



# ***Energy Bill: Committee Stage Report***

RESEARCH PAPER 13/19 12 March 2013

This is a report on the House of Commons Committee Stage of the *Energy Bill 2012-13*. It follows Library Research Paper 12/79 prepared for Commons Second Reading. There is as yet no date set for Report Stage and Third Reading.

Some substantive Government amendments were made to the Bill in Committee. New clauses added the power to set, after 2016, a 'decarbonisation range' for the electricity sector in secondary legislation. Further new clauses were introduced on providing cheapest tariffs, with a 'sunset clause'. Several consultations associated with the Bill have closed but the results are not yet known, and others are on-going. This leaves open the possibility of further Government amendments to the Bill, which is a carry-over Bill, later.

All Government amendments so far have been accepted, but no non-Government amendments or new clauses have been adopted. Those rejected included; setting a decarbonisation target for 2030 sooner, ensuring greater transparency for setting the 'strike price' paid for low carbon generation and around early investment contracts, stronger requirements on offering cheapest tariffs, providing for a 'strategic reserve' as well as a 'capacity market' to provide extra electricity capacity, extending the small scale feed-in-tariff to larger community schemes, and for energy efficiency incentive Regulations.

Patsy Richards

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## Research Paper 13/19

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## Contents

	<b>Summary</b>	<b>1</b>
<b>1</b>	<b>Introduction</b>	<b>4</b>
<b>2</b>	<b>Second Reading Debate</b>	<b>5</b>
	Summary of Government assurances given at Second Reading	9
<b>3</b>	<b>Committee Stage</b>	<b>9</b>
3.1	Composition of the Committee	9
3.2	Summary of evidence from Government witnesses on EMR	9
	Summary of Government assurances given in oral evidence	10
3.3	Evidence on the overall aims of EMR and investor confidence	10
<b>4</b>	<b>Consideration of Clauses: EMR measures</b>	<b>11</b>
4.1	Clause 1 Aims of EMR	11
	Reporting requirements	11
	Summary of Government assurances on reporting on EMR aims	12
4.2	Clause 2 The CfD Regulations	13
	The transition from the Renewables Obligation to CfDs	13
	The level of detail left to the CfD regulations	13
4.3	Clause 3 The counterparty	14
4.4	Clause 5 Supplier obligation, and posting collateral	15
4.5	Clause 6 Direction to offer to contract	16
	The promotion of community energy schemes	16
	Government assurances on community energy schemes and energy efficiency	17
	Setting the strike price	17
	Summary of Government assurances on setting strike prices	18
4.6	Clause 7 Payments to electricity suppliers	18
	Guaranteeing payments to generators	18
	Opposition amendment on refunding CfD over-payments to consumers	20
	Government assurances on payments under CfDs	21
4.7	Clause 13 Allocation of CfDs	22
	Locational charging?	22
	Targets for technologies	22
4.8	Clause 14 Consultation	22

4.9	Clause 17 Capacity market	23
	Proposed New Clause 2 Strategic Reserve	23
4.10	Energy efficiency, and demand reduction	24
	Government assurances on demand reduction and energy efficiency	26
	Clause 19 Capacity auctions; timings	26
	Clause 20 Settlement body	26
	Government assurances on the capacity market	27
4.11	National Grid and conflicts of interest	27
	Clause 29 Modifications of licences; business separation	27
	Government assurances on possible conflicts of interest for National Grid	28
4.12	Investment contracts or ‘early CfDs’	28
	Schedule 3 Investment contracts and transparency	28
4.13	Clause 34 Market liquidity, and routes to market	30
	Government assurances on improving liquidity	32
	Helping independent renewable generators	32
	Government assurances on routes to market for independent generators	33
4.14	Clause 38 Emissions performance standard	33
	The special case of carbon capture and storage (CCS)	34
<b>5</b>	<b>Consideration of Clauses; other measures</b>	<b>35</b>
5.1	The Office for Nuclear Regulation (ONR)	35
5.2	The Government pipeline and storage system	36
5.3	The role of Ofgem	37
	Strategy and Policy Statement	37
	Schedule 14 Consumer redress orders	37
<b>6</b>	<b>New Clauses on ‘cheapest tariffs’</b>	<b>38</b>
	Government amendments made during Committee Stage	39
	Opposition New Clause 6 on cheapest tariffs	40
	Government assurances on cheapest tariffs	42
<b>7</b>	<b>A decarbonisation target?</b>	<b>42</b>
	Opposition amendments on a decarbonisation target	43
	Government New Clauses on a ‘decarbonisation target range’	45
<b>8</b>	<b>Other New Clauses not previously debated</b>	<b>46</b>

	Government New Clause 12 Fees for services for energy resilience purposes	46
	New Clause 1 Payment of winter fuel allowance to pensioners off the gas grid	46
	New Clause 7 Extension or operation of renewable energy in Wales	46
<b>9</b>	<b>The Bill sent for Report</b>	<b>47</b>
	Amendment on decarbonisation target tabled for Report stage	47
	<b>Appendix 1 Membership of the Committee</b>	<b>48</b>
	<b>Appendix 2 Sitings and Evidence</b>	<b>49</b>
	<b>Appendix 3 Abbreviations</b>	<b>53</b>



## Summary

This paper summarises the Second Reading Debate and Committee Stage of the *Energy Bill* 2012-13. The Bill seeks to implement ‘electricity market reform’ (EMR). A draft Bill underwent pre-legislative scrutiny by the Energy and Climate Change Select Committee. The Bill will introduce ‘contracts for difference’ (CfDs), a new support mechanism replacing the Renewables Obligation but encompassing all forms of low carbon generation, including nuclear.

At Second Reading the Opposition indicated its support for many of the Bill’s provisions. These included the sale of the Government Pipeline and Storage System (GPSS) and the placing of the Office of Nuclear Regulation (ONR) on a statutory footing. Significantly, the Opposition also stated its support for the aims of EMR, the main thrust of this Bill.

However, the Opposition was concerned that the Bill’s provisions would not *deliver* the aims of EMR. A reasoned amendment in the name of the Leader of the Opposition declined to give the Bill a Second Reading in the absence of a clear target to decarbonise the power sector by 2030, or direct measures on transparency, competition and liquidity (in the market), or ensuring that the market was properly regulated and worked for consumers.

Other major areas of concern included the Bill’s focus on generation rather than on energy efficiency or demand-side measures. Many Members were also not convinced it did enough to help independent generators or suppliers compete with the large energy companies.

On a decarbonisation target, the Government had already promised to introduce amendments during Committee Stage taking a power to set a ‘decarbonisation range’ in secondary legislation, although not until after 2016. Many Members spoke in favour of setting a decarbonisation target for the electricity sector now. However, the Opposition’s amendment was defeated on division and the Bill was given a Second Reading.

Other major Government amendments made during Committee Stage (and, like decarbonisation measures, promised in advance) included a suite of new clauses on cheapest tariffs. These did not go as far as the Opposition wanted, however, and an Opposition New Clause seeking to extend the provisions was rejected.

All of the Government’s amendments to the Bill during Committee Stage were accepted, some following a division.

No non-Government amendments or new clauses were adopted.

