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Research Briefing

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Energy Bill: Parts 11 and 12 - Offshore wind, oil and gas

Summary

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Summary

The Government's Energy Bill [HL] 2022-23 was introduced to the House of Commons on 25 April 2023, following its Lords stages. Second reading is due to begin on 9 May 2023.

This briefing provides background on parts 11 and 12 of the bill. These parts contribute to the third of the bill's three pillars, which aims to "maintain the safety, security and resilience of the UK's energy system". They cover the following measures, as summarised by the bill's explanatory notes (PDF):

- **Part 11: Core fuel sector resilience**
    - Reducing the risk of fuel supply disruption and improve fuel supply resilience in the core fuels sector.
- **Part 12: Offshore wind electricity generation, oil and gas**
    - Amending the Habitats Regulations Assessment process for all projects making applications from late 2023, helping reduce the time it takes to develop new offshore wind projects, whilst maintaining high environmental standards.
    - Ensuring that the offshore oil and gas environmental regulatory regime continues to be effective, to maintain current levels of environmental standards and facilitate the offshore oil and gas industry's transition to net zero.
    - Amending the Petroleum Act 1998 to change the fee regime and cost recovery mechanism for the regulation and offshore decommissioning activities of oil and gas producers.
    - Granting the Oil and Gas Authority, whose business name is the North Sea Transition Authority, additional powers to ensure the UK's oil and gas [...] infrastructure remains in the hands of companies best able to operate or decommission it.

The following summarises each of these measures.

Part 11: Core fuel sector resilience

The core fuel sector covers the storage, handling, transport, processing, and production of crude-oil based fuels and renewable transport fuels (e.g. biofuels). At present the supply of these fuels is largely unregulated, with no central system coordinator. The limited regulation that currently exists

addresses only the risks to the supply of fuel before a state of emergency is declared.

The Government currently works with industry on a voluntary basis to manage issues relating to the sector's resilience, and risks to the supply of core fuels as and when issues arise. However the explanatory notes (PDF) explain that "market participants have repeatedly told the Government that competition concerns remain a barrier to full co-operation on a voluntary basis".

Part 11 would therefore give the Secretary of State new powers to "maintain continuity of core fuel supplies and ensure that industry maintains or improves its resilience to reduce the risk of emergencies affecting fuel supplies". These would include:

- A direction making power, enabling the Secretary of state to
  - issue directions to individual enterprises, and in some circumstances, more than one enterprise, to take action to maintain or improve core fuel sector resilience, and
  - make regulations requiring a class of enterprises to take action to maintain or improve core fuel sector resilience.
- An information power, enabling the Secretary of State to require core fuel businesses to provide relevant information on request, and to require major operators to report an incident which poses a significant threat to the continuity of fuel supply.
- A financial assistance power, enabling the Secretary of State to provide financial assistance to core fuel businesses to support them in implementing measures to improve resilience or protect core fuel supplies.

Part 11 builds on the proposals in the draft Downstream Oil Resilience Bill (PDF), which was published in June 2021 and which received pre-legislative scrutiny from the Business, Energy and Industrial Strategy (BEIS) Committee.

During the Lords stages, opposition peers discussed grouped amendments to expand Part 11's scope to cover the storage of natural gas and to require that financial assistance provided under the new powers would be reported to Parliament. However, the leading amendment was withdrawn.

Part 12: Offshore wind electricity generation, oil and gas

Chapter 1: Offshore wind electricity generation

Part 12, Chapter 1, Clauses 245-251 of the bill cover offshore wind electricity generation. The clauses were introduced by the Government during the House of Lords committee stage. The new clauses were not opposed and no further amendments made at report stage.

The Government has an ambition to deliver up to 50 GW of offshore wind capacity by 2030, trebling the current offshore capacity. The clauses aim to implement measures announced in the British Energy Security Strategy (BESS) published in April 2022. In this the Government committed to cutting the time to develop and deploy offshore wind projects by half, from 13 years.

The Department for Energy Security and Net Zero (DESNZ) Energy Bill factsheet on environmental commitments for offshore wind provides an overview of the measures in the bill. The bill includes powers to amend the requirements of Habitat Regulations Assessments, carried out before an offshore wind farm is approved. A new strategic compensation approach will allow for mitigation of the impacts on the marine environment across multiple projects. This is not currently possible, with any mitigation measures having to be implemented in each site. The bill would also create a marine recovery fund, for wind developers to pay into, which would deliver some of these strategic measures. The proposals have been generally welcomed by both environmental and industry stakeholders.

Chapter 2: Oil and gas

Environmental protection

Part 12, Chapter 2 Clauses 251 and 252 of the bill cover marine environmental protection. They were not amended in the Lords.

The clauses would give the Secretary of State power to make regulations concerning the offshore oil and gas environmental regulatory regime. In the explanatory notes, the Government says that it will use the powers to ensure that the regime “remains fit for purpose”.

The Delegated Powers Committee raised concerns in its report on the bill that the proposals in Clause 252, covering the impact of offshore activities on habitats, were “very wide and open ended” and considered them inappropriate. The proposals have been also criticised by stakeholders for providing too broad a power to amend environmental regulations.

Charges for decommissioning schemes

Clause 253 would amend the Secretary of State's powers in the Petroleum Act 1998 to establish a new fee charging scheme for the costs of regulating the decommissioning of offshore oil and gas and carbon storage infrastructure. The new scheme would allow costs incurred by the regulator after the approval of a decommissioning programme to be recovered from infrastructure owners and operators. It would replace the existing fee charging scheme, which only allows for a fee to be charged when a decommissioning programme is submitted to the regulator, and when a request is made to the regulator for a decommissioning programme to be revised.

The change would align the fee charging regime with the 'polluter pays' principle of UK environmental law. It would also align the decommissioning fee charging regime with that for environmental fees.

When originally introduced in the Lords, the clause proposed to give the Secretary of State a power to establish the new charging scheme administratively, rather than through regulations, meaning that the power would not have been subject to a parliamentary procedure. The House of Lords Delegated Powers and Regulatory Reform Committee said this approach would be inconsistent with existing provisions on fees (PDF). It recommended that the charging scheme made under the new power should be contained in regulations subject to the negative procedure.

During the Lords report stage, a Government amendment to take the new powers in this way was accepted.

Change in control of licensee

The rights to search for, bore for and extract petroleum in most areas of Great Britain and the UK's offshore waters are the exclusive rights of the Crown. Companies who wish to undertake these activities must obtain the relevant licence from the regulator, the Oil and Gas Authority (OGA), whose business name is the North Sea Transition Authority (NSTA).

A DESNZ factsheet explains that during the lifetime of a petroleum production licence, "it is quite likely that the ownership and control of a Licensee should pass to a new parent company, most often by means of a share sale or merger". This is known as a 'change of control'. It notes that "an undesirable change of control could undermine investor confidence in the commercial environment, making the United Kingdom Continental Shelf (UKCS) a less attractive place for investment".

At present the NSTA cannot prevent undesirable changes of control before they happen. It can, however, examine the change of control, and seek to remedy it, after it has occurred, for example by requiring a further change of control or by revoking any UK petroleum licences held by the licensee. The potential for the NSTA to overturn a change of control after it has taken place is a concern for companies who may be subject to such an action.

Clauses 254 and 255 would give new powers to the North Sea Transition Authority (NSTA) to intervene before the ownership and control of a licensee is passed to a new parent company. This would replace the NSTA's existing powers to intervene after such a 'change of control' event.

The clauses were not amended during the Lords stages.

Part 2, chapter 4 of the bill (clauses 98 to 101) sets out equivalent provisions for carbon storage licences. For more information, see the Library briefing on parts 1-3 of the Energy Bill.

1 Part 11: Core fuel sector resilience

Part 11 would give the Secretary of State three new powers, on direction making, information and financial assistance, to "maintain continuity of core fuel supplies and ensure that industry maintains or improves its resilience to reduce the risk of emergencies affecting fuel supplies".[1]

Part 11 builds the proposals in the draft Downstream Oil Resilience Bill [PDF], which was published in June 2021 and which received pre-legislative scrutiny from the BEIS Committee. A number of changes have been made to the powers that were proposed in the draft Bill.

1.1 Background

The core fuel sector

For the purpose of the bill, the term "core fuels" refers to crude-oil based fuels and renewable transport fuels.

"Core fuel activity" refers to the "storage, handling, carriage, transport, conveyance, processing, or production" of such fuels.[2] In the crude oil industry, these activities are commonly referred to as "midstream and downstream" activities.

The explanatory notes [PDF] set out the role of core fuels in the UK's energy system:

> Currently, crude oil-based fuels provide >90% of the energy for transport and so this subsector will initially provide the majority of persons likely to be within the scope of this Part [of the bill]. Crude oil-based fuels are also used by more than 1.5 million homes for heating. As the UK economy transitions towards net zero greenhouse gas emissions, the balance of this will change, with renewable transport fuels likely to grow in importance.[3]

The following briefings provide general background on the midstream and downstream oil industry, and renewable transport fuels:

[1] DESNZ/BEIS, Energy Security Bill factsheet: Core fuel resilience, GOV.UK, 20 March 2023
[2] Explanatory Notes to the Energy Bill [HL] 2022-23 [PDF], para 69
[3] Explanatory Notes to the Energy Bill [HL] 2022-23 [PDF], para 69

- Practical Law, Oil & gas: industry overview (subscription[4] required)
- Practical Law, Renewable Transport Fuel Obligation (subscription[5] required)
- Commons Library, The future of the British Bioethanol industry (January 2019)

Existing regulation

The explanatory notes summarise existing regulation of the core fuel sector:

> The supply of fuels is largely unregulated and has no central system coordinator. There is only limited regulation which address the risks to the supply of fuel before a state of emergency is declared. Examples of such limited sector regulation include: the National Security and Investment Act 2021 which now covers acquisitions of major core fuel sector companies; the Offshore Safety Act 1992 which allows the DESNZ Secretary of State to direct the operator of an oil refinery for the purpose of preserving its security; and the Network and Information Systems Regulations 2018, to boost the overall level of security (both cyber and physical resilience) of network information systems of certain companies which provide essential services including in the oil sector.[6]

It goes on to highlight calls for further regulation in this sector:

> Following consultation [in 2017], full regulation of the sector (i.e., creating a licensing regime) was considered inappropriate as the sector has no existing monopoly and currently functions well as a highly competitive market, with some of the lowest pre-tax fuel prices in Europe. However, while the Government works closely with industry on a voluntary basis to try to address issues relating to core fuel sector resilience and risks to security of core fuel supplies as they arise, market participants have repeatedly told the Government that competition concerns remain a barrier to full co-operation on a voluntary basis, thus requiring legislative intervention.[7]

Information on the 2017 consultation is provided in section 1.2, below.

