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BRIEFING PAPER

Number 7531, 8 March 2016

Energy Bill - Committee Stage Report

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Summary

The Energy Bill has passed through the House of Lords and had its Second Reading in the House of Commons on 18 January 2016. The Bill was debated in Public Bill Committee between 26 January and 4 February 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.

A number of significant amendments were made in the Public Bill Committee:

- A Clause that changed the 'principal objective' of Maximising the Economic Recovery of oil and gas was removed;
- The time between OGA performance reviews was lengthened;
- The Government re-introduced a Clause on the closure of the renewables obligation on 31 March 2016;
- A Clause to adjust performance measure used in the carbon budgets was removed.

Further information on the Bill, including links to other research briefings, earlier versions of the Bill, explanatory notes and links to debates, can be found on the bill page.

The following links may also be useful:

- The Government's page on the Wood Review
- Library Briefing on UK Offshore Oil and Gas Industries
- Library Briefing on Oil Prices

1. Part 1 – the OGA

Part 1 of the Bill formally establishes the OGA as an independent regulator of UK Oil and Gas recovery. It will take the form of a government company. It 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.

Part 1 was significantly amended twice:

- the 'principal objective' of maximising the Economic Recovery of oil and gas was changed;
- the time between OGA performance reviews was lengthened.

1.1 Committee Debate

Reviewing the OGA

Dr Alan Whitehead, the opposition spokesperson, tabled an amendment to require that the Secretary of State assessed whether the OGA was fit for purpose within a year of the Act coming into force. Dr Whitehead explained the purpose of the Amendment was not to periodically review the OGA's performance but rather to consider the 'initial scoping of the purpose of the OGA and how it had been transferred from idea to action.'[1]

The Minister, Andrea Leadsom, argued:

> For such a wide ranging review to be undertaken within one year, it would have to begin almost immediately, diverting significant OGA and Government resources from the urgent task at hand.[2]

The amendment received support from the SNP but it was withdrawn.

During the same debate Government amendments were agreed to that changed the wording of Clause 17. Clause 17 also deals with reviewing the OGA but establishes a periodic, performance review process rather than an initial, fundamental review.

While in the House of Lords Clause 17 was amended to change this from a review every three years to an annual review. The Government amendment in Commons Committee undid this change so that a review would be required every three years. The Minster said annual reviews would:

> […] create significant resource burdens for the OGA and the Government and risk obstructing the work of the OGA. The process would be inefficient and would therefore risk producing an ineffective review. It would weaken the ability of the OGA to act as an independent regulator free from

[1] PBC 26 January 2016 c6
[2] PBC 26 January 2016 c7

> Government intervention. It would also create a review process significantly out of step with those to which other regulators are subject.[3]

The 'principal objective'

The Bill implements recommendations of the Wood Review on Maximising the Economic Recovery of petroleum from the UK's Continental Shelf (UKCS).

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).

MER UK is to achieve the "principal objective"[4] of maximising the economic recovery of UK petroleum.

Clause 8 (now removed) was added by the House of Lords during the Report Stage as an opposition amendment. It amended the 'principal objective' set out in section 9A of the Petroleum Act 1998 so that it changed from maximising economic recovery, to maximising economic return and additionally covered functions relating to decommissioning oil and gas infrastructure and carbon capture and storage (CCS).

During the Commons Committee debate Clause 8 was removed on division. The Minster argued against it, noting in particular that the Bill had been amended in other ways to provide greater certainty on CCS:

> It is damaging because not only does it introduce significant uncertainty about the principal objective, but it could also be interpreted as requiring industry to meet substantial and uncapped capital expenditure to secure and maintain infrastructure—potentially indefinitely—prior to decommissioning and until such time as a carbon capture and storage project is ready to use it. […]
>
> The clause is also self-defeating, because it would be likely to damage the prospects of carbon storage facilities being developed in the North sea. By removing the OGA's focus on maximising economic recovery, we risk degrading its ability to provide the support to industry that is so urgently needed, and that in turn risks the premature decommissioning of the UK continental shelf, which would result in a loss of assets, infrastructure and skills, including those that could help to promote the longevity of the industry through carbon storage projects.
>
> The clause is unnecessary because the Government tabled substantive, meaningful amendments in the other place to reflect the OGA's important functions in respect of decommissioning and CCS.

