HOUSE OF LORDS

Library Note

Energy Bill [HL]
(HL Bill 56 of 2015–16)

This Library Note provides background information to the Energy Bill and a brief summary of its main provisions.

The Bill implements a number of the recommendations of the Wood Review into maximising the economic recovery of petroleum from the UK's continental shelf. In so doing it would establish the Oil and Gas Authority as an independent regulator and transfer a number of additional functions to it from the Secretary of State for Energy and Climate Change. Additionally, the Bill would implement the Conservative Party's manifesto commitment to alter the planning law on onshore windfarms and to end any new subsidies for them under the Renewables Obligation.

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1. Introduction

The Energy Bill [HL] 2015–16 introduces provisions related to the regulation of the UK's offshore oil and gas industry and also provisions related to planning requirements for onshore windfarms, and the ending of public subsidies for new onshore windfarms under the Renewables Obligation.[1]

The 2015 Conservative Party manifesto included a commitment to continue to "support development of North Sea oil and gas".[2] The Energy Bill seeks to fulfil this commitment by implementing several policies—the development of which began under the previous Coalition Government—as part of its intention to implement the recommendations of the Wood Review into maximising the economic recovery of petroleum from the UK's continental shelf (UKCS), which is examined in detail below. The Bill also implements the 2015 Conservative Party manifesto commitment to "end any new public subsidy for [onshore windfarms] and change the law so that local people have the final say on windfarm applications".[3] The Bill does this by:

- Establishing the Oil and Gas Authority (OGA) as an independent regulator, taking the form of a government company. This will be achieved by transferring the existing regulatory powers on oil and gas held by the Secretary of State for Energy and Climate Change (the Secretary of State) to the OGA. The OGA would also be granted additional powers, which include—but are not limited to—access to company meetings and dispute resolutions.

- Removing the requirement for the Secretary of State to give planning consent for onshore windfarms larger than 50 megawatts. When combined with secondary legislation to be made by the Government to amend the Planning Act 2008, this consenting requirement would be effectively transferred into the planning regime under the Town and Country Planning Act 1990.

- Providing for the cessation of public subsidies for new onshore windfarms under the Renewables Obligation (RO).

The Bill would also validate prior charges made by the Offshore Oil and Gas Environment and Decommissioning Unit (OGED).

However, the Government have stated that the Energy Bill is likely to have further provisions added to it after its second reading in the House of Lords:

> The Bill as introduced covers the key areas stemming from the Wood Review recommendations. It is expected that other, primarily more technical, provisions will be introduced by Government amendment as the Bill progresses through its Parliamentary stages, including on areas such as decommissioning, third party access to oil and gas infrastructure and cost recovery powers.[4]

This Library Note provides background information to the Energy Bill and a brief summary of its main provisions.

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[1] Energy Bill, HL Bill 56 of 2015–16.
[2] Conservative Party, *The Conservative Party Manifesto 2015*, April 2015, p 57.
[3] ibid.
[4] GOV.UK, 'Wood Review Implementation: Energy Bill', accessed 14 July 2015.

2. The Wood Review, *UKCS Maximising Recovery*

In June 2013, the then Secretary of State for Energy and Climate Change, Edward Davey (Liberal Democrat), asked Sir Ian Wood to conduct a review into the recovery of oil and gas from the UK's continental shelf (UKCS).[5] The result of that review, *UKCS Maximising Recovery Review: Final Report* (the Review), was published on 24 February 2014.[6] The Review's principal recommendations can be summarised as follows:

- Government and industry should develop, and commit to, a new strategy for 'Maximising [the] Economic Recovery' of petroleum from the UKCS (a strategy referred to as MER UK).

- A new arm's length regulatory body should be created and charged with effective stewardship and regulation of UKCS hydrocarbon recovery. That body should also seek to maximise collaboration in the areas of exploration, development and production across the industry.

- The regulator should take on additional powers to facilitate the implementation of the MER UK strategy.

- Important Sector Strategies should be developed and implemented.[7]

The Government published its response to the review in July 2014, in which it accepted all of the Review's recommendations.[8] The response also announced a call for evidence on how to implement the Review. This ran from 6 November to 31 December 2014, and the Government published its response on 20 March 2015.[9]

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

> The Government intends to implement all of the Review's recommendations, but full implementation will require multiple stages of legislation and policy development in order to fully incorporate stakeholder views and avoid unintended consequences. A phased approach will therefore be adopted. Phase 1 requires primary legislation to establish the framework for MER UK Principles and to create the power for the Secretary of State to raise a levy to fund the activities of the new Regulator which cannot currently be charged for. Phase 2 will require primary and secondary legislation to establish wider powers, an enforcement regime, setting the level of the levy itself, developing a detailed strategy for how the MER UK Principles will be implemented, and the creation and establishment of an arm's length regulator.[10]

The Infrastructure Act 2015 established the framework for MER UK in primary legislation and provided the Secretary of State with the power to raise a levy.[11] The Energy Bill is part of the

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[5] Sir Ian Wood is the former Chairman of Wood Group, an international energy services company.
[6] Wood Review, *UKCS Maximising Recovery Review: Final Report*, 24 February 2014.
[7] ibid, pp 6–7.
[8] DECC, *Government Response to Ian Wood's UKCS: Maximising Economic Recovery Review*, July 2014.
[9] DECC, *Implementing the Wood Review Recommendations*, 20 March 2015.
[10] Impact Assessment, *Implementation of the Wood Review Proposals for UK Offshore Oil and Gas Regulation*, 5 September 2014, p 1.
[11] Infrastructure Act 2015, section 42 and schedule 7.

second phase of the implementation of the Wood Review, specifically those elements which relate to the OGA and the production of MER UK.