The following is not a definitive list but seeks to include areas of interest. The [Public Bill Committee Proceedings](#) record what happened to each amendment and new clause.<sup>1</sup>

Government amendments made included:

- New Clauses 13-17 on cheapest tariffs, including a sunset clause
- New Clauses 8-11 allowing for a decarbonisation range to be set after 2016 in secondary legislation (New Clause 8 was agreed to without a division but the Committee divided on New Clauses 9-11 which were then agreed)
- Amendment of Clause 5 on the supplier obligation and payments under CfDs

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<sup>1</sup> [Public Bill Committee Proceedings 7 February 2013 Energy Bill \(Fifteenth and Sixteenth sittings\)](#)

- Extending the provisions on possible conflicts of interest and separation of National Grid's business functions to more 'pillars' of EMR
- New Clause 12 on fees for recovery of costs related to preserving energy resilience

The unsuccessful Opposition amendments and new clauses included;

- Seeking to establish that there could be a single counterparty only (32-36, and others, withdrawn following reassurances)
- Seeking to preserve the 'certificate purchase period' between the end of the RO and the start of CfDs at three years (amendment 70 negated on division)
- Regulations to establish community energy schemes (42, withdrawn)
- Extending the small scale Feed-in-Tariff to 10 MW (43, withdrawn)
- Greater transparency around the setting of strike prices and reference prices (amendments 44-48 withdrawn)
- Requiring a panel of experts to advise on, inter alia, setting the strike price and for a consumer representative on this (57 and 67, withdrawn)
- Returning any overpayments under CfDs to consumers (amendments 49 and 68 defeated on division, others withdrawn)
- Requiring more consultation with the devolved administrations (various, withdrawn)
- Probing the nature of the capacity market settlement body (62, withdrawn)
- Stronger business separation of National Grid as System Operator and delivery body for EMR (76, 77, withdrawn)
- A panel of experts to advise on strike prices agreed under investment contracts or early CfDs, such as the EDF negotiations on new nuclear (78, withdrawn)
- More information to be published on investment contracts' content and for less to be redacted (79 and 80 not pressed. 81, which sought to remove variations of contracts from any exemption from publication and 83, requiring an annual report on the impact on bills, both negated on division)
- Extending the consumer redress (compensation) powers to Ofgem's current on-going investigations and to increase the cap on compensation (126, withdrawn)
- Allowing for a 'successor Authority' to Ofgem under the Bill (72, negated on division)
- Opposition New Clause 6 on cheapest tariffs, relating to the off-grid market and to over-75s (negated on division)

Amendments tabled by other Members of the Committee included:

- To extend the Renewables Obligation (10, negated on division)
- To guarantee payments for generators (i.e. to 'underwrite' the counterparty for CfDs) (27, withdrawn)

- For allocation of CfDs to take into account location of generation (to promote connection of remote renewables) (12, withdrawn)
- Greater consultation with the devolved administrations (withdrawn)
- New Clause 2 to allow for a strategic reserve to provide capacity as well as a capacity market, the Government's preferred option (not moved)
- Adding 'permanent demand reduction' alongside generation to the capacity market (73 and 74, withdrawn)
- New Clause 3 requiring energy efficiency incentive Regulations (not moved)
- Seeking to ensure that no information that might have liabilities for the public balance sheet or consumers could be redacted from investment contracts (75, defeated on division)
- New Clause 4 on market access for independent renewable generators, establishing a 'green power auction market' (negated on division)
- Seeking to tighten the emissions performance standard after 2020 and include the EPS in the five yearly EMR reviews (122, withdrawn)
- Seeking to ensure the sustainable use of biomass (132, withdrawn)
- New Clause 5 seeking a delivery plan for meeting a 2030 decarbonisation target and amendments setting this as one of the strategic priorities in the Strategy and Policy Statement (not called, and related amendment 119 negated on division)
- New Clause 1 seeking to bring forward winter fuel payments for off-grid consumers (withdrawn)
- New Clause 7 seeking to give Welsh Ministers greater power to determine renewable consents (withdrawn)

## 1 Introduction

The [Energy Bill \[Bill 100 of 2012-13\]](#) was introduced into the House of Commons on 29 November 2012. Its [Second Reading](#) Debate took place on 19 December 2012.<sup>2</sup> This paper accompanies the House of Commons [Library Research Paper 12/79](#) on the Bill prepared for Second Reading, and which includes much more detail on the background.<sup>3</sup>

A draft Bill underwent pre-legislative scrutiny by the Energy and Climate Change Select Committee, who reported in July 2012. The Committee's main concerns were about ensuring urgency and certainty of reform to attract investment to the UK, and also about the Bill's focus on generation rather than on energy efficiency or demand reduction.<sup>4</sup>

The Bill's [Explanatory Notes](#) and several [Impact Assessments](#) are available on the Parliament website.<sup>5</sup>

During the passage of the Bill, the DECC website was migrated to the new [www.gov.uk](#) website, with some content going to the National Archives. The Bill's accompanying documents can now be found on the [gov.uk Energy Bill web pages](#).<sup>6</sup>

Since the introduction of the Bill into the House of Commons on 29 November 2012:

- An [updated Impact Assessment](#) for EMR was published on 14 January 2013 (the day before the Bill's Committee Stage started)<sup>7</sup>
- A [panel of experts for EMR](#) and three [expert groups](#), on the capacity market, contracts for difference and the institutional framework, have been established

A number of consultations or calls for evidence have closed, but outcomes are still awaited:

- National Grid's [Call for evidence on strike prices](#) was [extended](#) to 7 January 2013 to let respondents consider the Bill as introduced
- DECC's [Consultation on Electricity Demand Reduction](#) closed on 31 January 2013
- DECC's [Call for evidence on a supplier obligation](#) closed on 15 January 2013
- Ofgem's [retail market review](#) (RMR) consultation (on simplifying energy tariffs and domestic and business bills) closed on 21 December 2012
- Ofgem's consultation on market liquidity, [Wholesale power market liquidity: consultation on a 'Secure and Promote' licence condition](#) closed on 15 February 2013
- The Government has said that DECC is currently scoping a Community Energy Strategy and will publish a call for evidence 'in the spring'.<sup>8</sup>

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<sup>2</sup> [HC Deb 19 December 2012 c897](#)

<sup>3</sup> 12 December 2012

<sup>4</sup> HC 275-I Energy and Climate Change - First Report of Session 2012-13 Volume I [Draft Energy Bill: Pre-legislative Scrutiny](#) 23 July 2012 and [Government Response to the House of Commons Energy and Climate Change Select Committee Report into the draft Energy Bill](#) 29 November 2012 Cm 8504

<sup>5</sup> [Energy Bill Explanatory Notes Bill 100-EN](#) and Parliament's [Energy Bill 2012-13 web page](#)

<sup>6</sup> <https://www.gov.uk/government/organisations/departments-of-energy-climate-change/series/energy-bill>

<sup>7</sup> DECC, [Electricity Market Reform – ensuring electricity security of supply and promoting investment in low-carbon generation \[January 2013 update\] Impact Assessment](#) IA DECC0125 14 January 2013

<sup>8</sup> [HC Deb 11 February 2013 c456W](#)

Policy responses to some of these, and perhaps further Government amendments, can therefore be expected as the Bill proceeds. A 'draft delivery plan' for EMR is also expected to be published in summer 2013.

The urgency for reform has not reduced. Possible shortfalls in capacity and delays in new generating plant coming on stream have most recently been highlighted in a keynote speech by Ofgem's Chief Executive Alastair Buchanan.<sup>9</sup> He reiterated the findings of some of the key documents which provide a useful backdrop to this debate. These include an October 2012 *Electricity Capacity Assessment* by Ofgem<sup>10</sup> and the Government's *Energy Security Strategy*<sup>11</sup> and *Statutory Security of Supply Report*<sup>12</sup> published alongside the *Energy Bill*.

## 2 Second Reading Debate

The *Energy Bill* had its Second Reading on 19 December 2012.<sup>13</sup>

The Secretary of State for Energy and Climate Change, Edward Davey, said that as well as delivering clean, affordable and secure energy, this was a Bill for growth and infrastructure investment. He said that the Bill has been "long, long in the consultation" and that he thought the Bill's aims were widely shared across the House.<sup>14</sup>

The Secretary of State said he was disappointed that a reasoned amendment had been tabled in the name of the Leader of the Opposition, declining to give the Bill a Second Reading (see below). He asked whether the Opposition would support the Bill's Second Reading if the amendment, which had been selected for debate, was defeated.<sup>15</sup>

The Secretary of State went on to outline the main components of electricity market reform (EMR) provided for by the Bill, including Contracts for Difference (CfDs);

Some have argued that CFDs are somehow complex, but I disagree. Generators will receive the market price for their electricity plus a top-up to an agreed level known as the strike price. When the market price is above the strike price, the generator will pay back the difference, ensuring value for money and greater price stability for consumers.<sup>16,17</sup>

A further element was a capacity market. Given that both new nuclear and new renewables might take time to come on-line, he said that this would provide an insurance policy against the possibility of future black-outs, for example, during periods of low wind and high demand. This would all be underpinned by a transparent institutional framework; the Bill included powers to address any conflicts of interest that National Grid incurred for example. To further investment confidence, the Bill also allowed for early-CfDs or investment contracts to have effect before the CfD regime.