A number of points were raised by Members in debate on the Clause. Clive Lewis MP noted there was Labour support for the clause:

> We support the clause because, instead of having a strategy whose primary goal is to maximise the quantity of petroleum profitably extracted from the North sea, we should have one that maximises the return on investment—

[3] PBC 26 January 2016 c7

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

> investment in infrastructure, for example—in the North sea. If and when activity such as CCS can be carried on economically in the North sea, the OGA should be given the job of promoting that as well. The OGA's powers to push the industry to collaborate are extensive and we applaud some of the points that the Minister made previously. However, it clearly makes sense for the OGA also to think about the wider uses and potential reuses of the infrastructure, information and skills that are there, which other industries could deploy on the UKCS later, and CCS is a clear example of that.[5]

The Committee divided on retaining the clause (Ayes 5, Noes 12) and the Clause was removed.

Opposition amendments on environmental considerations and climate change

Dr Whitehead introduced an amendment to require the OGA to have regard to environmental considerations and climate change when exercising its functions. The amendment would have required the OGA 'to address environmental considerations and to facilitate the pursuance of section 1 of the Climate Change Act 2008 in relation to relevant activities'.

The Minister argued that the OGA was not the body to lead on these responsibilities:

> Climate change is, of course, of great importance, but the OGA's primary role and focus will be to deliver MER UK. It would not be right to impose obligations on the OGA relating to environmental considerations in respect of which it does not have expertise and is not required to have expertise. It is important that our climate change objectives and environmental regulations are furthered by the experts in the field.[6]

The Committee divided (Ayes 5, Noes 12) and the amendment was not made.[7]

A subsequent amendment was also table by Dr Whitehead to allow the Secretary of State to give direction to the OGA if the Secretary of State considered these were necessary to inform the OGA's role in developing and promoting carbon storage and/or to meet the terms of the Climate Change Act 2008 or any international obligation on climate change.

The Minster argued the amendment was unnecessary,

> …since the Secretary of State's powers to give directions to the OGA as to the exercise of its functions already applies to those functions. Similarly, directions that the Secretary of State considers necessary to meet the terms of the Climate Change Act 2008 would clearly be in the public interest, and therefore clause 10 already provides for such directions to be made.[8]

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5 PBC 26 January 2016 c21
6 PBC 26 January 2016 c23
7 PBC 26 January 2016 c27
8 PBC 26 January 2016 c31

The Committee divided (Ayes 5, Noes 12) and the amendment was not made.[9]

2. Part 2 – Further Functions of the OGA

Part 2 of the Bill gives the OGA additional powers around access to company meetings; data acquisition, retention and transfer; dispute resolution; and sanctions.

No amendments were debated on this part of the Bill and it remains unchanged (other than consequentially) since Second Reading.[10]

9 PBC 26 January 2016 c33
10 PBC 28 January 2016 c46

3. Part 3 - Oil and gas infrastructure

Part 3 of the Bill was introduced by the Government at the Lords Report Stage. It contains provisions for sharing existing infrastructure and ensuring that decommissioning plans take account of the need to maximise economic recovery of oil and gas.

This part was not amended in Committee.

