HOUSE OF LORDS

Library Note

Energy Bill
(HL Bill 30 of 2013–2014)

The Energy Bill is intended to establish a framework for delivering secure, affordable and low-carbon energy. This Library Note provides background information for the second reading of the Bill in the House of Lords on 18 June 2013. It summarises the report stage and third reading in the House of Commons on 3–4 June 2013, where debate focused on setting a decarbonisation target for the electricity sector, electricity market reform and consumer protection. The Note is intended to be read in conjunction with two House of Commons Library Research Papers, *Energy Bill* (RP 12/79, 13 December 2012) which sets out the background to the Bill, and *Energy Bill: Committee Stage Report* (RP 13/19, 12 March 2013) which summarises the debates during the Commons second reading and committee stage.

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1. Introduction

Parliamentary Stages

The Energy Bill (HL Bill 30 of 2013–14) was introduced into the House of Commons on 29 November 2012, and had completed its committee stage by the end of the 2012–13 parliamentary session. The Bill was carried over into the 2013–14 session following a motion agreed in the Commons (HC *Hansard*, 19 December 2012, col 963), and it completed its passage through the Commons on 4 June 2013. The Bill received its first reading in the House of Lords on 5 June 2013, and its second reading is scheduled for 18 June 2013. The Department of Energy and Climate Change (DECC) has published a webpage bringing together resources on the Bill, including impact assessments and policy briefs.

A Draft Energy Bill was scrutinised by the House of Commons Energy and Climate Change Committee, which published its report *Draft Energy Bill: Pre-legislative Scrutiny* (HC 275-i of session 2012–13) in July 2012, and an informal House of Lords Working Group, chaired by Lord Oxburgh (Crossbench), which also published its *Report on the Draft Energy Bill* in July 2012.

Outline of this Note

This Note summarises proceedings in the House of Commons during the Bill's report stage, which took place over two days on 3–4 June 2013, and third reading, which immediately followed. The Note is intended to be read in conjunction with two House of Commons Library Research Papers: *Energy Bill* (13 December 2012, RP 12/79) which sets out the background to the Bill, and *Energy Bill: Committee Stage Report* (RP 13/19, 12 March 2013) which summarises the debates during the Commons second reading and committee stage. A third short House of Commons Library Note, *Energy Bill 2013: Update for Report Stage* (SNSC6653, 30 May 2013), summarises some of the more controversial areas remaining for discussion when the Bill was carried over, although in the event there was not time for all of these to be debated at report stage. Copies of all these House of Commons Library Notes are available in the House of Lords Library.

Part 2 of this Note summarises the debate on the first day of report stage, which focused on contracts for difference and investment contracts, the emissions performance standard, and consumer redress orders. Annex 1 summarises the numerous Government amendments made on day one without substantive debate. Part 3 of the Note summarises the debate on the second day of report stage, which focused on the date for setting a decarbonisation target, electricity demand reduction, and community energy schemes. Parts 4 and 5 of the Note summarise the third reading debate and the Secretary of State's response to press coverage of the proceedings. Annex 2 contains a bibliography of reports and documents referred to in this Note, and also lists some briefings by the Parliamentary Office of Science and Technology (POST) which provide further scientific background on some areas of the Bill.

Overview of the Bill

The Explanatory Notes to the Bill describe its purpose as being to:

> ... establish a legislative framework for delivering secure, affordable and low carbon energy.

> At its core is the need to ensure that, as older power plants are taken offline, the UK remains able to generate enough energy to meets its needs even if demand increases. Doing this while also decarbonising requires significant investment in new infrastructure to be brought forward—over £100 billion—and new schemes to be integrated to ensure this investment comes forward.
>
> (paras 3–4)

As introduced in the House of Lords, the Bill is structured as follows:

> **Part 1: Decarbonisation**. Establishes a framework for a decarbonisation target range for the electricity generation sector in Great Britain. This Part gives the Secretary of State a power to set a decarbonisation target range, imposes a duty on the Secretary of State in respect of any decarbonisation target range which is set and includes certain reporting requirements.
>
> **Part 2: Electricity Market Reform**. Reforming the electricity market with the aim of ensuring that electricity demands continue to be met over the coming decades. This Part includes provisions on contracts for difference and investment contracts, the capacity market, liquidity and market access, institutional arrangements in relation to the delivery of these schemes, a transition to a certificate purchase scheme for generation supported by the renewables obligation, and emissions performance standard for new fossil-fuel plants.
>
> **Part 3: Nuclear Regulation**. Establishes the Office for Nuclear Regulation with powers and responsibilities to regulate the safety and security of nuclear power plant, as well as to deal with the transport of radioactive materials, nuclear security and safeguards more generally.
>
> **Part 4: Government Pipe-line and Storage System (GPSS)**. Measures to enable the sale of the GPSS including providing for the rights of the Secretary of State in relation to the GPSS, registration of those rights, compensation in respect of the creation of new rights or their exercise, and for transferral of ownership, as well as powers to dissolve the Oil and Pipelines Agency by order.
>
> **Part 5: Strategy and Policy Statement**. Measures applicable to the Authority [Ofgem] and the Secretary of State to create regulatory certainty by seeking to ensure that Government and the regulator are aligned at a strategic level.
>
> **Part 6: Consumer Protection and Miscellaneous**.
>
> - **Domestic tariffs**: Measures to provide the Secretary of State with powers to amend licence conditions of gas and electricity suppliers to ensure domestic consumers are on the cheapest tariff with their supplier that meets their preferences.
>
> - **Third-party intermediaries**: Extending the scope of activities which can be made subject to a licensing regime governed by the Authority to cover third-party intermediaries in the energy sector such as switching sites.

- **Consumer redress**: A measure introducing a new enforcement power for the Authority to require energy companies which breach licence conditions or other relevant regulatory requirements to provide redress to consumers who suffer loss, damage or inconvenience as a result of the breach.

- **Offshore transmission**: A measure to provide an exception to the prohibition of participating in the transmission of electricity without a licence for a person who participates in offshore transmission during a commissioning period in certain circumstances.

- **Fees for energy resilience services**: A measure to enable the Secretary of State to charge fees for providing energy resilience services for the purposes of, or in connection with, preventing or minimising disruption to the energy sector.

- **Nuclear decommissioning**: A measure to enable the Secretary of State to recover the costs incurred in considering various agreements and programmes relating to the decommissioning of nuclear installations and the disposal of hazardous waste.

Part 7: Final. This Part includes provision authorising spending in relation to electricity market reform.

(Explanatory Notes, pages 11–12)

2. Commons Report Stage—Day One

The debate on the first day of report stage (3 June 2013) covered Part 2 of the Bill, which deals with electricity market reform, and Part 6 of the Bill, which deals with consumer protection. Over 90 Government amendments were agreed on question with little debate; these are summarised in Annex 2 of this Note. Michael Fallon (Conservative), Minister of State for Energy, opened the debate by outlining the Government's reasons for disagreeing with amendments tabled by other parties and by backbenchers on a number of aspects of electricity market reform (HC *Hansard*, 3 June 2013, cols 1267–80)[1]. There was not time in all cases for the MPs who had tabled these amendments to respond. Section 2 of this Note focuses on the six amendments that were pressed to a division.

2.1 Contracts for Difference (CFDs) and Investment Contracts

Background

A major feature of the Bill's measures on electricity market reform is the introduction of Contracts for Difference (CFDs) in Chapter 2 of Part 2. The aim of the CFD scheme is to "provide developers of eligible low-carbon electricity generation with a long-term contract that provides for a stable revenue stream enabling investment in low carbon" (Explanatory Notes, para 10). Contracts will be allocated by the operator of the national electricity transmission system (currently National Grid). Generators of low-carbon electricity will enter into a contract with a CFD "counterparty" (a company or public authority designated by the Secretary of State). The contracts will work as follows:

[1] Column references in section 2 of this Note are to HC *Hansard*, 3 June 2013 unless otherwise specified.