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<sup>9</sup> Ofgem, 18 February 2013 [Will GB's lights stay on and will the gas keep flowing: a look at the next decade?](#) and *Financial Times* 20 February 2013 Ofgem chief warns of rising fuel bills p.43

<sup>10</sup> Ofgem, 5 October 2012

<sup>11</sup> DECC, Cm 8466 29 November 2012

<sup>12</sup> DECC/Ofgem 29 November 2012

<sup>13</sup> [HC Deb 19 December 2012 c897](#)

<sup>14</sup> *Ibid.* c897 and c899

<sup>15</sup> *Ibid.* c900

<sup>16</sup> c902

<sup>17</sup> The strike price is the price that generators are guaranteed for their energy, even if the market or 'reference' price fluctuates in line with wholesale prices and falls below this. If the reference price rises above the strike price, the generator pays back the difference. The strike price will be set administratively at first, before competition develops and it can be set in, eventually, technology-neutral auctions. See [House of Commons Library Research Paper 12/79 on the Energy Bill](#) for more background.

The Secretary of State said he was ‘particularly concerned’ about the lack of liquidity in the wholesale market, and especially in the forward markets. The Bill provided for intervention if needed and he refuted the Opposition’s assertion that the Bill did not address liquidity and competition.<sup>18</sup> He went on to address the Bill’s other provisions; on an emissions performance standard (EPS), the ‘reform of Ofgem’ through a statutory strategy and policy statement (SPS), and new enforcement powers for Ofgem to offer financial redress to consumers.

Caroline Flint, Shadow Energy Secretary, moved an amendment supporting the aims of EMR but declining to give the Bill a Second Reading because it:

fails to include a clear target to decarbonise the power sector by 2030, and because it fails to include direct measures to increase transparency, competition or liquidity or ensure that the energy market is properly regulated and works in the interests of consumers.<sup>19</sup>

Caroline Flint said that the Opposition had no disagreement with the broad objectives of the Bill. It also supported placing the Office for Nuclear Regulation (ONR) on a statutory footing, work begun under the previous Government. It supported the sale of the Government Pipeline and Storage System (GPSS), provided this was consistent with national security and safeguarding the resilience of fuel supply. The (technical) measures on offshore transmission systems were also deemed ‘sensible’.

However, the Opposition remained to be convinced as to whether the Bill would meet its objectives as a whole. The success of CfDs depended on the details; their allocation between technologies, their length, and the process for setting the reference (market) and strike prices. Again, a capacity market could work, but much depended on the details; the format of the auction, how the amount of capacity needed would be decided, the balance of supply and demand reduction measures and funding for capacity payments.

Another mechanism that the Opposition took issue with was the EPS being set at a level that allowed unabated gas. Building as many as 40 new gas-fired power stations would ‘blow a hole through our carbon budgets’ and leave consumers open to rising bills, while a second dash for gas also had energy security implications. The Bill needed a target to decarbonise the power sector by 2030. Caroline Flint said that some of the Government’s reasons for not doing this, such as waiting until 2016 to set a target at the time of the fifth carbon budget, were a smokescreen.<sup>20</sup>

On market liquidity, Caroline Flint proposed a return to an open marketplace or pool, which would be more successful than in the past, given the presence of many more generators now. This would end bilateral non-transparent deals and increase competition. It would also increase liquidity through in effect banning self-supply (of a supplier by its own generation arm). On regulation to protect customers, Caroline Flint reiterated the Opposition’s intention to abolish Ofgem, which had failed to use its powers to enforce its own rules, and to create “A guard dog for a regulator, not a poodle”.<sup>21</sup>

Tim Yeo, the Chair of the Energy and Climate Change (ECC) Select Committee which conducted a pre-legislative scrutiny of the draft Bill, spoke next. He welcomed the Government’s acceptance of some of the Committee’s recommendations. These included adding the aims of EMR to the face of the Bill and clarification of the counterparty status for

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<sup>18</sup> c904

<sup>19</sup> c906

<sup>20</sup> cc908-9

<sup>21</sup> c911

CfDs.<sup>22</sup> However, he felt that the Bill still required Government amendments, notably on energy efficiency, and not as an afterthought under pressure. Mr Yeo also said that a carbon-intensity target in legislation was supported by his Committee, the Committee on Climate Change (CCC), and a large number of companies. Delaying a decision on it led to uncertainty for investors.

Considering different fuels and technologies, Mr Yeo noted that Britain's energy policy could not be based on shale gas being a game changer as in the US, and carbon capture and storage (CCS) at economic prices could not be guaranteed. Low carbon technologies were therefore needed and DECC's 'Pathways to 2050' model showed how hard emissions reductions would be without new nuclear. Early clarity on strike prices and an early move to auctions for setting these was needed, as well as Government amendments on better incentives for demand-side and energy efficiency measures.

John Robertson, also a Member of the ECC Committee, said it would be hard to scrutinise the Bill effectively because the Government still planned amendments to it. This was despite the Committee's pre-legislative scrutiny (PLS) having been carried out in only five weeks to help the Government, around seven weeks shorter than any previous PLS.

Charles Hendry, who was Energy Minister when the draft Bill was introduced, said that the fundamental building block of energy policy was energy security, and at the heart of the Bill was investment. He said it was "Profoundly damaging to investors to have an absurd debate in which people can only be pro-renewables ... if they are anti-gas" and vice versa. He said that cross-party agreement was integral to delivering a long-term strategy. He advocated more gas storage, and said that while he would not vote for the Opposition's amendment, this did not mean there was not a significant amount of industry support for a decarbonisation target and long term clarity.<sup>23</sup>

Dr Alan Whitehead, another Member of the ECC Committee, called for real reform, possibly through the introduction of a pool system for the wholesale market, and also supported a decarbonisation target. He wanted the market to "Celebrate the removal of demand from the system" and felt the Bill still needed extensive surgery, listing a number of policy details in that regard. These included many of the issues to be discussed at Committee Stage:

- The arrangements for securing a counterparty
- Conflicts of interest for National Grid
- The transition between the renewables obligation (RO) and CfDs
- Routes to market for independents if power purchase agreements (PPAs) disappeared
- The administrative strike price setting process, especially around new nuclear
- The merits of a strategic reserve above market-wide capacity payments
- The lack of demand-side reduction measures in the Bill as yet – and to be added perhaps only at the very end of this legislative process and

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<sup>22</sup> The 'counterparty' is the body that will sign CfDs (contracts) with generators. The draft Bill proposed a complex 'multi-party' counterparty. Following concerns from industry and recommendations from the ECC Committee the Government has reverted to a single counterparty body that can sign legally binding contracts. See p.21 of [House of Commons Library Research Paper 12/79 on the Energy Bill](#) for more background and section 4.3 of this paper.

<sup>23</sup> cc916-8

- The effective lifetime exemption for all gas from any EPS<sup>24</sup>

The debate continued, touching on the continuing £1bn competition for CCS, the need for co-ordination with the Scottish Government, the flexible generation contribution from fossil-fuelled stations and the conversion of Drax to biomass, and the possibility of up to 50MW (megawatt) feed-in-tariffs for smaller businesses.

Several Members of the ECC Committee contributed, noting that investment must not be delayed, decarbonisation could not come at any cost, and that a balanced energy policy was needed; both Dan Byles and Albert Owen of the Committee making the case for both nuclear and renewables. Many Members who took part in the debate were concerned about the effects of rising fuel prices on fuel-poor households.

Mike Weir, SNP Westminster Spokesperson on Energy and Climate Change, returned to the recurring theme of the lack of a decarbonisation target. He said that Scotland had been more successful than the UK as a whole in attracting renewable investment; the UK Government had to be clear about its intentions and reducing risk, including considering extending the RO.<sup>25</sup> Caroline Lucas supported a decarbonisation target, increased feed-in-tariff thresholds, and more focus on community renewable schemes, and said that she very much hoped the Government would “table amendments on demand reduction once the last-minute consultation is complete”.<sup>26</sup>

Several other Members spoke in favour of a decarbonisation target, and the possibility of a dash for gas otherwise, including Joan Ruddock<sup>27</sup> and Huw Irranca-Davies.<sup>28</sup> John Leech said he thought the Secretary of State’s current position regarding a target, given his earlier stated support for one, was one of the practical realities of Coalition Government.<sup>29</sup>

Zac Goldsmith welcomed the Government’s undertaking to consult on energy efficiency, and asked whether the amendments following this, ‘when they eventually arrive’ would be radical enough to ensure that energy efficiency was a core part of the energy programme, and whether enough time would be made available for their scrutiny. The Secretary of State confirmed that a consultation was taking place on demand reduction (this closed on 31 January 2013) but said that there were a number of ways of taking forward any outcome, which might be through amendments or might be through ‘other ways’.<sup>30</sup>

Concluding for the Opposition, Shadow Energy Minister Tom Greatrex’s emphasis was on improving the Bill and providing certainty to investors. He wondered whether some of the necessary detail could be provided through showing draft Regulations to the Bill Committee. At the very least the Bill’s Impact Assessment (IA) needed updating.