3.1 Second Reading

At second reading this Part received cross party support. Rishi Sunak (Conservative) argued for collaboration on shared access to infrastructure. He said:

> Today, there are more than 300 operators in the North Sea, often small, often interdependent. Sir Ian Wood's review found more than 20 instances, in the last three years alone, where operators' inability to collaborate on shared access to infrastructure, such as shipping and pipelines, had led to higher costs, delays and stranded assets.[11]

Dr Alan Whitehead outlined the need to ensure that decommissioning was thought about carefully so that fields can be used for carbon capture and storage. He added that 'this is not just for the UK, […] the North Sea could be Europe's depository of choice in the future.' [12]

3.2 Committee stage

Clauses 71 and 72 – Third party access to infrastructure

Clauses 71 and 72 extend the third-party, access regime found in Chapter 3 of the *Energy Act 2011*. Dr Alan Whitehead sought clarification on the precise purpose and meaning of the process set out in these clauses. Andrea Leadsom provided a detailed explanation of the clauses in the debate.[13]

Clauses 71 and 72 were ordered to stand as part of the Bill

Clause 73 – Decommissioning

The Opposition sought to insert in this Clause a requirement that a report be made to Parliament on decommissioning costs (new clause 9). Dr Whitehead outlined the scale of decommissioning in the North Sea and explained what the new clause was designed:

> to seek a clear picture for Parliament of what is happening with decommissioning costs: whether they are running ahead in the way that I described or whether they are part of a much longer and more measured process, which I hope will be the outcome with the proper oversight of the OGA and the considerations it will bring to the whole decommissioning process.

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11 HC Deb 18 Jan 2016 c1194
12 HC Deb 18 Jan 2016 c1233
13 PBC 28 January 2016 c54

> […]
>
> It would be a great help if that material was available in an annual report for all who are looking at that process. That is the heart and purpose of the amendment, which would be a thoroughly constructive addition. I trust that the Minister will immediately take it on board and decide to run with it. [14]

Philip Boswell (SNP) pointed out that Oil & Gas UK already produce an annual Decommissioning Report. [15] The SNP were concerned that the annual report, as proposed by Labour, might conflict with the work of the industry as well as adding to the additional reporting requirements that might be required. [16] Andrea Leadsom responded to the proposed annual report on decommissioning costs as follows:

> [ ] the inevitable consequence of a maturing basin means that the future cost of decommissioning activity in the North sea is expected to be substantial, and the scale of the decommissioning challenge is undeniable. That is why Government measures in the Bill are aimed at preventing premature decommissioning of critical UKCS infrastructure and ensuring that the decommissioning that does occur represents the best value for money.[17]

The Opposition welcomed the reassurances given by the Minister. Clause 72 and Schedule 2 were ordered to stand as part of the Bill unchanged.

Clause 74 – Planning for decommissioning

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

The SNP tabled an amendment (new clause 16) that proposed a strategy for ensuring that UK companies benefit from decommissioning contracts. Andrea Leadsom responded.

> The intention behind the new clause—the development and support of a world-class decommissioning supply chain industry—is something that the Government wholeheartedly support. Such an industry certainly has the potential to create world-leading expertise and to support thousands of UK jobs.

The OGA is working to develop a supply-chain strategy with interested parties. The Minister concluded:

> [ ] the need for action is now, as we have discussed at length. Putting his proposal into primary legislation could force us to stop, consult and think again, and we could miss the ever-closing window of opportunity that we have to support the industry immediately. I hope the hon. Gentleman is reassured by my words and will agree to withdraw his proposed new clause. [18]

Clause 74 remained unchanged.

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14 PBC 28 January 2016 c57
15 Oil and Gas UK Decommissioning Report 2015, November 2015
16 PBC 28 January 2016 c58
17 PBC 28 January 2016 c60
18 PBC 28 January 2016 c64

4. Part 4 – Fees

The part of the Bill enables DECC to make secondary legislation to set fees or charges to recoup the costs associated with providing ancillary functions carried out under part 4A of the Energy Act 2008 and part 4 of the Marine and Coastal Access Act 2009 that relate to licensing.

This Part of the Bill was not amended in committee.

