



***Energy Bill* [HL]**

Bill 167 of 2010-12

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This briefing on the *Energy Bill* has been prepared for the Second Reading Debate on the Bill in the House of Commons. The flagship policy in the Bill is the “Green Deal”, a scheme whereby homes would be given finance upfront to make energy efficiency improvements, which would then be paid for by energy bill savings. The Bill would also set up a new obligation on energy companies to help certain groups of consumers with saving energy, particularly those who may not qualify for the Green Deal due to high energy costs, or who live in properties where energy efficiency improvements would be particularly expensive.

The Bill also introduces a range of other measures designed to improve energy efficiency; such as facilitating the roll-out of smart meters, widening access to energy performance certificates and making information on energy bills clearer. The Bill also provides measures designed to help improve energy security, to encourage low carbon generation and to grant additional powers to the Coal Authority to charge for certain services.

The Bill has completed all of its stages in the House of Lords where its passage was largely uncontroversial and consensual; there were no divisions on amendments at any stage. One of the particular concerns raised, however, was the large number of provisions in the Bill dependent upon further delegated legislation.

Louise Smith
Donna Gore
Paul Bolton

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Contributing Authors: Louise Smith: The Green Deal; Private Rented Sector; Energy Company Obligation; Energy Performance Certificates; Energy Bills; Gas Supply; Third Party Access to Upstream Oil and Gas Infrastructure; UK Continental Shelf; and Coal Authority, Science and Environment Section
Donna Gore: Smart Meters; Electricity Supply; Special Administration Regime; Offshore Electricity; Nuclear Operators' Fund; and Home Energy Conservation Act 1995, Science and Environment Section
Paul Bolton: Energy Efficiency Statistics, Social and General Statistics Section
Jacob Thorne: Comment on the Bill, Science and Environment Section

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Summary

The *Energy Bill 2010-12* was announced in the Queen's Speech on 25 May 2010. The purpose of it is to provide a "step change" in the provision of energy efficiency measures to homes and businesses. The Bill also contains a plethora of other energy related items, the majority of which are changes to existing policy and practices rather than new measures.

The Bill has completed all of its stages in the House of Lords where its passage was largely uncontroversial and consensual; there were no divisions on amendments at any stage and only Government amendments were made at Report and Third Reading. One of the particular concerns raised, however, was the large number of provisions in the Bill dependent upon further delegated legislation.

The Liberal Democrats, Labour Party and Green Party have supported the broad aims of the Bill, but have expressed concern about whether the provisions in the Bill are actually strong enough to make a real improvement in energy efficiency.

Energy efficiency in buildings

The main component in the Bill is the framework for a "Green Deal"; a new policy to encourage energy efficiency improvements in properties, to be paid for by savings from energy bills. It is being introduced in the context of rising levels of fuel poverty, legally binding carbon emission reduction targets and criticisms of existing energy efficiency schemes.

The Green Deal would enable customers to receive money upfront to make energy efficiency improvements to their properties. The repayments would then attach to the energy bill at a property, rather than to an individual. The "core principle" of the Green Deal is the "golden rule"; that the instalment payments for the energy saving measures, including the cost of finance, labour and products, should not exceed the projected associated cost savings on an average bill for the duration of the green finance arrangement. The obligation to make the repayments would then pass to a new occupier should the Green Deal applicant move.

The second strand to this policy is to replace the current obligations on energy suppliers (the Carbon Emissions Reduction Target and the Community Energy Saving Programme), to reduce carbon dioxide emissions from homes, with the new energy company obligation (ECO). The ECO would underpin the Green Deal by providing help for households that may not qualify for the Green Deal and/or those who could not make energy savings without extra financial support, such as those with hard-to-treat homes and the fuel poor.

Many questions about the exact working of the Green Deal remain to be answered; it is expected that the finer details of the Green Deal and the ECO will come into force through secondary legislation, after a consultation period in autumn 2011.

The Bill would also create powers to allow the Secretary of State to make regulations (not coming into force before 2015) to improve energy efficiency in the domestic and non-domestic private rented sectors. These powers would allow tenants asking for "reasonable" energy efficiency improvements to receive them and would give local authorities powers to insist that landlords improve the worst performing homes.

Other measures in the Bill to improve energy efficiency include: widening who can have access to energy performance data; requiring energy suppliers to provide information about their cheapest tariffs available on customer bills; and amending the powers in the *Energy Act 2008* about smart gas and electricity meters, to facilitate the roll-out of smart meters.

Security of energy supplies

The Government is keen to increase the effectiveness of monitoring of security of electricity supply, in order to better inform markets and enhance security of supply. To this end, the Bill would obligate the regulator, the Gas and Electricity Markets Authority (GEMA), to assess future electricity capacity need and the adequacy of plans to meet it. It would require GEMA to report annually to the Secretary of State, and place a duty on him/her to publish an assessment of the adequacy of plans. In practice, the work would be carried out by the operational arm of the regulator, the Office of Gas and Electricity Markets, Ofgem.

The Government also aims to prevent the likelihood, duration and extent of a gas supply emergency; a loss of pressure in the network which endangers people. The Bill would do this by changing the current market price mechanism, which freezes gas prices in such an emergency, to enable a price to be found which is attractive to gas importers, to incentivise them to maintain supply to Great Britain.

Provision is also made in the Bill to improve third party access to upstream petroleum and gas infrastructure, such as pipelines and offshore processing facilities. It can be difficult for third parties to negotiate a price to access the infrastructure to take advantage of any spare capacity. The Government has called the existing rules “piecemeal” and “inconsistent” and the Bill introduces measures to make access negotiations quicker and simpler.

The Bill also proposes a special administration regime (SAR) for gas and electricity suppliers that become insolvent to ensure both fuels continue to be supplied to their customers as cost effectively as possible.

Another section of the Bill would allow areas of the UK continental shelf to be de-designated if required. This would give the UK more flexibility in the management of its hydrocarbon resources and allow for areas of continental shelf to be swapped with other countries.

Low carbon generation

The Bill contains provisions to enable effective implementation of the Offshore Electricity Transmission Regime. The aim is to facilitate timely, secure and cost effective delivery of connections from offshore wind farms to the Great Britain onshore grid so that electricity generated by them can be brought ashore.

The Bill would also amend the existing powers under the *Energy Act 2008* for the Secretary of State to modify a nuclear operator’s Funded Decommissioning Programme with the aim of providing an appropriate balance between his powers to protect the taxpayer and the operator’s need for clarity over its liabilities. The aim is to give the necessary certainty to investors about their long-term, very significant, investments to enable new build to proceed.

Coal authority

The Government would like the Coal Authority to be able to offer and charge for services that are related to, but which go beyond, its statutory duties in regard to repair of non-coal mining subsidence and non-mine water pollution; the Bill provides for this.

Home Energy Conservation Act

To simplify policy delivery, the Bill repeals the *Home Energy Conservation Act 1995* (HECA) in England, Scotland and Wales. This measure was enacted early in the development of energy conservation legislation and has since been superseded by a wide range of policy initiatives which render it redundant.

1 Introduction

The *Energy Bill 2010-12* was announced in the Queen's Speech on 25 May 2010.¹ The principal aim of the Bill is to provide a "step change" in the provision of energy efficiency measures to homes and businesses.

The Bill and its Explanatory Notes are available from the [Energy Bill page](#) on the Parliament website. The impact assessment is available from the [Department of Energy and Climate Change website](#).

1.1 What is not in the Bill

The Government always intended that its flagship policy in the Bill would be to provide the framework for the "Green Deal", a scheme whereby homes would be given finance up front to make energy efficiency improvements, which would then be paid for by energy bill savings. The Bill was referred to in the Queen's Speech as the "*Energy Security and Green Economy Bill*". At the time, the Department of Energy and Climate Change (DECC) said that the Bill "may" also include measures to:

- **regulate the carbon emissions from coal-fired power stations;**
- **reform energy markets to deliver security of supply and ensure fair competition;**
- put in place a framework to guide the development of a smart grid that will revolutionise the management of supply and demand for electricity;
- require energy companies to provide more information on energy bills in order to empower consumers and to ensure fair access to energy supplies;
- ensure that North Sea infrastructure is available to all companies to ease the exploitation of smaller and more difficult oil and gas fields; and
- **create a Green Investment Bank to support investment in low carbon projects to transform the economy.**

Three of these six original proposals (those in bold) are not now in the Bill, which may reflect its change of title. The Government still intends to introduce these three measures, but the timetable has now changed, as a December 2010 consultation document makes clear.

In December 2010 DECC published a consultation document on *Electricity Market Reform*, which closed on 10 March 2011.² Among other things it consults on some of the proposals not now in the Bill. It outlines measures to regulate the emissions from coal-power stations, by the introduction of an emissions performance standard. It also consults on a package of options to reform the electricity market, including:

- carbon price support to provide greater long-term certainty around the additional cost of running polluting plant;
- feed-in-tariffs to extend the current scheme to give more certainty on the revenues for low-carbon generation; and

¹ HC Deb 25 May 2010c5

² Department of Energy and Climate Change, [Electricity Market Reform](#), CM 7983, 16 December 2010

- capacity payments to give a greater incentive for investment in spare and more flexible energy generation capacity.³

The timetable for implementation of these measures is set out in the consultation document. It shows that there will be a second energy bill, possibly later this year in 2011:

23. The Government is committed, subject to Parliamentary time and the complexity of the design issues, to the following implementation timeline for the reform of the electricity market:

- Late Spring 2011 – Publication of White Paper with final reform proposals;
- 2011 onwards – Aim to establish new powers in Primary Legislation; exact timings cannot be determined in advance of decisions on future Legislative Programmes; and
- 2013/14 – Secondary legislation in place, codes and licenses modified and new schemes take effect.⁴

Work has also begun on developing a green investment bank. On 29 June 2010 the Green Investment Bank (GIB) Commission, an independent group convened by the Chancellor of the Exchequer to advise Government and chaired by Bob Wigley, published its report, *Unlocking investment to deliver Britain's low carbon future*.⁵ The Commission concluded that there was an “urgent need for a new public financial institution to unlock the investment needed for Britain to deliver a timely transition to a low carbon economy.”⁶ The Government's October 2010 Spending Review confirmed that funding would be made available for the GIB to go ahead.⁷ The March 2011 Budget confirmed the financing and timetable for establishing the GIB:

The Government is committed to ensuring that the Green Investment Bank (GIB) has the resources to help the UK to move towards a low-carbon economy. The Government announces that the initial capitalisation of the GIB will be £3 billion and that the GIB will begin operation in 2012-13, a year earlier than previously anticipated. Government investment alongside private finance should mean that there is in the region of an additional £18 billion of investment in green infrastructure by 2014-15 as a result of the GIB. The Spending Review allocated £1 billion for the GIB and the Government is aiming for the remaining £2 billion to be funded from the sale of assets. This will include the £775 million net proceeds already received from the sale of High Speed I, ensuring that funding is in place to allow GIB investments from 2012-13. The Government will enable the GIB to have borrowing powers from 2015-16 and once the target for debt to be falling as a percentage of GDP has been met.⁸

A detailed announcement on the GIB is expected by the Government later in May 2011.⁹

³ Department of Energy and Climate Change, *Electricity Market Reform*, CM 7983, 16 December 2010, p5-6

⁴ Department of Energy and Climate Change, *Electricity Market Reform*, CM 7983, 16 December 2010, p121

⁵ Green Investment Bank Commission, *Unlocking investment to deliver Britain's low carbon future*, 29 June 2010

⁶ *Green Investment Bank Commission Report- CCC-E3G joint announcement*, 29 June 2010

⁷ HM Treasury, *Spending Review 2010*, Cm 7942, October 2010, p24

⁸ HM Treasury, *Budget 2011*, 23 March 2011, p33

⁹ HC Deb 22 March 2011 c1083

1.2 Measures in the Bill

In addition to introducing the Green Deal, the Bill also contains many other energy related items, the majority of which are changes to existing policy and practices rather than new measures. At Report Stage in the House of Lords, Parliamentary Under-Secretary of State, Department of Energy and Climate Change, Lord Marland said that the Bill had “fundamentally been driven by the Green Deal, admittedly with a few add-on bits.”¹⁰

In total, DECC divides the Bill up under 5 main headings and 15 sub-headings:¹¹

Energy efficiency

- Green Deal: the Bill provides a framework to set up a scheme whereby energy efficiency measures in households and non-domestic properties can be paid for upfront by a finance package, which is then repaid by savings made through lower energy bills.
- Private Rented Sector: in the event of continued poor energy efficiency in this sector the Bill would give the Secretary of State powers, which could be used at a later date, to require landlords to improve energy efficiency in their properties, where finance is available.
- Energy Company Obligation: the Bill would introduce a new obligation on energy companies, to take over when the existing schemes (see section 2.3 below) expire at the end of 2012, to require them to reduce carbon emissions in homes, particularly those households which may need additional support, above that offered by the Green Deal.
- Smart Meters: the Bill would allow Government to implement the roll-out of Smart Meters until 2018. It would ensure that the Secretary of State has powers to address unforeseen issues that might arise later in roll-out.
- Energy Performance Certificates: the Bill would remove certain restrictions on access to energy performance certificate data.
- Energy Bills: the Bill would require energy companies to provide information on the cheapest tariffs on energy bills.

Security of energy supplies

- Electricity security: the Bill would confer on the energy regulator, Ofgem, a duty to report to the Secretary of State with an estimate of future need for electricity capacity.
- Gas security: the Bill would strengthen the market incentive mechanisms for ensuring sufficient gas is available during a Gas Supply Emergency.
- Third party access to upstream oil and gas infrastructure: the Bill would streamline the procedure for granting third parties access to oil and gas infrastructure and update the procedure for settling disputes in this area when they occur.
- Special Administration Regime: the Bill would give the Secretary of State powers to apply to the court to ensure that gas and electricity continue to be supplied as cost effectively as possible in the event that a large gas and electricity supply company becomes insolvent.

¹⁰ HL Deb 8 March 2011 c1582

¹¹ Department of Energy and Climate Change website, [Energy Bill 2010 / 2011](#) [on 4 May 2011]

- UK Continental Shelf: the Bill would establish powers to de-designate areas of the UK Continental Shelf in order to facilitate the signing of a comprehensive agreement with Ireland about maritime boundaries. The aim is to provide flexibility in managing the UK Continental Shelf resources.

Low carbon generation

- Offshore electricity transmission regime: the Bill would extend powers in existing energy legislation to enable the implementation of an enduring offshore electricity transmission regime beyond 2010.
- Nuclear operators' Funded Decommissioning Programme: the Bill would enable the Secretary of State to modify a nuclear operator's Funded Decommissioning Programme by mutual agreement.

Coal Authority

- Coal Authority: the Bill would provide powers to the Coal Authority to enable it to offer and charge for services relating to the longer-term safety and repair of non-coal mining subsidence and non-mine water pollution.

Miscellaneous and General

- *Home Energy Conservation Act 1995* (HECA): the Bill would repeal the HECA in England, Scotland and Wales.

There were no consultations or white papers on the measures in the Bill as a whole prior to its introduction. The measures in the Bill can be traced back to a number of key sources. Principally:

- Conservative Party green paper, [Rebuilding Security: Conservative energy policy for an uncertain world](#), 19 March 2010;
- [Conservative Party Manifesto](#), April 2010, pages 89-93;
- [Liberal Democrat Party Manifesto](#), April 2010, pages 57-60;
- [Coalition Programme for Government](#), energy and climate change section, 20 May 2010; and
- Department of Energy and Climate Change, [Annual Energy Statement](#), 27 July 2010.

The Bill in Scotland

Under the *Scotland Act 1998* energy is a reserved matter, but energy efficiency is a devolved competence. The majority of the provisions in the Bill, however, which relate to energy efficiency, such as the Green Deal, will apply to Scotland. In order that a UK-wide policy could be established, the Scottish Government, subject to the Scottish Parliament passing a Legislative Consent Memorandum, had said that it considered that these provisions should be legislated for by the UK Parliament.

For further information see the Scottish Parliament Information Office (SPICe) briefing on the [UK Energy Bill](#), which explains how the Bill will apply to Scotland and the Scottish Government's [Draft Legislative Consent Motion](#), December 2010.

1.3 The Bill in the House of Lords

The *Energy Bill 2010-12* had its First Reading in the House of Lords on 8 December 2010.¹² Second Reading was on 22 December 2010¹³ and there were six sittings held at Committee Stage, between 17 January 2011 and 8 February 2011.¹⁴

Matters raised in the House of Lords are explained under the appropriate section in the paper below. Overall however, Labour peer Lord Grantchester supported the aims of the Bill, but said that it was lacking in detail.¹⁵ He understood that further energy security and energy market reform measures were still to be consulted on, but he asked the Government to confirm its timetable for introducing a second energy bill. He was particularly concerned that any proposals for an emissions performance standard and licensing exploration legislation for deep geothermal energy, not currently included in this Bill, should be discussed sooner rather than later.

Liberal Democrat peer Lord Teverson said that he welcomed the Bill because it tackled problems associated with energy efficiency, which would in turn help future uncertainties in energy generation. He said however, that some areas of the Bill, such as some energy efficiency provisions, need “greater explanation and perhaps tightening up.”¹⁶

Lord Lawson of Blaby, a longstanding critic of interventionist energy policy, called the Bill “the most dirigiste legislation the present Government has produced so far.”¹⁷ He blamed Government intervention in the market for energy security problems. He criticised Government for incentivising wind energy, an unreliable and impractical technology, over gas, an energy source in which the world has abundant supplies. He said that the consequences of the energy policy behind the Bill, in abandoning gas in favour of low carbon technology, would: cause a substantial rise in the cost of energy to the detriment of the economy; raise bills and so increase fuel poverty; and may even prove to be incapable of supplying sufficient reliable energy to meet demand.¹⁸

A general concern of peers was the number of provisions for further delegated legislation provided for in the Bill. At Second Reading Baroness Smith of Basildon identified 54 individual provisions for delegated legislation and asked whether any drafts of these statutory instruments would be available for scrutiny in Committee.¹⁹ The Minister, Lord Marland replied that it would not be possible to have 54 draft statutory instruments ready before the Committee and explained that the Government was committed to ongoing consultation about a lot of the issues. He said that the Government would consult formally on most of the instruments at the end of 2011 before introducing them in 2012.²⁰

The House of Lords Delegated Powers and Regulatory Reform Committee also published a report on the *Energy Bill* in December 2010.²¹ It raised concerns about the amount of delegated legislation. The Committee recommended greater Parliamentary scrutiny, by way

¹² HL Deb 8 December 2010, [c194](#)

¹³ HL Deb 22 Dec 2010 [cc1101-1156](#)

¹⁴ UK Parliament website, [Bill stages — Energy Bill \[HL\] 2010-11](#) [on 4 May 2011]

¹⁵ HL Deb 22 December 2010 [c1104](#)

¹⁶ HL Deb 22 December 2010 [c1107](#)

¹⁷ HL Deb 22 December 2010 [c1121](#)

¹⁸ HL Deb 22 December 2010 [c1123](#)

¹⁹ HL Deb 22 December 2010 [c1146](#)

²⁰ HL Deb 22 December 2010 [c1155](#)

²¹ House of Lords Delegated Powers and Regulatory Reform Committee, [8th Report - Energy Bill \[HL\]](#), HL Paper 79, 22 December 2010

of the affirmative procedure rather than the negative procedure, for a number of delegated powers, particularly in relation those on energy efficiency.²²

During the House of Lords Committee Stage only one small typographical amendment was made to the Bill.²³ At Report Stage and Third Reading a number of amendments were made, all government amendments, many of which were technical in nature, although some did address concerns raised in Committee. There were no divisions.

2 Energy efficiency

Why is energy efficiency important?

Energy efficiency is one of several aspects of UK energy policy designed to reduce energy use and hence greenhouse gas emissions. Energy use will need to be reduced if the UK is to meet legally binding climate change targets:

- The UK has a target under the Kyoto Protocol to cut greenhouse gas emissions by 12.5% below 1990 levels by 2012.
- The UK has a legally binding target under the *Climate Change Act 2008* to cut greenhouse gas emissions by 80% below 1990 levels by 2050. Within the period to 2050 the UK must set and meet carbon budgets, each lasting five years.²⁴
- There is also a non-binding EU-wide energy efficiency target to save 20% of energy consumption by 2020 (compared to the energy consumption forecasts for 2020), to which the UK has agreed to contribute.²⁵

All sectors responsible for the UK's emissions are expected to play a part in meeting these targets and to make carbon savings. One of the sectors where the Government hopes to make savings is from the domestic building sector. Figures from the Department of Energy and Climate Change (DECC) show that 146 MtCO₂e,²⁶ 24% of the UK's carbon dioxide emissions, are generated by the UK domestic building stock.²⁷ This arises either directly from the burning of fossil fuels for heating or indirectly from electricity consumption. Emission levels in the domestic sector have remained relatively unchanged over the past 20 years and will need to be cut if domestic and international climate change targets are to be met.

In addition to climate change targets, the Government also has a target to eradicate fuel poverty across England, as far as reasonably practicable, in vulnerable²⁸ households by 2010 (which has not been met) and in all households by 2016.²⁹ The target originates from the provisions in the *Warm Homes and Energy Conservation Act 2000*. A household is defined as in fuel poverty if it needs to spend more than 10% of its income on fuel to maintain a satisfactory heating regime. This is considered to be 21°C for the main living area and

²² House of Lords, Delegated Powers and Regulatory Reform Committee, Eighth Report, *Energy Bill [HL] and Parliamentary Voting System and Constituencies Bill*, HL Paper 79, 22 December 2010, para 5

²³ HL Deb 17 January 2011 cGC24

²⁴ For further information about the carbon budgets see the *Carbon Budgets* page on the Department of Energy and Climate Change website [on 4 May 2011]

²⁵ Communication from the Commission, *Action Plan for Energy Efficiency: Realising the Potential*, COM(2006)545 final, Brussels, 19 October 2006

²⁶ Million tonnes of carbon dioxide equivalent

²⁷ Department of Energy and Climate Change, *Energy Bill Impact Assessment: Green Deal*, December 2010, p12

²⁸ For the purposes of fuel poverty, 'vulnerable households' are defined as those containing elderly or disabled people, children, or the long-term sick.