Challenges for core fuel resilience

A DESNZ factsheet, Core fuel resilience states that the core fuels sector is usually “efficient, flexible and effective in ensuring continuity of supply” but highlights some of the current challenges to the sector. These include the impact of Covid-19 pandemic and “ambitious targets” on reduction of greenhouse gases.[8]

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5 As above

6 Explanatory Notes to the Energy Bill [HL] 2022-23 [PDF], para 71

7 Explanatory Notes to the Energy Bill [HL] 2022-23 [PDF], para 72

8 DESNZ/BEIS, Energy Security Bill factsheet: Core fuel resilience, GOV.UK, 20 March 2023

It sets out the risk to the supply market:

> There remains a risk of disruption to the UK core fuel supply market due to various factors e.g. from the sudden loss of critical supply infrastructure sites due to either operational or financial events.
>
> […]
>
> [For example] in autumn 2021 there was a disruption to fuel distribution that resulted in forecourts not having sufficient fuel stocks. The Government activated several contingency measures to assist industry to ensure continuity of supply. The shortage at the forecourts was not caused by an overall shortage of fuel but driven by increased demand and an underlying shortage of HGV drivers. [9]

The autumn 2021 fuel shortages were widely covered in the media.[10]

The factsheet explains that the proposed measures in Part 11 of the bill "are focused on encouraging industry to build resilience rather than respond to an emergency". It also says they may:

> assist the Government to be cognisant of such risks prior to them escalating and to have more tools to obtain more comprehensive information about events as they unfold and, if necessary, to be able to direct relevant industry actors to take steps to shore up their own resilience or reduce the impact of any disruption or failure to fuel supply.[11]

1.2 Policy development

Consultation

In 2017, the Department for Business, Energy and Industrial Strategy (BEIS) held a consultation on proposals to improve fuel supply resilience. It sought views on proposed new measures to apply to companies operating in the downstream oil sector, aimed at achieving the following:

> **Monitor** - to enable BEIS to collect information from the downstream oil sector to better understand the impact of potential disruptive events, and to use the information to support industry in improving fuel resilience
>
> **Protect** - to align this sector with protections that apply in other critical service sectors, by enabling government to ensure that new owners of critical fuel infrastructure are financially sound and operationally capable; and to take government spending power to enable government to support supply resilience improvements and schemes

[9] DESNZ/BEIS, Energy Security Bill factsheet: Core fuel resilience, GOV.UK, 20 March 2023

[10] See for example: Financial Times, BP service stations close as driver shortage hits UK fuel supplies, 23 September 2021; BBC News, Petrol shortage: Is the fuel crisis improving?, 5 October 2021

[11] DESNZ/BEIS, Energy Security Bill factsheet: Core fuel resilience, GOV.UK, 20 March 2023

> **Insure** - to enable industry to create and operate collective, sector-wide industry-led schemes to maintain fuel supply in case normal supply arrangements are seriously disrupted; and a power to direct individual companies to participate in such schemes and take other action that may be necessary to ensure resilience.[12]

BEIS published its response in April 2018 which proposed the introduction of “light-touch” measures to identify supply issues and support industry in addressing these. It said:

> Doing nothing [to improve fuel supply resilience] will expose the UK market to real, though low probability, risks with large economic and social consequences if they were to materialise. The impacts of these risks ultimately fall upon the economy and the individual consumers to bear. Government does not feel that this is an equitable distribution of risk in an economy and society which has to work for all.
>
> Our proposed approach is to put in place a small number of light-touch measures which provide Government with the tools to identify fuel supply risk and support industry in insuring fuel supply resilience, with further back-stop powers to protect fuel supply resilience when required. These measures are designed to work in the structure of the fuel supply market.[13]

Draft bill

In the December 2020 Energy White Paper the Government said it would “take powers to ensure we maintain a secure and resilient supply of fossil fuels during the transition to net zero emissions” and announced that it would publish a draft Downstream Oil Resilience bill.[14]

The draft Downstream Oil Resilience Bill [PDF] was published in June 2021. Setting out the purpose of the bill, the Government said its 2017 consultation had concluded that “while individual suppliers invest in their own resilience, there is limited co-ordination and no mechanism to share burden [for protecting resilience] across the sector or with Government”. It also concluded that existing emergency legislation did not enable it to proactively protect fuel supplies, and that legislation was therefore required to address this.[15]

The draft bill proposed four new powers:

- **Information power**: requires industry to provide vital information to ensure we can identify potential disruptions and monitor the impact during a crisis;
- **Power of direction**: requires industry to take measures to improve their own resilience, such as keep critical infrastructure operating;

12 BEIS, Downstream oil supply resilience, GOV.UK, updated 9 June 2021

13 BEIS, Government response to consultation on fuel resilience measures [PDF], GOV.UK, April 2018, paras 4.2-4.3

14 BEIS, Energy white paper: Powering our net zero future [PDF], GOV.UK, 14 December 2020, p146

15 BEIS, Downstream Oil Resilience Draft Bill [PDF], CP 435, June 2021, p4

- **Control test power**: ensures companies gaining control of critical DSO infrastructure are financially and operationally fit for the task; and
- **Spending power**: provides financial assistance to support the sector to improve resilience and ensure continuity of supply.[16]

Pre-legislative scrutiny

The BEIS Committee conducted pre-legislative scrutiny of the draft Downstream Oil Resilience Bill over June to November 2021.

The Committee published its report [PDF] in November 2021, which expressed concerns about the breadth of the proposed powers in the bill and recommended these be narrowed in scope.[17]

It recommended a number of revisions to the bill to include "more detail about why, when and how these new powers would be used to ensure the legislation achieves what it sets out". Specifically, it recommended that many of these details should be included on the face of the bill.[18] The Committee's recommendations included:

- The introduction of a purpose clause "to provide the courts (and stakeholders) with a clearer and more detailed articulation of when and to what end the powers in the draft bill should be used"[19].
- The inclusion of "more clearly defined parameters and criteria for the thresholds which 'trigger' the powers in parts 1 and 2 of the bill" (equivalent to Part 11, Chapters 1 and 2, in the Energy Bill).[20]
- A clear explanation of "the circumstances in which (and why) it [the Government] would choose to exercise its power by direction as opposed to regulation (and vice-versa, or both)".[21]
- A statutory requirement for a Ministerial statement when financial assistance is provided (or notification via private correspondence in instances where a statement would not be appropriate).[22]

The Committee said that if the bill was introduced in Parliament, it would be "crucial" for the Government to provide "adequate clarity on how the

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16 BEIS, Downstream Oil Resilience Draft Bill [PDF], CP 435, June 2021, p4

17 BEIS Committee, Business Committee backs bill to protect fuel supply but wants limits on new powers, 12 November 2021

18 BEIS Committee, Business Committee backs bill to protect fuel supply but wants limits on new powers, 12 November 2021

19 BEIS Committee, Pre-legislative scrutiny: draft Downstream Oil Resilience Bill [PDF], 12 November 2021, HC 820, para 24

20 BEIS Committee, Pre-legislative scrutiny: draft Downstream Oil Resilience Bill [PDF], 12 November 2021, HC 820, para 35

21 BEIS Committee, Pre-legislative scrutiny: draft Downstream Oil Resilience Bill [PDF], 12 November 2021, HC 820, para 95

22 BEIS Committee, Pre-legislative scrutiny: draft Downstream Oil Resilience Bill [PDF], 12 November 2021, HC 820, para 63

measures would operate in practice, in order to allow effective Parliamentary scrutiny".[23]

Following the publication of the BEIS Committee's report, the Times reported the powers in the draft Downstream Oil Resilience Bill could help to prevent fuel panic-buying similar to that which occurred following the September 2021 fuel shortages. [24] The article highlighted a letter sent to the Committee by Kwasi Kwarteng MP [PDF] (then Secretary of State for BEIS), which was published alongside the report. The letter explained the actions taken by Government in response to the shortages, and said the new powers proposed in the bill would have enabled the Government to prevent the disruption to supply.

The Government response [PDF] to the Committee's report was published in March 2022. The Government said it would:

> consider changes which sharpen the robustness and accuracy of the bill, without diluting the powers encompassed within it. This includes several recommendations made by the committee, such as amending specific definitions and objectives listed in the bill, providing more specificity on the use of the information power and detailing more information on the use of criminal sanctions.[25]

It also said it would remove the control test power from the bill, following the Committee's observation that this could duplicate existing legislation.[26]

The measures within the draft Downstream Oil Resilience Bill are now part 11 of the Energy Bill:

- Part 11 includes a purpose clause (clause 222), addressing the BEIS Committee's recommendation on this.
- Part 11 does not address all of the BEIS Committee's wider recommendations. Some of the same issues have been raised as matters of concern by the Delegated Powers and Regulatory Reform Committee, and also during debate in the Lords stages. See the discussion of delegated powers (in section 1.6, page 20), and the Lords stages (section 1.7, page 22) for information.

[23] BEIS Committee, Pre-legislative scrutiny: draft Downstream Oil Resilience Bill [PDF], 12 November 2021, HC 820, para 39

[24] The Times, New law gives powers to prevent fuel panic-buying, 12 November 2021

[25] BEIS Committee, Pre-legislative scrutiny: draft Downstream Oil Resilience Bill, Government Response to the Committee's Fifth Report [PDF], 7 March 2022, HC 1177, pv

[26] BEIS Committee, Pre-legislative scrutiny: draft Downstream Oil Resilience Bill, Government Response to the Committee's Fifth Report [PDF], 7 March 2022, HC 1177, paras 36-46

1.3 Proposed measures

Part 11 of the Energy Bill builds the proposals in the draft Downstream Oil Resilience Bill [PDF], which was published in June 2021 and which received pre-legislative scrutiny from the BEIS Committee. A number of changes have been made to the powers that were proposed in the draft bill.

Part 11 would give the Secretary of State three new powers, on direction making, information and financial assistance, to "maintain continuity of core fuel supplies and ensure that industry maintains or improves its resilience to reduce the risk of emergencies affecting fuel supplies".[27]

The **direction making power** would comprise:

- A power to issue directions to individual enterprises and in some circumstances, to more than one enterprise. E.g. Secretary of State may direct an operator to prioritise the production of a particular fuel, if he/she considers there to be a supply threat.
- A power to make regulations to impose similar requirements that can be imposed on individual companies by directions to apply re a class of enterprises.[28]

The DESNZ factsheet on Core Fuel Resilience explains this power is intended to "address circumstances that have the potential to escalate, specifically aimed at improving core fuel supply resilience rather than responding to emergencies".

The **information power** would enable the Secretary of State to require core fuel businesses to provide relevant information on request, and to "impose a duty for major operators to report an incident which poses a significant threat to the continuity of fuel supply".[29] The factsheet explains:

> Government will be able to use the information provided to build a consistent, accurate and up-to-date picture of the health of core fuel supply resilience in the country. This will help in identifying supply issues before they develop into emergency situations.[30]

The **financial assistance power** would enable the Secretary of State to provide financial assistance to core fuel businesses in order to "support industry in implementing resilience protection or improvement measures to protect UK core fuel supplies".[31]

The factsheet provides more information.

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27 DESNZ/BEIS, Energy Security Bill factsheet: Core fuel resilience, GOV.UK, 20 March 2023
28 DESNZ/BEIS, Energy Security Bill factsheet: Core fuel resilience, GOV.UK, 20 March 2023
29 DESNZ/BEIS, Energy Security Bill factsheet: Core fuel resilience, GOV.UK, 20 March 2023
30 DESNZ/BEIS, Energy Security Bill factsheet: Core fuel resilience, GOV.UK, 20 March 2023
31 DESNZ/BEIS, Energy Security Bill factsheet: Core fuel resilience, GOV.UK, 20 March 2023

Comparison with the draft bill

The DESNZ factsheet on Core Fuel Resilience summarises how the measures in Part 11 are different to those in the draft Downstream Oil Resilience Bill:

> The draft Bill included restriction on acquisitions powers. Feedback from Industry suggests that the powers in the National Security and Investment Act 2021 already cover this so these powers have been taken out. We have also widened the scope of the information-gathering powers in the bill in order to enable Government to get more information on forecourts when necessary.
>
> We have also included renewable transport fuels in these measures to allow the provisions to operate in a future scenario where the main transport fuel is not crude oil based.[32]

Part 11 also includes a purpose clause (clause 222), setting out the purposes for which the powers under Part 11 would be used. This addresses the BEIS Committee's recommendation on this issue.

1.4 Impacts

The Impact Assessment describes the key benefit of the measures as "the reduced risk of a loss of fuel supplies for consumers (e.g. for transport purposes) and those who consume oil-intensive goods and services",[33] with reduced knock-on effects on the wider economy. The main costs will be compliance costs for downstream oil businesses.[34]

1.5 Reaction to the measures

As noted above, these measures have been subject to consultation and pre-legislative scrutiny, both of which invited responses from stakeholders. The following summarises wider reaction to the draft Downstream Oil Resilience Bill in 2021.