Dr Whitehead (Labour) did question what these resulting regulations would do in practice. **Andrea Leadsom (Minister of State)** explained that before the regulations were finalised an impact assessment would be prepared. She also added that the clause specifically related to oil and gas functions and that it 'has been discussed closely with industry'.[19]

[19] PBC 2 February 2016 c71

5. Parts 5 – Wind Power

The debate on this part of the Bill focused on the early closure of the renewables obligation for onshore wind, in April 2016 rather than April 2017.

Clause 78 to ensure local consent for onshore wind generating stations passed without amendment.

The Government successfully re-introduced the clause on the closure of the renewables obligation on 31 March 2016, now clause 79 in the Bill, which was removed in the Lords. A significant number of amendments were tabled, but failed, aimed at clarifying and extending the application of the 18 June 2015 qualifying date for onshore wind installations.

In addition a new clause, now clause 80 was added by the Government to create backstop powers to ensure any additional support Northern Ireland decides to provide for onshore wind, where the renewables obligation is still being developed, is funded by consumers in Northern Ireland only.

Clause 83 on commencement was amended so that clauses 78 to 80 would come into force on Royal Assent

5.1 Local Consent for onshore wind – England and Wales

Clause 79 provides for planning applications for wind farms over 50MW having 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, also requires planning impacts identified by affected local communities to have been fully addressed and therefore the proposal would have community backing.

Alan Whitehead tabled an amended that would have required the Secretary of State to report to Parliament within six months of on the impact of this and other renewable policy changes on the UK's ability to meet its 2020 EU renewable target.[20]

The Minister argued in response that the Government's impact assessment did not anticipate any change in wind turbine deployment arising as result of clause 79, and that six months would be too soon to show any change.[21]

5.2 Closure of the Renewables Obligation

Areas covered during the debate included whether the early closure of the Renewables Obligation (RO) was a manifesto commitment or not;[22] Members also debated how the proposed early closure and other

[20] Ibid c72
[21] Ibid c77
[22] PB, 2 February 2016, c118

measures on renewables announced since May 2015 may impact investor confidence in renewables in the UK.[23]

When re-introducing the Government clauses on the RO, the Minister restated the reason for bringing forward the legislation:

> To deliver on the manifesto commitment, the Government intend to close the renewables obligation to new onshore wind in Great Britain after 31 March 2016, one year earlier than was previously planned.[…]. To protect investor confidence, we proposed a grace period for those projects meeting certain conditions as at 18 June. This would allow such projects to continue to seek accreditation under the RO after the early closure date.[24]

As previously stated, the grace period will apply to projects which have the relevant planning consent; grid connection offer and an access right to land.[25] There will also be an extension up until the date legislation receives Royal Assent for projects that have struggled to obtain finance as result of the proposed legislation; and a continuation of existing grace periods allowed for grid or radar works delays.

Clive Lewis, speaking for the Opposition, raised concerns that if successful:

> The Government will have adversely singled out the most cost-effective, low-carbon technology available to us, at a time when the Secretary of State herself admits that the UK is on track to miss its legally blinding EU obligation on renewable energy by an estimated 50 TWh hours, a shortfall of almost 25%.[26]

Phillip Boswell, for the SNP, tabled a number of unsuccessful amendments to extend and clarify how the 18 of June 2015 date would be applied. They included amendments to include:

- Projects where an extension to a planning determination deadline had been agreed by the developer and a planning authority;
- Applications which have been called in by Ministers;
- Projects where planning permission had been resolved before 18 June but not technically granted until after that;
- Projects over 50MW for which planning consent falls under 36 of the Electricity Act 1989, in particular small extensions to larger sites;
- Projects under 50MW where a further application takes them over the threshold;
- Projects with planning consent on 18 June that that seek to modify planning consent;
- Projects where grid connections agreements are varied;
- Remove the definition of "approved lender" for the investment freeze clause, extending it to funding from any source.