3. The Oil and Gas Authority (OGA)

3.1 Background

In its response to the Wood Review, the Government said that it would establish the Oil and Gas Authority (OGA) "to undertake the licensing, exploration and development functions work currently carried out by DECC".[12] It was established as an arm's length body accountable to the Secretary of State, and became an executive agency on 1 April 2015.[13] However, the Government explained that it does not believe that an executive agency is the best long-term structure for the OGA, arguing that it would be better established as a government company[14], as:

> […] this will give the Authority greater operational independence from Government and will provide a more suitable platform to provide the arm's length regulatory certainty Industry requires to invest in exploration and production activity to maximise economic recovery from the UK's oil and gas resources.[15]

During its transition between being an executive agency of DECC and an independent government company, the Government intends that the OGA will operate and act as closely as possible to its final form of a government company. The OGA's *Framework Document* states that "this principal has been reflected in the development of this *Framework Document*, so as to ensure that the OGA has sufficient operational independence to be effective from day one".[16]

Maximising Economic Recovery and the Principle Objective

MER UK is a strategy to achieve the "principal objective".[17] This is the objective of maximising the economic recovery of UK petroleum. This will be achieved in particular through:

(a) development, construction, deployment and use of equipment used in the petroleum industry (including upstream petroleum infrastructure), and

(b) collaboration among the following persons—

(i) holders of petroleum licences;

(ii) operators under petroleum licences;

(iii) owners of upstream petroleum infrastructure;

(iv) persons planning and carrying out the commissioning of upstream petroleum infrastructure.[18]

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[12] DECC, *Government Response to Ian Wood's UKCS: Maximising Economic Recovery Review*, July 2014, p 9.
[13] House of Lords, written statement: Establishment of the Oil and Gas Authority, 15 June 2015, HLWS34.
[14] The Government defines a government company as a private company, limited by shares, under the Companies Act 2006, with the Secretary of State of DECC as the sole shareholder.
[15] DECC, *Government Response to Ian Wood's UKCS: Maximising Economic Recovery Review*, July 2014, p 11.
[16] DECC and OGA, *Oil and Gas Authority Framework Document*, 1 April 2015, p 2.
[17] As defined by section 9A of part 1A of the Petroleum Act 1998—as inserted by the Infrastructure Act 2015.

The Energy Bill makes a number of references to the principal objective in its provisions.

Funding the OGA through a Levy

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

> Whilst the Government has agreed to contribute £3 million per year for five years starting from April 2016 to ensure the OGA is well funded from the outset, the OGA's ongoing costs will be met by a combination of the extant fees and charges regime, and a new levy on industry. We agree with industry that it is important that the levy is simple, transparent and cost-reflective.
>
> This consultation sets out details of the allocation methodology and the proposed levy rates. In line with the early focus of the OGA, we have determined that initially we will levy only offshore petroleum licence holders as (in the short term) the OGA will incur costs related to these licence holders. We intend that the OGA will begin collecting the levy in October 2015, subject to regulations.[19]

The Government's response to its call for evidence on implementing the Wood Review stated that the levy structure and amounts would be introduced via secondary legislation under the powers contained within the Infrastructure Act 2015.[20] The Impact Assessment published alongside the consultation on the levy provided further detail, saying that:

> Schedule 7 to the Infrastructure Act 2015 illustrates how the levy power may be used. As with fees and charges, levies should be designed to recover full costs. However, to ensure the levy is cost-reflective of the work carried out on behalf of licence holders, it may be appropriate to charge different levy rates to different kinds of licensees.[21]

At the time of writing the Government are still analysing the feedback to the consultation.[22] The Energy Bill does not make any further provision regarding the levy.

3.2 Transfer of Functions from the Secretary of State to the OGA

Part 1 of the Energy Bill relates to the OGA and its core functions. Amongst the provisions of part 1, clause 4 would provide for matters to which the OGA must have regard when exercising its functions. These include:

- Minimising future public expenditure: The need to minimise public expenditure relating to, or arising from, relevant activities.
- Security of supply: The need for the United Kingdom to have a secure supply of energy.