> The CFD regime provides stable returns and a guaranteed price for generators at a fixed "strike price". Generators receive revenue from selling their electricity into the market as usual. When the wholesale market price (or "reference price") is below the strike price they receive a top-up payment from suppliers. If the wholesale price is higher than the strike price, generators must pay back the difference. This is in turn paid back to suppliers…
>
> (House of Commons Library, *Energy Bill*, 13 December 2012, RP 12/79, page 20)

It is the Government's intention that eventually the strike price will be set through a competitive process, but initially the strike prices for all low-carbon technologies will be set through an administrative process.

The first CFDs are not expected to be signed before 2014. Chapter 4 of Part 2 of the Bill and Schedule 2 therefore introduce "investment contracts". These are contracts that low-carbon electricity generators may enter into directly with the Secretary of State, rather than with the CFD counterparty, before the full CFD scheme is operational. Investment contracts are intended as a transitional measure to ensure that there is no hiatus in investment in low-carbon electricity generation in the period before CFDs begin. Investment contracts are also sometimes referred to as "early CFDs", and they will operate in a similar manner to CFDs. An investment contract must contain an obligation for the parties to make payments to each other based on the difference between a strike price and a reference price in relation to the electricity generated. Schedule 2 specifies that the strike price will be "specified in, or determined under, the contract". To qualify as an investment contract, the contract must be laid before Parliament, but certain confidential or commercially sensitive material may be omitted from the version of the contract that is laid before Parliament.

In November 2012, a licence was granted for a new nuclear power station at Hinkley Point in Somerset, the first new site licence for a nuclear power station in the UK for 25 years. There have been prolonged discussions between the Government and Electricité de France (EDF) over the strike price to be paid for electricity generated at the new plant, Hinkley Point C. An announcement was originally expected by the end of 2012, but—as several members pointed out during the debate—it has not yet been made. During its pre-legislative scrutiny of the Draft Energy Bill, the House of Commons Energy and Climate Change Committee recommended that a panel of experts should scrutinise the setting of strike prices, and said that it thought a nuclear strike price above that given to offshore wind would not represent value for money for consumers (House of Commons Energy and Climate Change Committee, *Draft Energy Bill: Pre-legislative Scrutiny*, July 2012, HC 275-i of session 2012–13, para 131 onwards).

New Clause 5: Expert Panel

Martin Horwood (Liberal Democrat) tabled new clause 5, which would have introduced new Schedule 1. This would have required the Secretary of State to seek advice from, and the opinion of, an expert panel before entering into any CFD or investment contract. Mr Horwood said that he supported the Bill, but it was "obvious… there is a growing chorus of scepticism about aspects of the Bill, and particularly subsidies that may be unearned". He continued:

> My worry is principally about nuclear because the subsidies in the Bill contravene the spirit of the coalition agreement. That agreement distinguished between renewables,

> where it implicitly accepted there was a case for subsidy, and the nuclear industry, for which it specifically ruled out a subsidy.
>
> (col 1291)

Mr Horwood described nuclear power as "a 56-year old technology that has already proved to have a massive record of cost and time overruns". The nuclear industry in the UK was, he claimed, "not very competitive and … overwhelmingly dominated by one nationalised industry supplier—Electricité de France". He feared that in awarding CFDs or investment contracts to nuclear projects, "there are risks that we are in effect organising a massive transfer of funds from British bill payers, if not taxpayers, to a French nationalised industry of dubious profitability". He quoted an estimate by former directors of Friends of the Earth that a 30-year contract with EDF could lead to a transfer of £30 billion from Britain's householders and businesses. He explained that the effect of new clause 5 would be to ensure that all technologies negotiating CFDs were subject to scrutiny by an independent expert panel. This would apply equally to all technologies, so his amendment was "not specifically anti-nuclear, but … anti unearned subsidies" (cols 1292–3). His amendment would not give Parliament a veto over a CFD, but it would require the Secretary of State to lay before Parliament written reasons why he disagreed with the advice of the expert panel, should the situation arise. Mr Horwood argued that this would provide "greater assurance of scrutiny and transparency" (col 1283).

Speaking at the start of the debate, Michael Fallon assured the House that development of CFDs and investment contracts would "be informed by close consultation with relevant experts" and that new clause 5 and new Schedule 1 were "unnecessary". He explained that:

> Our decisions on strike prices for CFDs will be informed by analysis from the National Grid. The robustness of that analysis will be scrutinised by an independent panel of technical experts who will report to the Government. Their report will be published. Any divergence of opinion between the panel, the Government and National Grid will be reported and explained. Given the existing role of the panel of technical experts, I do not see a wider remit for another expert panel to look at CFDs.
>
> I agree that investment contracts should be subject to rigorous scrutiny and the best available advice, which they will be. For investment contracts relating to renewables projects I am minded to use the draft CFD strike price informed by the robust process just outlined. For other low carbon technologies, which are bilaterally negotiated, specialist advice will be sought as appropriate and there will be rigorous scrutiny. For example, for Hinkley Point C we have appointed technical and financial specialists to advise on whether any proposal represents value for money. We will publish details of that contract as and when it is negotiated.
>
> (cols 1267–8)

In response, Martin Horwood suggested that it was "practically pointless" to subject contracts to parliamentary scrutiny after the conclusion of negotiations, particularly when contracts might last 30 years or more, as is expected in the case of the contract with EDF for Hinkley Point C (col 1269).

Tom Greatrex (Labour), Shadow Minister for Energy and Climate Change, reminded Mr Fallon (who had not been in post at the time) that Labour had tabled a number of similar amendments

during the Bill's committee stage, and had "argued strongly for an independent expert panel to offer transparency, expertise and, crucially, protection for consumers". He believed that the Government's proposal for a non-statutory panel did not go far enough. He said that Labour would support this amendment if it were pushed to a division (cols 1281–2).

Mr Horwood pressed new clause 5 to a division. It was defeated by 287 votes to 232, a majority of 55 (col 1300).

Amendment 24: Nuclear Power

Caroline Lucas (Green) spoke to a number of amendments which, she said, "simply seek to return us to the coalition agreement, which said that new nuclear should receive no public subsidy". She accused the Government of "writing a blank cheque for an expensive, inflexible old technology that we cannot afford and simply do not need", and suggested that there were "more effective" ways of meeting energy needs and decarbonising the power sector, such as renewable energy, energy efficiency, demand reduction, and demand side measures such as energy storage and smart grids. She asserted that "nuclear is a mature technology that has enjoyed nearly 60 years of support [but] despite that, the price tag keeps going up", whereas "the costs of renewables are falling across the board". Ms Lucas explained that her amendments 23 and 25 were "far-reaching" and "would in effect rule out new nuclear altogether". An alternative proposal, amendment 24, "would simply ensure that payments under a CFD for nuclear electricity are not greater than payments for any form of renewable generation, in terms of price per megawatt hour and taking into account the length of the contract provided". She said that this amendment had cross-party support, and she intended to press it to a division (cols 1293–5).

Speaking at the beginning of the debate, Michael Fallon said that:

> It would not make sense artificially to link the amount of support for one technology with support for another. Support should be set based on robust evidence and advice that demonstrates, for instance, that the level of support makes a project economically viable—and thus will attract investment—and that it delivers our policy objectives while minimising costs for consumers. More widely, renewables support rates will vary over time, as has happened with the renewables obligation, and a mechanism to link support levels in this way, as proposed in amendment 24, could be cumbersome and could restrict our discretion to set support levels that might otherwise provide value for money.
>
> (col 1272)

In response, Caroline Lucas argued that the Government's position on nuclear power ought to be guided by the coalition agreement, which had, she said, "clearly stated" that new nuclear should receive no public subsidy. She suggested that Mr Fallon was "acting rather like Humpty Dumpty in *Through the Looking Glass*, in that he is making words mean what he wants them to mean… He seems to be arguing that it is not a subsidy if it is being given to renewables and to nuclear, but it is still a subsidy" (col 1272). Mr Fallon responded that there was no reference to the word "subsidy" in the Bill, nor would there be in any contract that might be concluded with EDF for Hinkley (col 1272).