Several trade bodies responded to the draft legislation:

- The Association of Convenience Stores (ACS) welcomed the draft bill, saying the Government was "right to continue to prioritise fuel resilience and that the proposed approach set out in the bill is appropriate".[35]

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32 DESNZ/BEIS, Energy Security Bill factsheet: Core fuel resilience, GOV.UK, 20 March 2023

33 BEIS, "Annex 3.3: Downstream oil resilience impact assessment" in Energy Bill - Impact Assessments [PDF], July 2022, p667 (p2 of Annex 3.3)

34 DESNZ, Energy Bill Summary Impact Assessment [PDF], p22

35 ACS, Submission – Business, Energy and Industrial Strategy Committee Call for Evidence: Downstream Oil Resilience Bill [PDF], undated

- The Petrol Retailers Association also welcomed the draft bill, saying "the powers that are conveyed to the Secretary of State, enabling them to take immediate and relevant actions to ensure this supply, are necessary irrespective of the emergency powers that may be granted under the Energy Act 1976 and the Civil Contingencies Act 2004".[36]
- S&P Global reported on comments by the UK Petroleum Industry Association (UKPIA), which represents the downstream oil sector. UKPIA said it would be important to ensure UK companies could remain competitive in the global market:

> History shows that UK companies, when able to compete globally have been able to offer fuels supplies in the UK, that are highly resilient in the face of global or domestic risks [...]
>
> The Downstream Oil Resilience Bill is being assessed closely by UKPIA to ensure protection for the consumer whilst continuing to encourage the strong competitive forces that have ensured supply to date.[37]

The law firm Watson Farley & Williams' commentary on the draft bill said that it indicated a change in direction towards greater regulation of the downstream oil market and was designed to protect the domestic market in the context of an "increasing number of companies [...] diversifying and often considering an outright sale or at least a reduction in their exposure to oil-related businesses". The commentary noted that the bill's powers to provide financial assistance to the oil-based fuel industry could be seen as conflicting with the Government's decarbonisation targets. [38]

1.6 Part 11: clauses 222 to 244

Chapter 1 introduces the measure.

Clause 222 would set out for what purposes the powers under Part 11 would be used. This clause addresses the BEIS Committee's recommendation that a purpose clause be introduced to the bill.

Clause 223 would define key concepts, such as core fuel sector activity.

Chapter 2 would give the Secretary of State powers to make directions or obtain information for the purpose of maintaining or improving core fuel sector resilience.

Clause 224 would give the Secretary of State a **power to make directions** (for specified purposes) requiring core fuel sector businesses with a capacity over

[36] Forecourt Trader, PRA welcomes the publication of The Downstream Oil Resilience Bill, 7 July 2021

[37] S&P Global, UK's downstream resilience bill gets cautious welcome from refiners, pump owners, 19 July 2021

[38] Watson Farley & Williams, IS THE UK GOVERNMENT AN 'OLD FOSSIL' IN PROTECTING THE DOWNSTREAM OIL MARKET?, 23 September 2021

500,000 tonnes, and owners of core fuel sector infrastructure with a capacity over 20,000 tonnes to do "anything in relation to [their] relevant activities or assets". It states that a direction may only be made where the business has failed to take steps the Secretary of State "considers necessary for maintaining or improving core fuel sector resilience."

Clauses 225 would set out the process for giving such directions. **Clause 226** would establish that a business who fails to comply with such directions would be committing a punishable offence.

Clause 227 would give the Secretary of State powers to make regulations that impose similar requirements to those outlined in **clause 224** on core fuel sector businesses and infrastructure with a capacity over 1,000 tonnes, through directions that would apply to a class of businesses. The clause would require the Secretary of State to consult with relevant organisations, such as the Health and Safety Executive and the Environment Agency prior to making regulations.

Clause 228 would give the Secretary of State a power to require a core fuel sector business or infrastructure owner, with a capacity over 1,000 tonnes, to provide information about their relevant activities and assets. It would also give powers to require a wetstock manager to provide information about core fuel sector businesses for whom they provide stock management services.

The European Convention on Human Rights Memorandum [PDF] identified that **clause 228** has the potential to engage Article 8 (the right to private and family life, home and correspondence), because it allows the Secretary of State to require persons to provide information, and would make failure to comply a criminal offence. See the memorandum for full details. The House of Lords Delegated Powers and Regulatory Reform Committee has commented on the powers to establish criminal penalties (see delegated powers discussion overleaf).

Clause 229 would place a duty to report incidents on core fuel sector businesses and infrastructure owners, with a capacity over 500,000 tonnes, requiring them to notify the Secretary of State if they know of, or suspect that, an incident could risk or cause disruption to or failure of, the continuity of core fuel supply.

Clause 230 would create offences associated with the breach of clauses 208 and 209**.**

Clause 231 would give the Secretary of State powers a power to make regulations requiring core fuel sector businesses and infrastructure owners, with a capacity over 1,000 tonnes, to provide information at specified intervals about their relevant activities or assets. It would also give powers to require a wetstock manager to provide information about core fuel sector businesses for whom they provide stock management services.

Clause 232 would allow for information to be disclosed to other Government departments, devolved authorities or for criminal proceedings, and for HMRC to disclose relevant information to the Secretary of State.

Clause 234 would allow businesses affected by the powers under **clauses 224 and 228**, and the duty under **clause 229**, to appeal against this.

Chapter 3, clauses 235 to 241 would set out provisions for enforcement under the offences created in the preceding clauses.

Chapter 4, clause 242 to 244 would allow the Secretary of State to provide financial assistance for the purpose of maintain or improving core fuel sector resilience and for securing of maintaining the continuity of core fuel supplies.

Clause 243 would give the Secretary of State a Henry VIII power to vary the capacity thresholds for which the powers to direct or require information from businesses apply.

Delegated powers

Part 11 includes a number of delegated powers, which are explained in detail in the Delegated Powers Memorandum [PDF]. Where these powers are to make secondary legislation, they would all be subject to the affirmative procedure. As noted above, **Clause 243** would provide a Henry VIII power.

The House of Lords Delegated Powers and Regulatory Reform Committee expressed concern about some of the delegated powers in its report on parts 7-13 of the new Energy Bill [PDF].[39] In this it repeated concerns it had previously raised during pre-legislative scrutiny of the draft Downstream Oil Resilience Bill.[40] Specifically:

- The Committee said the clauses which would give the Secretary of State powers to give directions or make regulations requiring persons to take specific actions,

  > contain inappropriate delegations of power because the bill lacks clear criteria or parameters for the exercise of the very broad powers in those clauses to impose requirements backed by criminal penalties.[41]

- It said that clarity was needed on when the Secretary of State should use their direction-making power, and when they should use their regulation-making power:

39 House of Lords Delegated Powers and Regulatory Reform Committee, Energy Bill [HL]: Parts 7-13 [PDF], 13 October 2022, HL 66

40 BEIS Committee, "Appendix: Memo from the Delegated Powers and Regulatory Reform Committee" in Pre-legislative scrutiny: draft Downstream Oil Resilience Bill [PDF], 12 November 2021, HC 820, pp38-46

41 House of Lords Delegated Powers and Regulatory Reform Committee, Energy Bill [HL]: Parts 7-13 [PDF], 13 October 2022, HL 66, paras 54-58

> it should only be in exceptional circumstances that such powers are capable of being exercised without parliamentary scrutiny; and it is only justifiable to provide for the power to be exercised by direction where it concerns a single case on the basis of the specific circumstances which apply in that case. Where the Secretary of State wishes to impose generic requirements on a class of persons, that should be done through the exercise of the regulation making powers so that the exercise of powers is subject to Parliamentary scrutiny.[42]

- The Committee also recommended that for transparency,

> there should be a requirement for the Secretary of State to lay every direction before each House of Parliament unless the Secretary of State is of the opinion that disclosure of the direction would be against the interests of national security or the commercial interests of any person.[43]

In its response to the Committee's report [PDF], the Government said it had introduced further requirements regarding the use of the direction powers since the draft bill, including "the requirement to give notice of the direction, providing a reason why the direction is being issued and when the direction will come into force", and that direction recipients would be "allowed to make representations which must be considered by the Secretary of State before the direction is made".[44] It also said the are protections in the bill to "ensur[e] that any direction is fair, proportionate and reasonable", including:

> the requirement to consult with other parties–those responsible for the control of major accident hazards, and for the environment– and a right to appeal the direction notice if they wish to do so on the basis that it is wrong in fact or law or that it is unfair or unreasonable.[45]

It also set out the distinction between the direction-making and regulation-making powers:

- The direction-making power would be used with "identified specific persons" who carry out core fuel activities meeting the threshold in the bill, where they "need to take urgent action".
  - The response explained these persons are "critical contributors to the resilience of the sector as a whole [...] It is therefore important to have the power to direct them individually to take action to minimise the risk of disruption".
  - It said a requirement for parliamentary scrutiny would cause delays, reducing the effectiveness of a power that is intended for use when urgency is required. However, it said the Government would agree

42 House of Lords Delegated Powers and Regulatory Reform Committee, Energy Bill [HL]: Parts 7-13 [PDF], 13 October 2022, HL 66, paras 59-63

43 House of Lords Delegated Powers and Regulatory Reform Committee, Energy Bill [HL]: Parts 7-13 [PDF], 13 October 2022, HL 66, para 64

44 House of Lords Delegated Powers and Regulatory Reform Committee, "Appendix 1: ENERGY BILL [HL]: GOVERNMENT RESPONSE" in 27th Report of Session 2022–23 [PDF], 2 March 2023, HL 159, p15

45 House of Lords Delegated Powers and Regulatory Reform Committee, "Appendix 1: ENERGY BILL [HL]: GOVERNMENT RESPONSE" in 27th Report of Session 2022–23 [PDF], 2 March 2023, HL 159, p15

an engagement protocol with the BEIS Select Committee "to enable Parliamentary scrutiny regarding the directions made". This would include "a commitment to disclose every direction to the Select Committee after issuing, in order to maintain transparency and [...] [to] consider any requests from the Select Committee regarding the publication of a direction".[46]

- The regulation-making power is intended to apply to "a whole class of persons [e.g. a segment of the industry] who are required to carry out certain actions to improve the industry's resilience over a longer period of time or to deal with a specific issue".[47]

A BEIS policy statement on Core Fuel Resilience [PDF] sets out how Government would implement the delegated powers that would be conferred by the provisions in Part 11 of the bill. It provides some additional information on when the Government expects to use the regulation (rather than direction) making powers:

> While the power to issue directions applies only to the larger operators in the sector that have a key impact on fuel supply; the regulation-making power allows the imposition of obligations on a much wider group including smaller businesses and facilities, should it be deemed necessary. As issues at individual smaller sites are unlikely to have an impact on the overall national fuel supply, the directions power would not be appropriate, neither on a commercial nor financial level. It has been considered, however, that a class of these smaller sites acting together can have an impact on the overall fuel supply market, hence the need for corresponding power to make regulations to require such classes to act.[48]

1.7 Lords stages

Introducing the bill during **second reading**, the Minister for Energy Efficiency and Green Finance, Lord Callanan, described the measures in Part 11:

> the bill contains measures for downstream oil security, which will apply to facilities such as oil terminals and filling stations. These measures will prevent fuel supply disruption and reduce the risk of emergencies affecting fuel supplies, such as disruption from industrial action or malicious protest and emergencies resulting from wider national security risks.[49]

Labour welcomed the measure but said it was "important [...] that any powers introduced are not overextended or misused".[50] Lord Callanan

46 House of Lords Delegated Powers and Regulatory Reform Committee, "Appendix 1: ENERGY BILL [HL]: GOVERNMENT RESPONSE" in 27th Report of Session 2022–23 [PDF], 2 March 2023, HL 159, p16

47 House of Lords Delegated Powers and Regulatory Reform Committee, "Appendix 1: ENERGY BILL [HL]: GOVERNMENT RESPONSE" in 27th Report of Session 2022–23 [PDF], 2 March 2023, HL 159, p16

48 BEIS, Energy Bill Policy Statement: Core Fuel Resilience [PDF], GOV.UK, December 2022, p8

49 HL Deb 19 July 2022 c1887

50 HL Deb 19 July 2022 c1890

responded that the new powers are "intended to be used in a light-touch way" and that the Government would provide for "certain rights of appeal and consultation requirements".[51]

Resilience of gas supplies and financial assistance

At **second reading** Lord Teverson, Liberal Democrats Spokesperson for Energy and Climate Change, noted that the measure relates only to petrol and oil, not natural gas, despite ongoing concerns about gas supplies. He asked about negotiations to reopen the Rough gas storage facility.[52]

During a **committee stage** debate on a group of amendments on "core fuel sector activity", Lord Ravensdale (crossbench) moved amendment 213 to **clause 223** (then clause 203), tabled by Baroness Worthington (crossbench). The amendment sought to expand the scope of the measure to include the storage of natural gas.