²⁹ *The UK Fuel Poverty Strategy*, DTI, November 2001. Amendments to the Fuel Poverty Strategy are contained in the *Summary of responses to the joint consultation from Defra and DTI* [dated 18 September 2002] on proposals to clarify the intentions of the UK Fuel Poverty Strategy dated in or after February 2003

18°C for other occupied rooms during daytime hours. Besides space heating, fuel costs also include spending on energy for water heating, lights and appliances and cooking. Cutting the cost of fuel and/or increasing energy efficiency will therefore be major contributors to meeting this target.

Schemes to improve energy efficiency

Measures aimed at improving energy efficiency are a mixture of direct expenditure by the public sector and legal obligations on energy suppliers to provide free or cut price energy efficiency improvements.

There are a number of government-initiated schemes in place to improve energy efficiency in businesses and households. Amongst the main schemes are:

- The Carbon Emission Reduction Target (CERT). Introduced in April 2008, it is an obligation on energy suppliers to reduce carbon emissions in the household sector through providing energy efficiency improvements.
- The Community Energy Saving Programme (CESP). Introduced in September 2009, it is an obligation on energy suppliers and generators to deliver energy efficiency measures in certain low income areas.
- The Warm Front Scheme in England, the Nest energy efficiency scheme in Wales³⁰ and the Energy Assistance Package in Scotland. A range of programmes designed to offer grants to enable certain households in fuel poverty to install energy efficiency improvements such as home and loft insulation and heating measures.
- The Decent Homes Programme. A policy designed to improve conditions, including energy efficiency, in social housing.
- The CRC Energy Efficiency Scheme. A new mandatory carbon dioxide emission trading scheme to improve energy efficiency in large public and private sector organisations in the UK.

Decent Homes and Warm Front

The main area of direct government spending over the past decade has been improving heating and insulation for the social rented sector through the Decent Homes programme. This totalled just over £6 billion between 2000 and 2011. Between 2000 and 2008 750,000 council homes had insulation works under the Decent Homes Programme; 900,000 had new central heating systems and a similar number had double glazing fitted.

The other main government scheme is Warm Front, which has assisted more than 1.7 million households.³¹ Spending on this and its predecessor scheme in England was around £2.6 billion between 2000 and 2011. It peaked at almost £400 million in 2008-09, is planned to be just under £350 million in 2010-11, before being reduced in the final two years of a more 'targeted scheme to £110 million and £100 million in 2011-12 and 2012-13 respectively.^{32 3334}

³⁰ Formerly the Home Energy Efficiency Scheme (HEES)

³¹ *Home Energy Saving Programme -Helping households to save money, save energy*, HM Government

³² *ibid.*

³³ HC Deb 21 January 2010 c473-4W

³⁴ HC Deb 14 February 2011 c544-5W

At the end of September 2010, Warm Front had assisted just over 2.2 million households with energy efficiency measures.³⁵

Energy Efficiency Commitment 2005-2008

During the period 2005-2008 gas and electricity suppliers were set a target to deliver lifetime energy efficiency savings totalling 130 TWh (terawatt hours).³⁶ Final delivered savings were 187 TWh. Measures were largely delivered direct to customers, but they could also be delivered via retailers, charities or government schemes. 44% of savings went to people on low incomes. The top three measures (by estimated energy saved) were:³⁷

- Cavity wall insulation 77 TWh (1.8 million measures installed)
- Loft insulation 59 TWh (34 million measures)
- Energy saving light bulbs 22 TWh (102 million measures)

Carbon Emissions Reduction Target (CERT)

Between April 2008 and December 2010 CERT suppliers delivered 276 million energy efficient light bulbs, 1.4 million cavity wall insulations, 1.7 million loft insulations, distributed 1.3 million real time energy displays, helped 63,000 households switch fuel type and delivered 5,080 microgeneration systems. The total lifetime savings of these measures is estimated at 182 million tonnes of CO₂, or 62% of the CERT target. The insulation measures made up the majority of these estimated savings (62%), next most important were lighting (26%) and fuel switching (7%).³⁸ 42% of these savings were in the priority group of low-income and vulnerable households. In 2009 estimated end-user emissions from households in the UK were 140 million tonnes of CO₂.³⁹

Community Energy Saving Project (CESP)

Up to the end of August 2010 a total of 81 proposals had been submitted and around a quarter were 'live'. Social housing providers would be involved in all schemes, in just over half there would be additional promotion to private households. The type of measures proposed in these schemes has a different profile than CERT, with greater focus on glazing, solid wall insulation and replacing boilers.⁴⁰

For further information about energy efficiency schemes, see House of Commons Library Standard Note, [Energy Efficiency Schemes](#), SN/SC/5614, 17 November 2010.

³⁵ HC Deb 2 November 2010 c724-5W

³⁶ 130 Terawatt hours over the lifetime of these measures. In 2007 final domestic consumption of gas and electricity was 465 TWh. *Digest of UK energy Statistics 2008*, BERR

³⁷ *A review of Energy Efficiency Commitment 2005-2008*, Ofgem

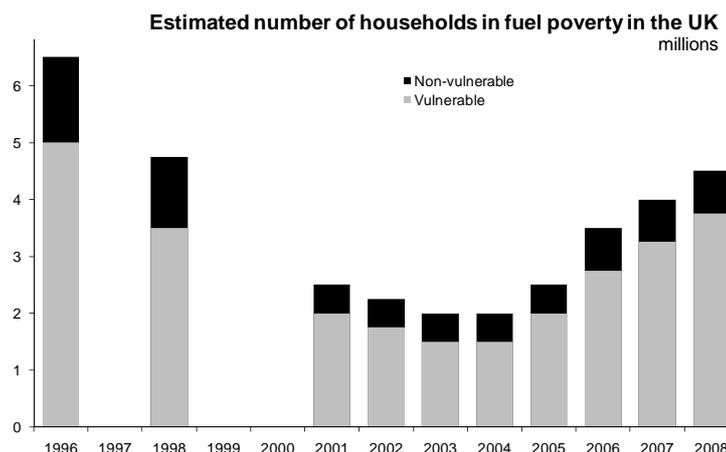
³⁸ *Carbon Emissions Reduction Target update 11*, Ofgem (February 2011)

³⁹ *UK climate change sustainable development indicator: 2009 greenhouse gas emissions, final figures*, DECC

⁴⁰ *Community Energy Saving Project update2*, Ofgem (October 2011)

Fuel poverty trends

The chart opposite illustrates trends in estimated levels of fuel poverty in the UK. Fuel poverty fell by almost 70% between 1996 and 2003 which was a reduction of over 4 million households. The subsequent rise in fuel poverty has been smaller; an increase of 2.5 million households, but the data only goes up to 2008 and hence includes two years where energy prices rose or remained high.



The 4.5 million households in fuel poverty in 2008 was around 18% or just over one in six households. The percentage fall in fuel poverty up to 2003 and 2004 was similar for vulnerable and non-vulnerable households, but the proportionate increase since then has been somewhat larger for vulnerable households.⁴¹ A vulnerable household is one that contains the elderly, children or someone who is disabled or long term sick.

The increase in fuel poverty levels between 2007 and 2008 is attributed, in the latest fuel poverty progress report, to rising fuel prices, which had risen by an average of 80% between 2004 and 2008. According to the Government, the overall effect of price rises since 2004 has far outweighed the impact of measures to improve energy efficiency.⁴²

In 2008 fuel poverty rates in England of 16% were considerably lower than the latest figures for Wales (20%), Scotland (27%) and Northern Ireland (34%).⁴³ There are many reasons for this pattern. The most important is the limited availability of mains gas in many parts of Wales, Scotland and particularly Northern Ireland. This means more households have to use generally more expensive alternatives. Variations in income, energy efficiency and the climate also contribute.

Projections

Projections of fuel poverty in England suggest an increase in fuel poverty of around 20% between 2008 and 2010. This could take the 2010 total to more than three times the 2003 low, but still well below the 1996 level.⁴⁴ The Committee on Climate Change (CCC) has modelled the impact on fuel poverty to 2022 of the measures needed to meet the carbon budgets it has proposed to the Government. Under their reference (business as usual) scenario⁴⁵ the number of households in fuel poverty in the UK falls from 3.5 million in 2006 to 2.1 million in 2022. Their modelling shows that reaching the targets set by the carbon budgets may result in higher energy prices⁴⁶ and the cost of further energy efficiency improvements through the Supplier Obligation would both increase energy bills and fuel poverty. This would be partially offset by improvements in energy efficiency these higher bills help to fund, but the net impact would be to increase the number of fuel poor households in

⁴¹ *Annual report on fuel poverty statistics 2010*, DECC

⁴² Department of Energy and Climate Change, *Annual Report on Fuel Poverty Statistics 2010*, 14 October 2010, p9

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ Small real increases in fuel prices, 2.2% real annual increases in income and energy efficiency improvements in line with their reference scenario

⁴⁶ To provide support for renewable sources and through the carbon price

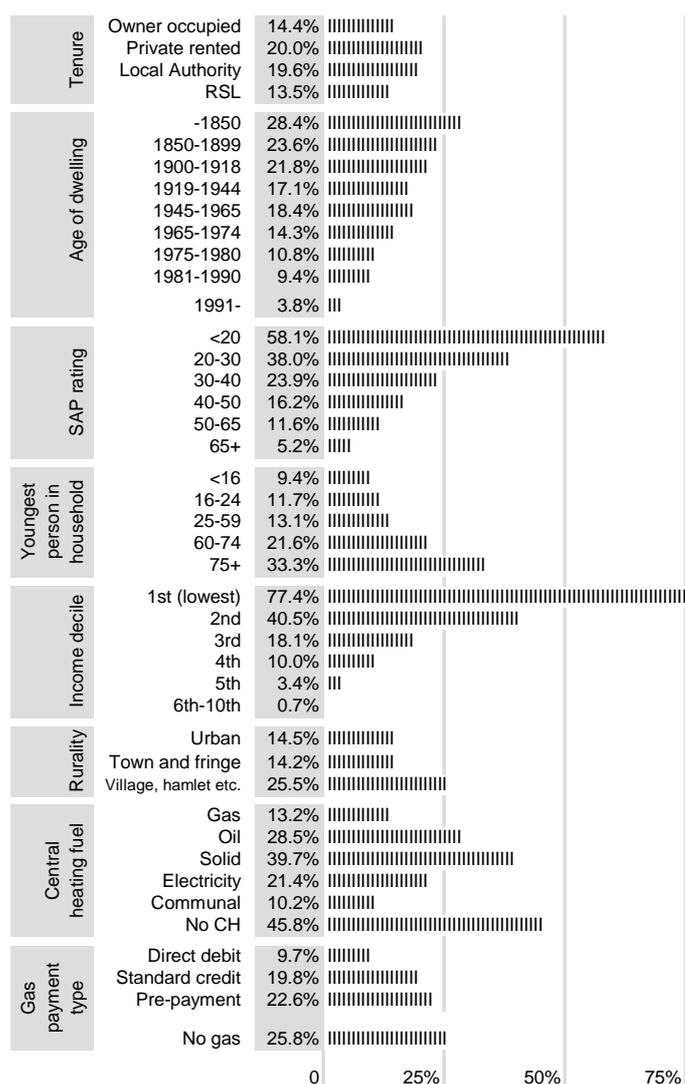
2022 from 2.1 million to 3.9 million. The CCC estimated that the cost of offsetting the energy price increases alone for all fuel-poor households would be around £500 million. They added that existing policy on income transfers and/or social tariffs might have to be strengthened to offset these impacts.⁴⁷

Patterns of fuel poverty in England

There are marked variations in fuel poverty rates by type of household and dwelling. It is helpful to think of these in terms of the elements that contribute to fuel poverty – lower income, lower energy efficiency and higher prices. For instance households living in dwellings not heated by gas are more likely to be in fuel poverty largely due to higher fuel prices. In some cases the reasons will be multiple such as for pensioners whose lower incomes, need for heating throughout the day and poorer energy efficient homes all contribute towards fuel poverty.

Some of the largest variations and most important differences are illustrated in the chart opposite. On average 15.6% of households in England were in fuel poverty in 2008. Further categories and details are all given in [Fuel poverty 2008 - detailed tables](#).

Variations in fuel poverty rates in England 2008



Most of the patterns shown above are as we would expect – fuel poverty is higher for those who are poorer, elderly, off mains gas and who live in older dwellings. The extent of some of the variations in fuel poverty between different groups is stark. More than three out of every four of the poorest 10% of households were in fuel poverty while the rate was less than 1% among those with above average (median) incomes. Over half of the 3.3 million households in fuel poverty were in the poorest 10% of households. After incomes the next largest variations in fuel poverty rates were by SAP rating⁴⁸ or the dwelling's energy efficiency – more than half of households in the lowest efficiency band were in fuel poverty compared to around one in twenty in the highest classification here. Fuel poverty rates increased for each and every dwelling age band; one in four households in pre 1850 dwellings were in fuel poverty compared to around one in twenty five among those who lived in post 1990 dwellings. There were also large differences by central heating fuel types reflecting differences in prices and ages of dwellings. Almost 40% of those who used solid fuel were in fuel poverty and rates were higher for those with no central heating.

Source: Fuel poverty 2008 -detailed tables, DECC

⁴⁷ Building a low-carbon economy - the UK's contribution to tackling climate change, Committee on Climate Change. Chapter 12

⁴⁸ SAP stands for the Standard Assessment Procedure and is a measurement of the energy efficiency of a property which runs from 1-100. A higher ratings means higher energy efficiency and a rating of 100 means zero energy costs

Review of fuel poverty

In the October 2010 Spending Review the Government announced that it would undertake an independent review of the fuel poverty target and definition.⁴⁹ The Government announced on 14 March 2011 that Professor John Hills, Director of the Centre for Analysis of Social Exclusion and Professor of Social Policy at the London School of Economics, would lead the review.⁵⁰ The Review will publish interim findings in autumn 2011 and provide a final report to Government no later than January 2012. Its terms of reference are:

- 1) To consider fuel poverty from first principles: to determine the nature of the issues at its core, including the extent to which fuel poverty is distinct from poverty more generally, and the detriment it causes.
- 2) As appropriate and subject to the findings under (1), to develop possible formulations for a future definition and any associated form of target, which would best contribute to:
 - addressing the underlying causes identified;
 - helping Government focus its resources (which are set out in the Spending Review for the period to 2014-15) and policies on those who need most support;
 - measuring the cost effectiveness of different interventions in contributing to progress towards any target; and
 - developing practical solutions, particularly around identification and targeting of households and measuring progress resulting from Government action.⁵¹

Energy use and efficiency of the domestic sector

On any measure the energy efficiency of the housing stock in Britain has improved over the past four decades. Between 1970 and the latest estimates the average SAP⁵² rating has improved from 18 to 51 (out of 100) and average dwelling heat loss fell by 36%.⁵³ These changes are driven by the improved energy efficiency of new dwellings and increased uptake of insulation, double glazing and more efficient central heating systems.

Overall UK domestic energy use per household increased by 18% between 1970 and 2009, although the trend has been downwards since 2001. The main longer-term factors behind higher energy demand are: increases in population, a rise in disposable income, more household appliances and higher average temperatures inside the home. Until recently these factors have outweighed improvements in energy efficiency of the building stock and the energy consumption of individual appliances.⁵⁴

According to the latest official estimates at the start of 2011 55% of homes with lofts had insulation of at least 125mm depth and 57% of homes with cavity walls had cavity wall insulation.⁵⁵ In 2007 an estimated 56% of properties had 80% or more of their windows double glazed and 73% of those with a hot water tank had it insulated to a depth of 75mm or

⁴⁹ HM Treasury, *Spending Review 2010*, Cm 7942, 20 October 2010, para 2.107

⁵⁰ Department of Energy and Climate Change press release, *Social policy expert appointed to lead independent Fuel Poverty Review*, 14 March 2011

⁵¹ Department of Energy and Climate Change press release, *Social policy expert appointed to lead independent Fuel Poverty Review*, 14 March 2011

⁵² Standard Assessment Procedure and is a measurement of the energy efficiency of a property which runs from 1-100. A higher ratings means higher energy efficiency and a rating of 100 means zero energy costs

⁵³ *Domestic energy factfile 2008*, BRE. Table 19

⁵⁴ *Energy consumption in the UK 2010*, DECC

⁵⁵ *Estimates of home insulation levels: Great Britain January 2011 (experimental statistics)*, DECC

more. An assessment for 2006 estimated that 16% of properties were fully insulated⁵⁶ and only 7% had no insulation.^{57 58}

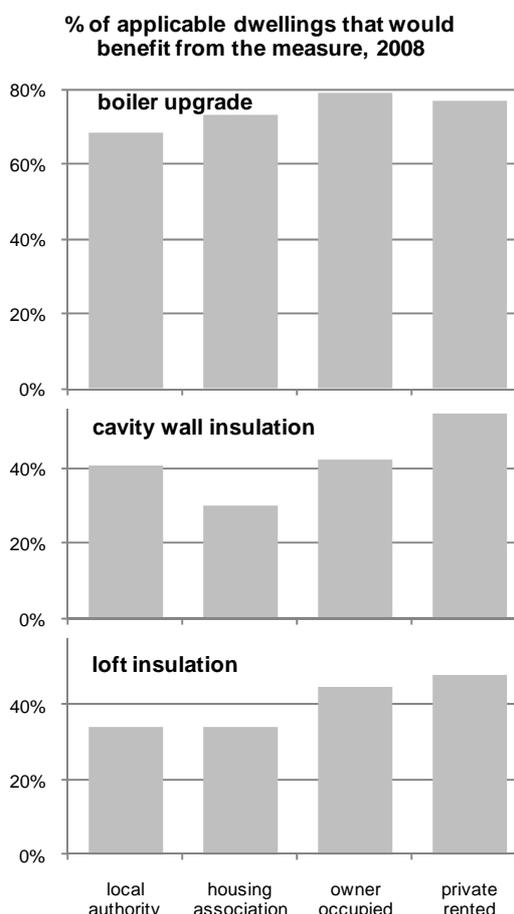
Energy efficiency by tenure

Data from the 2008 English Housing Survey show a distinct pattern of energy ratings and uptake of certain energy efficiency measures by tenure. Private rented dwellings were more likely than other tenures to be without adequate loft insulation and cavity wall insulation and less likely to be fully double glazed and have a condensing boiler. They were more likely than any other tenure type to be in one of the two lowest energy efficiency ratings bands (F and G). The proportion of social housing with a rating of C or better was 25% compared to 7% in the private rented sector.⁵⁹

The profile of each tenure is different so such comparisons are not on a strictly like-for like basis. Private rented dwellings are much more likely to be pre-1919 (40% compared to 18% of other types).⁶⁰ This limits the practical energy efficiency improvements that could be made. For instance, the private rented sector would still have the highest proportion of F and G rated dwellings even after all the improvement measures recommended in the Energy Performance Certificate (EPC) methodology were carried out. The profile of private rented dwellings resembles the social housing sector somewhat more closely than owner occupied dwellings, particularly the dwelling type and size.

The charts opposite compare the proportion of dwellings of each type that could benefit from selected energy efficiency improvements (using EPC methodology).⁶¹ Both social housing types had the lowest proportion of dwellings that could still benefit from these measures. They were also more likely to be fully double glazed. Private rented properties were both less likely to have cavity walls (due to their age) and less likely to have them insulated where they do exist.

It is important to realise that although the private rented sector tends to be less energy efficient than other sectors, it made up 3.3 million of 22.2 million dwellings. Therefore this sector only makes up around one in seven of all properties that could benefit from loft or cavity wall insulation.⁶²



⁵⁶ At least 100mmm of loft insulation where there is a loft, cavity wall insulation where there is a cavity and at least 80% of rooms double glazed

⁵⁷ No loft insulation where there is a loft, no cavity wall insulation where there is a cavity and no double glazing

⁵⁸ *Domestic energy fact file 2008*, BRE

⁵⁹ *English Housing Survey 2008 Housing Stock Report*, DCLG. Annex table 6.6

⁶⁰ *ibid.* Table SST1.1

⁶¹ *ibid.* Annex Table 6.6

⁶² *Ibid.*

Problems with energy efficiency schemes

The slow progress on meeting the fuel poverty targets was highlighted by an Energy and Climate Change Select Committee inquiry in March 2010. The Committee also highlighted criticism from other groups, particularly in regard to the difficulties people face in actually obtaining help from schemes designed to improve energy efficiency:

While there is widespread agreement about the importance of energy efficiency, the adequacy of current measures has been criticised. NEA, although noting the “significant” support for energy efficiency programmes provided directly by the Government and suppliers, said that “the current structure of domestic energy efficiency programmes makes them unfit for purpose in terms of eradicating fuel poverty. A fragmented approach in which individual households make individual applications for assistance followed by individual assessment and installation work represents grossly sub-optimal use of resources”. The Fuel Poverty Advisory Group agreed, telling us “there is no doubt that the schemes we currently have, bearing in mind the task that we face, are unfit for purpose and, therefore we do need to have a radical rethink”.⁶³

In particular, there has been criticism of the Warm Front Scheme for not providing value for money. The House of Commons Public Accounts Committee (PAC) published a report into the Warm Front Scheme in July 2009.⁶⁴ The PAC concluded that cost comparisons for seven of the most common installation works appeared competitive overall. It said, however, that the scheme lacked clarity as to whether its aim was to improve energy efficiency or reduce fuel poverty. The PAC recommended that the scheme should be refocused on fuel poverty, with energy efficiency delivered by other measures.⁶⁵

The Carbon Emission Reduction Target (CERT) scheme has also been criticised for not providing adequate help to the households most in need of energy efficiency help (for further information see section 2.3 below).