Mark Reckless (Conservative) said that he was pleased that Ms Lucas intended to press this "relatively modest" amendment to a division, although he would prefer that no forms of energy

production received a subsidy. He described the Bill as a "dog's breakfast", under which "we will end up subsidising almost everything". He criticised the Bill for putting "very large subsidies to different technologies, which Ministers pick as winners in an opaque process, on a contractual basis that cannot realistically be unpicked later" (col 1296).

When Caroline Lucas pressed amendment 24 to a division, it was defeated by 503 votes to 20, a majority of 483 (col 1305).

Amendment 9: Confidential Information

As noted above, Schedule 2 allows "confidential information" to be withheld from the version of an investment contract that is laid before Parliament. The Opposition tabled amendments 8 and 9, which would have changed the definition of "confidential information", restricting it only to information that "constitutes a trade secret". Speaking on this issue at the beginning of the debate, Michael Fallon observed that:

> There is a difficult balance to be struck between publishing as much as possible about a contract, while also allowing some commercially sensitive information to be withheld from publication. It is crucial that developers provide the information we need to show that a contract represents value for money, but it would be inappropriate to publish information that damages a developer's commercial interests.
>
> (col 1268)

Mr Fallon made a number of proposals and commitments intended to improve transparency in this area. On the subject of Hinkley Point C, the Government had undertaken to publish reports from its external advisors (col 1268). He explained that it would be the Government, and not developers, who would decide what information was confidential. Mr Fallon made a commitment to publish a description of any information that was withheld, and the reasons for doing so. He also tabled Government amendments 71 and 72 (which were agreed to—col 1316) which removed the Secretary of State's discretion to withhold information from a contract after it had been agreed, but before it had been laid before Parliament. This would mean, said Mr Fallon, that "any confidential information will have to be clearly identified as such during contract negotiations, and there is no further discretion then to withhold information once those are concluded" (col 1269). Government amendment 52 (which was agreed to—col 1304) placed a duty on the Government to publish a report each year setting out how it had exercised its powers and carried out its functions under Part 2 of the Bill, the Part concerned with electricity market reform (EMR).

Speaking for the Opposition, Tom Greatrex acknowledged it would be "churlish" of him not to recognise that the Government had moved on this issue since the Bill's committee stage. However, having listened to Mr Fallon's commitments on what information would be published, and on publishing a description of what information had been withheld, he was "unconvinced that that goes as far as it could or should". He accepted that "it may be appropriate for certain information not to be put in the public domain, particularly when we are dealing with nuclear energy", but felt that it should be "the very limited exception, not the rule". He concluded that:

> We will never have the confidence that we should have in nuclear as part of our generation mix if people are able to gainsay aspects of agreements between Governments and companies.

> The best way of ensuring that does not happen is to make all the information available; people can then make their judgements
>
> (col 1282).

The House divided on amendment 9, which was defeated by 304 votes to 227, a majority of 77 (col 1319).

2.2 Emissions Performance Standard (EPS)

Background

Chapter 8 of Part 2 establishes an "emissions performance standard" (EPS), which requires operators of new fossil-fuel plants to ensure that the plant does not emit more than a specified amount of carbon dioxide (CO_2) in each year of the plant's operation. According to the Bill's Explanatory Notes, this "reinforce[es] the existing policy… that no new coal-fired power plant should be consented unless equipped with carbon capture and storage (CCS) technology" (para 36). Chapter 8 establishes the EPS as an annual limit, equivalent to 450g of CO_2 per kilowatt hour of electricity for a plant operating at baseload.[2] New power stations for which consent is given by the Secretary of State will continue to be subject to the EPS until the beginning of 2045, under a provision known as "grandfathering". The EPS limit is around half the emissions level expected of new coal plant when operating unabated (ie without CCS), which is nearly 800g/kWh. It is, however, above the level of modern combined cycle gas-fired power plants, which operate at below 400g/kWh. This has contributed to concerns that there could be a "dash for gas"—in other words, that new gas-fired power stations will be built at the expense of investment in developing new low-carbon technologies.[3]

Amendment 179: Carbon Capture and Storage (CCS) Exemption

Tom Greatrex welcomed a Government amendment which included the EPS within the review of electricity market reform that the Government must carry out five years after the Act has come into force (col 1281). However, he was concerned that the provisions on EPS would "have a significant impact on the future development of CCS", a technology which the Opposition believed "has a vital role to play in our future energy mix alongside other low-carbon technologies". He argued that "an unintended consequence of the Bill is that it makes that technology less likely to be developed" and pointed out that a number of industry bodies shared the Opposition's fear in this regard. There were concerns that requiring CCS—a new, unproven technology—to meet the EPS whilst it was still in a development phase could hamper investment in and development of the technology. Mr Greatrex spoke to Opposition amendment 179, which sought for CCS plant to be exempt from the EPS "for a commissioning and proving period that shall last no longer than three years" (col 1281).

Speaking at the start of the debate, Michael Fallon reminded the House that the Draft Energy Bill had contained a similar exemption for CCS, but it had been removed following the recommendation of the Energy and Climate Change Committee. Although the Committee

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[2] For the purpose of the EPS, "baseload" is assumed as a plant operating at full output for 85 percent of the operating hours available in a year.

[3] See House of Commons Library, *Energy Bill*, 13 December 2012, RP 12/79, pages 34–5 for further details about the likelihood of a "dash for gas".

accepted that, as an emerging technology, CCS was "a special case", it had urged DECC to ensure "that the Bill provides sufficient safeguards so as to avoid the unintended consequence of undermining decarbonisation" (House of Commons Energy and Climate Change Committee, *Draft Energy Bill: Pre-legislative Scrutiny*, July 2012, HC 275-i of session 2012–13, para 207). Mr Fallon argued that:

> Our view is that the best way to manage risks to CCS projects from the EPS is through each project's funding contract. That provides greater flexibility to manage project risks in one place and on a case-by-case basis. Also, the EPS already provides a degree of flexibility for plant during the commissioning period.
>
> (col 1276)

Mr Greatrex maintained that the way in which amendment 179 was framed—giving CCS an exemption for a specific, limited commissioning period—"sensibly" addressed the Energy and Climate Change Committee's concerns and "would ensure that CCS is given the best chance of developing and being part of the future generation mix" (col 1281). Barry Gardiner (Labour), a member of the Energy and Climate Change Committee, agreed that this approach would "remove an unnecessary regulatory burden for project developers and lower the cost for consumers" as the EPS risk would not need to be factored into the price that suppliers paid generators for electricity from CCS plant (col 1299). Mr Greatrex pushed the amendment to a division which was defeated by 298 votes to 225, a majority of 73 (col 1310).

2.3 Consumer Redress Orders

Background

Schedule 14 of the Bill amends the Gas Act 1986 and the Electricity Act 1989 so as to provide Ofgem ("the Authority") with a power to make a consumer redress order requiring a "regulated person" (an energy supplier regulated by Ofgem) to pay compensation to gas or electricity consumers if the regulated person has contravened certain conditions or requirements, and thereby caused loss, damage or inconvenience to the consumer. A consumer redress order could, for example, require an energy supplier to pay compensation to consumers. At present, Ofgem has powers to impose financial penalties (fines) of up to 10 percent of turnover on regulated persons which breach their licence conditions, but is only able to negotiate voluntary agreements with suppliers to pay compensation to consumers. Schedule 14 of the Bill specifies that a regulated person cannot be required to pay more than 10 percent of their turnover in penalties, in compensation, or in a combination of penalties and compensation.