During the discussion, Baroness Worthington questioned why the bill's proposals to improve fuel resilience excluded natural gas. She noted the BEIS Committee's report on pre-legislative scrutiny of the measure was published before these events.[53]

Baroness Worthington also expressed concern about the "wide-ranging nature of the types of financial assistance the bill will allow" and proposed that any such financial assistance should be reported to Parliament.[54]

Lord Lennie, Shadow Spokesperson for Energy and Net Zero, said Labour was "generally supportive" of Baroness Worthington's amendments.[55]

Baroness Bloomfield, Government Whip, responded. She said the measures in the bill were limited to the "core fuel sector", traditionally taken to mean the downstream oil sector, but they included some forms of natural gas such as liquified petroleum gas (LPG). She cautioned against expanding the measure to cover gas more generally because "the level of regulation and resilience in place for the gas industry is significantly higher than that of the oil sector", noting there are already "robust, long-standing emergency procedures" to deal with emergencies on the gas network.[56]

On the proposals for financial assistance, Baroness Bloomfield said the Government currently has "no dedicated powers to enable spending for the purpose of core fuel resilience", which is usually the responsibility of the sector. She said "financial assistance will not be used frequently and only if it is deemed necessary and offers the best value for money". She said a reporting requirement was not necessary because "financial assistance will likely need to comply with subsidy control requirements and information

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51 HL Deb 19 July 2022 c1934
52 HL Deb 19 July 2022 c1927
53 HL Deb 16 January 2023 cc349-350
54 HL Deb 16 January 2023 cc350-351
55 HL Deb 16 January 2023 c351
56 HL Deb 16 January 2023 c352

about a subsidy may need to be recorded on the transparency database pursuant to the requirements of the Subsidy Control Act 2022".[57]

Baroness Worthington said she would further consider the issues of the issues raised in the amendments.[58]

The amendment was withdrawn.

The measure was not debated at **report stage** or **third reading**.

1.8 Further reading

In addition to the various publications providing information on the bill in general, the Government has published the following background documents specific to this measure:

- Energy Security Bill factsheet: Core fuel resilience
- Policy statement: Core Fuel Resilience

The following documents provide further background on the development of this policy:

- Consultation on downstream oil supply resilience [PDF] (October 2017) and Government response (April 2018)
- Draft Downstream Oil Resilience Bill (June 2021)
- BEIS Committee pre-legislative scrutiny on the draft Downstream Oil Resilience Bill [PDF] (November 2021), and Government response [PDF] (March 2022)
- Practical Law practice note on Oil stocking: EU and UK requirements (subscription[59] required). The chapter on Future policy gives a short history of development of the draft Downstream Oil Resilience Bill and Part 11 of the Energy Bill.

57 HL Deb 16 January 2023 c353
58 HL Deb 16 January 2023 c354
59 MPs and their staff have access to Practical Law (a legislative database) through the Library subscription. Please be aware that Practical Law's publications are subject to copyright and should not be shared. Further details on Practical Law's copyright are available through the above link.

2 Part 12, chapter 1: Offshore wind electricity generation

Part 12, Chapter 1, Clauses 245-251 of the bill cover offshore wind electricity. They were introduced by the Government into the bill in the House of Lords during committee stage.

The clauses aim to implement measures announced in the British Energy Security Strategy (BESS) published in April 2022. In this, the Government committed to cutting the time to develop and deploy offshore wind projects by half (from 13 years). The Government's stated aim was for "smarter planning" that would maintain environmental standards and increase the pace of deployment by 25%.

Box 1 Current offshore wind planning application timeframes

According to the Department for Energy Security and Net Zero (DESNZ) Renewable Energy Planning Database, the current operational offshore wind farms in the UK took an average of just over six years from applying for planning permission to the start of generation. The average time from applying to grant of planning permission was one year and eight months. It took a further two years and eight months on average to start construction and one year seven months from construction to the start of generation. The overall average time from applying for planning to start of generation for more recent offshore wind farms (starting operation from 2018) was longer at just over seven years, with a range from five to ten years.[60]

2.1 The British Energy Security Strategy

In BESS the Government put forward a range of measures, including the implementation of an Offshore Wind Environmental Improvement Package (OWEIP) as set out below. Together, the measures are aimed at meeting the commitment to cut the time it takes for offshore wind projects to come online:

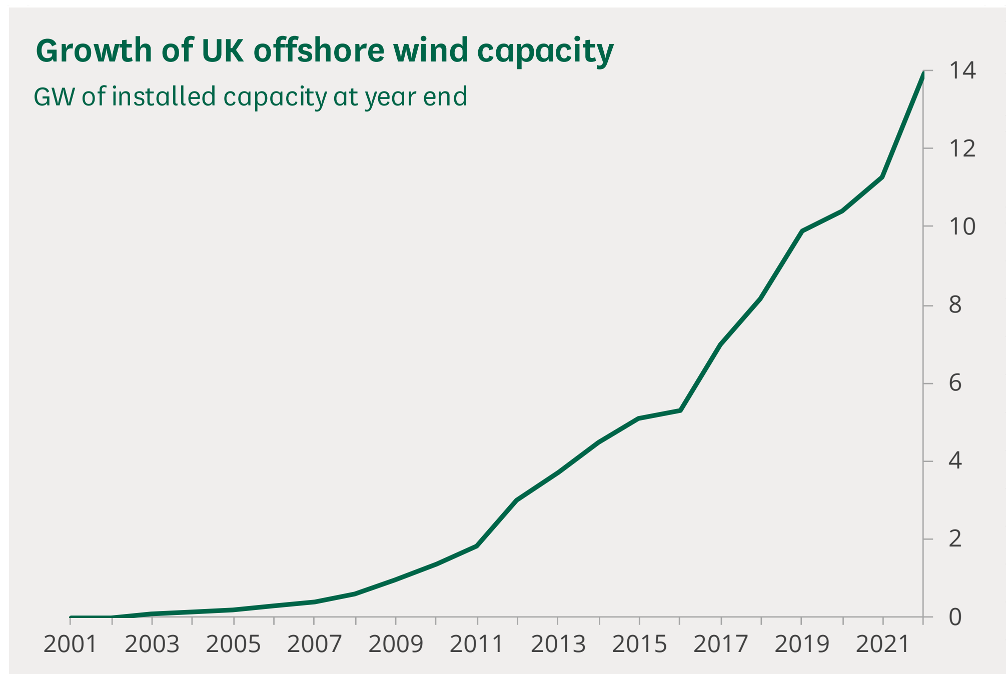
[60] DESNZ, Renewable Energy Planning Database: quarterly extract (January 2023)

- reducing consent time from up to four years down to one year.
- strengthening the Renewable National Policy Statements to reflect the importance of energy security and net zero [the Government published proposed drafts on 30 March 2023]
- making environmental considerations at a more strategic level allowing us to speed up the process while improving the marine environment
- introducing strategic compensation environmental measures including for projects already in the system to offset environmental effects and reduce delays to projects
- reviewing the way in which the Habitats Regulations Assessments are carried out for all projects making applications from late 2023 to maintain valued protection for wildlife, whilst reducing reams of paperwork
- implementing a new Offshore Wind Environmental Improvement Package (OWEIP)including an industry-funded Marine Recovery Fund and nature-based design standards to accelerate deployment whilst enhancing the marine environment
- working with the Offshore Wind Acceleration Task Force; a group of industry experts brought together to work with government, Ofgem and National Grid on further cutting the timeline
- establishing a fast track consenting route for priority cases where quality standards are met, by amending Planning Act 2008 so that the relevant Secretary of State can set shorter examination timescales [introduced in the Levelling-Up and Regeneration Bill, clause 119 of the bill as brought from the Commons to the Lords][61]

2.2 Current UK offshore wind capacity

The UK's first offshore wind farm, Blyth Harbour, started operating at the end of 2000. It consisted of just two turbines with a capacity of 2 MW each. Some recent offshore wind farms have a capacity 300 times as large. The chart below shows how offshore capacity has increased.

[61] DESNZ, British energy security strategy, 7 April 2022



Source: DESNZ, Energy Trends: UK renewables (Table 6.1)

Generation from offshore wind has followed a similar trend. It overtook onshore wind as the largest renewable generating technology in 2019. In 2022 it produced 45 terawatt hours of power and provided 13.8% of all electricity generated in the UK. [62]

The UK currently has two small operational floating windfarms which make up around 0.5% of total offshore wind capacity.[63]

2.3 Proposed offshore wind capacity

The Government has an ambition to deliver "up to 50 GW" of offshore wind capacity (including up to 5 GW of floating wind) by 2030.[64] This would mean more than trebling the current offshore capacity and would be more additional capacity than is currently in the planning pipeline.

The Climate Change Committee has said that under its 'Balanced Net Zero Pathway'[65] offshore wind capacity should increase to 95 GW by 2050. They see offshore wind as the 'backbone of electricity generation" under all their

62 DESNZ, Energy Trends: UK renewables (Table 6.1)
63 DESNZ, Energy Trends: UK renewables (Table 6.1)
64 DESNZ, British energy security strategy (April 2022)
65 The CCC developed this pathway to net zero emissions in 2050 as part of their sixth carbon budget covering the years 2033 to 2038. They describe the pathway as "…illustrative of what a broadly sensible path based on moderate assumptions would look like". They use this pathway as the basis for their sixth carbon budget recommendation. See section 1 of the The Sixth Carbon Budget :The UK's path to Net Zero, December 2020

different net zero scenarios, with capacity in 2050 ranging from 65 GW to 140 GW.[66]

In January 2023 there were 12 offshore wind projects under construction with a total capacity of 9.2 GW. A further nine projects with a total capacity of 9.5 GW have been granted planning permission but had not started construction. Seven projects with a total capacity of 8.7 GW had submitted their application for planning permission.[67]

Box 2 Offshore wind: international comparisons

Global offshore wind capacity at the end of 2021 was only 7% of onshore wind capacity.[68] The UK had the second largest installed offshore wind capacity at the end of 2021 with 22% of the world total. China had the largest with 47%. A total of 21.1 GW of offshore wind capacity was installed in 2021, three times the level in 2020, and 80% of this new capacity was in China.[69]

The UK's offshore wind capacity at the end of 2022 was 13.9 GW. This was 46% of the European total. The next highest countries in Europe were Germany with 8.0 GW and the Netherlands with 2.8GW. Denmark had a smaller offshore wind capacity (2.3 GW) but it provided 25% of its electricity. The UK was second highest on this measure at 15%.[70]

2.4 Bill Proposals

The DESNZ Energy Bill factsheet on OWEIP, published 20 March 2023, summarised the measures in the bill as follows:

> Government is seeking amendments to the Energy Bill to:
>
> - Give the Secretary of State powers to tailor HRAs[Habitat Regulations Assessments] that are required before an offshore wind farm is consented;
> - Enable measures to compensate for impacts on the marine environment to be taken at a strategic level across multiple projects; and
> - Set up a marine recovery fund to help deliver these strategic measures.[71]

[66] CCC, The Sixth Carbon Budget. Electricity generation, December 2020
[67] DESNZ, Renewable Energy Planning Database: quarterly extract (January 2023)
[68] International Energy Agency, Renewables 2022 -renewable electricity (accessed 14 April 2023)
[69] Global Wind Energy Council, Global wind energy report 2022
[70] Wind Europe, Wind energy in Europe: 2022 Statistics and the outlook for 2023-2027
[71] DESNZ Energy Bill factsheet on OWEIP, 20 March 2022

Box 3 The Habitat Regulations

The Habitat Regulations (Conservation of Habitats and Species Regulations 2017) cover sites of European importance and other sites as set out in Government policy. These are:

- Special Areas of Conservation (SACs)
- Special Protection Areas (SPAs)
- proposed SACs
- potential SPAs
- Ramsar sites - wetlands of international importance (both listed and proposed)
- areas secured as sites compensating for damage to a European site

Any development proposals that could affect a protected site under the regulations require a Habitat Regulations Assessment (HRA) to be carried out. If the proposal would adversely affect a protected site, it can only go ahead if there is an overriding public interest and it is possible to take adequate compensatory measures.