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[18] Petroleum Act 1998, section 9A.
[19] House of Commons, written statement: Funding of the Oil and Gas Authority: Consultation on Levy Design, 23 March 2015, HCWS443.
[20] DECC, *Implementing the Wood Review Recommendations*, 20 March 2015, p 24.
[21] Impact Assessment, *Funding the Oil and Gas Authority (OGA): Levy Design*, 25 March 2015, p 8.
[22] DECC, 'Funding the Oil and Gas Authority: Consultation on Levy Design', accessed 17 July 2015.

- Collaboration: The need for the OGA to work collaboratively with the government of the United Kingdom and with persons who carry on, or wish to carry on, relevant activities.

- Innovation: The need to encourage innovation in technology and working practices in relation to relevant activities.

- System of regulation: The need to maintain a stable and predictable system of regulation which encourages investment in relevant activities.[23]

Clause 5 would provide for the Secretary of State to give directions to the OGA as to the exercise of any of its functions, if the Secretary of State considers that the directions are necessary in the interests of national security or are otherwise in the national interest.[24] Additionally, the OGA would have to notify the Secretary of State if it considers that a circumstance has arisen—or is likely to arise—that makes the power appropriate to use. [25]

Part 1 of the Bill would transfer a number of functions from the Secretary of State to the OGA (as stipulated in the Bill's schedule). The Energy Bill would also transfer responsibility for the production of the MER UK strategy from the Secretary of State to the OGA,[26] and—as part of the Bill's objective of establishing the OGA as a regulator—would place an obligation on the OGA to act in accordance with the MER UK strategy when exercising its functions.[27] Section 9C of the Petroleum Act 1998 also places certain obligations on other persons, such as petroleum licence holders to "act in accordance with the current strategy or strategies when planning and carrying out activities as the licence holder".[28]

Under the Energy Bill, the OGA would become responsible for the production of the MER UK strategy.[29] Paragraph 6(2) of the to the Energy Bill, amends section Part 1A, section 9F, of the Petroleum Act 1998 to omit subsection 1.[30] The effect of this is to remove the following:

> (1) The Secretary of State must produce the first strategy before the end of the period of one year beginning with the day on which this section comes into force.[31]

However, it should be noted that in reference to the strategy Andy Samuel, Chief Executive of the OGA said that:

> We want to get that out this year [the MER UK] and it's again an area that we've been working very closely with industry and key stakeholders to prepare for.[32]

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[23] Energy Bill, HL Bill 56 of 2015–16, part 1, clause 4(1).
[24] Directions given in the public interest may only be given in circumstances which the Secretary of State considers to be exceptional. If the Secretary of State makes a direction under Clause 5 they must lay before Parliament a copy of the direction, however material may be excluded if the Secretary of State considers it would be contrary to national security or not be in the public interest.
[25] Energy Bill, HL Bill 56 of 2015–16, part 1, clause 5(7).
[26] Energy Bill 2015–16, Explanatory Notes, p 5.
[27] Energy Bill, HL Bill 56 of 2015–16, schedule, para 3.
[28] Petroleum Act 1998, section 9C(1).
[29] Energy Bill 2015–16, Explanatory Notes, p 5.
[30] Part 1A was inserted into the Petroleum Act 1998 by the Infrastructure Act 2015.
[31] Petroleum Act 1998, section 9F(1).
[32] Andy Samuel, Chief Executive of the OGA, 'The Oil and Gas Industry Conference 'MER UK: The Next 40 Years'', 17 June 2015.

The Government has stated that a role of the OGA will be to act as "a convenor and facilitator, bringing industry together to try and achieve the aims of MER UK".[33] It has also said that the MER UK strategy is being developed in a 'tripartite way' between DECC, the OGA and industry, as endorsed by the Wood Review.[34]

3.3 The Provision of Additional Powers to the OGA

The Role of the OGA in Dispute Resolution

In its response to the call for evidence on implementing the Wood Review, the Government stated that:

> There is a recognised need for the OGA to have a non-binding role in the resolution of disputes. However, dispute resolution should be seen as a last resort and only used after the parties have made sufficient attempts to reach a resolution, working informally with the OGA. It is important that the OGA has the operational freedom to define the process by which it will consider and resolve disputes.[35]

Chapter 2 of part 2 of the Bill would give the OGA powers to consider, and make recommendations in relation to, the resolution of disputes. Clause 10 of the Bill sets out what defines a qualifying dispute.[36] Clause 12 sets out the process which the OGA must follow when a dispute is referred to it by a relevant party. The Explanatory Notes state that:

> Where the OGA decides to adjourn the referral of the dispute it must set a timetable for the parties to conduct further negotiations with the aim that the dispute be settled without the need for OGA consideration. The OGA may also give directions to the parties, which they must comply with during the adjournment. After the period of adjournment has expired the OGA must again decide whether to reject, adjourn for a further period of negotiation or accept the reference.[37]

Disputes may either be referred to the OGA by relevant parties or the OGA may consider a qualifying dispute on its own initiative. Clause 14 states that the OGA must issue guidance on the matter to which it will have regard during the dispute procedure. The Explanatory Notes state that:

> […] where the OGA accepts a reference of a dispute by a relevant party or decides to consider a dispute on its own initiative, it must draw up a timetable for consideration of the dispute and for making a recommendation for resolving it. The OGA may issue directions to relevant parties, but not to other persons, breach of which may result in the application of sanctions, for which provision is made in Chapter 5 [of the Bill].[38]

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[33] DECC, *Implementing the Wood Review Recommendations*, 20 March 2015, p 11.
[34] ibid, p 6.
[35] ibid, p 7.
[36] This requires the dispute to be about a qualifying issue, which clause 10 states are issues relevant to the fulfilment of the principal objective and that relate to activities carried out under an offshore licence and that are not the subject of a section 82 application. A qualifying dispute must also involve at least one relevant party. In cases where a dispute covers both qualifying and non-qualifying issues the dispute is classified as qualifying only in relation to the qualifying issues.
[37] Energy Bill 2015–16, Explanatory Notes, p 9.
[38] ibid.

The OGA would have the power to issue recommended resolutions to the dispute, which it may choose to publish. Clause 18 outlines the accepted grounds for appeal to the First-tier Tribunal, including, for example, that the timetable determined by the OGA for the resolution of the dispute was unreasonable.[39]

Retention of Petroleum Related Information and Samples

In its response to the call for evidence on implementing the Wood Review the Government stated that:

> The Wood Review recommended that, in order to give full effect to its recommendations, the OGA should have the power to access appropriate and sufficient data from licence holders. This is all the more important in an industry which relies on good data to create value and support its safe operation.[40]

Chapter 3 of part 2 of the Bill would provide a number of additional powers to the Secretary of State and the OGA in relation to the retention of petroleum-related information and petroleum-related samples.[41]

Clause 20 would give the Secretary of State the power to make regulations which may require specified relevant persons to retain specified petroleum-related information, and specified offshore licensees to retain specified petroleum-related samples. Before making any such regulations, the Secretary of State must consult with the OGA. The regulations may allow for samples to be retained following the termination of a licensee's licence. However, such regulations:

> […] may not impose requirements which have effect in relation to particular petroleum-related information or particular petroleum-related samples at any time when an information and samples plan dealing with the information or samples has effect.[42]

Clauses 22 to 25 would establish information and samples plans. These plans establish what is to happen to petroleum-related information and petroleum related samples following a 'licence event'.[43] Clause 25 would provide supplementary information about information and samples plans, including that they may provide as appropriate for:

(a) the retention, by the responsible person, of any petroleum-related information or petroleum-related samples held by or on behalf of that person before the licence event,

(b) the transfer of any such information or samples to a new licensee, or

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[39] Energy Bill, HL Bill 56 of 2015–16, clause 18(2).
[40] DECC, *Implementing the Wood Review Recommendations*, 20 March 2015, p 15.
[41] For the purposes of chapter 3 petroleum-related information is information that is acquired or created in the course of carrying out any activities relevant to the fulfilment of the principal objective or information acquired or created in the course of carrying out any activities under an offshore licensee's licence. Petroleum-related samples are defined as samples of substances acquired by, or on behalf of, an offshore licensee in the course of carrying out activities under their licence.
[42] Energy Bill, HL Bill 56 of 2015–16, chapter 2, clause 21(3).
[43] Full details of the definition of a licence event are given in clause 22(3); they include the expiry of an offshore licence and the revocation of an offshore licence.

(c) appropriate storage of such information or samples.[44]

The storage of the information or samples may be made the responsibility of the OGA.

Clause 26 would provide the OGA with the power to request petroleum-related samples or information for the purpose of carrying out any of its functions which are relevant to the fulfilment of the principal objective. This must be done by notice in writing and the notice must specify the form or manner in which the information or sample is to be provided and the timescale within which this must be done. Information so requested may not include items subject to legal privilege.

Clause 27 would stipulate under which circumstances the information and samples acquired by the OGA under chapter 3 may be disclosed. Clause 27(2) defines such information and samples as "protected material". Clause 27(8) allows for the Secretary of State to make regulations which may specify when protected material may be published or made available to the public.

Clause 29 provides for the appointment of information and samples coordinators whose name and contact details must be made available to the OGA.

Clause 30 provides for an appeals process in instances where an information and samples plan may be unreasonable or where the length of time given to comply with a request for samples or information under clause 26(1) is deemed to be unreasonable. Appeals are to be made to the First-tier Tribunal.

The Right to Attend the Meetings of Relevant Persons

In its response to the call for evidence on implementing the Wood Review, the Government stated that:

> The Government will ensure the OGA has the right to attend industry meetings as an observer. This will apply to all parties covered by the MER UK Strategy and include meetings between operators within a joint venture, and meetings between licensees, where matters relating to licence obligations or to MER UK are being discussed. We will ensure the OGA has the flexibility to prioritise its attendance of meetings, prioritising those with the most relevance to furthering the objectives of MER UK. Sanctions will be applicable for a failure to comply with the OGA's powers relating to its access to meetings.[45]

Amongst its provisions, Chapter 4 of part 2 of the Bill gives the OGA the right to attend meetings which involve two or more relevant persons—or their representatives—where these meetings are on relevant issues.