Amendments 2 and 3: Ongoing Investigations and Compensation Cap

Luciana Berger (Labour), Shadow Minister for Energy and Climate Change, said that Labour welcomed the fact that the Bill gave Ofgem powers to compel energy companies to award compensation to consumers. She felt it was important "to do everything we can to protect consumers who lose out when energy suppliers break the rules". However, she felt that the powers in the Bill did "not go far enough". Setting a maximum level of 10 percent of turnover constituted an "arbitrary cap" on compensation, and the fact that these new powers would not apply to Ofgem investigations currently under way was, she argued, "a crucial loophole". She pointed out that Ofgem was currently carrying out 15 formal investigations and twelve informal reviews into potential malpractice by energy suppliers (cols 1332–3).

The Opposition tabled a series of amendments intended to address these issues. Amendments 2 and 5 would have removed the provisions that prevent Ofgem from making a consumer redress order in respect of contraventions that occurred before the Energy Act comes into force. Luciana Berger explained that in seeking to apply the new powers to Ofgem's ongoing investigations, Labour was not proposing retrospective legislation. Their proposals would not alter any of the regulations that energy companies currently need to abide by, but "would simply ensure that customers whose providers are found to have broken the rules receive appropriate compensation, including for investigations that fall before the Bill receives Royal Assent".

Amendments 3, 4, 6 and 7 would have set aside the ten percent cap on compensation if "one or more consumers suffered loss or damage greater than this value". Ms Berger said there was only a "relatively small chance of a compensation package exceeding ten percent, but that is not an impossibility" in a case where a very large number of consumers were affected. She felt that "it would be irresponsible for the Government not to be prepared for that scenario" (cols 1334–5).

Gregory Barker (Conservative), Minister of State for Climate Change, said he had "some sympathy with the aim of amendments 2 and 5" but was "troubled by the effect of setting a precedent by retrospectively applying powers in the energy market and by the impact that that would have on all consumers". He argued that the prospect of retrospective and unlimited liability would create regulatory uncertainty, which would push up capital and insurance costs for energy companies, decrease new investment in energy infrastructure and new technologies, and in turn, increase the cost of energy for consumers (cols 1335–6).

On the subject of removing the ten percent cap on compensation, Mr Barker said that: "Accepting amendments to remove the cap would require us to make changes to the appeal mechanism, which could deny customers access to the timely compensation they are due, as it could result in a far lengthier resolution of cases if the stakes are much higher". He argued that a ten percent cap would still allow for penalties and compensation orders of up to £1 billion to be imposed on the largest companies. He pointed out that to date the largest penalty imposed by Ofgem was £15 million, so the cap was "unlikely to hinder Ofgem's ability to impose appropriate redress orders". Mr Barker also asserted that removing the cap (thereby potentially leaving suppliers open to unlimited liability) could increase the costs of capital and insurance premiums for energy companies—particularly the smaller companies that the Government was trying to attract into the sector—again with adverse effects on consumer bills (cols 1336–7). Mike Weir (SNP) expressed sympathy with this point; he feared that since many of the smaller energy companies were strong in renewables, these amendments could affect investment in renewable energy (col 1339).

Since the cap is expressed as a percentage of a company's turnover, John Robertson (Labour), a member of the Energy and Climate Change Committee, was keen to press the Minister on the definition of turnover. As many of the big energy companies are both suppliers and generators, he wanted to know whether it only included retail turnover, or if generation was also included. Mr Barker initially replied that a company's global turnover was the relevant figure, but later corrected this to UK turnover (col 1336). Mr Robertson continued to point out that it was important "to nail down what we mean by profit and turnover", as the big energy companies were multinationals with complicated tax arrangements, involved in both retail and generation (cols 1338–41).

Another member of the Energy and Climate Change Committee, Barry Gardiner, was concerned that any financial penalties imposed on energy companies would "ultimately be borne by consumers". He questioned whether it would be better to impose a strict liability on company directors so that it was not the consumer who ended up paying the fines (col 1340).

Luciana Berger pressed amendments 2 and 3 to a division. Amendment 2 was defeated by 276 votes to 217, a majority of 59 (col 1342). Amendment 3 was defeated by 280 votes to 213, a majority of 67 (col 1345).

3. Commons Report Stage—Day Two

The debate on the second day of report stage (4 June 2013) covered Part 1 of the Bill, which deals with the Secretary of State's power to set a decarbonisation target range—the issue which received most media attention—and returned to Part 2 for discussion of electricity demand reduction in the capacity market (Chapter 3) and contracts for difference in the context of community energy schemes (Chapter 2). Section 3 of this Note focuses on those amendments that were divided on.

3.1 Decarbonisation Target

Background

Part 1 of the Bill gives the Secretary of State a power to set or amend a target range for the level of carbon intensity of electricity generation in Great Britain, known as a "decarbonisation target range". The carbon intensity of electricity generation is a measure of the amount of CO_2 or other greenhouse gases produced per unit of electricity generated. Clause 1 of the Bill specifies that 2030 is the earliest year for which a decarbonisation target range could be set. It also specifies that the Secretary of State cannot set a target range until the UK's fifth carbon budget is set. This is not due to happen until 2016, based on the timescales for carbon budgets set out in the Climate Change Act 2008.

The Draft Energy Bill contained no provisions on setting a decarbonisation target. In its pre-legislative scrutiny of the Draft Bill, the Energy and Climate Change Committee recommended that: "The Government should set a 2030 carbon intensity target for the electricity sector in secondary legislation based on the recommendation of the Committee on Climate Change" (House of Commons Energy and Climate Change Committee, *Draft Energy Bill: Pre-legislative Scrutiny*, July 2012, HC 275-i of session 2012–13, para 37).[4] The Energy Bill as introduced in the House of Commons on 29 November 2012 did not contain such a power. In its response to the Energy and Climate Change Committee's report, the Government undertook to bring forward an amendment to the Bill to "take a power to set a range in secondary legislation", although it noted that: "The power will not be exercised until the Government has set the fifth carbon budget" (DECC, *Government Response to the House of Commons Energy and Climate Change Select Committee Report into the Draft Energy Bill*, November 2012, Cm 8504, page 16). An Opposition reasoned amendment declining to give the Bill a second reading in the absence of a decarbonisation target (and other measures) was defeated at second reading (HC *Hansard*,

[4] The Committee on Climate Change (CCC) is an independent, statutory body established under the Climate Change Act 2008. Its purpose is to advise the UK Government and devolved administrations on emissions targets and report to Parliament on progress made in reducing greenhouse gas emissions and preparing for climate change.

19 December 2012, col 958). New clauses on setting a decarbonisation target—what is now Part 1 of the Bill— were added to the Bill at its final committee sitting.

On 23 May 2013, the Committee on Climate Change (CCC) published a report, *Next Steps on Electricity Market Reform—Securing the Benefits of Low-Carbon Investment*, in which it recommended that the Government should: "Set in legislation this Parliament a target to reduce the carbon intensity of power generation to 50 gCO_2/kWh by 2030, with some flexibility to adjust this in the light of new information".

Amendment 11: Decarbonisation Target by 2014

Tim Yeo (Conservative) moved amendment 11, which (together with amendments 12–20, also in his name) would have required the Secretary of State to set a decarbonisation target by April 2014 (HC *Hansard*, 4 June 2013, col 1387)[5]. Mr Yeo said that the amendment was based on the Energy and Climate Change Committee's recommendation for a decarbonisation target, as outlined above.[6] Moving the amendment, Mr Yeo stated that his views on climate change and on the need for Britain to move swiftly to a low-carbon economy "were formed two decades ago when I had ministerial responsibility for this area of policy" and "have never been influenced at any time or in any way by my financial interests". He also pointed out that the Energy and Climate Change Committee had been unanimous in its support for the need for the Government to set a decarbonisation target, and that his amendment had cross-party support, and support from "a wide range" of businesses, trade bodies and voluntary groups (cols 1388 and 1392).

Mr Yeo argued that the need for a decarbonisation target was even greater than when the Energy and Climate Change Committee had published its pre-legislative scrutiny report in July 2012. Firstly, he said that the publication of the Government's *Gas Generation Strategy* (Cm 8407) in December 2012 had "confused many investors". The prospect that the Government might sanction 37GW of new gas-fired generation capacity, and the prospect of shale gas exploration meant that "Not surprisingly, there are now doubts in the minds of many prospective investors about the depth of the Government's commitment to decarbonising electricity generation" (cols 1388–9).