The Government set up a working group to review HAR in 2022. This proposed three new possible approaches to HRAs (PDF). The Government also published a consultation Nature Recovery Green Paper: Protected Sites and Species in May 2022. This is now closed and awaiting a government response.

The Energy Bill factsheet goes on to explain that the aim of new HRA legislation is to reduce the time spent "resolving issues project by project" and instead consider compensatory measures upfront and strategically. This will also allow for developers across projects to work together:

> Compensation can also be proposed by multiple developers to compensate for their impacts on the same protected features. Whilst measures will still need to compensate for the specific impacts of each development, they could be more effective and deliver greater ecological benefit at a strategic level.[72]

On the Marine Compensation Fund, the Government sets out the intention for it to be operational and receiving funds by late 2023. Its aim will be to support the delivery of strategic compensation measures. It will do this by allowing wind farm developers who are not able to collaborate in wider compensation measures to instead pay into the fund. They will be able to do this only where measures are available "to fulfil their mandatory requirement to compensate for negative effects that cannot be avoided".[73]

[72] DESNZ Energy Bill factsheet on OWEIP, 20 March 2022

[73] DESNZ Energy Bill factsheet on OWEIP, 20 March 2022

The bill

Part 12, Chapter 1, Clauses 245-251 of the bill cover offshore wind electricity. They were introduced by the Government into the bill in the House of Lords during committee stage.

Clause 245 defines the offshore wind energy projects that will fall within the scope of the legislation. These will be any in the UK marine area, together with the infrastructure required to connect any of these projects.

Clause 246 creates a statutory "environmental compensation obligation" that will require public authorities to ensure adequate compensatory measures for a wind development are in place. The explanatory notes set out when this will apply:

> If an offshore wind project has undertaken all feasible measures to avoid, reduce and mitigate an "adverse environmental effect" [...], the appropriate authority may decide to consent development in the public interest (such as energy security and net zero targets). Compensatory measures must then be undertaken or secured.

The authority will have the powers to decide when measures "taken or secured at a strategic level (in relation to one or more relevant offshore wind projects) count towards discharging relevant environmental compensation obligations". Measures can be taken on site, or elsewhere in the marine environment. This includes in another authorities' area, and they can be previously banked measures or measures to been taken in the future.

The requirements set out in in this clause will apply to compensation for anything that could have an adverse environmental effect on a national site network (as defined in the Conservation of Habitats and Species Regulations 2017) or could hinder the achievement of conservation objectives in a protected marine area.

Clause 247 provides the Secretary of State with regulation making powers to implement a Marine Recovery Fund, including powers to delegate functions to the devolved administrations in relation to the fund.

Clause 248 sets out environmental assessments (under a number of existing regulations listed in the clause) which may be "disapplied or modified" by the public authority in each devolved administration. It also specifies those which may not be disapplied or modified. Changes that can be made include:

- the matters to be dealt with
- who carries out the assessment
- prohibiting the granting of consent
- compensatory measures

- and which existing regulations may be disapplied or modified, including devolved legislation.[74]

Clause 249 sets out who the Secretary of State and devolved administrations must consult before making any changes through regulations as set out in Clause 248 above. **Clause 250** covers interpretation for this part of the bill.

Clause 278 sets out that the provisions in this part of the bill will come into force two months after royal assent.

Further information on how the Government intends to implement the measures in the bill can be found in the Delegated Powers Memorandum (PDF) and the Energy Security Bill Policy Statement: Offshore Wind Environmental Improvement Package Measures, both published January 2023.

2.5 Impact assessment of bill measures: costs and benefits

The impact assessment (IA) looked at potential costs of measures in the bill aimed at speeding up the consenting process for offshore wind and ensuring the marine environment is protected. As any amendments to the Habitat Assessment Regulations will be brought in through secondary legislation, with details to be determined, the impact assessment only looked at the potential scale and nature of costs for this measure.

Overall it found there would be some increased costs for developers because of more stringent compensatory measure being required. The IA did not examine savings to developers (resulting from shorter approval processes). It did conclude shorter consenting times would result in wider savings to society from reduced carbon emissions, as a result wind generation projects coming online sooner.

The IA concluded that the measures taken together could result in costs to offshore wind developers of £20-300 million[75] over a 20 year period, or annual costs of £1-15 million. The wide range of costs reflects the underlying uncertainty in these estimates. The majority of these costs (over 80%) are linked to higher assumed costs for compensatory measures under HRA changes. The analysis assumes that more compensatory measures will be needed as a result of "…earlier, proportionate weighting of SNCB [Statutory Nature Conservation Bodies] evidence and baselining." This increases the value of compensatory measures by 10-40%.[76]

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74 Bill 295 EN 2022-23, 25 April 2023

75 2020 prices in present value terms (discounted at 3.5% a year).

76 Defra, Energy Bill – Offshore Wind Environmental Improvement Package Measures Impact Assessment (PDF)

The impact assessment did not look at the monetary benefit to developers of the bill's proposals "…due to time constraints". The measures are aimed at reducing consenting time which would potentially benefit developers through higher short-term revenue and reduced 'option fees' paid to secure seabed rights. The IA did look at the value of reduced carbon emissions resulting from the potential reduced consenting time.[77] This was put at £320-360 million per year over a 20 year period. These figures are not an amount that any one group receives, but an estimate on the benefit to society from reduced emissions.[78] [79]

2.6 Stakeholder views

There are several initiatives where conservation and industry are already working together to address issues relating to offshore wind consents and conservation. The Offshore Wind Strategic Monitoring and Research Forum (OWSMRF) is an industry led initiative where the statutory public body, the Joint Nature Conservancy Council (JNCC) is co-ordinating work to identify and prioritise research opportunities to fill critical evidence gaps. The Offshore Wind Evidence and Change Programme is a partnership between the Crown Estate, BEIS and the Department for Environment, Food and Rural Affairs (DEFRA) which:

> brings together a 27-member steering group, spanning government, industry and non-profit organisations to collaborate in innovative research as well as collating and sharing existing information that will help speed up the consenting process, protect wildlife and fishing, while promoting greater biodiversity across the UK.[80]

The RSPB published a report Powering Healthy Seas: Accelerating Nature Positive Offshore Wind in August 2022. This called for a number of measures to be introduced, including strategic compensation:

- A robust ecological evidence base to inform environmentally conscious siting of new offshore windfarms.
- Country-level marine plans to provide clarity to marine users.
- Impact assessments that identify cumulative impacts of multiple developments
- Innovative industry standards, supported by government policy

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77 Through the resulting increased likelihood/speed of a fully decarbonised power system.

78 These use standard values per tonne of CO_2 used for all similar assessments of the impact of government policy.

79 Defra, Energy Bill – Offshore Wind Environmental Improvement Package Measures Impact Assessment (PDF)

80 Crown Estate, Offshore Wind Evidence and Change Programme 1 February 2023

- Adaptive management techniques that offer flexibility in the face of changing conditions or new information
- Strategic compensation, where necessary, to ensure ecological impacts are appropriately addressed.
- A marine net gain system to help drive nature recovery and improvement.[81]

The report also set out the RSPBs view on the shortcomings when carrying out Habitat Regulations Assessments, under the existing regulations, for offshore wind developments:

> Currently individual and cumulative impacts are considered at the plan level through Strategic Environmental Assessment (SEA) and plan level assessment under the Habitat Regulations. Cumulative and in combination effects should only be taken into account once there is a formal commitment to the development either by way of a formal allocation through a strategic development plan or once a consent has been granted. It is therefore not possible to truly assess cumulative impact from the HRAs associated with leasing rounds as they are possible lease sites with no commitment to delivery.
>
> Although SEA and plan level assessments are highly useful in requiring the environment to be considered as plans are first developed, they have broad perspective and often lack sufficient detail across many options. Typically, this results in decisions to avoid and mitigate impacts being delegated to the project level by which point those options can be narrowed.[82]

Renewables Energy UK, an industry representative body, welcomed the RSPB's report stating:

> We're working with the RSPB to ensure that we develop offshore wind farms in an environmentally sensitive way which protects birds and support marine ecosystems. This includes adapting the location of our wind farms and providing specially-designed safe places for birds to nest at sea.[83]

The Wildlife and Countryside Link, a coalition of wildlife and countryside charities, welcomed the proposals on offshore wind in the bill. However, it also raised concerns about the extent of the delegated powers in this part of the bill allowing the Habitats Regulations to be amended:

> The Energy Bill introduces important provisions to enable offshore wind developments to be deployed while minimising the effects on nature. We welcome Government efforts to enable strategic mitigation of the impacts of renewable energy development, ensuring climate change mitigation and nature restoration can go hand-in-hand.
>
> Unfortunately, in doing so, the Government is again proposing to take powers to amend the Habitats Regulations that go far beyond what is needed to support these proposals.

81 RSPB Powering Healthy Seas: Accelerating Nature Positive Offshore Wind, 31 August 2022
82 RSPB Powering Healthy Seas: Accelerating Nature Positive Offshore Wind, 31 August 2022
83 RSPB Powering Healthy Seas: Accelerating Nature Positive Offshore Wind, 31 August 2022

> This kind of "just in case we need it" aggregation of powers is inappropriate for such fundamental laws as the Habitats Regulations. The Government should not spoil its positive plans for offshore wind with a wider power grab.[84]

2.7 Lords stages

During second reading Lord Callanan, Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy, signalled the Government's intention to introduce measures on offshore wind at committee stage:

> I also share with the House three amendments that we intend to bring forward in Committee. To meet commitments made in the British energy security strategy we will look to amend the bill to include measures on offshore wind habitats regulations assessment and an offshore wind environmental improvement package.[85]

The Government introduced the new clauses as amendments 222ZB, 222ZC, 222ZD, 222ZE and 222ZF in Committee on 16 January 2023. Introducing the amendments, Lord Callanan provided details of how the Government intended to implement the proposed legislation.

He said amendments 222ZB and 222ZC (now clauses 245 and 246) would allow "the use of strategic compensation measures to discharge obligations under the habitats regulations, the Marine and Coastal Access Act 2009 and the Scottish and Northern Irish equivalents".[86]

On amendment 222ZC (now clause 247), allowing for the creation of the Marine Recovery Fund, the Minister set out the Government's intention to delegate operating funds to devolved Administrations "where appropriate". This was so that "their Ministers may choose to use a marine recovery fund to undertake the delivery of measures related to projects to which they consent".[87]

Amendment 222ZD (now clause 248 on assessments of environmental effects, etc) would "help to speed up the consenting process by streamlining assessments, including the habitats regulations assessment process". The Minister explained how it would do this:

> By enabling future regulations to address environmental protection of all protected marine sites early enough in the pre-application planning process to inform adequate and ecologically robust mitigation measures.
>
> This amendment also allows the Government to consider enabling developers to provide compensatory measures that improve wider marine ecosystems.