Manifesto plans to improve energy efficiency

In the build up to the 2010 General Election, the manifestos of each of the three main political parties included plans to improve the uptake of energy efficiency measures in homes. All committed to some form of pay-as-you-save scheme to improve energy efficiency. The pay-as-you-save idea is that a householder gets an upfront sum to improve energy efficiency in their home, which is then paid back through the savings made in subsequently reduced energy bills.

The Conservative Party election manifesto 2010 outlined a “Green Deal”. This was explained as being a pay-as-you-save scheme whereby home owners would be able to receive a loan of up to £6,500 to pay for energy efficiency improvements in their home. The energy efficiency improvements would result in lower energy bills, the savings from which could then be used to repay the loan.⁶⁶ In March 2010 the Conservative Party also published a “green paper” *Rebuilding Security Conservative Energy Policy for an Uncertain World*. The paper gave more information about how a “Green Deal” might work and suggested that a variety of organisations would be able to participate in financing the loan, such as banks, investment

⁶³ House of Commons Energy and Climate Change Committee, *Fuel Poverty*, Fifth Report of Session 2009–10, HC 424-I, 30 March 2010, p18

⁶⁴ House of Commons Public Accounts Committee, *The Warm Front Scheme*, Thirty-ninth Report of Session 2008–09, HC 350, 24 July 2009

⁶⁵ Ibid, p5

⁶⁶ *Conservative Party General Election Manifesto*, April 2010, p93

funds, high street retailers, local authorities, housing associations, charities, social enterprises and community groups, as well as energy suppliers.⁶⁷

The Liberal Democrat Party 2010 election manifesto had a number of proposals to improve energy efficiency, including: a ten-year pay-as-you-save programme of home insulation, which would offer £10,000 per home to be paid for by the savings from lower energy bills; an “Eco Cash-Back” scheme where households would get £400 if they installed double glazing, replaced an old boiler or installed microgeneration; and energy efficiency targets for companies and government departments.⁶⁸

The Labour Party 2010 election manifesto proposed to encourage energy efficiency through the use of smart grids to provide better information about energy use to households and energy companies. It proposed a new warm standard for social homes and also a pay-as-you-save scheme under which home energy improvements could be paid for from the savings they generated on energy bills.⁶⁹

2.1 The Green Deal

This part of the Bill, Part 1, Chapter 1, would allow the Government to introduce a “Green Deal” to encourage energy efficiency in properties.⁷⁰

The Government concluded that a market failure had resulted in many properties with poor energy efficiency ratings. It attributes the market failure to: a lack of information and understanding about energy efficiency measures; consumer inertia; lack of access to finance; and the relatively short time that people stay in one home as compared to the payback time for some energy efficiency improvements. It believes these factors have all prevented people from taking up cost effective measures to improve their homes and reduce their energy consumption.⁷¹

After the 2010 General Election the Coalition Programme outlined plans for a “Green Deal” to improve energy efficiency:

Through our ‘Green Deal’, we will encourage home energy efficiency improvements paid for by savings from energy bills. We will also take measures to improve energy efficiency in businesses and public sector buildings.⁷²

The Green Deal has been billed by the Government as being the “solution” to the problem of a current lack of investment in properties with poor energy efficiency ratings. It is intended to improve energy efficiency in both domestic and non-domestic buildings, in order to reduce carbon emissions.⁷³

The Government has estimated that in carbon saving terms the impact of the Green Deal could be a saving of between 3.9 and 5.9 MtCO₂e per year in 2020. This is only an illustrative example and more “robust” estimates are expected to be produced in Green Deal consultation documents later in 2011.⁷⁴

⁶⁷ The Conservative Party, *Rebuilding Security Conservative Energy Policy for an Uncertain World*, Strategic Summary, p21-22

⁶⁸ [Liberal Democrat Party Election Manifesto 2010](#)

⁶⁹ [Labour Party Election Manifesto 2010](#), p8.4

⁷⁰ Department of Energy and Climate Change website, *Energy Bill: Green Deal* [on 4 May 2011]

⁷¹ Department of Energy and Climate Change, *Energy Bill Impact Assessment: Green Deal*, December 2010

⁷² The Coalition: *Our Programme for Government, Energy and Climate Change*, 20 May 2010

⁷³ Department of Energy and Climate Change website, *Energy Bill: Green Deal* [on 4 May 2011]

⁷⁴ HC Deb 28 February 2011 c231W

A Green Deal customer would receive money upfront to make the energy efficiency improvements to their property. The responsibility to make repayments would then attach to the energy bill at a property, rather than to an individual. The obligation to repay would then pass to the new occupier or bill payer should the Green Deal customer then move away. A briefing from DECC explains that this is done to encourage people to invest in energy efficiency, even if they might move house:

At present we know that most people who expect to move again in the next 20 years or more are put off making large investment in energy efficiency because the costs are only affordable by factoring in savings generated after they expect to have moved; Green Deal will mean they only pay whilst they remain at the property enjoying the benefits.⁷⁵

The Government has stressed that the Green Deal finance should not be considered to be a “loan” in the traditional sense, because the responsibility for repayments would attach to a property, not to an individual. Speaking for the Government in the House of Lords, Lord Marland explained:

This is not a loan, so no individual is at risk of the lender calling in the whole amount. The meter is attached to the property and will stay with the property when the inhabitants change.⁷⁶

The impact assessment accompanying the Bill also sets out that the Government does not want the Green Deal to count as a personal debt and therefore reduce personal borrowing capacity:

Another argument against collection of Green Deal charges by finance companies is that the distinction between Green Deal charges and conventional loans would be blurred. Arguably, finance companies would count the Green Deal against a consumer’s overall debt capacity and thus the Green Deal would reduce borrowing capacity.⁷⁷

The Government has explained the Green Deal as a three-step process:

- Step 1 – an independent energy survey of the property, giving clear advice on the best energy efficiency options, such as loft or cavity wall insulation.
- Step 2 – Green Deal finance to be provided by a range of accredited providers, which will be repaid through savings on energy bills, making properties cheaper to run from day one.
- Step 3 – Homes and businesses will then receive their energy efficiency package. Only accredited measures will be installed by appropriately-qualified installers, overseen by Government, giving consumers confidence that the deal they are getting is high-quality and will save them money.⁷⁸

DECC sets out that the “core principle” to the Green Deal is the “golden rule”; that the estimated instalment payments for the Green Deal plan should not exceed the projected associated cost savings on an average bill for the duration of the green finance arrangement.

⁷⁵ Department of Energy and Climate Change website, [Energy Bill: Green Deal](#) [on 4 May 2011]

⁷⁶ HL Deb 22 December 2010 [c1101](#)

⁷⁷ Department of Energy and Climate Change, [Impact Assessment for the Energy Bill 2010-11, Impact assessment for the Green Deal elements](#), December 2010, p28

⁷⁸ Department of Energy and Climate Change press release, [Huhne heralds green homes revolution](#), 2 November 2010

The Golden Rule would take account of the estimated total cost of the Green Deal package, including the cost of finance, labour and products. The arrangement could be for as long as 25 years for houses.

Green deal household costs and savings

At the moment homes which come onto the market either for sale or rent must have an energy performance certificate (EPC).⁷⁹ An EPC is a certificate which provides 'A' to 'G' ratings for buildings. An 'A' rating is given to the most energy efficient buildings and 'G' to the least. A PQ from October 2010 set out the cost of improving energy efficiency in some of these lower category homes:

John Woodcock: To ask the Secretary of State for Communities and Local Government what estimate he has made of the average cost per home of improving its energy efficiency rating from F or G to E or above. [16983]

Andrew Stunell: The Secretary of State has made no estimate of the average cost per home of improving its energy efficiency rating from F or G to E or above.

The Energy Saving Trust has estimated that, of the total number of F and G properties in 2005, 37% can be improved to an E rating through basic insulation measures at a cost of £1,000 or less and 47% through installation of a modern condensing boiler at a cost of £3,000 or less. 15% of F and G rated homes, characterised as 'hard to make decent', will cost from £5,000 to £9,500 to improve to an E rating, leaving a small percentage (1.5%) costing up to £5,000 to upgrade.⁸⁰

The Government estimated that each of the 26 million homes in the UK could benefit in some way from the Green Deal, as well as "many" of the UK's businesses. It calculated that there are 14 million insulation measures like loft, cavity and solid wall to be carried out in Britain's homes; that the most energy inefficient homes in the UK could save, on average, around £550 per year by installing insulation measures.⁸¹ Statistics by DECC on the levels of home insulation levels in Great Britain were published on 30 November 2010.⁸²

It was initially suggested that applicants may be able to claim up to £6,500 under the Green Deal,⁸³ but since the publication of the Bill, the Government has said that there will not be an upper limit.⁸⁴ The amount that can be borrowed for each property will depend on whether the "golden rule" can be met.

In November 2010 the Government published a leaflet on the Green Deal setting out the cost to consumers of certain energy efficiency measures and the average savings in £/year that these measures could bring to energy bills. The figures are calculated on the basis of an "average three-bedroom semi-detached house".⁸⁵

⁷⁹ Under the *Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007*

⁸⁰ HC Deb 13 October 2010 [c313W](#)

⁸¹ Department of Energy and Climate Change press release, [Green Deal to create green jobs](#), 21 September 2010

⁸² Department of Energy and Climate Change, [Statistical release: experimental statistics estimates of home insulation levels in Great Britain](#), 30 November 2010

⁸³ HC Deb 30 June 2010 [c881](#)

⁸⁴ HL Deb 22 December 2010 [c1152-4](#)

⁸⁵ Department of Energy and Climate Change, [The Green Deal Energy savings for homes and business](#), November 2010

Measure	Savings (£/year)	Estimated cost to consumer
Loft insulation top up	Around £45	Around £250
Cavity wall insulation	Around £115	Around £250
Internal solid wall insulation	Around £380	£5,000-£7,000
External solid wall insulation	Around £400	£7,600-£12,600

The Green Deal finance would not come from Government, but from the private sector. Speculation in the media suggests that companies such as Tesco, B&Q and Marks and Spencer have been involved in discussions about providing the finance.⁸⁶ The Government projects that the private sector would provide £7 billion of investment in the Green Deal per year. Concern has already been expressed in the media about what the private sector companies would expect in return for providing Green Deal finance and whether there would be enough incentive for them to provide finance for anything but the measures with the quickest payback time, such as insulation.⁸⁷

Whether the Green Deal makes financial sense for a consumer will also depend on the price of energy. If energy prices are high, then energy efficiency savings paid for by the Green Deal will be more cost effective. If energy prices fall, then the Green Deal may not make the savings on energy bills as quickly. An article in the *Guardian* from 24 November 2010 illustrated that the amount of interest charged on any Green Deal loan would also have an impact on whether consumers could make much of a saving on their energy bills:

However, a mid-range quote for insulating solid walls (internally) and the loft would be £6,250, and the predicted saving £425 a year. Taking a middling interest rate... of 7%, a customer borrowing £6,250 would pay back approximately £875 a year over 10 years, or £530 over 25 years.

What immediately stands out in this example is that the repayments are higher than the government's estimated saving – implying those customers' bills would not fall. Decc also assumes a relatively low 15% "rebound effect" – when customers chose to use some of the saved money for extra heating, cooling or more appliances – despite acknowledging by email that it is in reality 15-40%, and a separate estimate by the EU environment directorate of 20-80%.

Disappointed customers might be even less happy when they realise how much interest they are paying to fund a "government" policy: total interest paid in the example above ranges from nearly £2,460 (over 10 years) to nearly £7,000 (over 25 years).⁸⁸

It is not yet known how, or at what level, interest rates will be set on Green Deal loans. The Government has estimated that the cost of finance should be lower under the Green Deal than many standard retail finance offers, which it estimates cost around 11%.⁸⁹

⁸⁶ "UK retailers in talks to join government's 'green deal'", guardian.co.uk, 6 October 2010

⁸⁷ "UK retailers in talks to join government's 'green deal'", guardian.co.uk, 6 October 2010

⁸⁸ "Green Deal is not a good deal for all homeowners" guardian.co.uk, 24 November 2010

⁸⁹ Department of Energy and Climate Change, *The Green Deal: a summary of the Government's proposals*, 9 December 2010, p15

The Government has stated clearly that the Green Deal is a market mechanism and, as such, there would be no Government guarantee that energy bills would fall for individual consumers.⁹⁰ Ultimate responsibility would lie with consumers for reducing energy consumption after a Green Deal measure had been installed. The Government has, however, proposed a number of measures designed to protect consumers in the Green Deal process:

- The expected savings must be greater than the costs.
- The measures must be accredited and the claimed savings must be those approved through this accreditation.
- The measures installed must have been recommended by an accredited, independent adviser who has assessed the property.
- The measures must be installed by an accredited installer.
- The Green Deal provider must take account of the individual circumstances of the consumer and give appropriate advice within the terms of the Consumer Credit Act.
- The presence of a Green Deal must be properly disclosed to subsequent occupiers including alongside energy performance information.
- Energy suppliers must collect the Green Deal and pass it on within the existing regulatory safeguards for collecting energy bills – including protections for vulnerable consumers.⁹¹

Green Deal: standards

The Green Deal would be underpinned by a certification scheme which would set technical standards for installation, competence levels for installers, as well as customer care and warranty requirements. The Government has made clear that to ensure that work is carried out to a high standard all installers operating under the Green Deal would carry a quality mark to demonstrate that they meet the prescribed certification and skills standard. The standard would be developed over time with the relevant sectors.⁹² The Government has said that details of this framework are being discussed with a Green Deal installation stakeholder advisory forum.⁹³

Green Deal incentives

An article in the *Times* on 23 November 2010 suggested that householders will be encouraged to take up the Green Deal through incentives paid for by energy suppliers as part of the new energy company obligation (see section 2.3 below).⁹⁴ The article speculated that for Green Deal customers this could include the chance to win a holiday, a discount on council tax, a cash voucher, or a rebate on energy bills. The *Times* also said that the Secretary of State for Energy and Climate may consider making changes to the stamp duty system if these incentives do not encourage enough people to take out a Green Deal:

⁹⁰ Department of Energy and Climate Change, [Energy Bill Impact Assessment: Green Deal](#), December 2010, p15

⁹¹ Department of Energy and Climate Change, [Energy Bill Impact Assessment: Green Deal](#), December 2010, p15

⁹² HC Deb 30 November 2010 [c671W](#)

⁹³ HC Deb 7 March 2011 [c819-20](#)

⁹⁴ "Win a foreign holiday for insulating your loft; Homeowners to be rewarded for 'green loans'" *The Times*, 23 November 2010

He said that if these incentives proved insufficient to attract many homeowners, the Government would consider introducing a "tilt in stamp duty". Stamp duty could be reduced by 1 per cent — or about £2,000 for the average home — for those who insulated to a high standard within a set period after purchasing the home.⁹⁵

Budget 2011 confirmed that the Government may, at a later date, introduce incentives for people to take up the Green Deal:

The Government is committed to the success of the Green Deal and will act to encourage and incentivise take-up so that the Green Deal will appeal to households, businesses and prospective providers alike, before it is introduced in 2012.⁹⁶

Green Deal and Warm Front

In the October 2010 Spending Review it was announced that the Warm Front spending programme on grants would be phased out as the Green Deal comes into force:

DECC will fund a smaller, targeted Warm Front programme for the next two years with a budget of £110 million in 11/12 and £100 million in 12/13. From 2013, support for heating and insulation for the most vulnerable will be delivered through the Green Deal for energy efficiency and a new obligation on energy companies. At the same time, from April 2011, energy suppliers will provide greater help with the financial costs of energy bills to more of the most vulnerable fuel poor households, through Social Price Support – with total support of £250 million in 11/12 rising to £310 million in 14/15.⁹⁷

Timing

It is expected that the finer detail of the Green Deal will come into force through secondary legislation after a consultation period in autumn 2011. The Green Deal is expected to be available to customers in the latter half of 2012.⁹⁸ The Government has set out the following timetable:⁹⁹

Date	Development
December 2010	Introduction of the Energy Bill to Parliament
Pre-Autumn 2011	Officials engage stakeholders as they develop the technical details for secondary legislation
Autumn 2011	Formal consultation on secondary legislation
Early 2012	Secondary legislation laid before Parliament
Spring 2012	Detailed industry guidance prepared
Autumn 2012	First Green Deals appear

Further questions and concerns

Although the *Energy Bill* establishes the broad framework for the Green Deal, many issues remain left to be resolved at a later consultation stage and in further secondary legislation.

⁹⁵ Ibid

⁹⁶ HM Treasury, *Budget 2011*, 23 March 2011, para 1.113

⁹⁷ Department of Energy and Climate Change, *HMT Spending Review Press Release*, 20 October 2010

⁹⁸ Department of Energy and Climate Change website, *Energy Bill: Green Deal* [on 4 May 2010]

⁹⁹ Department of Energy and Climate Change, *The Green Deal: a summary of the Government's proposals*, 9 December 2010, p7

Some questions that have arisen so far include:

- How exactly will households be incentivised to take part in the Green Deal? Will it be through a carrot or a stick method or a combination of both?¹⁰⁰
- What level will interest repayment on the Green Deal be set at and how?
- What will happen if the “golden rule” is not met and customers do not save as much on their energy bills as first anticipated? Who will be responsible for making up any shortfall?
- Will finance providers be able to turn down requests for the Green Deal? If so, for what reasons?
- How many people will actually take-out a Green Deal plan? In February 2011 the Government said it has not yet made any estimates of expected take-up.¹⁰¹

In January 2011 the Chartered Institute of Environmental Health (CIEH) expressed concern about the decision to phase out Warm Front grants and replace them with the Green Deal. It said that it “had yet to be convinced” that the Green Deal would have a sufficiently wide-scale effect to reach the most needy in society rather than just those people with difficulties with heating costs.¹⁰²

In February 2011 it was reported that a coalition of 11 charities, companies and industry groups had written to the Chancellor to ask him to announce measures to incentivise people to take-up the Green Deal in the March 2011 Budget.¹⁰³ The Budget did announce that incentives may be introduced at a later date, but it did not explain further what these incentives would be. In a *Financial Times* article the CBI expressed concern that the policy could become a “lame duck” if people were not encouraged to take it up.¹⁰⁴ The Federation of Master Builders has also set out its disappointment at the lack of additional incentives announced in the Budget to create more demand in the market.¹⁰⁵

In April 2011 there was concern from the building industry that Green Deal measures may not save enough energy to allow for energy efficiency improvements to be made “on the majority of non-domestic buildings”:

The Green Deal is an initiative to help meet carbon reduction targets, where loans for energy efficiency improvements are paid back over 25 years by savings on bills. The revelation that the majority of improvements will not meet the initiative’s “golden rule”, where energy bill savings must be equal to the costs of the work, is the latest in a series of blows to the government’s sustainability agenda.

In a study, QS Cyril Sweett found that changes to building fabric, services improvements and renewable energy installations will not generate enough savings to pay back the capital and loan costs for the work on the majority of non-domestic buildings.

The firm modelled an existing primary school, office, industrial unit and retail warehouse to assess energy use. Energy efficiency improvements were modelled to see how much these would cost and how much energy would be saved. The modelling

¹⁰⁰ “UK retailers in talks to join government's 'green deal'”, guardian.co.uk, 6 October 2010

¹⁰¹ HC Deb 28 February 2011 c235W

¹⁰² “CIEH says Warm Front cut will hit poor”, *Environmental Health News*, 14 January 2011

¹⁰³ “Osborne eyes tax rebate to boost green deal” *Financial Times*, 14 February 2011

¹⁰⁴ “Osborne eyes tax rebate to boost green deal” *Financial Times*, 14 February 2011

¹⁰⁵ “FMB bemoans lack of Green Deal incentives in Budget” *Energy Saving Trust*, 26 March 2011

included interest on the loans, projected increases in energy bills and income from the feed-in tariff and Renewable Heat Incentive.

The only improvements that met the golden rule were upgrading the fabric of the industrial unit and installing PV and solar thermal panels on the retail warehouse. All other measures cost more to implement than the savings they generated.

Cyril Sweett said if the government went ahead with the Green Deal in its current form it would only work for “very poorly performing buildings and the lowest of low hanging fruit.” It added the government had a long way to go to develop the details of the scheme.¹⁰⁶

Financial implications: Green Deal impact assessment

The work in the impact assessment has been done subject to a very high degree of technical and behavioural uncertainty, therefore a range of possible outcomes are still conceivable.

Background

The Government’s financial impact assessment of the Green Deal formally looks at the potential costs and benefits of this aspect of the Bill.¹⁰⁷ Primary legislation is thought to have negligible financial impacts. Costs and benefits will result from secondary legislation which will set out details of the Green Deal Programme. This has not yet been developed. The impact assessment provides costs and benefit figures for the full programme, but these are illustrative scenarios only. They are intended to inform debate and not meant to pre-empt secondary legislation or be viewed as forecasts of uptake. The results are therefore subject to a high degree of uncertainty. This is reflected to some extent in the range of cost and benefit estimates which are based on high and low estimates of consumer take-up. The impact assessment says that ‘The responses of consumers are currently not well understood’. In addition the cost/benefit ranges do not directly reflect different assumptions about energy prices, carbon prices or capital costs.