In response the Minister stated that the grace period drew a clear line for investors and:

> That approach has underpinned our engagement with industry and wider onshore wind stakeholders. We have been told that the

[23] Ibid c124
[24] Ibid c122
[25] ibid
[26] Ibid c125

> industry ultimately supports our approach. We have also heard anecdotally that some projects that did not meet the grace period criteria have already fallen away, so to change the goalposts at such a late point would be fundamentally unfair to developers who may have chosen not to continue their projects in the light of our original announcement.[27]

In her response the Minister made clear that projects that did not have formal planning permission would not qualify but that where there is a need to vary planning permission after the 18 June, as is currently allowed for in legislation, they would. The same would apply to delays caused by variations to grid connection agreements. The Minister also clarified that consent granted under Section 36 of the Electricity Act 1989 was already allowed for in the Government clauses. A number of similar amendments have been tabled again for Report Stage.

The SNP also tabled an unsuccessful amendment that would return to Scottish Ministers the power to close the Renewable Obligation in relation to electricity generated by onshore wind. The powers were removed in the Energy Act 2013, with the aim of ensuring a coherent closure of the Renewables Obligation. Phillip Boswell was of the view that the original justification no longer held and the powers should be returned to the Scottish Government. With regard to meeting any costs of maintaining the RO in Scotland he stated:

> We are looking for dispensation from paying the £92.50 strike price for Hinkley Point C—double the current electricity rate—that seems to have been imposed on the rest of the country by this Government.[28]

The Minister opposed the change stating that it was imperative that consistency was maintained across Great Britain as a whole.[29]

[27] Ibid c156
[28] Ibid c133
[29] Ibid c159

6. Part 6 - Emissions Trading: UK Carbon Account

Clause 80 at Committee was an Opposition amendment introduced in the Lords 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 from 2027. The Minister did not support the Lords amendment, stating it was not the right time to make such a change, and that it should be removed, but it was something the Government would keep under review:

> There are positives and negatives in different accounting methods. Weighing them up needs careful consideration of a number of factors, such as the potential impact on consumers, on businesses, on industry and, of course, on cutting emissions at the lowest cost. It is absolutely right that we keep our accounting practices under review. However, I make it clear to all hon. Members that now is not the right time to make this change. The Government are totally focused on setting the fifth carbon budget by 30 June, and we have already been working on it for upwards of a year, as required by the Climate Change Act. That 30 June deadline is less than six months away.
>
> We have been working on the basis that it will be permissible to use the current accounting framework, which is also the basis on which the Committee on Climate Change has produced its advice on the level of the budget. Accepting clause 80 would threaten serious delay in setting the fifth carbon budget, putting us at risk of not complying with the Climate Change Act at a time when the UK should be showing clear, decisive leadership following Paris. It is therefore my strong desire to see clause 80 removed from the Bill.[30]

In supporting the amendment, Clive Lewis, speaking for Labour, stated:

> The Committee on Climate Change, has said that we should be a net seller of ETS credits if we are to pursue the lowest-cost option to go green and meet our climate targets. Therefore, there is a real risk that by putting off emission reductions to future years, as current accounting practices inevitably encourage, taxpayers and consumers would be at risk of higher costs.[31]

The Clause was removed.

6.1 Other Amendments

Other Opposition amendments to the Bill included two amendments similar to failed amendments in the Lords. The first would have required yearly Contract for Difference allocation rounds as long as the UK electricity carbon intensity exceeds 100g/kWh. A second amendment would have required the Secretary of State to set a decarbonisation range for the electricity sector that would be reviewed annually. A new Opposition amendment would have required air

[30] Ibid c80
[31] Ibid c84

pollution restrictions and a carbon price to be applied to fossil fuel plants granted a capacity contract. This was aimed at addressing concerns raised by existing contracts that have been awarded to diesel generators. There was also a proposed amendment that would have devolved control of Contracts for Difference in Scotland to the Scottish Parliament.

BRIEFING PAPER
Number 7531, 8 March 2016

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