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[84] Wildlife and Countryside Link. Risks on four fronts, January 2023

[85] HL Deb, 19 July 2022 c1887

[86] HL Deb, 16 January 2023, c354GC

[87] HL Deb, 16 January 2023, c356 GC

> I must emphasise that this broader approach would be considered only where developers have already avoided and mitigated their environmental impacts, and where like-for-like measures are not possible.
>
> Consent decisions will remain subject to advice from Defra's statutory nature conservation bodies and their equivalents in the devolved Administrations.[88]

The amendments were generally welcomed and agreed to unopposed.[89] There were no further amendments to this part of the bill tabled at report stage.

[88] HL Deb, 16 January 2023, c356GC

[89] HL Deb, 16 January 2023, c366GC

3 Part 12, chapter 2: Oil and gas - Environmental protection

Part 12, Chapter 2 Clauses 251 and 252 of the bill cover marine protection. The explanatory notes for the bill explain that the clauses introduce regulation making powers aimed at ensuring that the "offshore oil and gas environmental regulatory regime remains fit for purpose". It sets out how these powers might be used:

> The delegated powers would ensure that the BEIS Secretary of State is able to adequately:
>
> (i) respond to changes in policy delivery required to meet the challenges of achieving net zero, including extending regulatory regimes for habitat assessment and emergency oil pollution planning and response to new offshore activities, such as hydrogen production and storage;
>
> (ii) implement changes, resulting from any future court judgments; and
>
> (iii) implement lessons learned from any future offshore incident.[90]

Clause 251 covers arrangements for responding to marine oil pollution. It will allow the Secretary of State to make regulations on emergency planning and response, and inspections. Powers will apply to offshore gas and oil, CO_2 storage and offshore hydrogen production and storage.

Clause 252 covers impacts of offshore activities on habitats. The explanatory notes state the clause will provide the Secretary of State with powers to make regulations covering "habitats assessment of offshore activities relating to oil and gas, carbon dioxide storage and hydrogen production and storage".[91]

The 11th Report of the Delegated Powers and Regulatory Reform Committee (PDF) examined the powers in clause 252 (then clause 226). It concluded that they were very wide and opened ended, and that the Government had not provided sufficient justification for them.[92] In its response, the Government did agree to the Committee's recommendation that any amendments to the regulations should be through the affirmative procedure.

The Impact Assessment (PDF) for the bill set out why the primary powers were needed following Brexit:

> As the ECA 72 [European Communities Act 1972] no longer applies in the UK, a large part of the current offshore oil and gas environmental regulatory regime

[90] Bill 295 EN 2022-23, 25 April 2023
[91] Bill 295 EN 2022-23, 25 April 2023
[92] 11th Report of the Delegated Powers and Regulatory Reform Committee (PDF), 13 October 2022

> is essentially 'frozen'. Consequently, BEIS / OPRED no longer has any enabling primary powers to change secondary legislation which concerns matters that fall within OPRED's regulatory remit and extend to the United Kingdom's territorial waters and the Continental Shelf.[93]

The Offshore Petroleum Regulator for Environment & Decommissioning (OPRED) is the environmental regulator for offshore decommissioning. For more information about OPRED, see box 4 on page 39.

The DECZN fact sheet explaining the proposed changes includes details of how the measures might be used. For example, in the case of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 ("the Offshore Habitats Regulations") a possible legislative change would be:

> Extending the provisions to cover offshore hydrogen production & storage operations; or incorporating provisions to be able to appoint Inspectors to monitor and investigate compliance with consents.[94]

Detail of both clauses is set out in the explanatory notes, and the Energy Security Bill Policy Statement: Oil and Gas Environmental Protection (PDF), published January 2023.

3.1 Lords stages

During second reading of the bill the Minister, Lord Callanan, summarised the proposals as enabling:

> existing legislation to be updated, ensuring that the offshore oil and gas environmental regulatory regime maintains high standards in respect of habitat protection and pollution response.[95]

Both clauses were agreed to without debate during committee stage on 16 January 2023.[96]. During report stage, the Government amended both clauses to allow a right of appeal against the imposition of civil penalties. The changes were agreed to without division, as was the amendment to ensure any changes to regulations made under to Clause 252 are done so using an affirmative procedure. [97]

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93 BEIS/DESNZ, Impact Assessment (PDF) 7 July 2022

94 BEIS/DENZ, Energy Security Bill factsheet: Offshore oil and gas (habitats assessment and emergency pollution planning and response), 20 March 2023

95 HL Deb 19 July 2022 c1887

96 HL Deb 16 January 2023 c374GC

97 HL Deb 17 April 2023 c520

4 Part 12, chapter 2: Oil and gas – Charges for decommissioning schemes

Clause 253 would amend the Secretary of State's powers in the Petroleum Act 1998 to establish a new fee charging scheme to recover the costs of regulating the decommissioning of offshore oil and gas and carbon storage infrastructure, including costs incurred after the approval of a decommissioning programme. This would replace the existing fee charging scheme, which only allows for a fee to be charged at the point of programme submission and if a request is made for a programme to be revised.

4.1 Background

Regulation of decommissioning offshore oil, gas and carbon capture and storage activities

The Offshore Petroleum Regulator for Environment & Decommissioning (OPRED) is part of DESNZ. It regulates the decommissioning of offshore oil, gas and carbon capture and storage operations on the UK continental shelf (UKCS).[98, 99] For more information about offshore regulators, see box 4 overleaf.

The decommissioning of offshore oil and gas installations and pipelines is controlled by Part 4 of the Petroleum Act 1998, which was extended by the Energy Act 2008 to also apply to carbon storage installations. It requires the owners of offshore oil, gas and carbon storage infrastructure to decommission it at the end of its working life. The owners must submit a 'decommissioning programme' to OPRED for approval, setting out their proposals to decommission disused installations.

98 The legal database Lexis Nexis defines the UK Continent Shelf as follows: "The United Kingdom Continental Shelf (UKCS) is the region of waters surrounding the United Kingdom, in which the country claims mineral rights. This principally refers to the North Sea, where there are large resources of oil and gas". LexisNexis, GLOSSARY United Kingdom Continental Shelf definition, accessed 30 December 2022.

99 OPRED, About us, GOV.UK, accessed 18 April 2023

Box 4 Offshore oil and gas regulators

The North Sea Transition Authority is the business name for the **Oil and Gas Authority** (OGA), a company owned by the Secretary of State. It is the regulator for the oil and gas industries and offshore carbon storage operations. The NSTA website set outs the licensing and consents process, as well as the general processes for exploration and development of North Sea oil and gas fields for production and information on offshore carbon storage.

The Offshore Petroleum Regulator for Environment & Decommissioning (OPRED) is part of DESNZ. It regulates environmental and decommissioning activity for offshore oil and gas operations, including carbon capture and storage operations, on the UK continental shelf (UKCS).[100]

Several other regulators are involved in offshore oil and gas. The Practical Law practice note Oil & gas who's who: organisations, regulators and industry groups (subscription[101] required) provides an overview of each.

Existing provision to recover decommissioning costs

The Government has set out the current legal principle behind recovering decommissioning costs:

> In line with the fundamental polluter pays principle of environmental law, those who are responsible for putting in place the infrastructure (offshore oil and gas installations and pipelines and associated infrastructure) in order to benefit from the extraction of hydrocarbons should pay for its decommissioning.[102]

The Petroleum Act 1998 as amended by the Energy Act 2008 gives the Secretary of State powers to regulate to recover the costs of regulating decommissioning activities from the offshore infrastructure owners/operators, at the following points in time:

100 The legal database Lexis Nexis defines the UK Continent Shelf as follows: "The United Kingdom Continental Shelf (UKCS) is the region of waters surrounding the United Kingdom, in which the country claims mineral rights. This principally refers to the North Sea, where there are large resources of oil and gas". LexisNexis, GLOSSARY United Kingdom Continental Shelf definition, accessed 30 December 2022

101 MPs and their staff have access to Practical Law (a legislative database) through the Library subscription. Please be aware that Practical Law's publications are subject to copyright and should not be shared. Further details on Practical Law's copyright are available through the above link.

102 BEIS, Charging regime for decommissioning offshore oil and gas installations: Consultation on changes to charging a fee in respect of decommissioning offshore (oil and gas) installations and pipelines under the Petroleum Act 1998 as amended by the Energy Act 2008 [PDF], GOV.UK, May 2021, p5

- When an operator submits a decommissioning programme (referred to as an “abandonment programme” in the Act);
- When an operator requests to revise a decommissioning programme.
- The Act also gives the Secretary of State a power to make regulations to set the amount of fees payable.

These powers are set out in sections 29, 34 and 39 of the Petroleum Act 1998.[103]

Under these powers, the Government made the Offshore (Oil and Gas) Installation and Pipeline Abandonment Fees Regulations 2012 which put in place the existing charging regime.

A 2021 BEIS consultation on proposals for a new charging regime [PDF] set out how fees are set under the current regime:

> In calculating the fee, the Secretary of State takes the following factors into account.
>
> - The number of days which the Offshore Decommissioning Unit [part of OPRED] estimates will be required to consider a decommissioning programme from initial discussions, through development of the programme to final programme approval [....] and
> - the number of officers which the Offshore Decommissioning Unit estimates will be required to consider a proposal to revise a decommissioning programme.
>
> The decommissioning [...] approval and [...] revision processes are consistent, and the services standardised. Charges for these services are made on a daily full cost rate which will ensure that the customer pays a fee to cover the cost of dealing with the specific approval or revision of a decommissioning programme i.e. charged a bespoke cost on a case by case basis on the Unit’s best estimate of the full cost incurred.[104]

OPRED has published “indicative fees” for the submission and revision of decommissioning programmes for different types of infrastructure.[105] These are used to provide estimated fees to operators, however the actual fee charged to an operator is calculated as above.

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103 BEIS, Charging regime for decommissioning offshore oil and gas installations: Consultation on changes to charging a fee in respect of decommissioning offshore (oil and gas) installations and pipelines under the Petroleum Act 1998 as amended by the Energy Act 2008 [PDF], GOV.UK, May 2021, pp9-10

104 BEIS, Charging regime for decommissioning offshore oil and gas installations: Consultation on changes to charging a fee in respect of decommissioning offshore (oil and gas) installations and pipelines under the Petroleum Act 1998 as amended by the Energy Act 2008 [PDF], GOV.UK, May 2021, p10

105 OPRED, Decommissioning Offshore (Oil and Gas) Installations and Pipelines: Guidance on charging a fee in respect of offshore (oil and gas) installations and pipelines decommissioning programmes under the Petroleum Act 1998 [PDF], undated, accessed 24 April 2023, p8

For more information on the existing fee charging regime, see OPRED's guidance on the fee charging regime [PDF].

For general background on decommissioning, see the Practical Law practice note on Decommissioning of offshore installations (subscription[106] required).