Overall costs and benefits

The overall estimate of the cost of the Green Deal are £15-21 billion and its benefits £23-33 billion. This is based on the lifetime impact of installations under Green Deal Finance and the ECO between 2013 and 2020. It covers financial costs and benefits plus non-financial aspects such as the benefits from lower carbon emissions and the costs of reduced floor space inside a home as a result of internal insulation. These figures are discounted to 2010 prices at an annual rate of 3.5%.

Detail of estimates for the domestic sector

The impact assessment looks at two possible levels of take-up of insulation measures for the domestic sector. For most measures the low and high estimates mean take up of 50% and 75% of the maximum feasible potential respectively by 2020. The table opposite gives the underlying assumptions behind the two scenarios. The annual number of new loft insulations and standard cavity wall insulations is expected to fall to close to zero towards the end of this decade. Installations of other measures are expected to steadily increase.

Assumed number of insulations, 2013-2020

millions	Low	High
Lofts	2.3	3.4
Cavity wall	0.5	2.3
Solid wall	1.8	2.2
Glazing	0.7	1.0
Party wall	0.5	0.7
Insulated doors	1.3	1.9

¹⁰⁶ “Revealed: Green Deal costs will outweigh savings” Building.co.uk 1 April 2011

¹⁰⁷ [Energy Bill. Green Deal Impact Assessment](#), DECC

The cost element is the upfront amount needed to install the measure and 'make good' where necessary plus administration costs and elements to account for the cost of household disruption and loss of floor space. It is not an assessment of the cost to consumers repaying through Green Deal Finance. Installation costs make up 50-60% of the total,¹⁰⁸ household costs around one-third and administration costs around 10%. Just over half the benefits are made up of reduced energy consumption the rest is the global non-financial benefits from lower carbon emissions (one quarter), increased comfort (one fifth) and an element for air quality improvement.

Looking at the narrow financial aspects alone, the costs of these measures outweigh the benefits from reduced energy bills. This is not surprising as the assessment only looks over a period of up to seven years into the future, while the benefits from installing these measures are expected to accrue for 30 to 40 years.¹⁰⁹ With a longer profile of benefits most of these measures result in a net financial gain.¹¹⁰ The actual costs and interest charges paid by consumers will also be spread out over time under the Green Deal Finance scheme.

Carbon savings in 2020 under the two scenarios are 3.2-4.9 million tonnes of CO₂ and lifetime savings 110-180 million tonnes of CO₂.¹¹¹ Total UK emissions in 2020 are projected to be around 420 million tonnes of CO₂.¹¹²

The assessment assumes 'learning rates' for solid wall insulation to reflect a possible reduction in installation costs as the product moves from infancy to maturity. These are based on observed cost reductions in cavity wall installation costs and give a cut in costs of 29% between 2010 and 2020.¹¹³ The reduction in total costs would be smaller as household costs, such as loss of amenity, form a substantial percentage of the overall cost of solid wall installation, especially when not carried out as part of a major renovation.

The main estimates use central projections of energy and carbon prices. Changing these assumptions has a substantial impact on the overall cost and benefit balance. If low energy and carbon prices and high capital costs are assumed, the overall costs outweigh benefits by £6-8 billion. With high energy and carbon prices and low capital costs the net benefits increased substantially to £16-25 billion. Central estimates of the net benefit are £6-11 billion.¹¹⁴

Other costs

The impact on the non-domestic sector is assumed to be much smaller with capital costs of £75-145 million and energy savings of £170-330 million. The discounted costs to companies of dealing with the additional bill queries from customers and higher default levels is estimated at £650 million and £1,050 million under the low and high take-up scenarios respectively. The section of the impact assessment on the Private Rented Sector illustrates different scenarios which again are not meant to pre-empt secondary legislation. These put the costs at £20-90 million and the benefits £90-1,120 million (these are not additional to the total costs and benefits given earlier). The wide range reflects the underlying uncertainty. At the higher end it is assumed that local authorities get involved in requests for improvements and enforcement actions, this is described as an 'over estimate' of the number of measures that could be undertaken.

¹⁰⁸ The low and high uptake scenarios have a different balance of costs and benefits which results from a different make up of measures under each scenario

¹⁰⁹ *Energy Bill. Green Deal Impact Assessment*, DECC. Table A4.1

¹¹⁰ *ibid.* Table A6.1

¹¹¹ Non-traded sector only

¹¹² *Updated Energy and Emissions Projections*, DECC (June 2010)

¹¹³ *Energy Bill. Green Deal Impact Assessment*, DECC. Table A4.2

¹¹⁴ *ibid.* Annex 5

Individual financial decisions

The impact assessment looks in a standard way at the profile of costs and benefits. It does not include the cost of finance or look directly at calculations of whether cuts in energy bills will be greater than repayments for insulation or heating measures. It does present a simple comparison of costs of each measure compared with the current value of future reductions in energy bills -the net present value¹¹⁵. This shows that internal and external solid wall insulation are not cost effective when done on their own (not as part of other renovation work).

The Bill

Chapter 1 of the Bill would provide a framework to establish the Green Deal. Many of the clauses give the Secretary of State powers to make further regulations and give non-exhaustive examples of the sorts of powers that these regulations could include.

In the House of Lords Labour peer Lord Grantchester welcomed broadly the proposals for a Green Deal and called them the same as Labour's previous pay-as-you-save proposals. He asked for further assurances about personal interest rates, about disclosure and consent requirements for when the home improver and the bill payer are different people, and about how the Green Deal would sit alongside existing tenancy law. He said that he was not convinced at the moment that the scheme would be simple for consumers to follow, which he wanted to ensure would happen.¹¹⁶

Liberal Democrat peer Lord Teverson said that he welcomed the Bill because it tackled problems associated with energy efficiency, which would in turn help future uncertainties in energy generation.¹¹⁷ His particular concern, however, was that the Bill would not immediately require landlords to make energy efficiency improvements to their rented properties. He also wanted to ensure that the structure of the Bill would not allow for any conflict of interest between Green Deal finance providers, advisers and installers.¹¹⁸

Other peers also raised questions about the operation of the Green Deal. Lord Jenkin of Roding wanted clarification about who would pay for the initial Green Deal assessment, particularly where an assessment concluded that the household would not qualify for any Green Deal help. He was also concerned about who would bear the cost of consumer defaults. He wanted clarification about whether it would be the provider of the initial finance or the energy company responsible for collecting the payments.¹¹⁹

Baroness Maddock questioned whether there were enough businesses to do the work under the scheme and enough properly trained people to carry out the assessments. She also questioned whether the Green Deal would be enough to help people in fuel poverty and asked for clarity about whether there would be other incentives, outside of the Bill, to encourage people to improve energy efficiency; such as reduced rates of council tax or stamp duty.¹²⁰

In reply to these comments, Lord Marland said that the Office of Fair Trading would be fundamental to ensuring consumer protection. He made clear that he wanted the private rented sector to embrace the Green Deal and said that there would be a review of it after 12 months to decide whether legislative powers to force landlords to take it up would be necessary. He also confirmed that there would be no cap on the amount of money that

¹¹⁵ Discounted savings over the lifetime of the measure.

¹¹⁶ HL Deb 22 December 2010 [c1104-5](#)

¹¹⁷ HL Deb 22 December 2010 [c1107](#)

¹¹⁸ HL Deb 22 December 2010 [c1107-8](#)

¹¹⁹ HL Deb 22 December 2010 [c1112](#)

¹²⁰ HL Deb 22 December 2010 [c1117](#)

someone could borrow under the Green Deal; that the “golden rule” would ensure that all improvement loans could be paid back.¹²¹

Further, on the costs associated with the Green Deal, Lord Marland explained that he could not control interest rates under the scheme, but said that the Government was working on a “model” for providers to follow. The cost of the initial Green Deal assessment would be a market-led endeavour, but many firms may offer promotional incentives and the Government would support those who could not pay for it themselves.¹²² He said that a consultation was currently underway about who would bear the cost of consumer default on the scheme.¹²³

One of the specific amendments at Committee Stage in the Lords, moved by Baroness Smith of Basildon, called for a new Clause to be added at the beginning of the Bill.¹²⁴ This Clause was intended to tie the main aims of the Bill, to deliver energy savings from building stock and to reduce levels of fuel poverty, to the carbon reduction targets in the *Climate Change Act 2008* and also to the fuel poverty reduction targets of the *Warm Homes and Energy Conservation Act 2000*. Baroness Smith explained:

I have been through a number of ministerial speeches, comments and press releases—as the Minister knows, I look at the DECC website every day—but I cannot find anything about what energy carbon savings the Green Deal is anticipated to deliver even if the take-up is high, as the Government anticipate that it will be. So the Secretary of State has not stated what the carbon reductions from the housing sector need to be or what the standard of an individual home must be in order to contribute to the carbon reduction. So, defining the energy saving to be achieved to meet the reduction will provide more clarity on what will then need to be delivered in terms of improvement to properties.¹²⁵

Lord Marland said that the Green Deal was central to the carbon reduction target contained in the *Climate Change Act 2008* and to the elimination of fuel poverty, but there would be practical difficulties in linking the Bill with these targets. He explained that it may cause problems for organisations with duties under the Bill:

There are, however, difficulties with this proposed clause as an operational clause, many of which my noble Friend Lord Dixon-Smith has alluded to. The Green Deal is about establishing a commercial framework in which businesses can take the lead in delivering a new type of finance package designed to address climate change and fuel poverty. However, most of the regulatory functions which will be performed by specific bodies under this Bill are for consumer protection. For example, those persons running accreditation schemes ought to be focused on setting and enforcing standards to protect customers, not having to have regard to a trade-off between high-level policy aims such as carbon reduction and operational issues such as enforcing standards. We should resist an overarching purpose because we do not want to open an opportunity to challenge inappropriate commercial practices on the basis that the end justifies the means if the overarching purpose is achieved.

We are also concerned that this amendment might cover all parties to the Green Deal—including installers, assessors and Green Deal providers—and, if so, places obligations most fitted to government onto commercial agents. For example, I do not consider it appropriate to ask an insulation installer to have regard to the recommendations of the Committee on Climate Change. Furthermore, Green Deal

¹²¹ HL Deb 22 December 2010 [c1152-4](#)

¹²² HL Deb 22 December 2010 [c1152-4](#)

¹²³ HL Deb 22 December 2010 [c1153-4](#)

¹²⁴ HL Deb 17 January 2011 [GC1](#)

¹²⁵ HL Deb 17 January 2011 [GC3](#)

participants will quite legitimately hold commercial objectives that are not reflected in subsection (1) of the proposed new clause— i.e., business motives but which indirectly contribute to public policy aims. By defining the purposes in this way, we risk creating unnecessary complications that could have unintended effects.¹²⁶

Lord Marland also made clear that the Government would set out a more detailed carbon saving plan later this year:

There is no question but that we would want to explain how our energy efficiency policies will deliver our carbon saving and fuel poverty goals. However, the aims of these amendments are already provided for by existing legislation. Later this year we will publish a carbon plan to set out, department by department, the policies and deadlines that will ensure real action on climate change. Our energy efficiency policies, not least the Green Deal, will be a key element of this plan. Also, as required by Section 2(1) of the Warm Homes and Energy Conservation Act 2000, the Government have in place a strategy for delivering their fuel poverty targets.¹²⁷

Green Deal plan

Clause 1 of the Bill would define what a “Green Deal” is; an energy plan whereby qualifying energy efficiency improvements to a qualifying property are paid for wholly or partly by instalments to the relevant energy supplier of the property. Paragraph 6 makes clear that the instalments are to be made by the person responsible for paying the energy bill at the property and paragraph 7 states that this is irrespective of whether the person in paragraph 6 is the person who took out the Green Deal plan.

Clause 2 defines some of the key terms used, including “improver” (the owner or occupier who arranges the Green Deal on the property), and “Green Deal provider” (the person who makes the improvements). Clause 2(4)-(6) would define the range of energy efficiency improvements that may be provided under Green Deal. Clause 2(4) includes measures that improve energy efficiency, which would be set out more explicitly in a further Order. Clauses 2(5) and (6) show that microgeneration of electricity from low emissions sources and generation of heat from such electricity may qualify for a Green Deal, but only if the Secretary of State later passes a further Order.

Clause 3 would require the Secretary of State to establish, in regulations, a scheme to authorise persons to act as Green Deal assessors, Green Deal providers and Green Deal installers, and to regulate the conduct of all of these “Green Deal participants”. The regulations made under this Clause are to be known as the “framework regulations”.

Clause 3(3) would set out the sorts of provisions that the framework regulations may make. It includes the ability for the Secretary of State to issue a Code of Practice. Clause 3(4) would set out a non-exhaustive list of provisions that could be included in a Code of Practice, such as:

- the qualifications and training required of Green Deal participants;
- how to handle their queries or complaints;
- the circumstances in which Green Deal customers could be charged for an assessment of their properties by Green Deal assessors; and
- how Green Deal plans could be marketed.

¹²⁶ HL Deb 17 January 2011 [GC8-9](#)

¹²⁷ HL Deb 17 January 2011 [GC9](#)

Under Clause 3(5) the Code could provide for a regulating body to be established. Clause 3(8) would provide examples of how the Secretary of State could secure compliance with the Code, for example, by: cancelling the liability to pay for a Green Deal assessment; requiring the Green Deal provider to cancel the liability of a bill payer to make a Green Deal payment; and requiring a Green Deal participant to pay a compensation or financial penalty.

Clause 4 would set out the conditions that must be met in order for a Green Deal plan to be taken out at a property. For example, that an assessment of the property must be made by a Green Deal assessor, that the Green Deal provider must give an estimate of the savings likely to be made on energy bills if the improvements were to be carried out, and of the time period over which the savings could be made.

Clause 5 would clarify the terms of Green Deal plans. Under Clause 5(2) there must be a term which sets out the amount of the instalments and the intervals and total period for which they are payable. Under Clause 5(3) there must not be a term making someone liable for payments for any longer than they are the bill payer at the property. Clause 5(4) would provide for a “cooling-off” period of 14 days in which the Green Deal improver could change their mind about agreeing to the Green Deal.

Clause 7 would set out requirements that: the person carrying out Green Deal improvements must be an authorised Green Deal installer; the type of improvement must meet any standards specified in the Code of Practice; and the work carried out must also meet any standard specified in the Code of Practice. One of the amendments agreed in the House of Lords at Report stage to Clause 7 was to provide that products installed under the Green Deal must meet the standards to be set out in the Code of Practice. This was tabled by the Government in response to concerns raised in Committee that products installed should be to a high quality and safe standard. Baroness Northover said the Government would consult on the draft regulations and the Code of Practice in the autumn.¹²⁸

Clause 8 would set further conditions for a Green Deal plan: that energy suppliers notify the bill payer, within a time period set by the framework regulations, about when the repayments will begin to be taken from the energy bill for the property, for how long and the amount of the repayments.

Disclosure of Green Deal plans

Clause 12 would ensure that those who intend to buy or let a property where a Green Deal plan has been taken out would be given information about it. Clause 12(1) and (2) would place a duty on those selling and letting out a Green Deal property to disclose the information required in Clause 8(4) to prospective buyers, tenants and licensees. The duty would apply to sellers of Green Deal properties and those letting out such properties under a tenancy or licence agreement where the prospective tenant or licensee will be liable for paying the energy bill on the property.

Clause 13 would allow the Secretary of State to make regulations requiring disclosure of Green Deal information in circumstances not covered by Clause 12. This was a new Clause tabled by the Government at Report Stage in the House of Lords to ensure that the potential liability for people having to make Green Deal repayments is disclosed in all circumstances. It was envisaged that the Clause may cover the situation when a property is transferred by executors to a beneficiary under a will, or when a property is given to one person by another.¹²⁹

¹²⁸ HL Deb 2 March 2011 c1105

¹²⁹ HL Deb 2 March 2011 c1105

Clause 14 would place a duty on the seller of a Green Deal property, prospective landlord or licensor to secure a written acknowledgement by the prospective buyer, tenant or licensee that the Green Deal plan is binding on the energy bill payer at the property.

Clause 16 would give the Secretary of State power to make regulations to ensure compliance with the disclosure and acknowledgement obligations. A non exhaustive list given in Clause 16(2) provides examples of civil penalties and creates a provision to require a Green Deal provider to suspend or cancel the bill payer's liability to make Green Deal repayments.

Modifying energy licences

Clauses 17-22 would give the Secretary of State power to modify the energy licenses of energy companies, subject to prior consultation, in a variety of circumstances connected with the Green Deal. This includes: requiring a licence holder to collect Green Deal payments through energy bills and then pass them on to a Green Deal provider; making provision for what could happen where the Green Deal payment had not been made; making provision for the circumstances in which the licence holder could disconnect the energy supply from a Green Deal property; and making provision to require licence holders to give specified information to energy bill payers in connection with their Green Deal plan.

Gas and electricity codes

Clauses 23 and 24 would give energy suppliers the right to take action in the event that a bill payer defaults on Green Deal repayments and to allow any sums owed from a Green Deal plan to be collected from a pre-payment meter.

Modifying consumer legislation

Clauses 25-29 would allow the *Consumer Credit Act 1974* (CCA) to be amended in connection with the Green Deal. This is to: provide that the CCA does not regulate consumer credit agreements in the form of Green Deal plans where the agreement is for business purposes and the credit does not exceed £25,000 (Clause 25); exempt energy suppliers from the need to obtain an Office of Fair Trading licence to carry out the functions of the Green Deal (Clause 26); ensure that obligations placed on creditors to provide debtors with statements can be met by a third party acting on behalf of the creditor (i.e. by the energy supplier rather than the Green Deal provider) (Clause 27); and, in the context of the Green Deal, to amend the CCA to exempt creditors from the requirement to give debtors notice of sums in arrears.

In discussion on these Clauses at Report stage in the House of Lords, Baroness Northover said that the Government would introduce an amendment in the House of Commons designed to protect consumers from high costs under the Green Deal. The proposed Commons amendment would allow Green Deal providers, in certain circumstances, to receive compensation from bill payers where the Green Deal is paid back earlier than expected. There was concern that without such provision Green Deal providers may build in extra charges to the scheme, which would be passed onto consumers, to cover this eventuality. Baroness Smith of Basildon said that her party may have concerns about this proposal and would want to look closely at the detail of how it would work.¹³⁰

Delegation of functions

Clauses 30-31 would give the Secretary of State power to delegate, by Order, the exercise of certain functions to a public body. Clause 30(2) provides that if the Secretary of State delegates the power to make a Code of Practice to a public body, that the Secretary of State must approve the Code before it is laid before Parliament. Clause 31 would give the

¹³⁰ HL Deb 2 March 2011 c1105

Secretary of State power to require a report from any public body receiving delegated powers, at specified intervals.

General

Clause 32 would give the Secretary of State power to make regulations setting out the circumstances in which: a bill payer's liability to make Green Deal payments would be suspended or cancelled; the circumstances in which any liability ends; the consequences of any suspension or cancellation; and the circumstances in which the Green Deal provider could require the early repayment of any outstanding repayments.

Clause 33 would require the Secretary of State to provide a right of appeal to a court or tribunal against any sanction imposed by him under powers granted by certain Clauses in this chapter.

Clause 34 would allow the Secretary of State to incur expenditure for providing information about Green Deal plans and energy efficiency to individuals or organisations.

Clause 35 would set out the Parliamentary procedure to be used in relation to the issuing of a Code of Practice established by the framework regulations.

Clause 36 would set out which procedure, (either negative or affirmative), should be used for the regulations that the Secretary of State is given powers to make in this Chapter. Clause 36(7) provides that the Secretary of State must consult Scottish Ministers in respect of any regulations or orders extending to Scotland, and if anything falls within the legislative competence of the Scottish Parliament, Scottish Ministers' consent would be required. Similarly, Clause 36(10) provides that Welsh Ministers must be consulted on regulations or orders which apply to Wales. Under Clause 36(8) Welsh Ministers' consent would be required if powers under Clause 33 are used to amend or revoke any Measures or Acts by the National Assembly for Wales.

