net UK carbon account for that year. In addition, the carbon budgets set by order for the purposes of section 4 of that Act are amounts for the net UK carbon account for each 5 year budget period.
>
> The effect of the amendment is to prevent the Secretary of State to make regulations permitting carbon units deriving from the European Union Emissions Trading Scheme to be used in calculating whether the 2050 target has been met or any budget

[94] HL Deb 21 Oct 2015 c712
[95] HL Deb, 21 Oct 2015, c714

> for any period after the end of 2027 (i.e. in relation to the 5th carbon budget and beyond).

The Debate

Baroness Worthington argued that the change would support investor confidence in the energy sector by shoring up confidence about the pathway to decarbonisation of the power sector.[96] She continued to say that "essentially, we pay other people to decarbonise and then we import the certificates" and that "potentially, we are repeatedly paying other countries to decarbonise and not investing in our own country."[97]

In response Lord Bourne argued that "the great danger with the proposal is that it takes away the flexibility of being able to use the trading system". "At the moment, it does not have to be used but it can be used if it is appropriate. If we were to go down this path, we would be throwing away that tool." [98] In further defence of the use of the EU ETS, Lord Bourne stated

> We do not want to imply a loss of faith in the EU emissions trading system as a means of achieving least-cost decarbonisation by decoupling our carbon budget regime from it.[99]

Lord Howell raised other questions about the clause. He questioned whether enough gas-fired power stations will get built with this change and whether the change would "lead to cheaper power in the power sector".[100] With regards to costs, Lord Bourne said that "this would jeopardise that, at the very least".[101] However, Baroness Worthington said that she believed that for "for UK plc" it would be the cheapest way.[102]

Baroness Worthington also noted that she felt "confident that the Government will not say that it falls foul of their manifesto commitments, because it is not a new target on the power sector". Another proposed Labour amendment for a 'decarbonisation obligation' was withdrawn on the basis of manifesto commitments.[103]

Implications of the New Clause for Carbon Budgets

The proposed change would legislate against UK territorial emissions going above the stated carbon budget level, as EU ETS credits would no longer be included. The change would also mean the CCC would have to produce a new fifth carbon budget recommendation based on the amended Climate Change Act.

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[96] ibid., c716
[97] ibid., c722
[98] Ibid., c722
[99] ibid., c721
[100] ibid., c717
[101] ibid., c721
[102] ibid., c722
[103] Ibid c716

Any new budget recommendation may well be based on the cost effective path for territorial emissions that the CCC have outlined (but not recommended) in the 5th Carbon Budget Report Summary:

> Under the Climate Change Act, performance against carbon budgets is measured by the net UK carbon account. In practice, this means that the part of the budget for the power sector and energy intensive industry, which is covered by the EU Emissions Trading System (EU ETS), is based on the UK's share of the ETS cap rather than the actual emissions in those sectors.
>
> It is clear that in order to stay on track to the 2050 target in the Act, actual emissions must be reduced. The accounting rules should not be used to mask the real progress to the UK's legal commitment. Our proposed budget implies a 57% reduction in emissions from 1990 to 2030 on the accounting basis in the Act.
>
> We also identify the cost-effective path for actual emissions across the UK economy (ignoring the allocation of emissions allowances in the EU ETS). For actual emissions the recommended budget requires a 61% reduction from 1990 to 2030. The larger reduction in actual emissions reflects our scenarios for the power sector. Under the cost-effective path the power sector should reach a carbon intensity of below 100 gCO2/kWh in 2030. This would result in emissions in the traded sector of around 450 MtCO2e across the fifth carbon budget period, lower than the Committee's current best estimate of the allocation of emissions allowances to the UK.
>
> To stay on track to the 2050 target and to support emissions reductions elsewhere in the economy, the power sector will need to reduce emissions at around the rate in our estimate of the cost effective path. In line with our approach to date, the Committee will continue to assess progress towards carbon budgets and the 2050 target on the basis of both the net carbon account and actual emissions across the economy.

Further details on the implications of the amendment for the UK Carbon budgets are explored out in the POSTBrief Measuring Performance in the Carbon Budgets.

BRIEFING PAPER

Number CBP 7466, 14 January 2016