4.2 Policy development

The case for changing the fee charging regime

In May 2021 BEIS launched a consultation [PDF] on proposed changes to the existing fee charging regime. It said this was no longer fit for purpose, because it does not allow OPRED to charge for all the work it undertakes in regulating decommissioning:

> The existing regime […] was implemented at a time when the decommissioning process was still immature. In recent years, as operators have commenced decommissioning in the UKCS [UK continental shelf], it has become clear that the fee-charging regime does not sufficiently cover the full life cycle of the work involved in delivering the service to industry, which can take place over a period of 1 to 15 years.[107]

The consultation outlined specific issues with the current fee charging regime:

> Experience shows that the current indicative cost framework where costs are aligned to type of facility is not a good proxy for cost estimation, and the regulatory process for small facilities can be as complex and time-consuming as it can be for large facilities. In addition, the decommissioning process has been streamlined and operators generally take less time than reflected in the indicative cost framework to deliver decommissioning programmes.
>
> The regulatory process that supports the development and ultimate approval of a decommissioning programme can take place over several years. Not only does this create a complex accountancy accrual burden for the Department, but it also makes it difficult for operators to monitor costs that are accruing each year.
>
> While the approval of a decommissioning programme is a key milestone there are many other discrete stages involved in the decommissioning process that should be reflected in a fee charging regime.[108]

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[106] MPs and their staff have access to Practical Law (a legislative database) through the Library subscription. Please be aware that Practical Law's publications are subject to copyright and should not be shared. Further details on Practical Law's copyright are available through the above link.

[107] BEIS, Charging regime for decommissioning offshore oil and gas installations: Consultation on changes to charging a fee in respect of decommissioning offshore (oil and gas) installations and pipelines under the Petroleum Act 1998 as amended by the Energy Act 2008 [PDF], GOV.UK, May 2021, p5

[108] BEIS, Charging regime for decommissioning offshore oil and gas installations: Consultation on changes to charging a fee in respect of decommissioning offshore (oil and gas) installations and

Changes proposed to the regime

The consultation proposed to amend the existing regime to allow OPRED to "to charge for all of the work it carries out to fulfil its statutory functions under Part 4 of the [Petroleum] Act […] and also for work carried out in connection with these functions".[109]

OPRED's statutory functions include engaging and advising operators on decommissioning projects, conducting financial reviews and risk assessments and serving Section 29 legal notices on companies. More detailed information on the functions is provided in pages 11 to 13 of the consultation document [PDF].[110]

The consultation also proposed to "introduce charging for all activities following decommissioning programme approval". It explained that the department "can spend considerable time post formal approval guiding operators to successful project close out".[111]

BEIS published the Government response to the consultation [PDF] in April 2022. It said it would amend Petroleum Act to "allow amendments to be made to our charging regime to align with the statutory functions of the Secretary of State […] under Part 4 of the Act".[112] In its response, BEIS noted the consultation had received only four stakeholder responses.

4.3 Proposed measure

The proposed measure would amend the Secretary of State's powers in the Petroleum Act 1998 to establish a new charging scheme to recover the costs of regulating the decommissioning of offshore oil, gas and carbon storage installations.

pipelines under the Petroleum Act 1998 as amended by the Energy Act 2008 [PDF], GOV.UK, May 2021, pp10-11

109 BEIS, Charging regime for decommissioning offshore oil and gas installations: Consultation on changes to charging a fee in respect of decommissioning offshore (oil and gas) installations and pipelines under the Petroleum Act 1998 as amended by the Energy Act 2008 [PDF], GOV.UK, May 2021, p11

110 BEIS, Charging regime for decommissioning offshore oil and gas installations: Consultation on changes to charging a fee in respect of decommissioning offshore (oil and gas) installations and pipelines under the Petroleum Act 1998 as amended by the Energy Act 2008 [PDF], GOV.UK, May 2021, pp11-13

111 BEIS, Charging regime for decommissioning offshore oil and gas installations: Consultation on changes to charging a fee in respect of decommissioning offshore (oil and gas) installations and pipelines under the Petroleum Act 1998 as amended by the Energy Act 2008 [PDF], GOV.UK, May 2021, p13

112 BEIS, Consultation on changes to charging a fee in respect of decommissioning offshore (oil and gas) installations and pipelines under the Petroleum Act 1998 as amended by the Energy Act 2008: Government response to consultation [PDF], GOV.UK, April 2022, p11

The DESNZ factsheet on the measure explains that the Department is "currently unable to recover the full costs" of regulating offshore oil and gas decommissioning from industry, and instead these costs are met through "through central budgets, leaving the taxpayer liable for any shortfall". It says the measure is intended to "future proof the cost recovery mechanism in line with the polluter pays principle of environmental law". [113]

The Delegated Powers Memorandum [PDF] gives more information about the drivers to change the charging regime.

> The current system is too inflexible in limiting cost recovery to only two fixed trigger points, based on submission of an application by the operator. The Department carries out work connected with Part 4 functions over a period of many years. Therefore, the Department is proposing a new charging scheme, to be established [...] that will allow the Department to bill regularly for work that it is doing. Charges will be based on an hourly rate, dependent on the expertise of the official involved. This will enable the Department to recover its costs more efficiently, in line with "Managing Public Money"; and will be more transparent and predictable for operators who pay the charges.
>
> The regulatory activity involved in overseeing the PA 1998 Part 4 decommissioning process is extremely complex and lengthy. Comparable regulatory work of a similar scale and complexity is also recovered by way of charging scheme, as this has proven to be the most suitable costs recovery model for such work.[114]

4.4 Impacts

The measure is expected to ensure OPRED can fully recover the cost of providing its regulatory services from industry and to "maintain the effectiveness of the 'polluter pays' principle in UK environmental law".

It is also expected to benefit offshore operators (also known as "duty holders), as it will align OPRED's cost recovery and environmental fees, allowing operators to "better and more efficiently plan ahead". [115]

From the point of view of the taxpayer, the measure is expected to have a net present value of between £9 million and £21 million over 10 years, due to the transfer of some decommissioning costs from the taxpayer to operators. However, from point of view of society, the measure is not expected to any net financial loss or gain (because the saving to the taxpayer would be equal to the additional costs on operators).[116]

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[113] DESNZ, Energy Security Bill factsheet: Offshore oil and gas decommissioning cost recovery, GOV.UK, updated 20 March 2023

[114] BEIS, Energy Bill Delegated Powers Memorandum [PDF], GOV.UK, July 2022, paras 964-966

[115] BEIS, "Annex 3.7: Offshore oil and gas decommissioning cost recover impact assessment" in Energy Bill - Impact Assessments [PDF], July 2022, p715 (p2 of Annex 3.7)

[116] BEIS, "Annex 3.7: Offshore oil and gas decommissioning cost recover impact assessment" in Energy Bill - Impact Assessments [PDF], July 2022, p715 (p2 of Annex 3.7)

Decommissioning charges

In a 2021-based estimate, the North Sea Transition Authority (NTSA) estimated the total cost of decommissioning the existing UKCS oil and gas infrastructure was £44.5 billion. This total cost estimate has decreased by 25% from £59.7 billion in 2017, when the NTSA set a target of reducing costs by 35% to £39 billion by the end of 2022. [117]

Decommissioning fee charging regimes

In 2021/22, the estimated total annual running cost of the Offshore Petroleum Regulator for Environment & Decommissioning (OPRED) is £3.4 million. The table below shows the proportion of the cost that the duty holder and tax payer are responsible for under the existing and proposed fee charging regime.[118]

Annual decomissioning costs for 2021/22 under the existing and proposed fee charging regime

£s millions

	Existing Fee charging regime		Proposed fee charging regime	
	Duty Holder	Taxpayer	Duty Holder	Taxpayer
Decommissioning cost	1.1 - 1.6	2.1 - 2.6	3	0.8
	30 - 43%	57 - 70%	81%	22%
Total cost	**3.7**		**3.7**	

Source: BEIS, "Annex 3.7: Offshore oil and gas decommissioning cost recover impact assessment" in Energy Bill - Impact Assessments [PDF], July 2022, p719 (p6 of Annex 3.7)

The duty holder is responsible for 29-44% (£1.0-£1.5 million) of decommissioning costs in the existing fee charging regime. This increases to 79% (£2.7 million) under the proposed fee charging regime.

The taxpayer is responsible for 56-71% (£1.9-£2.4 million) of decommissioning costs in the existing fee charging regime. Under the proposed fee charging scheme, the taxpayer is still responsible for 21% (£0.7 million) because not all running costs, such as policy development, are recoverable.

117 North Sea Transition Authority (NTSA), UKCS Decommissioning Cost Estimate 2022, 4 August 2022

118 The decommissioning costs have been estimated using average recovered costs from the last three financial years. More information can be found in the published impact assessment.

4.5 Reaction to the measure

As noted above, this measure has been subject to consultation. However, there appears to have been little wider discussion of the measure.

CMS Law Now™ published an article on the bill's oil and gas provisions. It said:

> The bill does not propose to include any details of the proposed [new fee charging] scheme itself – rather it provides [BEIS] with powers to put such a scheme in place and provides that the scheme may specify when, how and by whom a charge is to be paid. [...] Industry will therefore be keen to hear details of the proposed scheme as soon as possible to understand potential impact and likely timing of introduction of any such scheme.[119]

4.6 Clause 253

Clause 253 would amend the Petroleum Action 1998 and the Energy Act 2008 to give the Secretary of State a power to make regulations imposing charges to recover the costs of DESNZ's regulatory functions related to decommissioning offshore oil and gas infrastructure and carbon storage installations. The power would be subject to the negative procedure.

The new power would replace an existing delegated power in the Petroleum Act, which allows the Government to charge fees for this purpose, at two fixed points (approval and review of decommissioning programmes).[120]

When originally introduced in the Lords, **clause 253** (then clause 227) proposed to give the Secretary of State a power to establish an administrative charging scheme to recover these costs, rather than to make regulations for this purpose. In this format, the power would not have been subject to a parliamentary procedure.[121]

In its report on parts 7-13 of the new Energy Bill [PDF], the House of Lords Delegated Powers and Regulatory Reform Committee said the proposal to establish the charging scheme in this way was inconsistent with existing provisions on fees. It recommended that the charging scheme made under the new powers introduced by **clause 253** (then clause 227) should be contained in regulations subject to the negative procedure.[122]

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119 CMS Law-Now™, Energy Bill 2022 - Key proposals for the offshore oil & gas industry, 14 July 2022

120 DESNZ, Energy Bill Policy Statement: Offshore oil and gas and carbon dioxide storage - decommissioning cost recovery measure [PDF], GOV.UK, March 2023

121 BEIS, Energy Bill Delegated Powers Memorandum [PDF], GOV.UK, July 2022, paras 964-968

122 House of Lords Delegated Powers and Regulatory Reform Committee, Energy Bill [HL]: Parts 7-13 [PDF], 13 October 2022, HL 66, paras 65-71

In its response to the Committee's report [PDF], the Government welcomed the Committee's comment and said it agreed the charging scheme should be made by regulations and subject to the negative procedure.[123] During the Lords Report Stage the Government moved an amendment, which was accepted, to contain the new powers in this way.[124]

A BEIS policy Statement on decommissioning cost recovery [PDF] sets out how Government would implement the new power.

4.7 Lords stages

Introducing the bill during **second reading**, Lord Callanan said:

> In line with the polluter pays principle, and in order to protect taxpayers, the bill introduces a provision on charging schemes for offshore oil and gas decommissioning. This means that the Government will be able to recover the costs of these activities more fully from the industry.[125]

Clause 253 (then 227) was agreed without debate at **committee stage**. Baroness Sheehan (Liberal Democrats) moved a related amendment, which sought to introduce a new clause to increase transparency about taxpayer liability in respect of decommissioning relief agreements, which was supported by Baroness Worthington (crossbench).[126] The amendment was withdrawn.

At **report stage**, Lord Callanan moved amendments 108 to 123. These would amend **clause 253** (then clause 248) to allow the Secretary of State to recover the costs of regulating decommissioning activity (as set out in Part 4 of the Petroleum act) by making regulations to impose charges, rather than by establishing an administrative charging scheme. The power would be subject to the negative procedure.[127] The amendments were agreed.

The measure was not debated at **third reading**.