2.2 Private rented sector

On 2 November 2010 DECC announced that the *Energy Bill* would create powers to allow:

- any tenants asking for "reasonable energy efficiency improvements" to receive them from 2015 onwards; and
- that local authorities would be given powers to insist that landlords improve the worst performing homes.¹³¹

The announcement came with the caveat that whether these powers would be used would be subject to a review. The *Times* reported that landlords would face fines of up to £5,000 if they did not make energy efficiency changes, although this figure was not given in the original DECC announcement.¹³² It also reported that the National Landlords Association had "condemned" the plan as they had concerns that owners of older buildings would be fined, even if insulation was too expensive or impractical.¹³³

The Government hopes that landlords in the Private Rented Sector (PRS) in particular will use the Green Deal to improve energy efficiency performance of their properties. The PRS has the largest proportion of lowest-rated (EPC band G) properties of all tenures (6.2%

¹³¹ Department of Energy and Climate Change press release, [Huhne heralds green homes revolution](#), 2 November 2010

¹³² "New energy rules will force landlords to upgrade properties", *The Times*, 2 November 2010

¹³³ *Ibid*

compared with 3.4% in owner-occupied accommodation).¹³⁴ A PQ from February 2011 also shows that the PRS has a high number of fuel poor households:¹³⁵

The following table shows the number of fuel poor households in England in 2008, split by the four main tenure types:

<i>Tenure</i>	<i>Number of fuel poor households (thousand)</i>
(a) Private rented	600
(b) Local authority	375
(c) RSL [Registered Social Landlords]	253
(d) Owner occupied	2,107
Total	3,335

A summary of problems with energy efficiency in homes in the PRS is also set out in the impact assessment to accompany the Bill:

The private rented sector (PRS) contains a considerable number of cost effective abatement opportunities. 68% of PRS homes have uninsulated wall cavities compared with 52% in the owner occupied sector, and 42% of lofts in the sector have less than 100mm of insulation compared with 25% in the owner occupied sector. The PRS also has a disproportionately large number of homes with the lowest energy performance certificate (EPC) rating (G) than the other domestic sectors, 6% compared with 3% in the owner occupied sector.¹³⁶

The impact assessment also explains that there are barriers which have prevented the PRS from making energy efficiency improvements. For example, the benefits of reduced fuel bills often benefit only the tenant, but the initial costs of making the improvements have to be borne by the landlord. In properties with short-term tenancies any benefits are spread over a large number of tenants, making any investment unattractive to just one person. The impact assessment also notes that a number of non-regulatory approaches to encourage take up of energy efficiency measures in the PRS have also failed to make a substantial impact. For example, the Landlords Energy Saving allowance – an income tax deduction of up to £1,500 per property against profits for expenditure to install certain measures – had only been claimed by 2,100 people in 2007/08. The impact assessment noted that it had also been difficult to target landlords with information, advice and offers and to encourage take-up of voluntary accreditation schemes for improving energy efficiency.¹³⁷

The Bill

The Bill would provide for new powers to allow the Secretary of State in England and Wales, and Scottish Ministers in Scotland, to make future regulations requiring private landlords to make relevant energy efficiency improvements to their buildings. Chapter 2 of the Bill

¹³⁴ Department of Energy and Climate Change website, [Energy Bill: private rented sector](#) [on 4 May 2011]

¹³⁵ HC Deb 4 Feb 2011 [c996W](#)

¹³⁶ Department of Energy and Climate Change, [Energy Bill Impact Assessment: Green Deal](#), December 2010, p57

¹³⁷ Department of Energy and Climate Change, [Energy Bill Impact Assessment: Green Deal](#), December 2010, p58-59

provides for these powers in England and Wales and Chapter 3 provides for these powers in Scotland. The provisions are equivalent and are identical, except on technical matters, such as reference to the legislation defining what constitutes a domestic and non-domestic private rented property. Regulations could be made for both domestic and non-domestic properties.

Friends of the Earth has expressed concern, however, that energy efficiency will not improve in the PRS as a consequence of the Bill, as it stands, without a deadline for improvements to be made by. It does not want the policy to be conditional on the success or otherwise of the Green Deal:

The Green Deal will provide landlords with the mechanism for financing the improvement of their properties but that alone is unlikely to be enough to get them to take it up, as many landlords will not act without greater incentive.

According to DECC, landlords have not taken up heavily subsidised energy saving measures under CERT and do not take up the Landlords Energy Saving Allowance. There is no reason why they will take up the Green Deal in any numbers in the worst properties without knowing that at a certain date in the future they will have to.¹³⁸

At Report Stage in the House of Lords Liberal Democrat peer Baroness Maddock and crossbench peer Lord Best tabled amendments to reflect concerns that the Bill would not do enough to improve energy efficiency performance in the PRS. The amendments would have made it illegal to let out a property after 2016 which did not meet minimum energy efficiency standards.¹³⁹ The amendments were withdrawn after Lord Marland gave assurances that the Government would seek to act to improve this sector if uptake of the Green Deal in it turned out to be low. He said that all parties were “singing from the same hymn sheet”.¹⁴⁰

Clauses 38 (England and Wales) **and 51** (Scotland) would define, by reference to other legislation, what is meant by “domestic private rented property” (domestic PR properties) and “non-domestic private rented property” (non-domestic PR properties). A Government amendment to this Clause was agreed at Report Stage in the Lords to give the Secretary of State power to extend the range of tenancy types that were within the definition of “domestic private property” and to clarify that the Secretary of State could consider non-private rented sector properties in a review of the energy efficiency of rented properties, if he so wished. The amendment was tabled in response to concerns raised in Committee that the social housing sector should also be incentivised to improve energy efficiency performance.¹⁴¹ Labour peer, Lord Grantchester, said that he was grateful for the amendment.¹⁴²

The Government is keen that landlords have the opportunity to make voluntary improvements first, before any enforcement legislation is enacted. The power to make regulations would therefore be subject to the outcome of a review. **Clauses 39** (England and Wales) **and 52** (Scotland) would require the Secretary of State and Scottish Minister to conduct, or arrange for, a review of the energy efficiency of domestic and non-domestic PR properties. Under these Clauses the review must not begin until one year after the framework regulations for the Green Deal come into force. The review must be published by 1 April 2014 and must include:

(a) a comparison of the energy efficiency of PR properties with the energy efficiency of properties in England and Wales which are not PR properties;

¹³⁸ Friends of the Earth Briefing, *A minimum energy efficiency standard for private rented homes*, February 2011

¹³⁹ HL Deb 2 March 2011 c1133-1137

¹⁴⁰ HL Deb 2 March 2011 c1133-1141

¹⁴¹ HL Deb 2 March 2011 c1117

¹⁴² HL Deb 2 March 2011 c1117

(b) a consideration of the extent to which financial assistance is available to landlords of PR properties for the purpose of taking measures to improve the energy efficiency of their properties;

(c) a consideration of the need for action to be taken for the purpose of improving the energy efficiency of PR properties;

(d) a consideration of the possible effects of any action recommended to be taken as a result of the consideration required by paragraph (c).

Domestic energy efficiency regulations

Clauses 40-41 (England and Wales) **and 53-54** (Scotland) would give the Secretary of State and the Scottish Ministers powers to make regulations about energy efficiency improvements in the PRS, after the review has been published. Before either the Secretary of State or the Scottish Ministers could make any regulations they must have regard to the review. They must consider whether regulations would a.) improve the energy efficiency of PRS properties and b.) decrease the number of properties available to rent. Regulations could only be made if they were likely to increase efficiency and were not deemed likely to decrease the number of properties available for rent.

Under these Clauses the regulations would require local authorities to issue a notice to landlords renting out domestic PR properties which fall below a certain level of energy efficiency (which would be specified in the regulations). The notice would require the landlord to make relevant energy efficiency improvements. Relevant energy efficiency improvements are defined as being those that could be financed wholly through a Green Deal plan or through a scheme provided for by an energy supplier (such as the existing Carbon Emissions Reduction Target programme, or the new Energy Company Obligation programme). These Clauses make clear that no regulations could come into force before April 2015.

The Bill also provides for a sanctions regime for landlords failing to comply with the regulations. **Clauses 42** (England and Wales) **and 55** (Scotland) would allow the Secretary of State and Scottish Ministers to make provision for sanctions for non-compliance with a notice, or for providing false information in connection with the energy efficiency regulations. The Clauses provide that any local authority civil penalty provided for by the regulations must not exceed £5,000. They also require a right of appeal to a court or tribunal to be provided against the imposition of a penalty.

Tenants' energy efficiency improvements regulations

Clauses 43 and 44 (England and Wales) **and 56-57** (Scotland) would give the Secretary of State or Scottish Ministers powers to make tenants' energy efficiency regulations, after the publication of the review. These regulations would help stop a landlord of a domestic property from unreasonably refusing a request by the tenant of the property for energy efficiency improvements. Under these Clauses the regulations could deal with the form and content of how the tenant should make the request to the landlord and set out any exemptions. An exemption might be, for example, if consenting to the request would have a negative impact on the value of the property.

Clauses 45 (England and Wales) **and 58** (Scotland) would give the Secretary of State and Scottish Ministers power to make provision for ensuring landlords' compliance with these regulations; that the tenant could apply to a court or tribunal for a ruling that a landlord had not complied with a requirement of these regulations. The regulations could provide for provisions, such as, on what grounds the tenant could make an application and what powers the courts would have. These Clauses also provide for a right of appeal against any decision made by a court or tribunal.

Non-domestic energy efficiency regulations

Clauses 46-47 (England and Wales) **and 59-60** (Scotland), replicate the provisions in Clauses 40-41 (England and Wales) and Clauses 53-54 (Scotland) about making regulation to improve energy efficiency, but this time in relation to the non-domestic PRS.

Under these regulations it is proposed that a landlord, of a non-domestic PR property, would not be able to let out a property which fell below a certain level of energy efficiency until a relevant energy efficiency improvement had been made. Relevant energy efficiency improvements are defined as those that could be financed wholly through a Green Deal plan or through another financial scheme that the regulations may so provide. Under these Clauses the regulations may provide terms such as the time period in which any improvements in energy efficiency must be made and for any exemptions for landlords.

Clauses 48 (England and Wales) **and 61** (Scotland) would allow the Secretary of State and Scottish Ministers to make provision for sanctions for non-compliance with these regulations. Examples include enforcement by local weights and measures authorities and for the imposition of civil penalties. These Clauses would also provide for a right to appeal against a penalty imposed.

General

Clauses 49 (England and Wales) **and 62** (Scotland) would set out the procedures to be used in Parliament and the Scottish Parliament for making the regulations and orders provided for in this Chapter of the Bill.

2.3 Reducing carbon emissions and home-heating costs: the Energy Company Obligation (ECO)

The Green Deal will also be supported by a replacement of the current obligations on energy suppliers to reduce carbon dioxide emissions from homes (the Carbon Emissions Reduction Target and the Community Energy Saving Programme), with a new obligation which focuses on vulnerable households, those in fuel poverty and those living in hard to treat properties – for example, solid walled properties.¹⁴³ This part of the Bill, Part 1, Chapter 4, would establish the new obligation.

The existing energy company obligation: CERT

In 2008 the Labour Government introduced the Carbon Emissions Reduction Target (CERT) scheme as a way to encourage energy efficiency in homes. CERT obliges electricity and gas suppliers in Great Britain to help reduce carbon dioxide emissions from homes. Each supplier under the scheme¹⁴⁴ must demonstrate that measures which it implements have led to a certain level of carbon dioxide (CO₂) savings amongst customers.

The CERT scheme is a broad successor to the energy efficiency target imposed under the *Electricity and Gas (Energy Efficiency Obligations) Order 2004* (SI 2004/3392) (the 2004 Order) for the period 1 April 2005 to 31 March 2008, known as the Energy Efficiency Commitment.¹⁴⁵

The CERT scheme was first implemented by the *Electricity and Gas (Carbon Emissions Reduction) Order 2008*, (SI No. 188) (the 2008 Order). The authority to make the 2008 Order stems from 3 primary Acts, as amended:

¹⁴³ Department of Energy and Climate Change website, [Energy Bill: Energy Company Obligation](#) [on 4 May 2011]

¹⁴⁴ CERT applies to suppliers with more than 50,000 customers (the 'big six' suppliers qualify: British Gas, EDF, Eon, Npower, Scottish and Southern, and Scottish Power)

¹⁴⁵ [Explanatory Memorandum to the Electricity and Gas \(Carbon Emissions Reduction\) Order 2008](#), 2008 No. 188, Section 7.3

- section 33BC of the *Gas Act 1986*;
- section 41A of the *Electricity Act 1989*; and
- section 103 of the *Utilities Act 2000*.

The 2008 Order required CERT to deliver overall lifetime carbon dioxide savings of 154 MtCO₂ – equivalent to annual net savings of 4.2 MtCO₂ by 2010.¹⁴⁶ Under the 2008 Order, energy suppliers were required to achieve at least 40% of their carbon emissions reduction obligation by promoting measures to a priority group, that is those in receipt of at least one of the benefits or tax credits listed in Schedule 2 to the Order, or to those who are aged 70 or over. This was known as the priority group obligation.

The scheme was then amended by the *Electricity and Gas (Carbon Emissions Reduction) (Amendment) Order 2009* (SI No. 1904) (the 2009 Order) which came into force on 20 July 2009. The 2009 Order was made following the then Prime Minister's Home Energy Saving Programme announcement in September 2008 which proposed a 20% increase in the Carbon Emissions Reduction Target.¹⁴⁷ The main aim of the change was to increase the amount of help householders received to take up energy efficiency measures at a time of high energy prices, to help them save money, save energy and save carbon.¹⁴⁸

The CERT scheme was also amended again, most recently, by the *Electricity and Gas (Carbon Emissions Reduction) (Amendment) Order 2010* (SI 2010/1958) (the 2010 Order), which came into force on 31 July 2010. The amendment was made following a consultation¹⁴⁹ initiated by the previous Labour Government and which was subsequently responded to by the new Coalition Government.¹⁵⁰ The main changes were an increase in the overall carbon emissions reduction target to 293 million lifetime tonnes of carbon dioxide (MtCO₂) (from 185 MtCO₂) and an extension to the target period; so that suppliers must achieve their increased obligation by 31st December 2012. It also created a super priority group of vulnerable households and set a new super priority group target.¹⁵¹ On 16 November 2010 the Government also issued a consultation proposing further changes to the existing CERT scheme in order to enable the Government to assess any energy savings measures offered under the scheme against some "core principles".¹⁵²

Ofgem has a duty under the CERT legislation to collect data from energy suppliers about the scheme and to update on progress. Ofgem's latest report from June 2010 shows that:

- At the end of the second year of the three year CERT programme, suppliers have achieved 81% of the 185 Mt CO₂ CER [carbon emissions reduction] target. This equates to 112 Mt CO₂ emissions reductions achieved during the CERT period, or 149 Mt CO₂ including carryover.
- 43% of total savings to target are from the Priority Group.

¹⁴⁶ [Explanatory Memorandum to the Electricity and Gas \(Carbon Emissions Reduction\) Order 2008](#), 2008 No. 188, Section 4

¹⁴⁷ HM Government, [Home Energy Saving Programme](#), 11 September 2008

¹⁴⁸ [Explanatory Memorandum to the Electricity and Gas \(Carbon Emissions Reduction\) \(Amendment\) Order 2009](#), section 2.2

¹⁴⁹ Department of Energy and Climate Change, [Extending the Carbon Emissions Reduction Target Consultation on a CERT framework for the period April 2011 to December 2012](#), December 2009

¹⁵⁰ Department of Energy and Climate Change, [Paving the way for a Green Deal Extending the Carbon Emissions Reduction Target supplier obligation to December 2012](#), June 2010

¹⁵¹ Explanatory memorandum to the [Electricity and Gas \(Carbon Emissions Reduction\) \(Amendment\) Order 2010](#), section 2.3

¹⁵² Department of Energy and Climate Change, [Consultation on the role of appliances and consumer electronics in the Carbon Emissions Reduction Targets \(CERT\)](#), 16 November 2010

- 62% of total savings to target are from insulation.
- 28% of total savings to target are from lighting.¹⁵³

CERT however, has attracted a number of criticisms, as highlighted by the Environment, Food and Rural Affairs Committee in its June 2009 report *Energy efficiency and fuel poverty*.¹⁵⁴ Particular problems noted were that: the scheme did not have the ability to help those in hard-to-treat homes, such as those with solid walls; that as it was a commercially driven scheme, those who needed help were missing out as companies delivered the quick-wins first; and that measures could be counted against suppliers' targets even though the actual benefits are not quantified. For example, one of the big criticisms about the scheme, as under the 2008 Order, was that energy companies had distributed free energy saving light bulbs to their customers, but had not had to check whether the bulbs were suitable for their customers to use or indeed whether they had actually been used. The calculated savings from the bulbs still counted towards the carbon emissions reduction target at that time.¹⁵⁵

During a debate on the 2010 Order the Government made it clear that it did not want to continue with the CERT scheme beyond 2012. DECC Minister Gregory Barker said that he would like to focus a new scheme on reducing fuel poverty and said that new legislation would be needed:

I think that it is worth saying that the extension of CERT is not ideal. We want to do more, particularly for the fuel-poor, and we think that a supplier obligation is a significant tool for achieving that. We anticipate that, as part of a focused series of measures that will work as part of the green deal, a key lever will be an ongoing supplier obligation. We will work closely with stakeholders during the coming months to ensure that when the CERT extension finishes at the end of 2012, there is a new bespoke supplier obligation, designed to work with the green deal, which will focus far more on those who are in the worst fuel poverty.

Within the constraints of this type of obligation as laid out in legislation... we think that we have probably pushed the envelope as far as we can without breaching the terms of the original legislation. We will therefore introduce new proposals in the Energy Security and Green Economy Bill¹⁵⁶ to lay the groundwork for a future supplier obligation, which will take further the work done in the CERT extension.¹⁵⁷

The Community Energy Saving Programme (CESP)

In addition to CERT, energy suppliers also have obligations under the Community Energy Saving Programme (CESP) scheme. The CESP obligation period runs from 1 October 2009 to 31 December 2012.¹⁵⁸ CESP was designed to complement CERT.

CESP aims to deliver around £350 million of energy efficiency improvements.¹⁵⁹ The Programme targets households, across Great Britain, in given geographical areas, to improve energy efficiency standards, and to reduce fuel bills. It is funded by an obligation on energy suppliers. The Labour Government estimated that up to 100 schemes would be

¹⁵³ Ofgem, *Carbon Emissions Reduction Target Update*, June 2010

¹⁵⁴ Environment Food and Rural Affairs Committee, *Energy efficiency and fuel poverty*, Third Report of Session 2008–09, HC 37, 10 June 2009, paras 55-67

¹⁵⁵ Which? website, *Energy-saving light bulbs - your concerns* [on 4 May 2011]

¹⁵⁶ The Energy Security and Green Economy Bill was changed to the Energy Bill 2010-11 at publication.

¹⁵⁷ Second Delegated Legislation Committee, *Draft Electricity and Gas (Carbon Emissions Reduction) (Amendment) Order 2010*, 26 July 2010, c10

¹⁵⁸ Ofgem website, *Community Energy Saving Programme (CESP)* [on 4 May 2011]

¹⁵⁹ Department of Energy and Climate Change, *Impact Assessment of proposals for implementation of the Community Energy Saving Programme (CESP)*, May 2009, p4

funded, which would benefit around 90,000 homes across Great Britain, and deliver a saving of nearly 2.9 MtCO₂.¹⁶⁰ The *Electricity and Gas (Community Energy Saving Programme) Order 2009* (SI 2009/1905) implemented the scheme. The original legal basis for it was the *Climate Change Act 2008*. British Gas launched the first 'live' CESP scheme in Walsall in January 2010. As of 30 April 2010 there were 6 live CESP schemes.¹⁶¹

CESP is particularly focussed on delivering the uptake of energy efficiency measures in low income areas and hard to treat homes. In these homes, there are barriers to implementing energy efficiency measures for householders including lack of capital, awareness, hidden costs and landlord/tenant split incentives.¹⁶² The impact assessment to accompany CESP sets out how it differs to CERT:

CESP is based on the CERT legislative model, but is designed to deliver where CERT generally will not. CESP will use community partnerships to treat large numbers of homes within a given area, rather than focusing on the most cost efficient CO₂ reductions which are delivered under CERT. While CERT has a priority group to help target the most fuel poor, CESP will go further by focusing delivery in income deprived areas and often in hard to treat homes.¹⁶³

CESP designates eligible areas based on the lowest income areas identified by the Indices of Multiple Deprivation. In England this is based on the lowest 10% income areas and in Scotland and Wales the lowest 15%. According to a PQ dated 15 June 2010, in total there are around 4,500 designated CESP areas across Great Britain.¹⁶⁴ CESP means that energy suppliers have to offer energy efficiency measures for free, or at a very low cost, in order to meet their obligation. Measures available under CESP include improvements such as: solid wall insulation; flat roof insulation; draft proofing; installation of ground source heat pumps; and connection to a district heating system.¹⁶⁵ It is up to suppliers and generators exactly which measures they wish to offer, and how, in order to meet the terms of scheme.