Secondly, he was concerned that "investment in new generating capacity is now at a low level" across the board. He pointed out that the talks between the Government and EDF over a new nuclear plant remained unfinished. New investment in coal was "unlikely to occur" until an economically viable form of CCS was developed and "there is no sign anywhere in the world of that happening". He described gas generation as "currently so unprofitable that, far from large-scale new investment taking place, some plant is currently mothballed". Doubts about a future Government's commitment to supporting low-carbon technologies after 2020, fears about a new "dash for gas" and a lack of clarity on future strike prices under CFDs were all affecting investment in renewable technologies (cols 1389–90).

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[5] Column references in section 3 of this Note are to HC *Hansard*, 4 June 2013 unless otherwise specified.

[6] At the time of the debate, Mr Yeo was Chair of the Energy and Climate Change Committee. He subsequently stood aside from this role on 11 June 2013, having referred himself to the Parliamentary Commissioner for Standards over allegations in the *Sunday Times* on 9 June that he had coached a businessman employed by a firm with which he had financial links on what to say in evidence to the Committee (BBC News website, 'Tim Yeo stands aside amid probe into committee coaching claim', 11 June 2013).

Mr Yeo explained that his amendment would address some of these political uncertainties by requiring the Secretary of State to set, no later than 1 April 2014, a decarbonisation target for 2030 for electricity generation (col 1390). He said that:

> I want to ensure that the Government's current commitment to moving down a pathway of slowly decarbonising the British economy and reducing its dependence on fossil fuels, which is particularly relevant to the electricity generation industry, is reinforced by accepting an obligation to set the target in secondary legislation during the next ten months. I believe that that would be wholly helpful to investors. It would give them a more secure and predictable framework in which to make their decisions, as well as having an effect on the returns they might expect.
>
> (cols 1391–2)

Mr Yeo declared that his amendment was "not so revolutionary as some people seemed to think", as it only sought to "bring forward by a couple of years something that the Government are contemplating doing anyway" (cols 1391–2). He claimed that the problem with delaying setting a target was that:

> … by 2016 many investment decisions will have been made. If these lock Britain into a high greenhouse gas emission future, they will either prevent us from meeting our climate change commitments, or else will lead to the construction of fossil fuel generating capacity, which will subsequently have to be scrapped.
>
> (col 1394)

Speaking in support of the amendment, Barry Gardiner, a fellow member of the Energy and Climate Change Committee, alluded to tensions within the coalition Government over this issue. He described Ed Davey, the Liberal Democrat Secretary of State, as being "in a bind". A 2030 decarbonisation target was a Liberal Democrat policy, he said, but Mr Davey could not implement it because "he struck an agreement with the Chancellor", under which £7.6 billion support would be given to renewables until 2020 under the levy control framework. Mr Gardiner claimed that far from being a "grand bargain", this deal was "more of a Faustian pact" because it still allowed old coal generation to provide base load beyond 2023 and incentives for gas generation to provide base load until 2045. Mr Gardiner said that this would be at the expense of investment in low carbon technologies. He pointed out that the Committee on Climate Change had calculated in its recent report that investment in low carbon would save consumers £25–45 billion if gas prices were low, and up to £100 million if gas prices were high. "What that committee is telling the Secretary of State", said Mr Gardiner, "is that the £7.6 billion that he has negotiated needs to be set against at least £25 billion to £45 billion of increased costs to the UK public". Mr Gardiner urged the House not to "wilfully choose to disregard the advice of the Committee on Climate Change unless it hears very specific evidence from Ministers that refutes its conclusions" (cols 1395–6).

Mr Yeo had already urged all Liberal Democrats MPs who had supported a motion proposed by Danny Alexander, Chief Secretary to the Treasury, at the Liberal Democrat party conference in

September 2012 to introduce a decarbonisation target, to vote in favour of his amendment. The Liberal Democrat MP Andrew George declared that:

> …one of the biggest road blocks to achieving progress in this area is the Chancellor of the Exchequer. It is not the Liberal Democrats who are standing in the way of the progress that we need to make. [Tim Yeo] needs to work with his own colleagues to persuade the Chancellor of the Exchequer to come on board.
>
> (col 1393)

Barry Gardiner declared that a 2030 decarbonisation target was "essential to the success of the Bill". He continued by refuting some of the arguments that the Government had advanced against setting a decarbonisation target before 2016. He pointed out that the Committee on Climate Change did not agree with the Government's position that a target should not be set until the Committee had published the fifth carbon budget. He quoted from the Committee's report:

> …it is not necessary to wait for the setting of the fifth carbon budget to take a decision on the 2030 carbon intensity target, given the clear evidence to show that investment in a portfolio of low-carbon technologies is a robust strategy with low regrets and significant potential benefits across a wide range of scenarios.
>
> Neither is it necessary to wait for the fourth carbon budget review in 2014 to set a carbon-intensity target. Although the Government has linked its approach to EMR implementation with the review of the fourth carbon budget, it will remain economically desirable to invest in a portfolio of low-carbon technologies whatever the outcomes of the review, given the 2050 carbon target in the Climate Change Act.
>
> Moreover, delay in setting the target will allow current uncertainties to be perpetuated, with adverse consequences for supply chain investment and project development.
>
> (col 1397)

Mr Gardiner said it was "fallacious" to claim that promoting low carbon technologies would mean sacrificing jobs and growth. He believed that "overcoming the insecurity created by the 2020 cliff edge does not require more public money or even the promise of money", but simply "coherence in the form of a 2030 target that proves to industry that the demand for low-carbon energy will continue to rise beyond 2020". Mr Gardiner argued that this certainty was necessary to continue to attract investment in the UK (cols 1398–9).

Michael Fallon began his response by saying that the Government "share the view that decarbonisation of the electricity sector, done in the right way, is vital". He spoke to Government amendments 51 and 70 which were intended to refine the Bill's existing provisions on a decarbonisation target by:

> …adding the target range duty to the list of considerations to which the Secretary of State must have regard when exercising certain electricity market reform functions, such as when making regulations relating to contracts for difference and the capacity market. That will help to ensure that, when a decarbonisation range is set, the Secretary of State is obliged to take his duty to meet that target range into account when

> exercising his functions in respect of electricity market reform.
>
> (col 1401)

These amendments were agreed to on question (col 1444). Mr Fallon went on to explain why the Government did not agree with Mr Yeo's amendment. Firstly, it was not necessary to set a target now, because the Government was already giving clear signals to investors through a range of "legal targets and measures that clarify the long-term future of electricity generation in this country". Mr Fallon explained that these included: the 2050 target to cut emissions by at least 80 percent; the fourth carbon budget running up to 2027, which required emissions in the whole economy to be halved; the 2020 EU renewables directive, which would mean that 30 percent of electricity generation would come from renewables in 2020; and the Government's support for an EU greenhouse gas emissions reduction target of 50 percent by 2030. In addition to this, he said that the Government's decision to triple support for renewables between now and 2020 to £7.6 billion was "a clear and durable signal to investors". The Energy Bill itself, coupled with the publication in July of draft strike prices for renewables projects under CFDs, would provide certainty to investors and "bring on significant investment in renewable technologies" (cols 1402–3).