The Minister of State, Department of Energy and Climate Change, John Hayes, disagreed with Members who had advocated a return to a pool. In response to Michael Meacher’s comments on setting the strike price for nuclear and a ‘nuclear subsidy’, he said that while the current negotiations were commercially confidential, nuclear power was part of the Government’s strategy but would not come ‘at any price’.

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<sup>24</sup> cc919-20

<sup>25</sup> c929

<sup>26</sup> c951

<sup>27</sup> c897

<sup>28</sup> c899

<sup>29</sup> c900

<sup>30</sup> c902

The House divided on the Opposition's amendment declining to give the Bill a Second Reading: Ayes 206, Noes 279.<sup>31</sup> The Bill was accordingly given a Second Reading without a further division.

### **Summary of Government assurances given at Second Reading**

- The Bill's EMR Impact Assessment would be updated
- A consultation was taking place on demand reduction but there were a number of ways of taking forward any outcome, which might be through amendments or might be through 'other ways'

## **3 Committee Stage**

### **3.1 Composition of the Committee**

The Committee first sat on 15 January 2013. Members are listed in Appendix 1 along with all sittings held, witnesses who attended and written submissions received.

The Ministers on the Committee were Gregory Barker (Minister of State, Department of Energy and Climate Change) and John Hayes (Minister of State, Department of Energy and Climate Change). Its Chairs were Hugh Bayley and Edward Leigh. Tom Greatrex (shadow Energy Minister) and Luciana Berger (shadow Climate Change Minister) led for the Opposition.

The Committee held four sittings at which it heard from witnesses, and then from its [fifth session](#) on 22 January 2013 moved on to consider the Bill's provisions clause by clause. There were 16 sittings in total.

### **3.2 Summary of evidence from Government witnesses on EMR**

At its [first sitting](#) the Committee heard initially from the Secretary of State and the Minister of State Mr Hayes, and from DECC officials.<sup>32</sup>

Tom Greatrex noted that an updated Impact Assessment (IA) for the Bill had just been published, and suggested increased profitability for the generation sector.<sup>33</sup>

In response to a question from Barry Gardiner, the Secretary of State said the Government would table amendments by 5 February 2013 on a decarbonisation target for the Committee to consider (see section 7). Following questions by Luciana Berger, he admitted that the 'vast majority' of the industry supported a 'decarbonisation target in the Bill'.<sup>34</sup>

Dr Alan Whitehead raised the option of a strategic reserve in place of a capacity market; he noted that the option of a reserve had been dropped from the updated IA even though it appeared cheaper for consumers. The Secretary of State argued that it was not only the modelled costs that were important but the dangers of gaming and disincentive to invest. He said that much work was being done on the design of the auction and capacity market and

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<sup>31</sup> HC Deb 19 December 2012 c958

<sup>32</sup> PBC (Bill 100) 2012-2013 15 January 2013 (Morning)

<sup>33</sup> DECC, *Electricity Market Reform – ensuring electricity security of supply and promoting investment in low-carbon generation [January 2013 update]* [updated Impact Assessment](#) 14 January 2013. Paragraph 9 onwards outlines the key changes since the November 2012 IA which relate to cost of capital (financing cost) changes; improvements to modelling of the capacity market, and changes in the technology mix impact.

<sup>34</sup> PBC (Bill 100) 2012-2013 15 January 2013 (Morning) c7

the Government would come back to the Committee - he thought in May - with the minutiae of the capacity market design.<sup>35</sup>

Tom Greatrex raised community energy projects, and the decision not to increase the threshold for the small scale feed-in-tariff (FiT) above 5MW as the ECC Committee had recommended. The Secretary of State felt that this did not need to be in the current Bill and said that a consultation on a community energy strategy was being produced under a separate policy strand.<sup>36</sup>

The Committee asked about the Prime Minister's recent announcement on including in the Bill measures requiring energy companies to give customers their cheapest tariffs. The Secretary of State said that amendments would be tabled following a consultation which would be closing very shortly. The plan was to table the amendments before 5 February 2013.<sup>37</sup> (This was done; see section 6.)

### **Summary of Government assurances given in oral evidence**

- Design details of the capacity market and auction in May 2013
- Government amendments in Committee tabled by 5 February 2013 on a power to set a decarbonisation target later in Regulations
- A community energy consultation in March 2013, with a view to finalising a strategy before summer recess or in the autumn but probably not to feed into the Bill
- Amendments, following a consultation, on requiring energy companies to give consumers their lowest tariffs, tabled by 5 February 2013

### **3.3 Evidence on the overall aims of EMR and investor confidence**

National Grid and the so-called 'Big 6' energy companies generally welcomed the increased certainty provided as a result of the earlier pre-legislative scrutiny, including changes made to the Bill on the counterparty, and the announcement of the amount of the Treasury's levy control framework (LCF) that would cap spending under CfDs.<sup>38</sup> SSE voiced concerns about the Bill leaving the way open for a multiparty counterparty.<sup>39</sup> (See section 4.3 below.)

The CBI's evidence focussed on investment certainty and confidence. It was satisfied with the direction of travel since the draft Bill, but stressed that more detail was needed. The CBI wanted to see the costs passed on to consumers by the capacity mechanism minimised.<sup>40</sup>

The Chief Executive of the Committee on Climate Change (CCC) supported long term contracts to replace the Renewables Obligation (RO) but felt the direction of travel in the power sector was 'highly uncertain at the moment'. The [Gas Generation Strategy](#) had included a Treasury scenario where the UK stopped investing in low carbon after 2020, which the CCC contended had undermined investment. So even though the LCF cap on the amount of subsidy was probably set at an appropriate level, there were issues with the

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<sup>35</sup> Ibid. c12

<sup>36</sup> c16 (further column numbers in this paper refer to the Public Bill Committee proceedings unless stated)

<sup>37</sup> c19

<sup>38</sup> For example, c23 onwards

<sup>39</sup> c83

<sup>40</sup> c50

broader investment climate.<sup>41</sup> Indeed at one point the CCC said that the Government's mixed messages had destroyed the investment climate.<sup>42</sup>

The Committee went on to hear from Greenpeace and from Friends of the Earth (FoE), who felt that the RO, which was past its sell-by date and had always been a second-rate policy, was unfortunately being replaced by another second rate policy in CfDs. FoE preferred a fixed FiT. FoE also thought that the whole package was designed to build nuclear.<sup>43</sup>

The Committee heard from Professors Dieter Helm and Catherine Mitchell and from Nigel Cornwall, an energy market consultant. Dieter Helm lamented the complexity of the EMR proposals, supported the reintroduction of a pool in theory, and also supported capacity contracts and contract auctions driven by the market. He thought a 2030 decarbonisation target might be incompatible with the Treasury's LCF. Professor Mitchell advocated certainty through targets and a strategic framework. Nigel Cornwall considered there was a 'black hole' in the Bill regarding access to markets and its impact on smaller generators and suppliers.<sup>44</sup>

## 4 Consideration of Clauses: EMR measures

### 4.1 Clause 1 Aims of EMR

#### *Reporting requirements*

Tom Greatrex introduced amendment 29, considered alongside a series of other amendments that sought to introduce reporting requirements to the Bill. He said it was important that alongside the Annual Energy Statement, Government had a duty to report on the effects of the Bill on the overarching aims of EMR (on consumer bills, energy security and decarbonisation). Amendment 29 would require this annually.

Amendments 30 and 31 alongside sought to require reporting on how the Contracts for Difference (CfD) Regulations made under the Act would contribute to the reduction of greenhouse gas emissions *for each of the forms of low-carbon generation* to which CfDs would apply, as well as on the impact on the other two aims of EMR (consumer bills and energy security).