Clause 31(4) would define relevant issues as ones which are relevant to the fulfilment of the principal objective or related to activities carried out under an offshore licence. However, issues to which a claim of legal professional privilege (or confidentiality of communications in Scotland) could be maintained in any legal proceedings are not included.

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[44] ibid, clause 25(1).
[45] DECC, *Implementing the Wood Review Recommendations*, 20 March 2015, p 6.

Clause 32 would place a duty on relevant persons—or their representatives—to write to the OGA informing it that the meeting is taking place and how the OGA may attend.[46]

Clause 34 stipulates that where the OGA did not exercise its right to attend a relevant meeting it must be provided with a summary of the meeting by the relevant person.

The Right to Issue Sanction Notices

In its response to the call for evidence on implementing the Wood Review the Government stated that a gradated set of sanction powers would be necessary to underpin the delivery of the MER UK strategy. To this end:

> […] The Government intends that sanctions will be applicable for breaches of the MER UK Strategy as well as non-compliance with licence conditions, and non-compliance with key powers exercised by the OGA such as breaches of data obligations or non-compliance with the OGA's power to attend industry meetings.[47]

Chapter 5 of part 2 would provide the OGA with a range of sanction notices which it could issue in cases where it considers that a person has failed to comply with a petroleum-related requirement imposed upon that person. Clause 37(3) defines a petroleum-related requirement as:

> (a) a duty imposed under section 9C of the Petroleum Act 1998 to act in accordance with the current strategy or strategies produced under section 9A(2) of that Act for enabling the principal objective to be met,
>
> (b) a term or condition of an offshore licence, or
>
> (c) a requirement imposed on a person by or under a provision of this Act which, by virtue of the provision, is sanctionable in accordance with this Chapter.[48]

Chapter 5 would provide the OGA with the power to issue the following sanction notices:

- Enforcement notices (clause 38). These would allow the OGA to direct a person or persons to comply with a petroleum-related requirement and may set out the means by which this can be achieved. Directions included in an enforcement notice are sanctionable under chapter 5 of the Bill.

- Financial penalty notices (clauses 39 to 41). These would allow the OGA to issue financial penalties for failing to comply with a petroleum-related requirement in certain circumstances. Clause 40 would stipulate that the financial penalty must not exceed £1 million, and that the OGA must issue guidance on how it will calculate the value of financial penalties. Money received by the OGA in such a way must be paid into the consolidated fund. The Secretary of State would be given the power to make regulations to raise the limit to £5 million.

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[46] This must be done at least 14 days before the day on which the meeting is to take place, or if that is not reasonably practicable, as soon as reasonably practicable, but the OGA must be told in writing as to why this is the case. The OGA must be provided with the meeting agenda and any other documents relevant to the meeting. Clause 33 does not allow the OGA to vote in such meetings.

[47] DECC, *Implementing the Wood Review Recommendations*, 20 March 2015, p 21.

[48] ibid, clause 37(3).

- Revocation notices (clause 42). These would only be issued to a licensee and allow the OGA to revoke a petroleum licence under certain specified circumstances.

- Operator removal notices (clause 43). These would only be given to an operator under a petroleum licence. They would enable the OGA to require the licensee—under whose licence the operator operates—to remove the operator effective from a specified date. From this date the licensee must ensure that the operator does not exercise any function of organising or supervising any of the operations of searching for, boring for, or getting petroleum in pursuance of the licensee's petroleum licence. Clause 43(7) details that a requirement imposed on a licensee to remove the operator with effect from the removal date would be sanctionable in accordance with chapter 5 of the Bill.

Clause 37(5) allows for such notices—bar enforcement notices—to be issued in respect of a failure to comply with a petroleum-related requirement even if that failure had been remedied at the time the notice was issued.

Clause 44 places a duty on the OGA to issue sanction warning notices prior to the issuing of a sanction notice. A warning notice must specify the requirement in breach; inform the recipient that a sanction notice may be issued in respect of this breach; gives details of the failure to comply with the requirement; and informs the recipient of their right to make representations to the OGA on this issue.[49]

The Bill would provide for the OGA to decide whether to issue a sanction notice in regard to the failure detailed in the warning notice; issue a sanction notice in regard to a failure with the requirement which differs from that detailed in the warning notice; or not to issue a sanction notice.

Clauses 45 to 47 set out the circumstances under which it would be possible for an appeal against a sanction notice issued by the OGA may be made.[50]

Clause 48 would give the OGA the power to publish any sanction notice it issues. However, it cannot publish anything that in its own opinion is commercially sensitive; not in the public interest to publish; or otherwise not appropriate to publish. If, after publication a sanction notice is cancelled, appealed or withdrawn then the OGA must publish details of this.