Secondly, Mr Fallon argued that 2016 was the right time to make a decision on whether to set a target, because it would allow the Government to consider the whole picture:

> …the Secretary of State can only make a decision on whether to set a target when considering the trajectory of the whole economy towards our 2050 target in a way that is consistent with the overarching framework of the Climate Change Act. The timing is important. There is significant interaction between the electricity sector and other sectors of the economy, especially those, such as heat and transport, that might well become more dependent on electricity as we move into the 2020s and 2030s. That will in turn have an impact not only on overall demand for electricity but on when that electricity is needed.
>
> Such questions must all be considered together when thinking about the best way to decarbonise electricity generation as part of a least-cost route to meeting our obligations under the Climate Change Act. It is therefore vital that a decision to set a target range is not taken in isolation… 2016 is when we are due to set in law the level of our economy-wide fifth carbon budget, which will cover the period between 2028 and 2032. At that point, we will be able to consider the pathway of our whole economy towards our overarching 2050 target and understand better the most cost-effective way to achieve that.
>
> …given the uncertainties about the relative costs and potential of different low-carbon technologies, it would not be right for a Government to set a target now without having first thought through precisely how a particular level would be achieved.
>
> (col 1404)

Thirdly, Mr Fallon pointed out that amendment 14 (related to amendment 11) required that the level of the decarbonisation target range must not exceed that recommended by the Committee on Climate Change. The Government believed that: "It would be wrong to blur the lines of accountability between the Committee on Climate Change and the Secretary of State, as the role of the committee is to advise the Government and not to set policy". Mr Fallon

argued that an unelected body should not impose a legal constraint on setting a target (cols 1404–5).

Caroline Lucas, who had put her name to the amendment, argued that: "If Britain is to maintain its position as a real leader on climate change, we absolutely have to act at home. The decarbonisation target is a crucial part of that". She also asserted that reaching the level of carbon intensity proposed in the Committee on Climate Change report was "absolutely the minimum that we should seek to achieve"; in her opinion a target of 50 gCO_2/kwH did "not go far enough" (col 1408).

John Redwood (Conservative) argued that the amendment would mean that "the United Kingdom got even more out on a limb"—by subjecting the country to carbon targets that would not apply to its economic competitors such as America, China and other parts of Asia, the Government would impose additional costs on business in the form of higher energy prices (cols 1409–12).

Tom Greatrex spoke for the Opposition in support of amendments 11–20. He noted the wide range of support for a decarbonisation target and recalled that when the Secretary of State was challenged by Luciana Berger in committee to name a company that opposed the target, he was unable to do so (col 1413). Mr Greatrex was convinced that to realise the economic benefits of reduced energy costs and new jobs in the renewables sector, a decarbonisation target was necessary to create investor certainty. He dismissed the Government's approach as illogical:

> The Government may or may not, at some point in the future that is yet to be defined—it may never be defined or indeed reached—set a decarbonisation target range… The definition of carbon intensity itself and the means of calculating it can be changed by the Secretary of State—and, by the way, the Secretary of State can revoke the order. That is hardly the sense of clarity the Government seeks.
>
> The illogicality of the Government's argument is summed up in amendment 52, which the Minister only barely referred to; it would require the Secretary of State to publish an annual report from 2014 setting out how he had met the duty to meet a decarbonisation target. I suspect that that report would be very thin, simply reading: "A target will not be set until 2016. There is nothing more to report…"
>
> (col 1416)

Mr Greatrex concluded that: "The issue is about a deep division in the Government" and the Chancellor's "damaging and risky outlook that a dash for a gas is the best course of action for our energy policy" (cols 1416–7). Alan Whitehead (Labour), a member of the Energy and Climate Change Committee, warned that explicit within the Government's gas strategy was the need to take a decision in 2014 as to whether gas should be at the centre of a future energy strategy, rather than a back-up for renewable generation. He claimed that accommodating this potential shift in gas strategy could result in a carbon intensity target of around 200g of emissions per kWh, and that therefore "A significant decision might be taken in 2014—way before 2016—which could blow the potential 2016 target out of the water" (col 1421). Dr Whitehead claimed it was:

> …blindingly obvious that a Bill of that kind should have a target at the front to underpin all the other things that it is doing. Not having that target is rather like someone

> carefully strapping a belt around their waist and then sallying forth having forgotten to put on the trousers that the belt was supposed to be supporting in the first place.
>
> (col 1420)

Mark Reckless said that he was not convinced by the logic or coherence of the Bill or of the amendment (col 1422). He argued that "the amendment is about hitting the renewable energy directive for 15 percent of all energy production in this country", but that seeking to achieve this target by focusing on decarbonising the electricity sector was "a very expensive way to decarbonise". He claimed that: "if the objective is to reduce carbon that can be done so much cheaper than the proposals that will be forced through by the Bill, which will be [a] millstone round our constituents' necks for decades to come" (col 1426). Peter Aldous (Conservative) and Mike Weir (SNP), who had both sat on the Public Bill Committee, spoke of the role that a decarbonisation target could play in building a domestic supply chain and creating jobs in the renewable energy sector, such as offshore wind developments in East Anglia and Scotland (cols 1430–34).

The amendment was divided on, and defeated by 290 votes to 267, a majority of 23 (col 1440).

3.2 Electricity Demand Reduction (EDR)

Background

In its pre-legislative scrutiny report, the Energy and Climate Change Committee said that the Draft Energy Bill was "fundamentally flawed by the lack of consideration given to demand-side measures, which are potentially the cheapest way of decarbonising our electricity system". It noted that reducing overall demand was "entirely absent from the Bill". It recommended that "permanent end-use reduction in electricity demand should feature much more prominently in the Bill" (House of Commons Energy and Climate Change Committee, *Draft Energy Bill: Pre-legislative Scrutiny*, July 2012, HC 275-i of session 2012–13, paras 50–1). At committee stage, Gregory Barker gave assurances that the Government was "absolutely committed" to being the first to bring forward radical demand reduction policies for the market (Public Bill Committee, 29 January 2013, morning, col 346).

DECC published the *Consultation on Options to Reduce Electricity Demand—Government Response* (Cm 8631) on 22 May 2013. The consultation had sought views on a range of options, including the provision of financial incentives, to encourage greater efficiency in the use of electricity. Following the consultation, the Government proposed to "to amend the Energy Bill such that a financial incentive to deliver permanent reductions in electricity demand, open to a range of sectors and technologies, could be delivered via the Capacity Market". It was also "considering whether to test the proposed approach via a pilot in order to gather evidence that will inform final decisions on an incentive" (para 32).

The "capacity market" is a new mechanism introduced by Chapter 3 of Part 2 of the Bill. Around a fifth of the electricity generation capacity available in 2011 is set to close over the coming decade, and the generation being built to replace it is likely to be more intermittent (such as wind power) or more inflexible (such as nuclear power). The Bill's Explanatory Notes explain that:

> These changes to our market create an investment challenge, in particular for a plant that will be needed during periods of peak demand or still days but which would

> operate less often than now and therefore have less certain reserves. This uncertainty could lead to underinvestment and, as a consequence, uncomfortably low levels of reliable capacity (para 17).

Under the capacity market mechanism, providers of electricity capacity would enter into an auction to secure contracts for providing capacity. Providers who were successful in the auction would receive a payment to provide reliable capacity when needed during the delivery year, but would be penalised if they failed to deliver. John Hayes, then Minister of State at DECC, said at committee stage that the Government planned to run the first capacity market in 2014 for delivery in 2018–19 (Public Bill Committee, 29 January 2013 (morning), col 359). In its *Capacity Market: Design and Implementation* document, published in November 2012, the Government said it would aim to publish final detailed design proposals on the capacity market by May 2013 (para 107).

New clauses 11 and 12, Amendments 35 and 100: EDR in the Capacity Market

Gregory Barker spoke to Government amendments and new clauses that would allow electricity demand reduction projects to compete in a capacity market, and would allow a pilot to test how this would best work. He explained that this would allow "negawatts"—units of power saved—to compete against "traditional megawatts" and would mean that "we will not be building expensive new energy plants unnecessarily where cheaper alternatives for energy efficiency are available". Government amendment 100 would allow demand reduction to be included in the proposed capacity market. New clause 12 (clause 37 in the Bill as introduced in the House of Lords) would "provide a spending power to enable our approach to be tested via a large pilot, or pilots, to better understand, among other things, the complexity of the issue and the scale of the potential". New clause 11 (in the Bill as introduced in the House of Lords) and Government amendment 135 would allow the Secretary of State to appoint and make payments to an alternative delivery body to National Grid if it were decided that National Grid was not best placed to carry out the EDR elements of the capacity market (cols 1447–8). Mr Barker assured the House that this measure was "not an additional green burden on consumer bills", but a "genuine win-win situation" which would make energy policy greener and potentially cheaper (col 1449).