In July 2010 the Government announced that it would undertake an evaluation of CESP, which was due to be completed in March 2011, but which has yet to report.¹⁶⁶

The new obligation

The Coalition Government announced in its first Annual Energy Statement that it would include powers in the forthcoming *Energy Bill* to introduce a new obligation on energy companies from 2012, to take over beyond CERT and CESP¹⁶⁷ This is the new energy company obligation (ECO) which would underpin the Green Deal. It would focus on those properties and households which could not make energy savings without extra financial

¹⁶⁰ Department of Energy and Climate Change, *Community Energy Saving Programme (CESP) Consultation Response and Analysis*, June 2009, p3

¹⁶¹ Department of Energy and Climate Change website, *Community Energy Saving Programme (CESP)* [on 4 May 2011]

¹⁶² Department of Energy and Climate Change, *Impact Assessment of proposals for implementation of the Community Energy Saving Programme (CESP)*, May 2009, p1

¹⁶³ Department of Energy and Climate Change, *Impact Assessment of proposals for implementation of the Community Energy Saving Programme (CESP)*, May 2009

¹⁶⁴ HC Deb 15 June 2010 c367w

¹⁶⁵ Department of Energy and Climate Change, *Impact Assessment of proposals for implementation of the Community Energy Saving Programme (CESP)*, May 2009, p8-9

¹⁶⁶ HC Deb 27 July 2010 c881W

¹⁶⁷ Department of Energy and Climate Change, *Annual Energy Statement*, 27 July 2010, p4 and HC Deb 23 November 2010 c208W

support or qualify for Green Deal finance, such as those with hard-to-treat homes and the fuel poor.¹⁶⁸

One of the key rationales for the Government in introducing the ECO is to make up for the market failure in the take up of more expensive energy efficiency measures:

Given that gas prices do not reflect the external cost of carbon emissions, it is unlikely that the Green Deal finance and accreditation measures on their own would drive the take up of solid wall insulation and other more expensive energy efficiency measures. However when the reduction in negative externalities (climate change and air quality) are considered as well as the private benefits then there is a strong argument for installing solid wall insulation (SWI) in many cases, i.e. it is a cost effective way of meeting the UK's carbon budgets.¹⁶⁹

The Government is also concerned that the Green Deal package may not be enough to help low income and vulnerable households:

The ECO is also intended to focus on support for low-income households and the most vulnerable in society. Some households in this category may require more support than just Green Deal finance if they are to improve their energy efficiency and reduce their fuel bills. Some of the types of measures which may help low-income households or those with individuals who are particularly vulnerable to the cold such as the elderly or disabled, such as boiler repairs or new heating systems, will help to reduce the cost of heating a home but will not necessarily lead to energy efficiency or carbon savings. As a result it is difficult to incentivise such measures through a carbon or energy efficiency-based target using the existing powers. The proposed new ECO powers will allow for an obligation to be set in such a way as to drive delivery of these measures too.¹⁷⁰

According to the Government, the ECO will not be introduced until CERT and CESP expire in December 2012. The aim in this Bill is to provide for broad powers, with the detail set out in secondary legislation following a public consultation in late 2011.¹⁷¹

The Government envisages that the ECO would be able to deliver a wide range of measures, such as cavity wall insulation, external solid wall insulation, heating repairs and boiler replacements. It also envisages that unlike CERT and CESP, the ECO measures would not always be linked directly to carbon savings measures, but would also include those likely to bring long term improvements to a household's ability to heat a home at a decent level of affordability:

- Increased thermal efficiency. The intention would be to focus on low income vulnerable households with a high propensity to fuel poverty, with companies obliged to deliver measures in order to improve households' ability to heat their home affordably (i.e. a notional home heat cost reduction target). Analysis confirms that the most cost effective means of meeting this target will be through new central heating systems (where there is no working system) and insulation measures, including cavity wall and loft insulation measures (where opportunities remain).

¹⁶⁸ Second Delegated Legislation Committee, [Draft Electricity and Gas \(Carbon Emissions Reduction\) \(Amendment\) Order 2010](#), 26 July 2010, c11-12

¹⁶⁹ Department of Energy and Climate Change, [Energy Bill Impact Assessment: Green Deal](#), December 2010, p50

¹⁷⁰ Energy Bill Explanatory Notes, Bill 167-EN, p23

¹⁷¹ Department of Energy and Climate Change website, [Energy Bill: Energy Company Obligation](#) [on4 May 2011]

- Increased energy efficiency. The intention would be to focus on insulation measures that reduce carbon emissions cost-effectively (i.e. have a positive net present value to society) but are not attractive enough to consumers at current energy prices (i.e. have a negative net present value to consumers), for example solid wall insulation in many cases. By providing joint support with Green Deal finance, it is hoped that a high level of take-up of these energy efficiency improvements can be delivered in a way that maximises the contributions to the costs of measures from the consumers that will benefit from them.¹⁷²

The Bill

This part of the Bill, Part 1, Chapter 4, applies to England, Wales and Scotland. Many of the powers needed to establish the ECO are contained in section 33BC of the *Gas Act 1986*, section 41A of the *Electricity Act 1989* and section 103 of the *Utilities Act 2000*. These powers will need to be amended in order to shape the ECO as the Government requires.¹⁷³ The Bill would amend and add to the existing enabling powers in these Acts.

Clause 64 would amend section 33BC of the *Gas Act 1986* to set up the ECO for gas transporters and suppliers. **Clause 65** would make “materially identical” amendments to section 41A of the *Electricity Act 1989*, to set up the ECO for electricity generators, distributors and suppliers.¹⁷⁴ These Clauses would allow the Secretary of State to make an Order specifying that ECO targets should be met by taking action in relation to specified types of individuals living in specified types of property or specified areas. These Clauses would also provide that the administration and/or enforcement of the ECO would be carried out by, either the Gas and Electricity Markets Authority (GEMA), or another body chosen by the Secretary of State, this body is to be known as the “administrator”. The Clauses would give the Secretary of State powers to make provision allowing the administrator to offer services to energy companies with ECO obligations and to charge a fee for this work

The Clauses would also insert new provisions that energy companies may be required to meet two targets: a carbon emissions reduction target and a home-heating cost reduction target. The Secretary of State would have powers to prevent companies from counting a specific action against more than one of these targets. This power would ensure that the ECO covered both measures that reduced carbon emissions and measures that reduced the cost of heating. **Clauses 66 and 67** would define the home heating cost reduction target as “a target for the promotion of measures for reducing the cost to individuals of heating their homes.”

Clause 68 would insert a new section 103A into the *Utilities Act 2000* to give the Secretary of State a new power, by Order, to create an overall home-heating cost reduction target which must be achieved by obligated energy companies. In the Order, the Secretary of State could set more than one overall target for a specified period and set the criteria for how the target should be split between gas and electricity companies. Clause 68(5) would provide that the Secretary of State must undertake a consultation of listed persons before making the Order, which would be subject to the affirmative resolution procedure in Parliament.

Clause 69 would enable the Secretary of State to require specified information from the obligated energy companies and the administrator for the purposes of assessing the effectiveness of the ECO towards meeting policy objectives. Clause 69(6) would allow for this information to be shared with Scottish and Welsh Ministers.

¹⁷² Department of Energy and Climate Change, *Energy Bill Impact Assessment: Green Deal*, December 2010 p49

¹⁷³ Energy Bill 2010-11 Explanatory Notes, Bill 167-EN, p24

¹⁷⁴ Energy Bill 2010-11 Explanatory Notes, Bill 167-EN, p26

2.4 Smart meters

Smart meters have varying degrees of functionality and require the support of a complex infrastructure. They can provide a one-way (known as Automated Meter Reading (AMR)) or two-way (known as Automated Meter Management (AMM)) communication between a supplier and the customer. An Interval Meter is a two-way meter that can store and communicate data to the customer (in real-time) and the supplier (on a half-hourly basis), thus enabling real-time pricing and the offering of a variety of time-of-use tariffs.

Smart meters are expected to pave the way for a transformation in the way energy is supplied and used, and will link into a future smart grid. They will deliver a range of benefits to consumers, energy suppliers and networks. DECC reports:

- Consumers will have real time information on their energy consumption to help them control energy use, save money and reduce emissions. By 2020, the average consumer (with both electricity and gas) is expected to save around £23 per year on their energy bill as a result of smart metering. There will also be an end to estimated billing.
- Suppliers will have access to accurate data for billing, allowing them to improve their customer service and reduce costs, for example by reducing call centre traffic, ending visits by meter readers, and better debt management.
- Energy networks will have better information with which to manage and plan current activities as well as the move towards smart grids to support sustainable energy supplies.¹⁷⁵

The Coalition Programme stated “We will establish a smart grid and roll out smart meters”.¹⁷⁶

In July 2010, DECC and the regulator, the Office of Gas and Electricity Markets (Ofgem), published a Prospectus for consultation containing proposals for the roll-out of smart and advanced meters in homes and small businesses in Great Britain. It includes proposals on the design of the delivery model, development of technical specifications for meters and a wide range of other issues including consumer protection and data privacy.

Further information and links to the Prospectus and supporting documents and Government response are available online on the DECC website.¹⁷⁷

On 7 February 2011, Ofgem published a further consultation specifically addressing consumer protection.¹⁷⁸ It sets out:

... proposals for how it will ensure consumer interests remain protected in response to early moves by suppliers to start to install smart meters ahead of the government’s mandated rollout. It proposes some updating of the important protections around prepayment and disconnection which could in future be done remotely. It also proposes obligations to help ensure consumers do not face barriers to switching where they have a smart meter.

The consultation closed on 13 April 2011.

¹⁷⁵ DECC press notice 2011/32, [DECC lays foundations for smart meters rollout](#), 30 March 2011

¹⁷⁶ [The Coalition: our proposals for government](#), p16

¹⁷⁷ [Smart Metering implementation programme: prospectus](#)

¹⁷⁸ [Smart Metering Spring Package - Addressing Consumer Protection Issues](#), ref 13/11

The Bill

Currently, under sections 88-91 of the *Energy Act 2008*, the Secretary of State (SoS) has broad powers to implement and direct the roll-out of smart gas and electricity meters. These expire in November 2013.

Clause 71 of the Bill seeks to amend the powers in the 2008 Act so that:

- the SoS would be able to modify transmission licences. The SoS already has powers in existing legislation to modify electricity distribution and supply, and gas transportation, shipping and supply licences;
- the scope of the SoS's powers to review and direct roll-out would be amended;
- the provisions on smart meters in the *Energy Act 2008* would be extended by five years until November 2018. This would enable the Government to deal with any issues that arise in the later stages of roll-out, and to ensure the business case is achieved.

Further information about smart meters is online at the DECC website,¹⁷⁹ and in a POST note: *Smart metering of electricity and gas*, No 301, February 2008.¹⁸⁰

During the passage of the Bill through the House of Lords, discussion focused on consumer issues. Peers called for an independent code of conduct on how suppliers and installers will operate with householders, and for common standards to be established for smart meters. The latter would ensure that they are compatible and interoperable for all energy companies to facilitate easy switching between suppliers and payment methods. No amendments were made to the Bill as these matters are being addressed in the documents mentioned above, although it was hoped that they would be addressed during the passage of the Bill through the Commons.

2.5 Energy performance certificates

This part of the Bill would widen the scope of who could have access to energy performance data in order to include accredited Green Deal providers.

The Government has stated that buildings are responsible for over 40% of the UK's total carbon emissions and it estimated that 75% of the buildings that will exist in 2050 have already been built. The Government therefore is particularly keen to take action to improve energy efficiency and reduce carbon emissions from existing buildings.¹⁸¹

One of the ways that energy efficiency in buildings is encouraged is through the production of an Energy Performance Certificate (EPC). An EPC is intended to inform a potential purchaser or tenant about the energy performance of a building, so they can consider energy efficiency and fuel costs as part of their decision to buy or rent it.¹⁸² An EPC is a certificate which provides 'A' to 'G' ratings for buildings. An 'A' rating is given to the most energy efficient buildings and 'G' to the least. From October 2008 an EPC has been required whenever a building is built, sold or rented out. Accredited energy assessors produce EPCs alongside an associated report which suggests improvements to make a building more energy efficient.

¹⁷⁹ Department of Energy and Climate Change website, [Smart electricity and gas meters](#) [on 4 May 2011]

¹⁸⁰ Parliamentary Office of Science and Technology, [Smart Metering of Electricity and Gas](#), number 301, February 2008

¹⁸¹ Department of Energy and Climate Change website, [Energy Bill: Energy Performance Certificates](#) [on 4 May 2011]

¹⁸² Department for Communities and Local Government website, [Existing dwellings](#) [on 4 May 2011]

The current requirements for EPCs stem from the *Energy Performance of Buildings Directive 2002/91/EC* (EPBD1), which was approved in 2003. EPBD1 has been progressively transposed for England and Wales through the *Housing Act 2004*, revisions to the *Building Regulations 2000* and through other regulations, including the *Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007* (SI 2007/991) (the 2007 Regulations), as amended.

In addition to EPCs the 2007 Regulations also require display energy certificates (DECs) to be displayed in larger buildings (over 1000m²) and which are occupied by public authorities and/ or institutions providing public services to a large number of persons. A DEC shows the energy performance of a building based on actual energy consumption as recorded annually over periods up to the last three years (known as the Operational Rating).¹⁸³ The idea behind a DEC is to raise public awareness of energy use and to inform visitors to public buildings about the energy use of a building. A DEC is accompanied by an advisory report which highlights recommendations to improve the energy performance of the building.

The 2007 Regulations also require that written air conditioning reports (ACRs) be produced after each regular inspection of an air conditioning system above a certain size. These inspection reports must include an assessment of the air conditioning efficiency and the sizing of the system compared to the cooling requirements and appropriate advice on possible improvement or replacement of the system and possible alternative solutions. Again, the idea is to raise awareness of energy efficiency and how it might be improved.

The Government now wants to broaden the scope of who has access to this energy performance data. Access to this data is currently restricted by Regulation 14 of the 2007 Regulations to a defined group of people including: those legitimately connected with the sale or rent of a property, the Energy Saving Trust and approved building inspectors. A briefing from the then Government in 2007 explained the reasoning behind the restriction at the time:

Regulation 14 imposes restrictions on the circumstances in which certificates and recommendations reports may be disclosed by recipients and creates a criminal offence for unlawful disclosure. This protects owners and occupiers of any property that may not wish information to be disclosed to third parties, particularly for marketing or other commercial purposes.¹⁸⁴

In March 2010 the former Government issued a consultation, *Making better use of Energy Performance Certificates and data*. One of the proposals in the consultation was to extend access to energy performance data. The consultation document set out that there had been a growing number of calls for wider access to data:

There are however, growing calls for access to energy performance data and to review these arrangements, to better support the development of policy and the actions of organisations and individuals to improve the energy efficiency of buildings and reduce their carbon emissions. This includes requests from other Government departments and their agencies to have access to the data to support efforts to:

- inform policy development for tackling climate change, for example by developing a clear understanding of existing energy use of buildings and assessing the effectiveness of actions to improve energy performance

¹⁸³ Department for Communities and Local Government, *Improving the energy efficiency of our buildings: A guide to Display Energy Certificates and advisory reports for public buildings*, May 2008, p13

¹⁸⁴ Department for Communities and Local Government Circular, *The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007*, 29 March 2007, p4

- assist research and development, for example by promoting awareness and education on EPC ratings
- help in targeting energy efficiency support, for example providing support and advice to owners or occupiers of dwellings, commercial or public buildings with an EPC or DEC to improve the energy efficiency of the building
- support the central role that LAs play in enforcing the EPBD requirements and in developing Local Carbon Frameworks to tackle climate change.¹⁸⁵

The consultation proposed to give the Secretary of State powers to widen access to data so that local authorities could be granted access and so that anonymised data could be given out more freely.

The Coalition Government responded to the consultation in November 2010 and confirmed that it would make all energy performance certificate data publicly available, including the address of the property, its energy performance certificate rating and the energy performance certificate recommendations.¹⁸⁶

The Government also wants accredited Green Deal providers to have access to this information in order that the providers can better provide information, support, offers and advice to consumers who currently have this energy performance data. The impact assessment to the Bill summarises the reasons why the Government wants to widen access to this data:

- It will give organisations which market or promote energy efficiency measures a better understanding of the market.
- Under the Green Deal, due to be launched in 2012, private entities known as Green Deal Providers will arrange and pay for a tailored eco-upgrade to a property in return for a stream of payments which will be charged on the electricity or gas bill of the property for a period of time. If accredited Green Deal Providers are given access to address-level data (option 3) it would enable them to market their services more effectively to individual households and businesses.
- It will facilitate research which may be used to inform Government policy. There has been growing demand for research and statistical analysis - CLG receives requests from Government departments, researchers and statistical analysts for data relating to energy efficiency of buildings to have access to the data.
- It will increase access for the general public to useful data and should increase awareness among the general public of the energy efficiency of buildings.
- It supports the Government's transparency agenda.¹⁸⁷

The Government also stated that safeguards would be put in place to ensure that data would be securely processed and stored in accordance with the provisions of the *Data Protection*

¹⁸⁵ Department for Communities and Local Government, [Making better use of Energy Performance Certificates and data](#), 2 March 2010, p16

¹⁸⁶ Department of Energy and Climate Change, [Making better use of Energy Performance Certificates and data: summary of responses](#), November 2010, p6

¹⁸⁷ Department of Energy and Climate Change, [Impact Assessment for the Energy Bill 2010-11: Energy Performance Certificates](#), December 2010, p8

Act 1998. More information about these safeguards is given in annex 4 to the Bill's impact assessment.¹⁸⁸

The Bill

Clauses 72 (England and Wales) **and 73** (Scotland) would allow the Secretary of State and Scottish Ministers to make regulations to change who could have access to energy performance data. The Clauses would allow the regulations to restrict access to documents and data and/or to specific parts of them, to certain people and/or when they relate to a specified description of a building. Regulations could also set out a sanctions regime for non-compliance with disclosure of energy performance data requirements. Any regulations made under these Clauses should be made by the negative procedure.

2.6 Information about tariffs

This part of the Bill would require energy companies to display information on their customers' energy bills about their cheapest available tariff.

Problems with energy tariffs

There are no restrictions on the number of tariffs that an energy company is allowed to offer. In May 2009, the consumer group Which? found that there were over 4,000 different deals available to gas and electricity customers in Britain and that seven out of ten people found the number of tariffs confusing.¹⁸⁹ Which? also reported that one in three people thought that energy companies could not be trusted to sell them the right energy tariff. It also suggested that consumers could save hundreds of pounds a year if their energy company informed them about cheaper tariffs available.¹⁹⁰

In September 2009, Ofgem introduced new conditions, into the licences of energy suppliers in Great Britain, to tackle unjustified differences in price between tariffs. These measures addressed directly the widespread overcharging of certain groups of customers that Ofgem had identified during its 2008 Energy Supply Probe.¹⁹¹ In particular Ofgem found problems with: differences in charges for different payment methods (for example that pre-payment customers had higher charges compared with direct-debit customers); different tariffs being offered to people in different locations throughout the country; and single fuel customers being penalised on price over dual fuel customers.¹⁹²

Following the Ofgem probe, a number of new licence conditions were introduced for energy suppliers. In particular, two new licence conditions introduced in September 2009 to reflect more accurately the cost of supply and prevent undue discrimination between different groups of consumers. The conditions have meant that from 1 July 2010 customers have received clearer energy bills and an annual statement. The idea is that customers would be able to use the improved information to compare energy tariffs more easily and therefore decide whether it would be advantageous to switch tariffs.¹⁹³ An Ofgem factsheet explained these changes:

¹⁸⁸ Department of Energy and Climate Change, *Impact Assessment for the Energy Bill 2010-11: Energy Performance Certificates*, December 2010, Annex 4

¹⁸⁹ Which? Press release, *Customers confused by energy tariffs*, 7 May 2009

¹⁹⁰ Which? *Energy deal lottery leaves consumers out of pocket*, 24 September 2010

¹⁹¹ Ofgem website, *Energy Supply Probe* [on 4 May 2011]

¹⁹² For further information, see Ofgem, *Addressing unfair price differentials*, 8 January 2009

¹⁹³ Ofgem press release, *Ofgem's market probe gives more muscle to consumers*, 19 October 2009

Better information on bills

Where a customer receives regular bills, each bill will display the following information:

- the name of the customer's current tariff;
- the customer's consumption for the past 12 months in kilowatt hours (kWh), except where the customer has been with the supplier for less than 12 months; and
- an estimated cost in pounds per year of the customer's supply for the next 12 months if the customer remains on the same tariff, if the tariff rate is unchanged, and if the customer uses the same amount of energy.

Where the customer does not receive regular bills, for example prepayment meter customers, this information must be provided at least once a year in an annual statement.

Annual statements

All customers will receive a clear and easy to understand annual statement that will include the information detailed above as well as:

- a reminder of the principal conditions of their contract;
- information about any premiums or discounts that may apply to the customer's tariff as compared to the supplier's standard tariff where payment is by direct debit;
- a reminder that the customer can switch, along with advice on how to do so.¹⁹⁴

Ofgem also introduced new standards to prevent the selling of products that are inappropriate to a customer's needs or offer products that are unnecessarily complex or confusing.¹⁹⁵ In July 2010 Ofgem published an open letter to remind suppliers of their obligations under these standards.¹⁹⁶

The Coalition's *Programme for Government* contained a commitment to increase households' control over their energy costs. It pledged to ensure that energy bills provide information on how to move to the cheapest tariff offered by their supplier, and how each household's energy usage compares to similar households.¹⁹⁷ The Government has called the recent changes made by Ofgem "a good start" but has said that "more can be done to empower consumers, and put them in control of their energy costs."¹⁹⁸

A PQ from November 2010 summarised findings from an Ofgem survey from 2008¹⁹⁹ and an update report in 2010,²⁰⁰ about levels of energy customers switching tariffs:

Charles Hendry: (...)

Since the publication of their consumer engagement survey in August 2008 Ofgem has, in an update report published in March 2010, found that switching levels have fallen slightly, with 17% of gas customers and 18% of electricity customers switching

¹⁹⁴ Ofgem, *Helping domestic customers get the most out of the energy market*, undated.

¹⁹⁵ HL Deb 12 October 2010 c WA59

¹⁹⁶ Ofgem, *Transparency requirements on suppliers in respect of domestic customers*, 15 July 2010

¹⁹⁷ HM Government, *The Coalition: our programme for government*, May 2010, p13

¹⁹⁸ Department of Energy and Climate Change website, *Energy Bill: Energy Bills* [on 4 May 2011]

¹⁹⁹ *Customer Engagement Survey Report prepared for Ofgem*, 29 August 2008

²⁰⁰ Ofgem, *Update on Probe Monitoring: tariff differentials and consumer switching*, 1 July 2010

during 2009, down from 20% for electricity and 19% for gas during 2008. However, Ofgem point out that this was in the context of the more static pricing strategies seen during 2009.

This report also found that 8% of those who have never switched say they found the number of tariffs confusing. In addition, 67% of customers who had switched their electricity supplier and 64% who had switched their gas supplier believe they are now paying less as a result of their switch. This is a statistically significant improvement for electricity where, in 2008, 62% said they believed they were paying less than they would have without switching.²⁰¹

On 26 November 2010, in its latest analysis of retail energy prices, Ofgem noted that the profit margin on a standard dual fuel tariff was now at around £90, up from £65 in its September report.²⁰² Given that energy prices had been rising during this period, Ofgem announced that it would investigate whether the energy market was working as effectively as possible for consumers.