The Minister John Hayes said that on reporting on the objectives of EMR (amendment 29), the Government took the view that five-yearly reporting would be appropriate. He would ensure that the Annual Energy Statement would also include a report on EMR alongside a five yearly report.<sup>45</sup> In response to a point raised by Barry Gardiner he also undertook to consider whether the reporting should include review of the EPS alongside the other elements of EMR.<sup>46</sup>

On amendment 30, which suggested that the CfD regulations included a statement on how far the three aims of EMR had been taken into account, he felt that Clause 1 of the Bill as introduced already required the Secretary of State to have regard to this. The Regulations would be subject to the affirmative procedure and consulted upon in detail but it would be hard to tease out the impact of the CfD Regulations alone. The draft delivery plan to be published in the summer (2013) would set out detail on strike prices and the expected impact

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<sup>41</sup> c92

<sup>42</sup> c100

<sup>43</sup> c104

<sup>44</sup> c79

<sup>45</sup> cc187 and 188

<sup>46</sup> c189

on consumer bills, but it was most effective to consider effects on security of supply at a macro level, across all technologies.<sup>47</sup>

The Minister felt that amendment 40, requiring an annual review of the impact of CfDs on consumer bills and for the Regulations to allow exemptions for energy intensive industries (EIs) was unnecessary. He said that DECC was committed to updating its analysis of the impact of policies on Bills annually along with the Annual Energy Statement. The Government was, along with BIS, “currently developing the exemption” for EIs.<sup>48</sup> (The Government has subsequently confirmed that EIs will be exempted from the costs of CfDs and EMR, but that this is subject to consultation and state aid clearance.<sup>49</sup>)

Turning to amendment 50, requiring more information on early CfDs (or ‘investment contracts’) to be laid before Parliament, this had to be balanced with what would be commercially confidential so as to not deter investors. Barry Gardiner pointed out that parts of Schedule 3 gave wide powers allowing the Secretary of State to rule that something should not be revealed. He felt that the powers should be limited so as not to include information that related to liabilities or risk for energy consumers or the public balance sheet. The Minister felt that the already promised open book scrutiny and fairness opinion report by financial advisors would be a proportionate response.<sup>50</sup> See the debate on Schedule 3 (section 4.12 of this paper) for more on the transparency of investment contracts.

Tom Greatrex thanked the Minister for his assurances on amendment 29, on reporting on EMR within each Annual Energy Statement. He also welcomed confirmation that there would always be a single counterparty and only one counterparty, which had been given in response to amendments 37, 38 and 39. He said the Opposition might return to the points regarding Schedule 3 and the transparency of investment contracts. He was less convinced on the responses to amendments 30 and 40 however.<sup>51</sup>

Tom Greatrex withdrew amendment 29 but put amendment 30 to a division, which would have required a statement on how each low carbon form of generation contributed to the three aims of EMR.

The Committee divided on amendment 30, which was defeated by 12 votes to 9.<sup>52</sup>

Amendment 40 was put to a division later, during the debate on Clause 5 at the Committee’s 22 January 2013 (sixth) sitting, and defeated by 12 votes to 9.<sup>53</sup>

### **Summary of Government assurances on reporting on EMR aims**

- Developing the exemption for energy intensive industries, with BIS
- To publish an annual update of DECC’s analysis of the impact of policies on bills
- The Annual Energy Statement to include a report on EMR alongside the five yearly EMR report.

<sup>47</sup> cc189-90

<sup>48</sup> c191. See Gov.uk webpage [Policy impacts on prices and bills](#) for the DECC analyses of impacts on bills; one edition was published in November 2011 updating another in July 2010

<sup>49</sup> HC Deb 14 February 2013 c792W

<sup>50</sup> cc192-3

<sup>51</sup> c196

<sup>52</sup> c198

<sup>53</sup> c241

## 4.2 Clause 2 The CfD Regulations

### *The transition from the Renewables Obligation to CfDs*

RenewableUK said in its oral evidence that for smaller to medium size projects waiting to take a final investment decision (FID), the investment contract (early-CfD or FID-enabling) route was not appropriate. It was not calling for the RO to be extended post-2017 however.<sup>54</sup>

Clause 2 of the Bill allows for regulations to encourage low carbon generation, or the CfD Regulations. Mike Weir, SNP Westminster energy spokesperson, moved amendment 10, which sought to ensure that Renewable Obligation Certificates (ROCs) remained available until after CfDs were operating ‘to a level acceptable to both Government and developers’. He said the amendment was supported by RenewableUK.<sup>55</sup>

Mike Weir quoted evidence from Scottish and Southern Energy (SSE) who had suggested the two systems should run in parallel. He cited other witnesses who had raised a general lack of certainty and clarity, particularly if there was any delay on announcing strike prices. He pointed out that there were some subtle differences in the way ROCs operated in Scotland and Northern Ireland and that it was not clear how well CfDs would work for less mature technologies. The Scottish Government was keen to maintain momentum behind the renewable industry.<sup>56</sup>

Amendments 70 and 71 tabled by the Opposition sought to have similar effect but by extending the ‘certificate purchase obligation period’. This covers the transitional arrangements for the period between when ROCs will end (on 31 March 2017, under other legislation), and CfDs will start, under the current Bill. Tom Greatrex felt these were more specific amendments with less ‘vagueness’ than amendment 10; they sought to preserve the length of the transitional arrangement even if CfDs were delayed.<sup>57</sup> Again, several Committee Members flagged the danger of delaying announcements on strike prices.

The Minister said that there were;

“Just under three years to sign a CfD, from 2014 to 2017, but full contract details and draft renewable strike prices are available from this summer, from July 2013, almost four years before the RO closes. That is not a hurried process by any measure”.<sup>58</sup>

The amendments’ sponsors remained unconvinced that delays might not occur; Mike Weir pushed amendment 10 to a vote and it was negatived while amendment 70 was deferred.<sup>59</sup>

The Committee divided on amendment 70 during its 31 January 2013 morning (eleventh) sitting during consideration of Clause 37, when it was defeated by 11 votes to 8.<sup>60</sup>

### *The level of detail left to the CfD regulations*

On resuming the session, the question was put as to whether Clause 2 should stand part of the Bill. Tom Greatrex said that even the Bill’s Annex A acknowledged that some elements of the design of CfDs were still being developed. Witnesses such as EnergyUK had said that

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<sup>54</sup> c169  
<sup>55</sup> c202  
<sup>56</sup> ibid  
<sup>57</sup> ibid  
<sup>58</sup> c207  
<sup>59</sup> c210  
<sup>60</sup> c421

too much was left for Regulations and the Minister had said in a letter of 14 January 2013 that these would not be available until after Committee Stage.<sup>61</sup>

Responding, the Minister said that he would take a fresh look at whether he could say more on which elements, referred to in his letter, might need to be firmed up.<sup>62</sup> But Regulations were appropriate to strike the balance between certainty and flexibility.

Alan Whitehead felt that some of these elements included the nature of a single counterparty, albeit without Government balance sheet backing; and the allocation and auction of CfDs, given constraints introduced by the Treasury's LCF and by early CfDs or investment contracts being agreed. These all had implications for the cost of capital and the assumptions in the Bill's Impact Assessments.<sup>63</sup>

Nevertheless, after further debate, Clause 2 was agreed to stand part of the Bill.<sup>64</sup>

### **4.3 Clause 3 The counterparty**

CfDs are essentially contracts, to be signed between generators and a 'counterparty'. The ECC Select Committee, following its pre-legislative scrutiny, had recommended a single counterparty model for CfDs, so as to make these contracts enforceable in law and attractive to investors. However, during the Bill Committee's first sitting and witness session, DECC confirmed to Tom Greatrex and Barry Gardiner that the Bill as it stood allowed for some flexibility and did not rule out the original multi-party model.<sup>65</sup>

Tom Greatrex moved amendment 32 which, along with a raft of other amendments (32 to 35, 36, 41 and 53), sought to increase clarity that there was only 'a single' counterparty to sign the CfD contracts. He repeated the point made often to the ECC Committee that the original Government proposals had been for a single counterparty with the risk borne by Government balance sheets. Even though the argument had been won for a single counterparty, the wording of the Bill still allowed for another shift back to a multiparty model. He felt that a letter from the Minister to Committee Members on the 16 January 2013 had not clarified this. Amendment 34 also sought to provide a notice period of 90, not 28 days, if the counterparty arrangements had to be changed.<sup>66</sup>