Clause 49 would provide limitations on the issuing of subsequent sanction notices in specific circumstances. Clause 50 would allow the OGA to withdraw a sanction notice after it has been issued at any time. It must then notify specified relevant persons of the withdrawal. Clause 51 would provide that, where the OGA gives a sanction notice to the holder of an offshore petroleum licence, the matter has to be addressed in accordance with chapter 5. The Bill's Explanatory Notes explain that the effect of this would be to:

> […] disapply any right under a licence for the matter to be dealt with in some other way—for example, by arbitration. The intention is that Chapter 5 provides an alternative method of enforcement for breaches of offshore petroleum licences.[51]

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[49] ibid, clause 44(3).
[50] Any appeal must be made within 28 days from the day on which the notice was given and the notice ceases to have an effect until a decision is made by the First-tier Tribunal.
[51] Energy Bill 2015–16, Explanatory Notes, p 17.

Clause 52 would provide the OGA with the power to acquire information by written notice from a person who is subject to the petroleum-related requirements. The Explanatory Notes explain that this can be done for purposes of determining whether a breach has occurred and therefore whether a sanction notice can be issued. Clause 53 would create a right of appeal to the First-tier Tribunal against this power. Clause 55 would require the OGA to establish and publish a statement of the procedure which it will follow when making a decision on whether to issue a sanction notice.

3.4 Reaction to the OGA Provisions

The Government's response to its call for evidence on implementing the Wood Review summarises the responses it received, page 25 of which lists the names of all respondents.[52] That response stated that:

> […] in line with the tripartite approach endorsed in the Wood Review, the Government undertook an extensive Call for Evidence. The purpose of this Call for Evidence was to seek views from all interested parties on how to implement the recommendations of Sir Ian's report, not to reopen questions addressed by the report itself. Throughout the Call for Evidence we sought practical examples and evidence of the issues currently affecting operations in the North Sea.[53]

The independent Oil and Gas Expert Commission—established by the Scottish Government in the context of the Scottish independence referendum—made reference to the Wood Review, writing in July 2014—prior to the publication of the Energy Bill—that:

> It is widely recognised that the remaining resources of the UKCS still represent a considerable prize and the need to 'extract every last drop' is commonly accepted. Support for Sir Ian Wood's *Maximising Recovery* Review has therefore been very strong within the industry, with a focus on a new strategy for Maximising Economic Recovery ('MER') and a new model of stewardship to deliver it.[54]

Oil and Gas UK is a trade association which describes itself as "the leading representative body for the UK offshore oil and gas industry".[55] Deirdre Michie, Oil and Gas UK's chief executive, welcomed the publication of the Energy Bill, saying that:

> The OGA is a critical catalyst for the work being done to sustain offshore oil and gas activity and the Bill aims to provide the new regulator with the tools and capabilities it will need to do the job effectively and efficiently so we support its swift passage through Parliament […]
>
> […] The commissioning of the Wood Review and implementation of its recommendations, along with the tax changes announced in this year's Budgets, lay strong foundations for the regeneration of the UK North Sea. Big strides are being made by industry to improve the efficiency and reduce the cost of operations with average lifting costs anticipated to fall as a result over the next twelve months. The

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[52] Including companies such as BP North Sea, ExxonMobil, and Shell UK Limited.
[53] DECC, *Implementing the Wood Review Recommendations*, 20 March 2015, p 5.
[54] Oil and Gas Commission, *Scotland's Independent Expert Commission on Oil and Gas: Maximising the Total Value Added*, July 2014, p 2.
[55] Oil and Gas UK, 'About Us', accessed 15 July 2014.

> focus of the industry now is to continue that work while maintaining comprehensive engagement with the OGA and HM Treasury.[56]

4. The Offshore Oil and Gas Environment and Decommissioning Unit (OGED) and Fees

The Energy Bill would insert a new sub-section 82OA into Part 4A of the Energy Act 2008 and a new section 110A into Part 4 of the Marine and Coastal Access Act 2009. The Explanatory Notes state that this is to enable the Secretary of State to make secondary legislation to set fees and charges to recoup costs associated with the provisions of certain functions.[57]

Clause 58 would validate charges for fees that have already been made. The Explanatory Notes explain that:

> OGED exercises environmental regulation functions in relation to offshore oil and gas and charges the industry for the exercise of those functions. It was recently discovered that the necessary fees regulations had not been made in relation to functions exercised under the enactments listed in subsection (2) of clause 58 of this Bill. Fees are validly charged in relation to the remainder of OGED's functions.[58]

5. Wind Power

The Conservative Government has committed to decentralising decision-making on new onshore wind farms and to ending new public subsidies for onshore wind generation.[59] The Energy Bill is intended to fulfil those commitments.