Speaking for the Opposition, Luciana Berger said that it was "wonderful… finally to hear what the Government propose to do about reducing demand for electricity" (col 1453). However, she regretted the lack of detail on exactly how the pilots would work, by how much the proposals would reduce electricity demand, what measures would be piloted, when the pilot would be launched, and when the Government expected the first capacity auction to take place (cols 1454–5).

Alan Whitehead welcomed these amendments as "a serious method of addressing the question of demand-side reduction over a long period", but felt that demand reduction measures should be kept separate from the main capacity market. He said that similar schemes elsewhere in the world had shown that "demand-side auction participants tend to be squeezed out of wider auctions on capacity when they participate" (col 1460). Gregory Barker replied:

> Although we are not in a position to announce details today, our thinking is very much in tune with that of [Dr Whitehead] and we recognise the issues that he raises. We expect the capacity market to run in 2014, but we expect that, separate from that, piloted projects for energy demand reduction will be funded to help scale up the

> market, and in future we expect ring-fenced auctions, at least for a transitional period, for specific demand response and demand reduction projects.
>
> (col 1461)

Caroline Lucas expressed disappointment that Ministers had revised down the estimate of demand reduction potential in DECC's consultation response. She was also disappointed that the Government's amendments "left [us] with no target for demand reduction and certainly no world-leading ambition, just a rather unambitious pilot" (col 1464). The new clauses and amendments were accepted on question (cols 1469 and 1474).

3.3 Community Energy Schemes

Background

In its pre-legislative scrutiny of the Draft Energy Bill, the Energy and Climate Change Committee concluded that the proposed CFDs were unlikely to work for smaller electricity providers, such as community schemes. It heard evidence that the problems for smaller-scale projects included:

- A lack of financial capability to deal with the complexities and uncertainties of CFDs, resulting in high transaction costs; and
- Difficulties in obtaining the full reference price for the electricity they generate, resulting in lower income per unit of electricity generated.

(House of Commons Energy and Climate Change Committee, *Draft Energy Bill: Pre-legislative Scrutiny*, July 2012, HC 275-i of session 2012–13, para 66)

The Committee recommended that:

> A simple fixed Feed-In Tariff would be a more appropriate form of support [than the proposed CFDs]. We therefore recommend that this Bill provides for the Energy Act 2008 to be amended to allow for the eligibility threshold for small-scale FiTs to be extended to at least 10MW and potentially up to 50MW in size.
>
> (para 70)

The feed-in tariff scheme pays energy users who invest in small-scale, low-carbon electricity generation systems for the electricity they generate and use, and for unused electricity they export back to the grid. At the Bill's committee stage, Tom Greatrex moved an amendment to raise the maximum threshold for the small-scale feed-in tariff so that larger community energy schemes which generated higher amounts of electricity could also benefit. He withdrew his amendment following assurances that the matter was under consideration by the Government (Public Bill Committee, 22 January 2013, afternoon, col 252). In advance of the Community Energy Strategy due for publication in the autumn, DECC published a *Community Energy Call for Evidence* on 6 June 2013.

Amendment 1: Feed-In Tariff Threshold

The Opposition tabled amendment 1, which would have raised the maximum feed-in tariff eligibility capacity from 5MW to not less than 10MW. Mr Barker said that he had "a great deal of sympathy" with the proposal, and it continued to be "under active consideration" by the Government. He explained that:

> I am committed to finding a workable solution… However, when looking at the proposal in further detail, I have been made aware of potentially perverse consequences and impacts on the renewables obligation [the existing scheme to provide incentives for the deployment of large-scale renewable electricity in the UK, which will be phased out under the Bill].
>
> (col 1149)

Mr Barker said he had been surprised that the Solar Trade Association, for example, was against this move. His officials were continuing to work on the matter, and he hoped to bring further measures before Parliament as the Bill progressed (col 1450). He suggested later that concerns about the potential size and location of solar arrays greater than 5MW could present problems. He also explained that further thought needed to be given to how raising the FiT threshold would sit alongside the existing renewables obligation scheme and the new CFDs, which the Government believed would be "a significant improvement", even for smaller players in the electricity market (cols 1468–9).

Speaking for the Opposition, Luciana Berger said that community energy schemes "deliver enormous benefits to our country" by bringing security, diversity and resilience to the energy market, by attracting new sources of investment, and by tackling fuel poverty. She declared that:

> … as drafted the Bill could stop these types of larger community schemes from ever happening again… the high degree of technical knowledge needed to participate in the system is a barrier for many smaller generators, and … the proposed CFD system does not compensate smaller generators for the lower market prices they receive for their power. With the end of the renewables obligation, the Bill provides no incentive for suppliers to purchase renewable electricity from independent generators.
>
> (col 1456)

Although Mr Barker urged the Opposition not to press the amendment to a division, Ms Berger did so. It was defeated by 312 votes to 245, a majority of 67 (col 1469).

4. Commons Third Reading

Ed Davey (Liberal Democrat), Secretary of State for Energy and Climate Change, opened the third reading debate by describing why the passage of the Bill was "so important and so firmly in the national interest". He believed that the Bill achieved four imperatives: "the need to power the country; the need to protect the planet; the need to insulate consumers from rising energy prices; and the need to get the economy moving" (HC *Hansard,* 4 June 2013, col 1475)[7].

[7] Column references in section 4 of this Note are to HC *Hansard*, 4 June 2013 unless otherwise specified.

On the subject of a decarbonisation target, he pointed out that no party had made a commitment to such a target in its 2010 manifesto, and no other country had yet set a power sector decarbonisation target for 2030. Mr Davey said he could see both sides of the argument for setting an early target, and for waiting until 2016. He continued:

> If anyone still doubts my commitment, or that of this Government, to decarbonisation, they should consider the decision that we have just made on the UK's position for the EU's 2030 greenhouse gas target. In the context of winning an ambitious global climate change treaty, we will be arguing for a 50 percent reduction target in the EU. That is the most ambitious position of any member state, and I am proud that this Government are leading the way on climate change.
>
> (col 1476)

He described the addition to the Bill of measures on electricity demand reduction as "a radical approach that has been shown to work in international examples", and "a major advance for the UK". The Bill would help consumers by paving the way for increased UK production of energy; this would help to reduce prices from global markets. The Bill's provisions on domestic tariffs would, he stated, "ensure that all households will be able to get the best deal for their gas and electricity". The new consumer redress powers were "another step forward for energy consumers". Mr Davey said that the Government would continue to actively consider raising the small-scale feed-in tariff scheme threshold, and hoped to respond to this issue in the House of Lords. He concluded:

> The wide cross-party consensus we have achieved sends a strong signal to investors in the UK and investors globally. The UK is the place in the world to invest in low-carbon energy. We now have the opportunity to deliver a lasting framework for investment in the country's energy infrastructure: delivering green jobs and growth, securing a low-carbon energy future, and ensuring that consumers get a fair deal. I commend this Bill to the House.
>
> (col 1477)

Caroline Flint (Labour), Shadow Secretary of State for Energy and Climate Change, welcomed the Government's acceptance of some of the Opposition's amendments at earlier stages of the Bill, including those concerning the transparency of investment contracts and the structure of the CFD counterparty. She noted the Government's commitment to considering the Opposition's proposals on other issues, such as CCS, support for community energy and access to the market for independent renewable energy generators, and she hoped that these areas would receive further attention in the House of Lords. While there were still many important details to be worked out on CFDs and capacity markets, she felt that in principle they could work and the Opposition would therefore support them (cols 1478–9).