The Minister said he had sought advice further to writing his letter, and had been advised that it was "impossible to have a multiparty counterparty in the Bill as drafted". Therefore amendments seeking to ensure that only one counterparty could be designated at one time were unnecessary.<sup>67</sup>

After being pressed by Members of the Committee the Minister admitted that the only circumstances in which this might arise was where "an extreme case needs a change counterparty for a period of transfer from one body to another".<sup>68</sup>

Members pointed out other possibilities such as different counterparties for different individual CfDs, and for investment contracts. Yet the Minister countered that the Government intended to establish only a single body.<sup>69</sup> On notice periods, the Secretary of

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<sup>61</sup> c214  
<sup>62</sup> c216  
<sup>63</sup> cc218-20  
<sup>64</sup> c224  
<sup>65</sup> c11  
<sup>66</sup> c226  
<sup>67</sup> c228  
<sup>68</sup> c229  
<sup>69</sup> c231

State might even be on the board of the counterparty and there were other provisions in the Bill to ensure that notice periods were sufficient and that a designated counterparty would always be in place.<sup>70</sup>

Given the Minister's assurances, including to speak again to his officials about the likelihood of having more than one counterparty, Tom Greatrex withdrew his amendment. Clause 3 was agreed to stand part of the Bill, and Schedule 1 was agreed to.<sup>71</sup>

**Clause 4 of the Bill, on the duties of a counterparty**, was non-controversial and agreed after some discussion of how its provisions (that the counterparty must act in accordance with any direction given by the Secretary of State) interacted with other similar directing provisions in the Bill.<sup>72</sup>

#### **4.4 Clause 5 Supplier obligation, and posting collateral**

The Minister moved Government amendment 22, alongside 23 to 26. Electricity suppliers will have to make payments under CfDs or investment contracts. The Minister said that the amendment sought to ensure that the Government's intention - that the CfD counterparty would collect these sums - would be stated clearly in the Bill.<sup>73</sup>

After some Members sought greater clarity, the Minister confirmed that such payments would also be enforceable as a debt under the contracts or suppliers might even lose their licence if they did not pay after the counterparties enforced the debt. Losses might also be mutualised across other suppliers via the Balancing and Settlement Code under Clause 5 subsection(2)(c). If suppliers did not pay they might have to post collateral, although the Minister felt that that provision would be 'rarely needed, if ever'.

Government amendment 22 was agreed to without division.<sup>74</sup>

However, on the question of whether Clause 5 should stand part of the Bill, Tom Greatrex wanted more detail on the supplier obligation, namely the criteria for the amount to be paid, regularity of payments, collection arrangements and the level of collateral that might be required to be posted against default.

He noted that exemptions for energy intensive industries (EIs) such as steelworks and brickworks might operate through the operation of the supplier obligation, but he had concerns about state aid clearance for this.

The Minister said that the call for evidence on the supplier obligation had just closed and was intended partly to ensure there were no unintended consequences. Non-payment would be pursuable through the courts and also as breaches of licence conditions. Suppliers who could pay therefore would pay. If suppliers could not pay, the Regulations would also allow the counterparty to require suppliers to post collateral in advance to cover an upcoming payment.

Under the detailed design work a balance would be struck between the cost of posting collateral to suppliers and the required stability of the regime. Actions to mutualise losses could start at the point of default of posting collateral, and the energy company administration scheme had been designed to deal with large supplier default. Clause 8 allowed the Government to set out in transparent Regulations the basis on which the supplier obligation

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<sup>70</sup> c232

<sup>71</sup> c234

<sup>72</sup> c238

<sup>73</sup> c238

<sup>74</sup> cc240-1

would be calculated and administered, and would give the counterparty a duty to recover shortfalls and return that to generators. The Government was considering options for the counterparty's costs in doing this to be met by suppliers.

Clause 5 as amended was agreed, without a division, to stand part of the Bill.<sup>75</sup>

#### **4.5 Clause 6 Direction to offer to contract**

##### ***The promotion of community energy schemes***

During the ECC Committee's pre-legislative scrutiny of the draft Bill the Committee was critical of the lack of demand side or energy efficiency measures in the draft Bill. There was also some consideration of how CfDs could support smaller community renewable schemes, which were too large to be supported by the small-scale feed-in-tariff scheme (FiTs).

In its oral evidence to the Bill Committee IPPR argued that the Bill was 'relatively silent' on energy efficiency. IPPR estimated that low take-up of the green deal was likely to be an issue, leading to fuel poverty targets being missed.<sup>76</sup> Later, the IPPR noted that its research showed that the energy company obligation under the green deal would reach only 40% of the coverage of the former schemes (CERT and CESP).<sup>77</sup>

The Combined Heat and Power Association (CHPA) told the Bill Committee, in oral evidence, that they would like to see an extension of the small scale FiT arrangements, rather than the complex CfD reforms, to incentivise CHP, and people whose core business was not inside the electricity market.<sup>78</sup>

Tom Greatrex moved amendment 42, which sought to place a duty on the Secretary of State and Ofgem to promote new generation capacity from community energy schemes and to define these. This was considered alongside amendment 43, which sought to amend the *Energy Act 2008* to raise the threshold for FiTs to 10MW.

Mr Greatrex noted that the Government's community energy strategy was due in March 2013. His intention through the amendments was to promote discussion and clarify the forthcoming strategy. Community energy strategies had an important contribution to make to the aims of EMR. Co-Operatives UK had estimated their potential to be equivalent to three or four conventional power stations, at nearly 3.5GW, yet as the Bill stood it contained little in relation to them. CfDs would not necessarily help small independent generators find routes to market. Therefore the Opposition's amendment 42 sought to increase the FiT threshold from 5MW to 10MW, which would currently encompass two examples of community-owned windfarms.<sup>79</sup>

The Minister Gregory Barker replied. The Bill included scope for intervention should the power purchase agreement (PPA) market not develop as envisaged for smaller independent renewable generators. He outlined the support that DECC had given to community energy schemes and said that the community energy strategy would be launched shortly. Rather than being 'a footnote to the Bill', this needed to stand alone, but there was no need for another piece of legislation.<sup>80</sup>

Increasing the FiTs threshold beyond 5MW would bring the small-scale scheme into another market, covering installations of considerable scale and complexity. There could be

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<sup>75</sup> c244

<sup>76</sup> c131

<sup>77</sup> c143

<sup>78</sup> c157

<sup>79</sup> c245

<sup>80</sup> c248

implications for consumer bills, the tariff scheme and the LCF. A 5MW solar PV installation would be the size of five football pitches and could generate hundreds of thousands of pounds of subsidy a year, raised from consumer bills.<sup>81</sup> There were also implications for over-incentivising large scale development on, for instance, greenfield agricultural land that could generate opposition to the community energy agenda.

Following assurances that the matter was under ‘active consideration in Government’, and that the door was being left open for a Government amendment on Report or in the Lords, (although without a definite commitment on that), Tom Greatrex withdrew his amendment on community energy schemes.<sup>82</sup>

### **Government assurances on community energy schemes and energy efficiency**

- Community energy strategy to be launched shortly (March 2013)
- Incentives for medium sized schemes ‘under active consideration’ in Government

### **Setting the strike price**

Before strike prices can be set competitively, there will be a period of administrative strike price setting. In its oral evidence, Which? wanted more transparency, especially around administrative strike price – setting, and consumer representation on the independent panel of technical experts. Consumer Focus agreed and urged a commitment to move to competition between zero-carbon technologies by 2020.<sup>83</sup>

Tom Greatrex moved amendment 44, considered alongside 45-48, which sought to ensure more transparency around setting the strike price and reference price. Given what witnesses had said about how critical the levels were, he was concerned that there was ‘so little detail’ around how the strike and reference prices would be set.<sup>84</sup>

He noted that the draft Bill had included clauses on these issues that were missing from the Bill as introduced. Amendment 48 would require the Secretary of State to come to Parliament within three sitting days of the strike price being set. Mike Weir agreed with the amendments and raised concerns about how the strike price would be set administratively for new, untried technologies.<sup>85</sup>

The Minister John Hayes confirmed that much of the text in the amendments was originally in the draft Bill. This level of detail he said reflected the multiparty arrangements proposed at that time. This was felt unnecessary with the move to a private law contract and single counterparty. He later added that there was a risk of constraining the terms of a CfD, which would now be a private law contract, by defining them in primary legislation.<sup>86</sup>

On transparency, once a set of assumptions had been formed, based on published results of early negotiations, expectations and certainty would arise. The Government intended to set out through Regulations provisions for the setting of strike prices both administratively and competitively, and on the contract terms that might be offered.