5.1 Wind Turbines and Decentralised Decision-Making

Currently, onshore wind projects with a capacity of 50MW (or under) only require planning permission to be granted by local planning authorities (in England and Wales only).[60] However, the construction or extension of onshore wind projects with a capacity above 50MW requires consent under the Planning Act 2008 from the Secretary of State for Energy and Climate Change.[61] Current planning requirements for onshore wind turbines are detailed in the *National Planning Policy Framework* and the National Policy Statement for Renewable Energy Infrastructure.[62] However, the increased emphasis upon renewable sources of power has resulted in planning problems causing "considerable delay and the rejection of many applications".[63]

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[56] Oil and Gas UK, 'Oil and Gas UK Welcomes Energy Bill', 10 July 2015.
[57] ibid, p 18.
[58] ibid.
[59] HC *Hansard*, 18 June 2015, col 10WS and col 42WS.
[60] The Town and Country Planning Act 1990 provides for onshore wind projects with a capacity under 50MW. See, Energy Bill 2015–16, Explanatory Notes, p 5.
[61] The House of Commons Library has recently published a briefing paper on *Planning for Onshore Wind* that sets out the local and national planning processes for onshore wind development: House of Commons Library, *Planning for Onshore Wind*, 29 June 2015, SN04370.
[62] Department for Communities and Local Government, *National Planning Policy Framework*, March 2012; Department of Energy and Climate Change, *National Policy Statement for Renewable Energy Infrastructure*, July 2011.
[63] ibid p 4.

The Conservative Party's 2015 manifesto committed to halting "the spread of subsidised onshore wind farms", stating that they often failed to win public support and were "unable by themselves to provide the firm capacity that a stable energy system requires". [64] Consequently, the manifesto stated that a Conservative Government would "end any new public subsidy for [onshore wind farms] and change the law so that local people have the final say on windfarm applications". [65]

The Secretary of State for Communities and Local Government, Greg Clark, made a statement on 18 June 2015 setting out new considerations which the Government intended would be applied to proposed wind energy development, to enable local people to "have the final say" on wind farm applications.[66] The Secretary of State said:

> When determining planning applications for wind energy development involving one or more wind turbines, local planning authorities should only grant planning permission if:
>
> > The development site is in an area identified as suitable for wind energy development in a local or neighbourhood plan; and following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.[67]

The Secretary of State said that these considerations would take effect from 18 June 2015 and "should be taken into account in planning decisions".[68]

Clause 59 of the Energy Bill would remove the existing obligation to obtain consent from the Secretary of State to construct, extend or operate an onshore wind farm in England and Wales with a capacity greater than 50MW.[69] The Explanatory Notes state that:

> The effect of this provision, when combined with secondary legislation to be made by Government to amend the Planning Act 2008, will mean that the developer of such a project will need to apply for planning permission under the Town and Country Planning Act 1990 generally to the local planning authority.[70]

5.2 The Renewables Obligation

The Renewables Obligation (RO) places an obligation on UK suppliers of electricity to source an increasing proportion of their electricity from renewable sources, by purchasing a Renewals Obligation Certificate (ROC) from an accredited generator for renewable energy.[71] The RO is administered by the Gas and Electricity Markets Authority, which then issues ROCs to renewable electricity generators for each megawatt hour of electricity produced during a specified period.[72]

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[64] Conservative Party, *The Conservative Party Manifesto 2015*, April 2015, pp 56–7.
[65] ibid.
[66] HC *Hansard*, 18 June 2015, col 9WS.
[67] ibid.
[68] ibid.
[69] Energy Bill 2015–16, Explanatory Notes, para 129.
[70] ibid.
[71] ibid, para 15.
[72] ibid.

Clause 60 of the Energy Bill would amend the Electricity Act 1989 to provide for the closure of the RO to new onshore wind generating stations located within Great Britain on 31 March 2016. Renewables Obligation certificates would no longer be issued for electricity generated after 31 March 2016. The Explanatory Notes state that clause 60 would also provide for the Secretary of State:

> […] to make regulations to give further effect and to make more detailed provision in relation to the RO closure measure. This is subject the affirmative resolution procedure.[73]

The new Secretary of State for Energy and Climate Change, Amber Rudd, made a statement on 18 June 2015 regarding Onshore Wind Subsidies "specifically in relation to the Renewables Obligation".[74] Ms Rudd said that the RO supported the "overwhelming majority of current and future onshore wind capacity"; it was demand-led and "so poses more risk of pressure on consumer bills from increased demand for the subsidy". She went on to announce that primary legislation would be introduced "to close the RO to new onshore wind from 1 April 2016—a year earlier than planned" and proposed a "grace period" for projects which, "as of today, already have planning consent, a grid connection offer and acceptance, and evidence of land rights for the site on which their project will be built".[75]

A further statement was given by the Secretary of State on 22 June 2015 with regard to ending new subsidies for onshore wind.[76] In that statement, Ms Rudd said that there was now "enough onshore wind in the pipeline" to meet the 2020 renewable electricity generation objective "comfortably", and that if no action were taken "we could end up with more onshore wind projects than we can afford".[77] The Secretary of State said that:

> […] by closing the RO to onshore wind early, we are ensuring that we meet our renewable electricity objectives, while managing the impact on consumer bills and ensuring that other renewables technologies continue to develop and reduce their costs. Consumer bills will not rise because of this change.[78]

Ms Rudd went on to say that she was aware that over two-thirds of the onshore wind pipeline related to projects in Scotland, and she would "continue to consult" colleagues in the devolved administrations as "we move towards implementation".[79]

Responding to the Secretary of State's statement of 22 June 2015, the Shadow Secretary of State for Energy and Climate Change, Caroline Flint, denounced what she described as the "confusion" in the policy regarding onshore wind:

> It is only four days since I heard the Secretary of State on the "Today" programme, explaining her Government's policy changes to onshore wind. That was followed by a written statement later that morning, along with a written statement from the Department for Communities and Local Government on the same subject. Today, she has been forced to come to the House because of the confusion and concern that she

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[73] Energy Bill 2015–16, Explanatory Notes, p 18.
[74] HC *Hansard*, 18 June 2015, col 10WS.
[75] ibid.
[76] HC Hansard, 22 June 2015, cols 617–32.
[77] ibid, col 617.
[78] ibid, col 618.
[79] ibid, col 619.