Ofgem reported its findings and initial proposals on 21 March 2011.²⁰³ The report concluded that the number and the range of energy tariffs offered to consumers was too complex and confusing. It also found that the big six energy companies had adjusted prices in response to rising costs more quickly than when costs fell. A number of proposals have now been put out for consultation to address this situation, including restricting the number of certain types of tariff that a company can offer and making it easier for new entrants to enter the energy supply market. The consultation period ends on 1 June 2011.

The Bill

The Bill would not enact any of Ofgem's proposals, but it does aim to help make energy tariffs more transparent for consumers. It would provide a power for changes to be made to electricity and gas licences; to require suppliers to provide information to consumers on their supplier's cheapest tariff. The Government hopes that with more information on bills, consumers will be better able to decide whether and how to switch to cheaper alternative tariffs. The Government also hopes that adding comparisons with similar households' energy use will help consumers to decide whether they could also make energy efficiency savings.

The Government would prefer to implement this policy through a voluntary agreement with energy suppliers. If a voluntary agreement is not obtained, the power would then come into force through secondary legislation.²⁰⁴

Clause 74 would give the Secretary of State (SoS) the power to modify standard licence conditions, to require electricity or gas suppliers to provide their domestic customers with information about their lowest tariffs. The SoS could specify how these tariffs should be defined, which of the tariffs a supplier must supply information about and how and when the information should appear. Under Clause 74(5) different provisions could be made for different cases, for example to exempt suppliers who only offer a few tariffs or smaller suppliers from these requirements. Under Clause 74(6) the SoS may also require different customers to be provided with different information, depending on their circumstances.

²⁰¹ HC Deb 25 November 2010 [c437W](#)

²⁰² Ofgem press release, [OFGEM to review effectiveness of the retail energy market to see if further action is needed to protect consumers](#), 26 November 2010

²⁰³ Ofgem, [The Retail Market Review - Findings and initial proposals](#), 21 March 2011

²⁰⁴ Department of Energy and Climate Change website, [Energy y Bill: Energy Bills](#) [on 4 May 2011]

3 Security of energy supplies

The security of energy supply has become an issue in recent years. The UK has entered a period of declining output of North Sea oil and gas. In addition, there will be a substantial loss of generating capacity during the next decade as much coal-fired capacity closes following EU emission controls, and most nuclear power stations reach the end of their projected lives. This is coupled with the move to a low-carbon economy, and access to energy supplies being used by some countries as a political tool. To avoid future energy shortfalls current policy aims to develop supplies that are secure, diverse, affordable and low-carbon.

3.1 Electricity supply

Currently, the monitoring of security of electricity supply is limited because of uncertainty over future capacity need. It amounts to broad estimates of future demand with no estimates of required margins. To make plans to meet future capacity needs, the Government needs more information available to it. To achieve this the Government plans to increase the effectiveness of monitoring of electricity security of supply so that the market may be better informed and security of supply enhanced.

The Coalition Programme commits to establishing a security guarantee of energy supplies.²⁰⁵

The Bill

Clause 77 of the Bill contains provisions that would obligate the regulator, the Gas and Electricity Markets Authority (GEMA), to report annually to the SoS on:

- future capacity that would be provided in Great Britain (GB) by the existing plans of current market participants
- future peak demand
- its assessment of the capacity margin the market should provide
- its assessment of the effect of different capacity margins on the probability of being unable to meet demand

This would be carried out by the operational arm of GEMA, the Office of Gas and Electricity Markets (Ofgem).

Clause 78 would require the SoS to publish annually his view of the electricity supply capacity needed to meet demand in Great Britain, including spare capacity to cover unexpected events. This amends section 172 of the *Energy Act 2004* which already requires the SoS to report on security of supply including generating capacity in GB.

Further information about international security of energy supply is online at the DECC website.²⁰⁶

3.2 Gas supply

Gas security has two main elements: physical security – avoiding supplies from being cut off; and price security – avoiding unnecessary price spikes due to market failures. This part of the Bill aims to improve both supply and price security during the occurrence of a gas supply

²⁰⁵ [The Coalition: our proposals for government](#), p16

²⁰⁶ Department of Energy and Climate Change website, [Energy Security: A national challenge in a changing world](#) [on 4 May 2011]

emergency. It was a Coalition Programme pledge to reform energy markets to deliver security of supply.²⁰⁷

The Government is keen to prevent an involuntary gas supply disruption and/ or very high wholesale prices. A gas supply emergency (explained below) has not happened to date. The intention therefore in the Bill is to reduce the likelihood, duration and extent of certain scenarios which could lead to such problems. The aim is to “sharpen” the commercial incentives for energy supply companies to meet their contractual supply obligation during a gas supply emergency.²⁰⁸

Gas is a particularly important source of energy for the UK. According to the Labour Government in April 2010, the UK was shown to have one of the largest gas markets in the world:

- 21 million households (over 80%) use gas for cooking and/or heating.
- 30-45% of power generation is gas-fired.
- Overall gas accounts for around 50% of non-transport primary energy demand.²⁰⁹

Indigenous gas production in the North Sea, however, is in decline.²¹⁰ In 2004, the UK switched back from being a net gas exporter to gas importer and is likely to become increasingly reliant on gas imports over the coming years.²¹¹ If the country does need to import more gas to meet demand, then a secure supply will become increasingly important.²¹²

A gas supply emergency

To maintain pressure in the gas network, there has to be a balance between gas supply and demand. Gas taken from the network by consumers has to be replaced by gas flowing into the network from producers, gas processing facilities, storage facilities, interconnector pipelines and LNG import facilities. In a severe winter gas demand goes up as households use more gas for heating and other consumers (such as power stations) increase their demand on the network.²¹³ This demand has to be met but is reliant on gas being available at the right place and time. If there is not enough gas available, demand has to be cut to maintain the safe pressure in the network. This could mean that certain customers are directed to stop taking gas and/ or that wholesale prices rise.

Under the *Gas Safety (Management) Regulations 1996 (SI 1996/551)* a “supply emergency” is defined as:

an emergency endangering persons and arising from a loss of pressure in a network or any part thereof.

²⁰⁷ The Coalition: *Our Programme for Government, Energy and Climate Change*, 20 May 2010, p16

²⁰⁸ Department of Energy and Climate Change website, *Energy Bill: Gas Security* [on 4 May 2011]

²⁰⁹ Department of Energy and Climate Change, *Gas Security of Supply: A policy statement from the Department of Energy and Climate Change*, April 2010, p9

²¹⁰ Oil & Gas UK press release, *UK Oil and Gas Industry: “An Engine for Recovery”*, 6 July 2010

²¹¹ Department of Energy and Climate Change, *Gas Security of Supply: A policy statement from the Department of Energy and Climate Change*, April 2010, p13

²¹² For further information about security of gas supply see: Department of Energy and Climate Change, *Gas Security of Supply: A policy statement from the Department of Energy and Climate Change*, April 2010 and Department of Energy and Climate Change and Ofgem, *Statutory Security of Supply Report*, November 2010

²¹³ Health and Safety Executive website, *HSE's role in gas supply emergencies* [on 4 May 2011]

The Government is keen to prevent an involuntary gas supply disruption and/ or very high wholesale prices. A gas supply emergency has not happened to date. The intention therefore in the Bill is to reduce the likelihood, duration and extent of certain scenarios which could lead to such problems. The aim is to “sharpen” the commercial incentives for energy supply companies to meet their contractual supply obligation during a gas supply emergency.²¹⁴

Under the current arrangements, in a gas supply emergency situation, the price at which National Grid must buy gas to balance the system between supply and demand (called the cash-out price) is frozen at the level immediately before the emergency occurred. This arrangement dates back to a time when the UK gas market was supplied mainly from indigenous sources. The cash-out price was to be frozen in a gas supply emergency so that Great Britain’s gas producers (who had nowhere else to sell their gas) could not exploit a shortage by raising wholesale prices to make excessive profits.²¹⁵ There is concern now however, that such an arrangement could, depending upon the price, have a dampening effect on the Great Britain’s ability to attract shippers to import more gas into the country. This might occur if the price was capped below an attractive import price.

This issue was explored under the Labour Government in its April 2010 paper, *Gas Security of Supply: A policy statement from the Department of Energy and Climate Change*. In this document, the Labour Government proposed unfreezing the cash-out price as a policy option, but said that a further scoping and assessment of the costs and benefits was required. The Labour Government set out what it thought would be the advantages and disadvantages of this policy option in its paper:

Advantages

5.55 Appropriately designed reforms to the gas balancing financial systems could better incentivise shippers to match their supply and demand positions. This would enhance the incentives for the market to provide for its own supply security, in particular, by providing greater incentives for gas to be delivered to the system in a gas supply disruption.

Disadvantages

5.56 Avoiding possible perverse incentives for producer/shipper exploitation will be challenging. Potential protection against abuse is provided by:

- competition law, and
- licence obligations requiring the shipper not to knowingly or recklessly behave in a way likely to prejudice:
 - the safe and economic operation of the system;
 - the safe, economic and efficient balancing of the system by the transporter; or
 - the functioning of the network code arrangements.

Furthermore, the increased commercial risk resulting from sharpened financial incentives in the balancing regime are likely to be more difficult to manage for smaller

²¹⁴ Department of Energy and Climate Change website, *Energy Bill: Gas Security* [on 4 May 2011]

²¹⁵ Department of Energy and Climate Change, *Energy Bill Impact Assessment: Gas Security*, December 2010, p5

market participants and pose a potential barrier to entry into both the wholesale and retail markets.²¹⁶

The intention in the Bill is to give Ofgem powers to make changes to the Uniform Network Code (the industry code which governs how the gas market operates) to unfreeze the cash-out price until later on in the emergency. DECC states that this would have two benefits:

- it would enable gas prices to rise sufficiently to be attracted into the GB market. This would reduce the likelihood of customers being disconnected.
- it would sharpen the incentives on gas supply companies to ensure that they have access to sufficient gas supplies in a pre-emergency.²¹⁷

DECC has also made clear that any changes that Ofgem proposes as a result of this new power would be subject to industry consultation and the normal rights of appeal to the Competition Commission.²¹⁸ The Government would like any changes to enter into force ahead of the winter of 2011/12.²¹⁹

The Bill

Clause 79 of the Bill would insert a new section 36C into the *Gas Act 1986* to give the Gas and Electricity Markets Authority (GEMA) powers to modify the Uniform Network Code in relation to a gas supply emergency. The powers in the new section would limit the circumstances in which GEMA could modify the Uniform Network Code. GEMA could only modify it if it considered it would decrease the likelihood of a gas supply emergency occurring and/or decrease the duration or severity of such an emergency, and only after consultation. This Clause would also ensure that parties affected by any such change could appeal to the Competition Commission.

3.3 Upstream petroleum infrastructure

Upstream²²⁰ oil and gas infrastructure, such as pipelines and offshore processing facilities, are typically built and owned by the field owner, often with spare capacity. The spare capacity can be made available for use by third parties if they are able to negotiate a tariff. Field owners therefore have a large degree of power over the price of access to their often unique infrastructure in a particular location.

The current access regime

Under the current legislation (the *Petroleum Act 1998*, the *Pipelines Act 1962*, the *Gas Act 1995* and the *Energy Act 2008*), companies seeking access to infrastructure must apply in the first instance to the relevant owner of the infrastructure in question. If the parties are unable to agree satisfactory terms of access to that infrastructure, the applicant seeking access may make an application to the Secretary of State to resolve the dispute.²²¹

An industry Offshore Infrastructure Code of Practice (ICOP), a non-statutory code, was introduced in January 1996. It aimed to streamline and facilitate the negotiation and

²¹⁶ Department of Energy and Climate Change, [Gas Security of Supply: A policy statement from the Department of Energy and Climate Change](#), April 2010, p51

²¹⁷ Department of Energy and Climate Change website, [Energy Bill: Gas Security](#) [on 4 May 2011]

²¹⁸ Department of Energy and Climate Change website, [Energy Bill: Gas Security](#) [on 4 May 2011]

²¹⁹ Department of Energy and Climate Change, [Energy Bill Impact Assessment: Gas Security](#), December 2010, p5

²²⁰ The term “upstream” generally refers to the process of finding and extracting oil and gas and bringing it to the surface. In contrast, “downstream” generally refers to the process of refining of oil, gas and petroleum to make them into useable products and to its subsequent distribution.

²²¹ Oil and Gas UK and Department of Energy and Climate Change, [Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UK Continental Shelf](#), January 2009, annex A, A1

administration of granting third party access to offshore pipelines and processing facilities and onshore terminals.²²² The Code has since been reviewed in consultation with industry and with the Government. A revised version was published by industry association Oil & Gas UK in August 2004, which was last updated in January 2009.²²³ The principles set out in the ICOP are as follows:

Overarching Principles

- Parties uphold infrastructure safety and integrity and protect the environment
- Parties follow the Commercial Code of Practice

Principles of the Infrastructure Code of Practice

- Parties provide meaningful information to each other prior to and during commercial negotiations
- Parties support negotiated access in a timely manner
- Parties undertake to ultimately settle disputes with an automatic referral to the Secretary of State
- Parties resolve conflicts of interest
- Infrastructure owners provide transparent and non-discriminatory access
- Infrastructure owners provide tariffs and terms for unbundled services, where requested and practicable
- Parties seek to agree fair and reasonable tariffs and terms, where risks taken are reflected by rewards
- Parties publish key, agreed commercial provisions²²⁴

To accompany the ICOP, DECC has published guidance, [Guidance on Disputes over Third Party Access to Upstream Oil and Gas Infrastructure](#), April 2009. It explains how the Secretary of State will determine applications made to require access to the infrastructure.

Problems with the current regime

Despite the legislation and the ICOP, a 2009 inquiry by the House of Commons Energy and Climate Change Select Committee highlighted the difficulty with smaller companies getting access to the infrastructure they require:

Smaller companies in particular are having difficulties accessing the infrastructure they require in order to produce oil and gas because in some cases of unrealistic demands by the infrastructure's owners. The industry's voluntary Code of Practice is not working well in this respect and, while we are not yet convinced of the case for a comprehensive statutory "common carrier" system of access, we do think that Government has to take a more active part in ensuring the successful outcome of negotiations about access arrangements. DECC and the industry should make it a priority to strengthen the voluntary arrangements so that they do not hamper the ability

²²² Department of Energy and Climate Change website, [Third party access to upstream oil and gas infrastructure](#) [on 4 May 2011]

²²³ Oil and Gas UK website, [Infrastructure Code of Practice](#) [on 4 May 2011]

²²⁴ Oil and Gas UK and Department of Energy and Climate Change, [Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UK Continental Shelf](#), January 2009

of companies to operate. If a voluntary code cannot be made to work more effectively serious consideration should be given to introducing a common carrier system.²²⁵

The then Labour Government responded to the Committee's report in October 2009. It said that it was working with industry to address the problems with access to infrastructure from third parties:

A number of infrastructure systems already have several third party users and these systems normally have standard terms and conditions that enable rapid negotiations to take place. However, for infrastructure systems with few or no existing third parties, it can take time for terms and conditions to be formulated for a new user. This is exacerbated by uncertainties over ageing infrastructure with increasing operational costs and declining production. As the UKCS [UK continental shelf] matures, some of the newer fields contain 'sour' or 'off-spec' hydrocarbons that need additional services to be provided by infrastructure owners, and this can introduce further complexity. The voluntary code encourages infrastructure owners to be as ready as possible for third party business, and recent surveys have indicated that this preparedness is much improved across the industry.

In summary, the Department is working with the industry, through improving guidance to provide clarity on DECC's approach to setting terms and conditions if so requested, and through other initiatives, to strengthen the voluntary arrangements and address the concerns that have been raised.²²⁶

In the impact assessment to accompany the Bill, the Coalition Government called the existing legislation in this area "piecemeal" and "inconsistent". It also said that there were uncertainties as to who was covered by it and that this could lead to some of the infrastructure being inefficiently used.²²⁷

The Bill

The Government has said that access to infrastructure on fair and reasonable terms is "crucial" to maximising the economic recovery of the UK's oil and gas production. The Bill therefore would re-enact and streamline the existing provisions for third party access to upstream oil and gas infrastructure and replace them with one set of requirements covering access to all relevant platforms, pipelines and terminals. It would also give the SoS new powers to seek information about the progress of access negotiations, and where appropriate, for him to initiate a determination at his own discretion for example, if the SoS had reasonable grounds to believe that there was no realistic prospect of the parties reaching an agreement.²²⁸

Clause 80 would set out the procedure for when a company which had been unable to secure access to infrastructure, could make an application to the SoS for a notice granting that access. It sets out: the circumstances within which an access dispute may be resolved by the SoS; the considerations he/she must take into account when deciding how to deal

²²⁵ House of Commons Energy and Climate Change Select Committee, *UK offshore oil and gas*, First Report of Session 2008–09, HC 341-I, 30 June 2009, p19

²²⁶ House of Commons Energy and Climate Change Select Committee, UK offshore oil and gas: *Government Response to the Committee's First Report of Session 2008–09*, First Special Report of Session 2008–09, HC 1010, 19 October 2009, p3

²²⁷ Department of Energy and Climate Change, *Impact Assessment: Reform of the regime for resolving disputes over third party access to and for compulsory modifications of upstream petroleum infrastructure*, 1 December 2010, p6

²²⁸ Department of Energy and Climate Change, *Impact Assessment: Reform of the regime for resolving disputes over third party access to and for compulsory modifications of upstream petroleum infrastructure*, 1 December 2010, p7

with the application; and the process the SoS must follow.²²⁹ Clause 80(10) would give the SoS powers to: secure the right of access for the applicant; ensure that the right of access is not prevented or impeded; to secure ancillary rights for the applicant (for example to allow the applicant's pipeline to be connected with that of the owner); and to regulate the charges made for access.

Clause 81 would set out the new process by which the SoS could issue an access notice under his own initiative. Under Clause 81(1) an application must have been made to the owner of the infrastructure and an agreement must not have been reached on the application. Under Clause 81(3) the SoS could only issue a notice if there had been "reasonable" time in which to reach agreement and that there was no realistic prospect of agreement being reached.

Clause 83 is another new provision to the current regime. It would allow for variation of notices to be made after they have been issued, to enable amendments to be made without having to restart the dispute resolution procedure again from the beginning.

Clause 85 is also a new provision. It would give the SoS powers to require information, including financial information, about the progress of negotiations. This would then enable the SoS to decide whether to use powers to issue a notice.

Clause 86 would set out the enforcement regime. Clause 86(1) to (3) creates a new offence of giving false information to the SoS. An offence could be committed either when a person knows or believes the information in question to be false, or is reckless as to whether the information is false. A person guilty of this offence would be subject to a level five fine on the standard scale; £5000.²³⁰ This Clause also gives a duty to comply with any notice issues and proves that such a duty may be enforced by a person to whom it is owed, as if it were a contractual right.

3.4 Special administration regime

The proposal in the Bill to introduce a special administration regime (SAR) as a backup to current arrangements for large gas and electricity suppliers that become insolvent is part of the Government's security of supply commitments. It would also contribute to market stability.

SARs are an alternative to general administration law. They aim to ensure uninterrupted and safe operation of essential services following the insolvency of a company.

There is already a SAR for electricity and gas transmission and network distribution companies, but the Supplier of Last Resort (SLR) process is used in the event of an insolvent supplier. Under the SLR, the operational arm of the regulator, Ofgem, is allowed to revoke the insolvent supplier's licence and appoint another supplier for its customers. SLR arrangements have worked well in the last few years when small suppliers have become insolvent, but it is clear that they are unlikely to work if a large supplier failed because of the number of customers to be transferred. Insolvency of a large supplier is very unlikely, and there is no evidence to indicate that any are at risk. If it did happen, the sale of the company would be the most likely event, but if a purchaser could not be found, then a SAR could be used. It would ensure continuity of supply to customers as cost effectively as possible until the company is rescued, sold or its customers transferred to other suppliers.

²²⁹ Energy Bill 2010-11, Explanatory Notes, Bill 167-EN, p38

²³⁰ Energy Bill 2010-11, Explanatory Notes, Bill 167-EN, p40

The Bill

Clauses 91-99 in the Bill contain proposals that would effect enabling powers of a SAR for gas and electricity suppliers. This would be followed by secondary legislation to implement the rules governing a SAR. These proposals follow consultation with individual stakeholders.

The provisions in the Bill would allow the SoS, or Ofgem with consent from the SoS, to apply to a court for a SAR. The court could grant the order only if current statutory tests for insolvency were met. An energy administrator (EA) could be appointed who would continue to contract to supply gas and electricity to customers until the company was rescued, sold or its activities transferred to another company. The EA would be required to carry out his/her duties as quickly and effectively as practicable.

A key feature of a SAR would be to enable the EA to use grants or loans from Government to finance the company's activities. Taxpayers would not be expected to meet these costs; provisions in the Bill allow recovery of any Government funds.

At Report Stage in the House of Lords, a minor, technical Government amendment was agreed to ensure consistency of statutory reporting to Parliament under the *Energy Act 2004* and the Bill with public expenditure rules. The amendment would apply both to the SAR for electricity transmission and distribution companies and gas transporters created by the *Energy Act 2004*, and to the SAR for energy supply companies under the Bill.²³¹

3.5 Continental shelf

The UK Continental Shelf (UKCS) comprises those areas of the sea bed and subsoil beyond the territorial sea over which the UK exercises sovereign rights of exploration and exploitation of natural resources. Responsibility for the UKCS lies with DECC. The designated area of the UKCS has been gradually refined by a series of Orders under section 1(7) of the *Continental Shelf Act 1964* (CSA 1964) following the conclusion of boundary agreements with neighbouring states, such as Norway, Denmark, and the Netherlands.