Ms Flint also highlighted a number of areas where she felt that the Bill failed. She claimed that it fell "badly short" on "prevent[ing] companies from ripping people off". She observed that although the Prime Minister had told the House repeatedly that "he would force the energy companies, by law, to put everyone on the cheapest tariff", nowhere in its nearly 200 pages did the Bill contain provisions to make this happen automatically, as the Prime Minister had promised. She argued that the Bill would "fall short of its stated purpose unless it puts Britain's electricity system on a pathway to decarbonisation", but the Bill did not contain a decarbonisation target "because the Liberal Democrats, with a few honourable exceptions, did

not have the courage to vote for it". If the Lords did not "rectify the omission of a decarbonisation target", she said that Labour would do so in government. She concluded by saying that Labour would "not oppose the Bill on third reading, but it is to be regretted that a dirty deal with the Liberal Democrats has once again blocked the path to clean energy and all the benefits it could bring" (cols 1478–80).

Mike Weir said that the SNP would support the Bill on third reading, but he was concerned about the continuing lack of detail on how CFDs would work. In particular he highlighted the transition period from the renewables obligation to CFDs, and the details of any contract the Government negotiated with EDF over Hinkley, as it would "inevitably become the template for future CFDs in the nuclear industry". Like Caroline Flint, he felt that the measures on ensuring consumers were on the lowest tariff were not "strong enough", and that it was "unfortunate" the Bill did not contain a decarbonisation target (cols 1481–3).

Dan Byles (Conservative), a member of both the Energy and Climate Change Committee and the Public Bill Committee, supported the Bill but he was "concerned about the level of complexity we are starting to pile on to our energy sector". He felt that "unintended consequences lead to another sticking plaster being put on, leading to more unintended consequences, so that a highly complex system evolves". He urged the Secretary of State to bear in mind the need to minimise this complexity when he brought forward secondary legislation under the Bill (col 1483).

Caroline Lucas acknowledged that there were some "positive aspects" to the Bill, such as the emissions performance standard, but overall she felt that "the Bill falls well short of what is needed". She claimed that it "opens the door to a new dash for gas" and would "facilitate vast subsidies to new nuclear power stations that we do not need". She declared herself "disappointed that the Bill simply fails to have a vision of a different energy future" but "simply entrenches the big six energy companies and their death-grip on the UK's energy system" (cols 1484–5).

The Bill was given its third reading by 396 votes to 8, a majority of 388 (col 1489).

5. Press Coverage

Press coverage of the report and third reading stages focused on the relatively narrow margin by which the Government defeated Tim Yeo's amendment on the decarbonisation target. The *Independent* ran a story headlined "Plan to make UK's electricity supply green is defeated in the Commons" (5 June 2013).[8] The article began: "A proposal to make Britain's electricity supply almost entirely green by 2030 has been narrowly defeated by MPs, a result critics say will make it much more difficult for low-carbon energy generators to raise finance". Mr Davey wrote to the *Independent* to refute this interpretation:

> Contrary to your article... the Energy Bill WILL make the UK's electricity supply green.
>
> Clean energy investors should take huge confidence from the overwhelming majority of MPs—396 in favour, eight against—who voted on Tuesday to complete the Commons

[8] The online version of the article, which was published on the *Independent*'s website on 4 June 2013, appears under the headline "Plan to make Britain's electricity supply almost entirely green by 2030 narrowly voted down by MPs".

passage of the Energy Bill. Cross-party consensus behind our reforms to the electricity market is strong.

The Bill will provide the certainty investors need. Long-term contracts for low-carbon will enable renewables, nuclear and carbon capture and storage to compete against conventional power stations, and they will be backed by our tripling in support for clean energy by 2020.

There are clearly differing views on setting a 2030 decarbonisation target for the power sector. There is logic to legislating now to enable us to set a target range in 2016, once we've decided the economy-wide emission reductions that will have to be achieved by 2030, so I am pleased that the House chose to support that position.

In any case, we're already bound by law to cut emissions across the whole UK economy by 50 percent by 2025, and the Energy Bill will bring about substantial decarbonisation of the power sector as part of that.

Crucially, it will also help us keep the lights on and people's bills down.

(DECC, 'Letter from Edward Davey to the *Independent* on the Energy Bill', 7 June 2013)

Annex 1: Government Amendments at Report Stage (Day One)

Michael Fallon briefly outlined at the start of the report stage debate the following Government amendments. All were agreed to on question, with little or no debate:

Electricity Market Reform

- Clarification of the circumstances in which more than one counterparty might be required (Government amendments 53 to 55). (These amendments were introduced following suggestions made at committee stage—see House of Commons Library, *Energy Bill: Committee Stage Report*, 12 March 2013, RP 13/19, section 4.3 for further details.)

- Extension of the notice period before a body can withdraw its consent to act as a counterparty from 28 days to three months (Government amendments 56 and 77)

- Minor changes to avoid any confusion over the terms "obligations" and "liabilities" (Government amendments 57, 62, 63, 78, 82 and 83)

- Creation of a statutory guarantee that the counterparty will exercise its functions to ensure CFD and investment contract liabilities are met and place a duty on the Government to provide the powers to do this (Government amendments 58, 65, 85 and 86)

- Clarification that supplier debts can be pursued through the courts and that payments to generators will be pro rata in the event that the counterparty does not immediately have sufficient funds available (Government amendments 60, 64, 80 and 84)

- Ensuring that suppliers only face costs that are related to the regime, including operational costs of the counterparty (Government amendments 59 and 79)

- Minor corrections and clarifications to ensure that settlement of payments works effectively (Government amendments 61, 68 and 81)

- Introduction of a duty to transfer investment contracts to the CFD counterparty, thus ensuring they transfer quickly once the CFD regime is in place (Government amendments 88, 89 and 90)

- Minor changes to align the drafting of Schedule 2 with Part 2 (Government amendments 73 and 87)

- Giving power to the Secretary of State to make rules relating to the capacity market (in addition to the power already contained in the Bill to make capacity market regulations). Mr Fallon said that the intention behind the changes was "to give Ofgem the responsibility for consulting on and implementing future changes to those elements in capacity market rules, in line with evolutions in the existing market structure". However, Ministers would retain accountability for key aspects of the scheme, such as capacity volumes and cost control (New clauses 8–10 (clauses 28, 35 and 36 in the Bill as introduced in the Lords) and Government amendments 105 to 107).

- Clarification of the Government's intentions for the capacity market settlement body. Capacity payments to and from providers would have to flow through the settlement body; the settlement body would be allowed to discharge certain technical obligations and functions through an agent; and the settlement body would be able to recover costs only in connection with the obligations placed on it as a settlement body (Government amendments 101 to 104).

(HC *Hansard*, 3 June 2013, cols 1270–1)

Domestic Tariffs

- Closer alignment of the powers in clause 121 (clause 127 in the Bill as introduced in the House of Lords) with Ofgem's retail market review proposals (Government amendments 119 to 133).

- Clarification that those powers cannot be used for the purpose of imposing price controls (Government amendments 119, 120, 122 and 123).

- Restriction of the power to move customers from one tariff to another only to those customers on tariffs closed to new joiners, in line with Ofgem's retail market review proposals (Government amendments 125, 127, 128 and 131).

- Ensuring that suppliers will have at least one tariff slot that is not prescribed (Government amendment 126).

- Clarification that the power to prescribe that a supplier offers fixed or variable rate tariffs does not equate to setting the price or term for the tariff (Government amendment 130).

- Rewording of definitions to ensure that the powers can be exercised in the context of existing requirements placed on suppliers as a condition of their supply licence (Government amendments 121, 124, 129, 132 and 133).

(col 1278)

Nuclear Regulation

New clause 13 (Nuclear regulations: civil liability) and new clause 14 (Civil liability: saving for section 12 of the Nuclear Installations Act 1965) were also added to Part 3 of the Bill, which deals with nuclear regulation and establishes the Office for Nuclear Regulation (ONR) (col 1300). These clauses appear in the Bill as introduced in the House of Lords as clauses 65 and 95 respectively. They were not mentioned by Mr Fallon during the debate.

Day 2

Government amendments made on the second day of the report stage debate are detailed in section 3 of this Note.

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