> has caused. There is concern about the Government's commitment to our renewable targets and to supporting value for money. There is confusion as to how her policy will apply in practice, and confusion across the renewables sector, where certainty to encourage investment is paramount. [80]

Ms Flint said that it was "extremely concerning" that the interim 2020 EU renewable targets had already been missed, and went on to point out that, as Scotland makes up ten percent of UK households and that more than 30 percent of operational onshore wind projects are located in Scotland, it was "understandable" that Scotland would be concerned about the impact on jobs and investment.[81]

Stewart Hosie, Shadow Westminster Group Leader for the Scottish National Party, also expressed concern about the damage that he argued that the policy would cause, and asked the Secretary of State to publish information on "all the jobs that are lost and the investment forgone" because of the decision to close new onshore wind projects.[82]

A policy paper, *Further Information on the RO Grace Period*, was issued by the Department on 15 July 2015 confirming the Government's plans to "bring forward primary legislation to implement the final policy later in this session of Parliament".[83]

5.3 Reaction to the Wind Power Provisions

Maria McCaffery, Chief Executive of RenewableUK—a not for profit renewable energy trade association—has described the Government's decision to "prematurely" end financial support for onshore wind as a "chilling signal" to the renewable energy industry and to investors in the UK's infrastructure sectors:

> It means this Government is quite prepared to pull the rug from under the feet of investors even when this country desperately needs to clean up the way we generate electricity at the lowest possible cost—which is onshore wind. People's fuel bills will increase directly as a result of this Government's actions. If Government was really serious about ending subsidy it should be working with industry to help us bring costs down, not slamming the door on the lowest cost option.
>
> Ministers are out of step with the public, as two-thirds of people in the UK consistently support onshore wind. Meanwhile the Government is bending over backwards to encourage fracking, even though less than a quarter of the public supports it.[84]

Reacting to the Government's decision to end new subsidies for onshore wind farms, and changing planning rules that could make it far harder for new turbines to be built, Friends of the Earth's renewable energy campaigner, Alasdair Cameron, said that the Government was "pulling the rug from under onshore wind" and was guilty of "making the environment pay the price for rash pre-election promises".[85]

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[80] HC *Hansard*, 22 June 2015, col 619.
[81] ibid, col 620.
[82] ibid, col 622.
[83] Department of Energy and Climate Change, *Information on the Proposed RO Grace Period for New Onshore Wind*, 15 July 2015, section 5.
[84] RenewableUK, 'RenewableUK Urges Government to Reconsider Onshore Wind Cuts', 18 June 2015.
[85] Friends of the Earth, 'Government Cuts Wind Subsidies', 18 June 2015.

Graham Lang, chair of Scotland Against Spin, an independent alliance campaigning for the reform of the Scottish Government's "unsustainable" wind energy policy,[86] said they were "delighted the Conservative Government is sticking to its promise to end the ludicrously generous subsidies for onshore wind farms".[87] He went on to say that "speculative developers from across the world have flocked to Scotland because of the SNP's open door policy to the wind industry".[88]

6. Territorial Extent and Application

The RO is currently provided for by three complimentary statutory instruments that together create a UK-wide renewables obligation:

- England and Wales—Renewables Obligation Order 2009 (S.I 2009/785)
- Scotland—Renewables Obligation (Scotland) Order 2009 (S.S.I. 2009/140)
- Northern Ireland—Renewables Obligation (Northern Ireland) Order 2009 (S.R. 2009/154).[89]

The Energy Bill 2015 would have a UK extent where it relates to oil and gas. The Explanatory Notes explain that it would not apply onshore in Northern Ireland, but would apply:

a. offshore in the territorial sea around the UK and in the continental shelf;

b. onshore in England; and

c. onshore in Scotland and Wales in a manner that respects the changing devolution position.[90]

The Explanatory Notes confirm that the Bill, regarding onshore wind planning, "only makes changes in relation to England and Wales" but that "the extent of RO closure provision is Great Britain".[91]

[86] Scotland Against Spin, accessed 15 July 2015.
[87] Scotland Against Spin, 'At Long Last—Comment on Closing ROCs Early' 18 June 2015.
[88] ibid.
[89] Energy Bill 2015–16, Explanatory Notes, para 16.
[90] ibid, para 18.
[91] ibid, para 19.