Under the CSA 1964, once an Order has been made designating an area as UKCS it cannot be revoked.²³² In order to improve energy security for the UK the Government would like more flexibility to designate and de-designate areas of the UKCS to enable "better management of resources, including hydrocarbon resources."²³³

Specifically, the Government would like this new power to allow it to swap designations of two areas with Ireland that currently form part of the Irish Continental Shelf. These areas (shown on a map on the [DECC website](#)), are agreed to be areas of the Irish Continental Shelf, but as they are more than 200 nautical miles from Irish baselines, cannot form part of the Irish Exclusive Economic Zone (EEZ). This limits what Ireland can do to develop these areas.

An EEZ is defined by part V of the 1982 UN Convention on the Law of the Sea (UNCLS). Under Article 57 of the UNCLS the EEZ shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Under Article 56, the EEZ is an area under which the country in question has certain rights:

- a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for

²³¹ HL Deb 2 March 2011 c1162-3

²³² Department of Energy and Climate Change website, [Energy Bill: UK Continental Shelf](#) [on 4 May 2011]

²³³ Department of Energy and Climate Change website, [Energy Bill: UK Continental Shelf](#) [on 4 May 2011]

the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

- (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
- (c) other rights and duties provided for in this Convention.

A memorandum from DECC explains that as part of a comprehensive agreement with Ireland about maritime zones, the countries would like to transfer these two areas of Irish Continental Shelf to the UK. In return the UK would then transfer two areas, as yet unspecified, of the same dimension to Ireland. This would require the UK to de-designate two areas of its Continental Shelf, which the current law does not allow.²³⁴

The Bill

In order to allow the de-designation of areas under the CSA 1964, **Clause 100** of the Bill would enable Orders made under section 1(7) of the CSA 1964 to be revoked, amended and re-enacted.

4 Low carbon generation

4.1 Offshore electricity

The provisions in the Bill about the Offshore Transmission Regime implement part of the Coalition Programme: “We will deliver an offshore electricity grid in order to support the development of a new generation of offshore wind.”²³⁵

DECC and the operational arm of the regulator, Ofgem, have developed a new regime to enable electricity generated by offshore wind farms to be fed into the GB onshore grid. Under the regime, Ofgem runs competitive tenders for Offshore Transmission Owners (OFTOs) to own and maintain (also design, finance and construct where necessary) transmission assets to connect offshore renewable generators to the onshore grid. To date, all offshore transmission assets have been built and operated by offshore wind generating station developers.

On 24 June 2009, the ‘Go-Active’ date, the framework for the new regime was established and Ofgem began the tendering process for OFTOs to take responsibility for the connections to nine current offshore wind farms. The regime is in two parts:

- the ‘transitional’ regime under which current generators will continue to build, or have already built, their own connections and these will be transferred to an OFTO chosen by Ofgem to maintain and operate. OFTOs buy the assets from generators, which then pay the OFTO an annual fee for 20 years;
- the ‘enduring’ regime for future projects. This may involve a generator or an OFTO building the connections.

²³⁴ Department of Energy and Climate Change website, [Energy Bill: UK Continental Shelf](#) [on 4 May 2011]

²³⁵ [The Coalition: our programme for government](#), p16

Details of consultations on these issues are online.²³⁶

Following developers' concerns, DECC and Ofgem consulted on the proposal to allow generators the choice of building their own connections and transferring them to an OFTO to operate (as in 'transitional' arrangements) or to appoint an OFTO to both build and operate the connections. After this, the decision was taken to implement the generator build option in the enduring regime.

The Bill

Under the *Energy Act 2004*, the SoS has powers to make modifications to codes, licences and agreements to begin work on this regime, for example, to allow the generator build option. These powers, however, expired on 18 December 2010, and amendments to sections 90 and 91 of the Act are required to extend the powers beyond then. **Clause 101 (1) and (2)** of the Bill contain proposals that would extend the powers for eighteen months to enable the Secretary of State to finalise the implementation of the licensing regime for the construction and operation of offshore transmission assets.

Clause 101 (3) of the Bill contains provisions that would amend Schedule 2A of the *Electricity Act 1989* to extend the powers of Ofgem to make property transfer schemes (PTSs). The PTS would allow the timely transfer of assets from a generator to a successful bidder if they cannot agree between themselves. Currently, the scheme expires in 2013, extendable to 2016. The provisions in the Bill would extend this to 2025 to allow effective transfer of assets under the new regime.

DECC and Ofgem have decided to carry out further consultations, probably in 2011, to decide whether, and if so, what additional measures will be required to deliver coordinated networks through the offshore transmission regime.

Further information about the current electricity network and its future development are online at the DECC website.²³⁷

During Committee in the Lords, Lord Whitty moved an amendment to prevent the Secretary of State from consenting to an oil or gas development in an area where there is an existing lease/licence or agreement for an offshore renewables project unless the current beneficiary agrees. At present the law gives the S of S the power to terminate offshore renewable leases etc early, which implies primacy for oil and gas developments. This is a considerable disincentive for renewable operators who wish to invest offshore and would lead to few offshore renewable installations. He acknowledged that the Government is aware of the issue and DECC are currently attempting to resolve it, as they have been for at least eight years. He withdrew the amendment, but said he "would be grateful if in a month or two we could complete that process." The amendment was withdrawn.²³⁸

At Third Reading in the Lords, Lord Whitty proposed a further amendment on this issue which included compensation to be paid to renewable companies when their leases etc were terminated in favour of an oil or gas company. The amendment was withdrawn, but Lord Whitty hoped the issue would be discussed during the passage of the Bill through the Commons.²³⁹

²³⁶ Department of Energy and Climate Change website, [Developing our future electricity network](#) [on 4 May 2011]

²³⁷ Department of Energy and Climate Change website, [Developing our future electricity network](#) [on 4 May 2011]

²³⁸ HL Deb 8 February 2011 GC44-53

²³⁹ HL Deb 15 March 2011 GC154-159

4.2 Decommissioning nuclear sites

The Coalition energy policy focuses on new generation which will be low carbon, including renewables, new nuclear and coal-fired generation with carbon capture and storage, coupled with improved energy efficiency measures.

The Conservative Party agreed with and supported the previous Labour administration's policy and development of new nuclear build, while the Liberal Democrats would prefer new generation to be renewable rather than nuclear. The Coalition agreed that it will take forward the previous Labour administration's policy and development of new nuclear build which it has stressed will be subject to normal planning arrangements for large infrastructure projects and without public subsidy. A Liberal Democrat spokesperson will speak in Parliament about new nuclear issues but its Members will not vote on them so that an issue of confidence will not arise. This gives the Coalition the certainty it needs to develop new nuclear build.

Currently, provisions in the *Energy Act 2008* (Part 3, Chapter 1) ensure that the private sector operators which will build new nuclear stations are liable for the full cost of decommissioning and their full share of nuclear waste and disposal costs. Thus, the taxpayer will not be liable for these costs associated with new build.

The *Energy Act 2008* requires that a new nuclear power station must have a Funded Decommissioning Programme (FDP) approved by the Secretary of State (SoS) in place before it operates. Failure is a criminal offence. The FDP will set out estimated costs of decommissioning, nuclear waste management and disposal, and also the financial arrangements made to ensure that over the lifetime operation of the station sufficient funds accrue to cover all the liabilities. The operator will report annually on the FDP, and it will be reviewed every five years. Under the Act, the SoS has power to propose modifications to the FDP, and at any time the operator can propose a modification to the SoS. All decisions about proposed modifications are taken by the SoS.

The Bill

The Bill contains measures that would amend the powers to provide an appropriate balance between the SoS's powers to protect the taxpayer, and the operator's certainty about the investment necessary. The aim of clarifying the liabilities is to increase the likelihood that operators will make the very significant investments which are of the order of several £bn to build a new nuclear station.

Clause 102 in the Bill includes provisions that would enable the SoS to enter into an agreement with an operator setting out how he will, or will not, exercise powers under section 48 of the 2008 Act ("Modification of a Programme") to propose a modification to a FDP. Such an agreement would be amended by mutual agreement between the SoS and the other party. It would be entered into even though it limits the discretion of the SoS.

Further information about nuclear power policy is online at the DECC website.²⁴⁰

²⁴⁰ Department of Energy and Climate Change website, [Nuclear](#) [on 4 May 2011]

5 Coal Authority

The Coal Authority was established by the *Coal Industry Act 1994* to take over responsibility for the non-operational assets and certain administrative functions of the British Coal Corporation, following privatisation in Great Britain.²⁴¹ It is a Non-Departmental Public Body that is sponsored by DECC. Its objectives include:

- dealing with emergencies, such as subsidence, arising from old coal mine workings;
- cleaning polluted mine water;
- providing information and advice about past coal mining; and,
- licensing private sector coal mining operations.²⁴²

The Government now believes that the Coal Authority has the experience and expertise that would be of help outside of the coal mining industry, specifically in relation to subsidence and treatment of contaminated water. It wants the Coal Authority to be able to offer advice and services to deal with the long term subsidence problems of non-coal mining sites for a commercial fee. The impact assessment to accompany the Bill estimates that the Coal Authority could undertake an additional £200,000 worth of work a year associated with its subsidence expertise.²⁴³ The additional powers are intended to extend the scope of the commercial services that could be offered by the Coal Authority. It would not extend or replace the Coal Authority's existing statutory functions.²⁴⁴

The Bill's impact assessment highlights that there could be a competition issue with this proposal. The Coal Authority, under its statutory powers, is the first organisation to investigate a site for subsidence and must make that site safe free of charge. The Authority is therefore well placed to offer its experience on further subsidence issues that may need to be resolved. It therefore could gain a monopoly on providing services on subsidence. The impact assessment suggests three possible measures that could be taken to mitigate any distortion to competition:

- One way of mitigating this may be to ensure that the statutory information/report is publically available within a short-term period and that other private players can act on that information as appropriate.
- There is also a competition risk that arises from the funding of the Coal Authority and the possibility of cross-subsidisation from other activities, thereby with the Coal Authority gaining an advantage over other players. To mitigate risk, it may be worth establishing separate cost accounting streams to reflect the different work carried out by the Coal Authority to ensure no cross subsidisation.
- It is planned for the ongoing monitoring to be undertaken through the statutory governance arrangements, which include bi-monthly meetings between DECC and

²⁴¹ Department of Energy and Climate Change, Energy Bill impact assessment: [Supplementary powers for the Coal Authority to sell its expertise on subsidence and treatment of contaminated water regarding non-mining situations](#), 1 December 2010, p5

²⁴² Department of Energy and Climate Change, Energy Bill impact assessment: [Supplementary powers for the Coal Authority to sell its expertise on subsidence and treatment of contaminated water regarding non-mining situations](#), 1 December 2010, p5

²⁴³ Department of Energy and Climate Change, Energy Bill impact assessment: [Supplementary powers for the Coal Authority to sell its expertise on subsidence and treatment of contaminated water regarding non-mining situations](#), 1 December 2010, p8

²⁴⁴ Energy Bill 2010-11, Explanatory Notes, Bill 167-EN, p50

Coal Authority officials. The industry market structure could be closely monitored as the policy becomes embedded and that if the above competition issues arise, there is a specific response as to how that issue will be mitigated. DECC could play a role in establishing the rules that will be placed on the Coal Authority to ensure that they compete on a level playing field with other service providers and do not crowd out the private market.²⁴⁵

In the impact assessment the Government suggests that the Coal Authority's grant-in-aid (its primary source of funding which amounted to £36.5 million in 2009/10), could be reduced by the amount of private income it generates:

There could be implications arising from the additional commercial revenues obtained by the Coal Authority. The Coal Authority could expect to have its public funded budget cut by Government by the amount of the additional private income. This would be a transfer between the public and private sectors, so there would not be any net costs arising from this proposal.²⁴⁶

The Bill

Clauses 103 and 104 of the Bill would amend the *Coal Industry Act 1994* to give the Coal Authority power to take action in respect of subsidence which is not caused by coal mining activities and water discharges not from coal mines in England, Wales and Scotland.

6 Miscellaneous and general

6.1 Repeal of Home Energy Conservation Act 1995

The *Home Energy Conservation Act 1995* (HECA) was enacted early in the development of energy conservation legislation by Baroness Maddox (then an MP) as a Commons' Private Member's Bill:

HECA requires all UK local authorities with housing responsibilities to prepare an energy conservation report that identifies practical and cost-effective measures likely to result in significant improvements in the energy efficiency of all residential accommodation in their area and to report on progress in implementing the measures. A "significant improvement" was defined [in England] as one that produced a 30 per cent improvement in energy efficiency.²⁴⁷

Substantial progress was expected in 10-15 years from 1 April 1996.

The HECA has since been superseded by a wide range of policy initiatives which render it redundant. It was reviewed starting in autumn 2006, and in late 2007 the then Government initiated a [public consultation on the review](#). The repeal of the HECA was proposed and supported by two-thirds of the respondents to the consultation. The Coalition Programme is committed to reducing regulatory burdens. Repeal of the HECA is also in line with the Coalition's localism policy and removes unnecessary legislation. It is supported by Baroness Maddox.

²⁴⁵ Department of Energy and Climate Change, Energy Bill impact assessment: [Supplementary powers for the Coal Authority to sell its expertise on subsidence and treatment of contaminated water regarding non-mining situations](#), 1 December 2010, p7

²⁴⁶ Department of Energy and Climate Change, Energy Bill impact assessment: [Supplementary powers for the Coal Authority to sell its expertise on subsidence and treatment of contaminated water regarding non-mining situations](#), 1 December 2010, p6

²⁴⁷ HL Deb 22 December 2010 c1117

The Bill

To simplify regulatory controls, **Clause 105** of the Bill would repeal the HECA in England, Wales and Scotland, and section 217 of the *Housing Act 2004*. **Schedule 3** would make consequential amendments.

7 Comments on the Bill

7.1 Political parties

Labour Party

The Labour Party said that it supported the broad aims of the Bill but was concerned about whether the Bill could actually achieve these aims, due to a lack of detail in the proposals:

Labour supports the aims of the Energy Bill in improving the energy efficiency of homes and reducing household emissions. We agree with the principle of making it easier for people to reduce their energy consumption whilst ensuring they are able to heat their homes to a sufficient standard.

Labour shadow ministers have raised concerns about the adequacy of the Energy Bill in achieving these aims. Labour wants to see the policy clearly linked to carbon emission targets under the Climate Change Act and fuel poverty targets under the Warm Homes and Energy Conservation Act. There are also concerns about whether the Green Deal package is attractive enough to consumers to reach the desired number of households.

Labour shadow ministers have argued for greater consumer protections in the bill and want to see more detail on how the proposals will promote consumer confidence. They have also raised concerns about the timescale for implementing measures to address energy inefficiency in the private-rented sector and would like to see a greater focus on this area. Shadow ministers are also concerned about how adequately the proposed Energy Company Obligation will address fuel poverty.

Overall there is concern over the lack of detail in the proposals much of which will be introduced through secondary legislation.²⁴⁸

Green Party

The Green Party welcomed the energy efficiency measures in the Bill, but said that there needed to be more research into renewable energy technologies:

The Green Party are, as you might expect, in favour of a twin track approach of replacing existing energy generation with renewable technologies and reducing consumption - mainly through energy efficiency measures. The central energy efficiency measure is a large programme of home insulation which would reduce energy consumption, improve the quality of life for millions as well as reducing their bills. This would also create jobs which are sorely needed in times like these.

It would be irresponsible to pursue new coal while we are trying to cut greenhouse emissions and nuclear power plants take two decades to go into operation which makes them unsuitable for the urgent task ahead of us on top of all nuclear's other issues. Research into wind, energy efficiency, micro-generation, and new technologies need a deep commitment to ensure they provide a cost efficient and reliable source of

²⁴⁸ Correspondence with House of Commons Library, 29 March 2011

energy to ensure the security of our energy supply and allow the UK to become a leading exporter of these technologies as part of its contribution to this global crisis.²⁴⁹

7.2 Other organisations

Demand a Better Bill Campaign

The Demand a Better Bill Campaign was launched by the Stop Climate Chaos Coalition. It is supported by a range of environmental NGOs such as WWF, the RSPB, Friends of the Earth and Greenpeace, trade associations such as the Federation of Master Builders and the Association for the Conservation of Energy, and businesses, including B&Q and Asda. The Campaign believes that the Bill should go further in promoting energy efficiency:

Our organisations strongly support ambitious action to improve the energy efficiency of people's homes. We welcome the Government's focus on energy efficiency in the Energy Bill, but at present we are not satisfied that the policies proposed will deliver the action needed. We urge MPs from all parties to support the Warm Homes Amendment to the Energy Bill.²⁵⁰

The Campaign would like to see a "Warm Homes Amendment" made to the Bill so that the energy efficiency savings aimed to be made by the Green Deal are quantified up front and would fit within targets set by the *Climate Change Act 2008*:

The Government has not outlined the actual ambition for its flagship Green Deal policy as it wants to leave it predominantly up to the market to decide on what is delivered. Consequently, it is unclear what energy savings the Government intends to deliver through its programme. There is currently no plan outlining the expected uptake rates of the Green Deal or the depth of carbon savings to be achieved in each home to make them fit for a low-carbon 2050. There is even less detail about the Energy Company Obligation and its role in supporting the energy efficiency programme.

The Warm Homes Amendment introduces to the Energy Bill provisions to ensure that Government's programme on energy efficiency, including the Green Deal, fit within an overarching strategy for energy saving that is sufficient to meet the ambition of the Climate Change Act – specifically an 80% reduction in emissions by 2050, and the intended 2020 target of a 42% reduction. It also reinforces the need for energy efficiency policies to contribute to eradicating fuel poverty by 2016.²⁵¹

RenewableUK

RenewableUK, the trade and professional body for the UK wind and marine renewables industries, said that the Bill was an opportunity missed to resolve issues surrounding long term certainty for offshore wind projects:

RenewableUK see the current Energy Bill before Parliament as the ideal opportunity to resolve a longstanding issue that has prevented the offshore wind industry from competing on a level playing field with the oil and gas industry in areas of potential spatial overlap. A clause currently exists in Crown Estate leases for offshore wind projects which allows a switch from offshore wind to oil and gas should new oil or gas reserves be found with no compensation payable to the wind developer. The existence of this clause has caused and continues to cause major problems for projects seeking finance for offshore wind developments. This comes at a time when both industries are

²⁴⁹ Correspondence with House of Commons Library, 30 March 2011

²⁵⁰ Demand a Better Bill Campaign, [Joint statement on the need for ambition on energy efficiency in the Energy Bill](#), 31 March 2011

²⁵¹ Demand a Better Bill Campaign, [Joint statement on the need for ambition on energy efficiency in the Energy Bill](#), 31 March 2011

seeking to develop areas of the seabed that are close to one another or may overlap. By creating uncertainty that a project may not continue in the future and without any clear course for recompense, banks and board rooms are viewing projects as a higher risk than is necessary. RenewableUK wants to ensure that this matter is resolved during the course of the Energy Bill by creating a mechanism for when the clause would be used, how it would be used and how compensation would be paid. Government must take action to address an issue that is within its power to resolve and reduce risk and cost at a time when the offshore wind industry in the UK is rapidly expanding.²⁵²

Consumer Focus

The consumer group, Consumer Focus, welcomed the Green Deal measures in the Bill, but expressed concern about consumer protection measures, particularly in relation to when a customer may be disconnected for not making Green Deal repayments. It was also concerned that the Bill may not improve energy efficiency in homes in the private rented sector:

Overall, Consumer Focus welcomes the Energy Bill's potential to enable the retrofitting of energy efficiency measures through the Green Deal; to introduce a more transparent energy company obligation to help consumers most in need; to provide consumers with better information about tariffs; and to extend powers to direct the rollout of smart meters.

But we have concerns. The Energy Bill does not set out adequately how Green Deal consumers will be protected. Consumers risk disconnection for non-payment of the Green Deal charge, but concurrent protections are needed to ensure consumers do not have to pay when Green Deal services go wrong, or when they are in financial difficulty. The Bill introduces the new energy company obligation to drive carbon-saving and heating measures. We are unclear how this enables a transparent and competitive energy services marketplace and to what extent it will help consumers out of fuel poverty. We think a publicly-funded scheme is best placed to deliver fuel poverty targets. Furthermore, the Energy Bill needs to enable data-sharing to cut the costs of getting help to vulnerable consumers.

The Green Deal as set out in the Energy Bill will enable rather than incentivise action. Information may incentivise some consumers, by at least prompting them to look at what options are available. Two forms of information-giving are considered in the Bill: energy bills and smart meters. In principle, we support the Government's plans to provide customers with details about the lowest cost tariff on energy bills. However, households' expectations must not be unduly raised.

Regarding smart meters, Consumer Focus is concerned that the potential benefits to low income and vulnerable consumers, especially prepayment meter customers, will not be realised. Protections are urgently needed, as we expect that more than 2 million meters will be in people's homes by 2012. Again, these protections need to join up with other developments in the energy services sector, and must include an Extra Help Scheme for low income and vulnerable consumers. However, information will not drive significant uptake and other incentives will be necessary, particularly to ensure the value of energy efficiency and the Green Deal is recognised by the property market.

Finally, minimum standards are now urgently needed in the private rental sector to prevent the rental of dangerously cold homes. The Green Deal removes the financial

²⁵² Correspondence with House of Commons Library 29 March 2011

burden for landlords, as it is the residents who pay for work, making inaction inexcusable.²⁵³

²⁵³ Correspondence with House of Commons Library, 30 March 2011