The Minister said that “During the passage of the Bill, we intend to make known the decisions we are taking on strike prices”. Those on renewables would be informed by evidence from the System Operator (National Grid), and would be broadly in line with the RO banding

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<sup>81</sup> c249

<sup>82</sup> c252

<sup>83</sup> c131

<sup>84</sup> cc252-3

<sup>85</sup> cc253-4

<sup>86</sup> c257

review. National Grid would do work on modelling the effect of strike prices on Government objectives for the energy mix and capacity requirements.

National Grid's call for evidence in October 2012 had already started the process of collecting data. The data used by National Grid in the analysis, existing RO data, and information on the CfD terms and the impact on the cost of capital, would be published in or alongside the draft delivery plan in July (2013) and then be subject to consultation.<sup>87</sup>

A final CfD price for renewables would be published in the first EMR delivery plan by the end of the year (subject to Royal Assent). The Government thought that the amendments relating to setting the market reference price were too detailed to be in the Bill rather than in Regulations. The reference price would be dynamic and would vary according to the price of electricity.

In response to continued concerns raised by Barry Gardiner, citing undertakings that were given at Second Reading, the Minister said that an updated IA had been published, and that secondary legislation would be consulted on during the passage of the Bill. Tom Greatrex regretted that these were not yet available in draft for scrutiny. However, accepting that work was being done by DECC, through expert groups and industry, he withdrew the amendment.

#### ***Summary of Government assurances on setting strike prices***

- To make known, during the Bill's passage, decisions being taken on strike prices
- To set out provisions through Regulations for the setting of strike prices both administratively and competitively
- Secondary legislation to be consulted on during the passage of the Bill, but not to be available in draft for Committee Stage
- To publish data used in the strike price analysis alongside the draft delivery plan in July 2013 to then be subject to consultation
- To publish a final CfD price for renewables in the first EMR delivery plan by the end of the year, subject to Royal Assent

#### **4.6 Clause 7 Payments to electricity suppliers**

##### ***Guaranteeing payments to generators***

The ECC Committee report discussed at some length the widely-held perception that the original Government aim was to have a counterparty 'underwritten' by Government to sign CfD contracts. This was included in one of the earlier impact assessments.

The Low Carbon Finance Group told the Committee in its oral evidence that it was satisfied with the direction of travel since the draft Bill but wanted more detail. One example given was guaranteeing payments for generators under the 'pay when paid' nature of the counterparty body which held no funds and where a cash flow stream was not underpinned by Government.<sup>88</sup> This view was later echoed by RenewableUK in its evidence.<sup>89</sup>

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<sup>87</sup> c257

<sup>88</sup> c49

<sup>89</sup> c169

Vincent de Rivaz, chief executive of EDF Energy, in his evidence to the Committee, called for the Government to provide confidence in the solvency of the counterparty in case generators needed to recover debts owed by suppliers.<sup>90</sup>

Alan Whitehead moved amendment 27 which sought to give the Secretary of State a duty to ensure that a CfD counterparty was able to meet its financial obligations under CfDs. The end, not the means, was most important; this could be done through various devices.<sup>91</sup>

The Minister John Hayes said that while this raised important issues of confidence for generators that they would be paid, there were mechanisms to ensure this, which the Committee had already discussed. After being pressed further by Barry Gardiner, he said that there was a firm set of guarantees detailed in the Bill, but said he would think again about whether a firm, explicit statement might be made. Nevertheless, he emphasised that the Bill made it “absolutely clear that the funding of CfD obligations must be put in place by one of the means that I have outlined”. Given the Minister’s offer to look at this again however, Dr Whitehead withdrew his amendment.<sup>92</sup>

### ***The expert panel***

Resuming consideration of Clause 7 during the Committee’s [seventh sitting](#), Luciana Berger, Shadow Minister for Climate Change, moved amendment 67 which would make provision for a panel of independent experts, to advise on setting the strike price and CfD negotiations. This was considered alongside amendment 57 also tabled by the Opposition which would require an expert panel to advise on the capacity market and capacity payments.<sup>93</sup>

The panel would need to include a consumer representative, the Authority (Ofgem), and technical, academic, legal, economic and other suitable experts. The amendments would increase transparency and address concerns raised by Which? for example, that the Government’s non-statutory proposals did not go far enough. A panel without statutory underpinning could be little more than a rubber stamp for contracts, risking strike prices or capacity payments being set too high and being passed on to consumer bills. This was supported by Barry Gardiner who said that in view of rising energy prices, a consumer voice on the panel was essential.

The Minister John Hayes said that a formula, set out in secondary legislation, would determine payments from the counterparty, so a panel of experts was not needed to determine payments. Following the call for evidence on the supplier obligation, the Government intended to consult in autumn 2013 on the detailed design of the payment model, including the formula.

(The Government also committed to appointing a panel of technical experts to scrutinise the analysis behind implementing the capacity market and volume to be contracted for.<sup>94</sup>)

The Minister further stressed that the panel’s role would be purely a technical one, so it would not include consumer representatives, but it would relate to both strike prices and the capacity market. He said he would share the document setting out requirements for the

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<sup>90</sup> c118

<sup>91</sup> c260

<sup>92</sup> c264

<sup>93</sup> PBC (Bill 100) 2012 – 2013 Thursday 24 January 2013 (Morning) c265 onwards

<sup>94</sup> c272

panel's members with the Committee.<sup>95</sup> In the light of this, Luciana Berger withdrew the amendment.<sup>96</sup>

### ***Opposition amendment on refunding CfD over-payments to consumers***

Luciana Berger moved on to amendments 68, 49 and 69, which sought to ensure that any payments back under CfDs and investment contracts, if the strike price rose above the reference price, found their way back to consumers. She noted that the EMR White Paper of July 2011 had specifically said that “generators return money to consumers” if market prices were above agreed strike prices. This was not reflected in Clause 7 (payments to electricity suppliers), which needed to be strengthened.<sup>97</sup>

Amendments 68 and 69 would ensure that the monies were returned via the counterparty to consumers including businesses. Tom Greatrex spoke to amendment 49, which would allow the Treasury to pass any surplus held by the counterparty back to consumers. Clause 8(4) as it stood had been inserted since the draft Bill, and allowed funds to be returned to the Consolidated Fund. The Shadow Minister wanted to be sure there was no revenue-raising intention, in which case Clause 8(4) had no purpose.<sup>98</sup>

Alan Whitehead said that although the great advertised merit of CfDs was the two-way street, in fact all the material subsequent to the initial modelling had made the assumption that there would “virtually never be a circumstance in which payback would take place”. Historically, theoretical strike prices had seldom been above reference prices, but we were entering a period of greater volatility and there would be practical issues around the money flows.<sup>99</sup>

The Minister John Hayes pointed out that the counterparty could not be a profit-making body. Clause 5 set out that funds could be collected only to make CfD payments or fund the costs of the body, so it would be unlawful for them to be used to generate revenue to be retained by the Exchequer. The Government was considering a variable rate obligation so that precise amounts owed to generators, perhaps on a monthly basis under CfDs, were collected from suppliers and passed through as swiftly as possible. These provisions were not in the draft Bill because the nature of the proposed counterparty had changed and indeed these provisions were intended to ensure that payments did not go to the Crown and Consolidated Fund, given that the counterparty would now be Government-owned.<sup>100</sup>

Payments could be paid into the Fund only temporarily as a technical measure before returning costs to the counterparty body. The Minister felt that the important point was that ‘retention’ would not be allowed, and there might be an argument for increasing clarity in the Regulations around that. However, the Government did not intend to place extra regulation on suppliers to redistribute surplus funds from generating back to consumers, which would amount to, and require, non-competitive price regulation. Since competitive market forces would apply, new suppliers would have a strong incentive to use the funds to reduce consumer bills.<sup>101</sup>

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<sup>95</sup> c274 and c275

<sup>96</sup> c278

<sup>97</sup> c278

<sup>98</sup> cc280-1

<sup>99</sup> c282

<sup>100</sup> c285

<sup>101</sup> c287

Luciana Berger was not convinced by these arguments and said she would press the amendments to a division. The Committee divided on amendment 68, which was defeated by 11 votes to 9.<sup>102</sup>