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[123] House of Lords Delegated Powers and Regulatory Reform Committee, "Appendix 1: ENERGY BILL [HL]: GOVERNMENT RESPONSE" in 27th Report of Session 2022–23 [PDF], 2 March 2023, HL 159, pp16-17

[124] HL Deb 17 April 2023 cc521-522GC

[125] HL Deb 19 July 2022 c1887

[126] HL Deb 16 January 2023 c374 and c389

[127] HL Deb 17 April 2023 cc521-522GC

4.8 Further reading

In addition to the various publications providing information on the bill in general, the Government has published the following background documents specific to this measure:

- Energy Security Bill factsheet: Offshore oil and gas decommissioning cost recovery
- Policy Statement: Offshore oil and gas and carbon storage - decommissioning cost recovery

The following documents provide further background on the development of this policy:

- Consultation on changes to charging a fee in respect of decommissioning offshore (oil and gas) installations and pipelines under the Petroleum Act 1998 as amended by the Energy Act 2008 [PDF] (May 2021) and Government response [PDF] (April 2022)
- OPRED guidance on Oil and gas: decommissioning of offshore installations and pipelines

5 Part 12, chapter 2: Oil and gas - Change in control of licensee

Clauses 254 and 255 would give new powers to the North Sea Transition Authority (NSTA) to intervene *before* the ownership and control of a licensee is passed to a new parent company. This would replace the NSTA's existing powers to intervene *after* such a 'change of control' event.

Part 2, chapter 4 of the bill (clauses 98 to 101) sets out equivalent provisions for carbon storage licences. For more information, see the Library briefing on parts 1-3 of the Energy Bill.

5.1 Background

Petroleum licences

The right to search, bore for and get petroleum in most areas of Great Britain and the UK's offshore waters are the exclusive rights of the Crown. Companies who wish to undertake these activities must obtain the relevant licence from the Oil and Gas Authority (OGA), whose business name is the North Sea Transition Authority (NSTA), which regulates these industries.[128] (For more information about offshore regulators, see box 4, page 389.)

There are different types of licence for onshore and offshore petroleum activities (provided for under the Petroleum Act 1998), including:

- Offshore petroleum production licences confer exclusive rights to explore for and extract petroleum across a licensed area at sea.
- Offshore petroleum exploration licences confer rights to explore for petroleum across the UK's entire offshore area (other than areas in which production licences are already in force), but not to extract it. They are non-exclusive.[129]

[128] DESNZ/BEIS, Energy Security Bill factsheet: OGA change of control powers prior to a change of control event, GOV.UK, updated 23 March 2023; Practical Law Energy and Practical Law Environment, Carbon capture and storage: UK policy and regulatory regime (subscription required), undated, accessed 23 April 2023 via Library subscription

[129] Practical Law Energy, Offshore petroleum licences and the model clauses, subscription required), undated, accessed 23 April 2023 via Library subscription

The terms and conditions of a petroleum licence usually incorporate a number of model clauses. They are set out in secondary legislation, for example:

- Schedule to the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008;
- Schedule 2 to the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014

Before it issues a licence, the NSTA satisfies itself that the prospective licensee company, and its parent companies, are fit to hold the licence, and that they will meet their licence obligations.[130]

For more information about offshore licences, see:

- NSTA webpages on Licensing and consents
- Practical Law practice note on Offshore petroleum licences and the model clauses (subscription[131] required)

Existing NSTA powers on changes in the control of licensees

A DESNZ factsheet explains that during the lifetime of a petroleum production licence, “it is quite likely that the ownership and control of a Licensee should pass to a new parent company, most often by means of a share sale or merger”. This is known as a ‘change of control’.[132]

It notes that “an undesirable change of control could undermine investor confidence in the commercial environment, making the United Kingdom Continental Shelf (UKCS) a less attractive place for investment”.[133]

At present the NSTA cannot prevent undesirable changes of control of licensees holding petroleum production licences before they happen. It can however examine the change of control, and seek to remedy it, after it has occurred, for example by requiring a further change of control or by revoking any UK petroleum licences held by the licensee.[134]

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130 DESNZ/BEIS, Energy Security Bill factsheet: OGA change of control powers prior to a change of control event, GOV.UK, updated 23 March 2023

131 MPs and their staff have access to Practical Law (a legislative database) through the Library subscription. Please be aware that Practical Law’s publications are subject to copyright and should not be shared. Further details on Practical Law’s copyright are available through the above link.

132 DESNZ/BEIS, Energy Security Bill factsheet: OGA change of control powers prior to a change of control event, GOV.UK, updated 23 March 2023

133 DESNZ/BEIS, Energy Security Bill factsheet: OGA change of control powers prior to a change of control event, GOV.UK, updated 23 March 2023

134 NSTA, Change of control, undated, accessed 23 April 2023

The potential for the NSTA to overturn a change of control after it has taken place is a concern for companies who may be subject to such an action. Businesses are able (and encouraged) to request a comfort letter confirming that the NSTA has no objections to the change of control. However, the NSTA's decisions to "issue comfort" are not binding: comfort is provided based on the information available to the NSTA at the time, and limited accordingly.[135]

The NSTA summarises the factors it considers when deciding whether to exercise its change of control powers:

> Our policy requirement when deciding whether to exercise the change of control powers and when deciding whether to issue comfort in respect of them is that the party seeking to effect the change of control must demonstrate that the change of control will not prejudice the ability of the Licensee to meet its licence commitments, liabilities and obligations.
>
> In taking its decision, the NSTA may also consider the fitness of directors and other persons (real or corporate) who will exercise control over the Licensee post the change of control. The NSTA's fitness criteria are set out here.[136]

In December 2021 the NSTA (then OGA) sent a letter to all licensees, which provided further detail on how it makes change of control decisions [PDF]. It said that the NSTA generally supported mergers and acquisitions, but it was concerned that "some such transactions may put at risk the delivery of a licensee's licence commitments, liabilities and obligations, including commitments under the OGA Strategy [...], and that they therefore require close scrutiny".[137,138]

The NSTA has rarely used its change of control powers. In 2015 the then OGA ordered LetterOne to dispose of the assets it had acquired from RWE within six months.[139]

The change of control powers do not apply to licensees holding petroleum exploration licences. The NSTA is not required to approve changes in the control of these, nor does it have powers to order a further change of control.[140]

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135 NSTA, Change of control, undated, accessed 23 April 2023

136 NSTA, Change of control, undated, accessed 23 April 2023

137 The OGA Strategy came into force in February 2021, replacing the Maximising Economic Recovery Strategy (2016). The OGA Strategy has not been renamed following the rebranding of the OGA as the NSTA.

138 NSTA, Letter from Tom Wheeler, Director of Regulation, to all licensees on Changes of control of licences [PDF], 3 December 2021

139 Department of Energy & Climate Change (DECC), Secretary of State decision on LetterOne North Sea gas fields acquisition, GOV.UK, 20 April 2015

140 Practical Law Energy, Offshore petroleum licences and the model clauses, subscription required), undated, accessed 23 April 2023 via Library subscription

5.2 Policy development

From July to September 2022 the NSTA held a consultation on proposed changes to the fees for its services. It published its consultation response [PDF] in February 2023. This set out the NSTA's intention to recommend to DESNZ that it legislate to introduce a fee for applying for consent to a change of control for petroleum licences.[141]

5.3 Proposed measure

The bill would amend the NSTA's change of control powers for petroleum production licences, to allow it to intervene before an undesirable change of control occurs, rather than after the event. The DESNZ factsheet on the measure explains:

> [The] Bill will bring forward a measure to rectify this [the NSTA's current lack of pre-emptive change of control powers], to provide a less time consuming and more robust approach. It will ensure that the UKCS continues to attract investment whilst protecting the taxpayer from funding liabilities not met by potential undesirable investors.
>
> [...]
>
> The bill will allow the NSTA to identify and prevent a potentially undesirable change of control before it happens, rather than seek to remedy it after it has taken place. Undertaking a change of control without NSTA's consent could result in the licence being revoked.
>
> Where the NSTA are the licensing authority, this measure will amend certain clauses relating to change of control in all current and future Seaward Petroleum Production licences [and] Landward Petroleum Production Licenses.[142,143]

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141 NSTA, Response to the consultation on new NSTA fees and data confidentiality period [PDF], February 2023, p12

142 Note the factsheet refers to the Bill's provisions to amend the NSTA's change of control powers for both petroleum licences and carbon storage licences. Part 12 of the Bill covers only those provisions that relate to petroleum licences; the equivalent provisions for carbon storage licences are covered in part 2, chapter 4 of the Bill, and addressed in the separate Library briefing on parts 1-3 of the Energy Bill.

143 DESNZ/BEIS, Energy Security Bill factsheet: OGA change of control powers prior to a change of control event, GOV.UK, updated 23 March 2023

5.4 Impacts

The primary legislation is not expected to have any direct costs, or benefits, on businesses, nor is it expected to have directly quantifiable benefits for the NSTA.[144]

The impact assessment notes that the policy would "improve the NSTA's ability to ensure that the governance, technical and financial capability of a [...] petroleum licensee is preserved following a change of its parent company".[145]

5.5 Reaction to the measure

This measure has not been consulted on. There has been some legal commentary on the measure.

In an article summarising the Energy Bill's wider provisions, law firm Bracewell LLP said that whilst the measure is "unlikely to result in any significant change", it would formalise the procedure.[146]

A CMS Law Now™ article on the bill's oil and gas provisions said the new change of control measure would likely mean that mergers and acquisitions transactions will require NSTA approval for the change in control as a condition precedent to the transaction's completion. It noted that

> Licensees will therefore be keen to be provided with further details of the formalities of the process – for example:
>
> - will requests be submitted though the existing [] portal used to make applications for consent in respect of asset transfers, or will a separate process be established by NSTA;
> - what fees will apply;
> - will it be possible to request an expedited approval process for internal corporate re-organisations.[147]

It went on to state that the process would need to be in place when this part of the bill comes into force so companies do not have delays in seeking approvals for change of control.

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144 BEIS, "Annex 3.4: Oil and Gas Authority (OGA) ex ante powers impact assessment" in Energy Bill - Impact Assessments [PDF], July 2022, p693 (p2 of Annex 3.4)

145 DESNZ, Energy Bill Summary Impact Assessment [PDF], p22

146 Bracewell LLP, Re-shaping the UK energy regime in an uncertain political landscape, Lexology, 14 July 2022

147 CMS Law-NowTM, Energy Bill 2022 - Key proposals for the offshore oil & gas industry, 14 July 2022

5.6 Clauses 254 to 255 and schedule 19

Clause 254 introduces Schedule 19.

Schedule 19 would amend model clauses in the **Petroleum Licensing (Production) (Seaward Areas) Regulations 2008** and the **Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014.** It would give new powers to the NSTA (OGA) to intervene *before* the ownership and control of a licensee under these regulations is passed to a new parent company. This would replace the NSTA's existing powers to intervene *after* such a 'change of control' event.

Clause 254 would amend new and existing licences with the new change of control provisions.

Clause 255 would amend the Petroleum Act 1998 to give the NSTA powers to request information in relation to a change, or potential change, of control of a petroleum licensee.

5.7 Lords stages

Introducing the bill during **second reading** Lord Callanan said it was important that "the UK's oil and gas [...] infrastructure remains in the hands of companies with the best ability to operate it". He said the bill would "allow the North Sea Transition Authority to identify and prevent a potentially undesirable change of control before it happens.[148]

The clauses were agreed to without debate at **committee stage**. They were not debated at **report stage** or **third reading**.

5.8 Further reading

In addition to the various publications providing information on the bill in general, the Government has published a factsheet on OGA (NSTA) change of control powers prior to a change of control event.

The factsheet refers to the bill's provisions to amend the NSTA's change of control powers for both petroleum licences and carbon storage licences. Part 2, chapter 4 of the bill (clauses 98 to 101) sets out the provisions for carbon storage licences. For more information, see the Library briefing on parts 1-3 of the Energy Bill.

[148] HL Deb 19 July 2022 c1887

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