The Committee divided later during its consideration of Schedule 3 (29 January 2013, tenth sitting) on amendment 69, which was defeated by 12 votes to 9.<sup>103</sup>

On resuming for the following session, Clause 7 was ordered to stand part of the Bill and the Committee then divided on amendment 49, which was defeated by 10 votes to 8.<sup>104</sup>

Clauses 8 and 9 were also ordered to stand part of the Bill, after the Minister had given the Shadow Minister some explanation of how payments would be made by the counterparty to generators. If there was a supplier shortfall, the counterparty could make payments to generators pro rata, to spread any shortfall evenly across generators in proportion to what they were owed for that generating period. This would therefore need to be set out in Regulations rather than in the bilateral CfD contracts.<sup>105</sup>

### **Government assurances on payments under CfDs**

- To consult in the autumn on the payment model, including the formula, following the call for evidence on the supplier obligation
- To share the document setting out requirements for the expert panel members with the Committee (the panel has now been established; see Introduction, p.4)
- ‘Retention’ of funds by the counterparty or Exchequer would not be allowed, and there might be an argument for increasing clarity in the Regulations around that

### **Clause 10 Functions of the Authority**

Tom Greatrex felt that this was relatively non-contentious. Leaving aside the Opposition’s position on Ofgem, he had concerns about Ofgem’s ability to deliver its role in the EMR proposals; Ofgem had not assessed projected staff needs in relation to this. The Minister John Hayes said that in relation to what Ofgem already did these additional responsibilities would be marginal. The Clause was ordered to stand part of the Bill. See also the more substantive discussion and Clauses on Ofgem below (section 5.3).

### **Clause 11 Regulations: Further provision**

Tom Greatrex outlined the powers under this Clause, which would let the Secretary of State direct the CfD counterparty. His wider point was that, as written submissions to the Committee had noted, the Bill and its Schedules granted many very broad powers with little detail of how these would be used. In many respects it was a framework Bill, but while flexibility was needed, so was investor certainty. However, Clause 11 was ordered to stand part of the Bill.<sup>106</sup>

**Clause 12 on enforcement** was also agreed without division or amendment.<sup>107</sup>

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<sup>102</sup> c289

<sup>103</sup> c400

<sup>104</sup> c293

<sup>105</sup> cc294-5

<sup>106</sup> cc297-300

<sup>107</sup> c301

#### 4.7 Clause 13 Allocation of CfDs

Clause 13 (Orders for maximum cost and targets) relates to the allocation of CfDs. It allows for a financial cap on their allocation and for targets to be set relating to their allocation.

##### *Locational charging?*

Mike Weir moved amendment 12, to allow the costs of delivering energy to the grid to be taken into account when setting targets. He was concerned about the costs for Scottish renewable generators of building and maintaining the transmission (high voltage) network, or of connecting and transporting their energy to the grid. A balance was starting to be struck between a purely locational approach (rewarding generation close to the main population centres) and a socialised one, but the islands still faced very high connection costs.<sup>108</sup>

The Minister John Hayes agreed that Ofgem had already changed the charging regime so that intermittent generators would, in future, pay less than a baseload generator in the same location. If there was a need to include targets considering the costs of delivering energy to the grid, that could already be done under one subsection ('any other targets to be met or taken into account'). However, setting generation targets on the basis of the cost of delivering energy to the grid would risk distorting the market. The Government had set up a study into the progress of renewable projects in Scotland and the islands specifically.<sup>109</sup>

Given that it was intended to be probing in nature, Mike Weir withdrew his amendment.<sup>110</sup>

##### *Targets for technologies*

Tom Greatrex went on to consider other aspects of the allocation process, notably that Clause 13 allowed for targets to be set for generating capacity and for technologies. He had concerns about the Clause's broad nature, for example whether CCS would be able to take up CfDs if the allocation process had left it behind, or how the size of the target might be set for nuclear or large offshore wind. He had concerns about the SNP proposals for targets being able to relate to the geographical location of generating stations.

The Minister, John Hayes, said Clause 13 allowed for targets to support particular types of generation and sizes of output. Targets might also specify types of generation (intermittent, baseload and flexible) or technologies at a particular stage of development, implying that specific targets might be set for CCS. Targets determining the generation mix might not be set initially but might later be used to cap or restrain particular technologies. The delivery plan and annual updates would signal the Government's intentions. The reason for having a provision relating to geography was mainly to deal with possible generating capacity outside the UK, relating for example to the energy trading memorandum of understanding that had just been signed with Ireland. The planning process was the correct way of determining the location of generation otherwise.<sup>111</sup>

Clause 13 was ordered to stand part of the Bill.

#### 4.8 Clause 14 Consultation

Mike Weir spoke to amendments 13, 20, 14, 21 and 15. The devolved administrations were statutory consultees on any Regulations on CfDs. However, Scotland and Northern Ireland had the ability to vary their ROCs arrangements, and yet there were no equivalent powers in the Bill relating to CfDs. Important details of the CfDs would be determined by the Secretary of State alone, such as the strike price. There was no requirement to *agree* with the

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<sup>108</sup> c302

<sup>109</sup> c305

<sup>110</sup> c306

<sup>111</sup> c308

statutory consultees, only to consult with them. Amendment 20 proposed a consultation group, to resolve disputes, but with no power of veto. Mr Weir said he would not press amendment 13, which sought to ensure devolved 'agreement' on the Regulations.

Tom Greatrex spoke to amendments 54-56 and 66. He felt there was probably already significant engagement with the devolved administrations, but wanted to add some more statutory consultees. These were; a panel of experts, generators (given that suppliers were already statutory consultees), and the Committee on Climate Change (the CCC).

The Minister John Hayes said DECC had already established a devolved Administration consultation group, and the Bill would require public consultation on the CfD and capacity market Regulations. He said that generators were being 'engaged' on the nature of CfDs, but the Government would resist them being statutory consultees. The CCC already had a statutory remit to advise on carbon budgets, which was why it was not included here.<sup>112</sup>

The amendments were withdrawn and Clauses 14 and 15 ordered to stand part of the Bill.

### ***Clause 16 Licence modifications***

There was some discussion of how the provisions in this Bill to modify energy companies' Licence Conditions related to powers remaining in statute elsewhere, notably under the *Utilities Act 2000*, since there were no consequential amendments made by the current Bill. The Minister clarified that primacy would lie with the most recent licence modifications, but these could be made under either Act. Clause 16 was ordered to stand part of the Bill.<sup>113</sup>

## **4.9 Clause 17 Capacity market**

### ***Proposed New Clause 2 Strategic Reserve***

Clause 17 (Power to make electricity capacity regulations) allows for a capacity market. Dr Alan Whitehead spoke to his proposed New Clause 2, which sought to offer the option of a 'strategic reserve' in addition to a capacity market (which is the Government's preferred choice and is allowed for by the Bill).

He rehearsed the arguments for requiring a capacity mechanism at all. Over the next few years a large number of existing plant would have to be replaced. Some very old plant had been sitting very largely unused, but these would have to close soon through coming to the ends of their lives or to meet emissions standards. There was the 'curious problem' now of possibly investing in new plant that would hardly ever run, to keep capacity going. It would make sense to keep such plant outside the market 'as far as normal transactions are concerned' but as a strategic reserve.<sup>114</sup>

Alan Whitehead outlined some of the figures in the earlier capacity market impact assessment (IA). Just a half hour slot of capacity when there was a lot of pressure on the system might reach £10,000 in the future compared to the highest price so far of about £1,000. But if the strategic reserve was waiting to come in, the market would probably not reach such figures because it would believe the reserve would come in. The reserve would also discourage gaming or the withholding of capacity, since it would always be there. The IA had also said that a capacity market was twice as expensive over 20 years than a strategic reserve would be, and yet the decision had been made in favour of a capacity

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<sup>112</sup> c315

<sup>113</sup> cc319-20

<sup>114</sup> c326

market in the Bill for 'qualitative advantages'. The amendment sought to offer both options.<sup>115</sup>

The Minister John Hayes noted that both DECC and Ofgem projected increasing demands on capacity. A capacity market would work by giving all providers who had entered into capacity agreements a steady payment to ensure enough capacity was in place, with penalties if they failed to deliver when needed. A competitive auction would be held to select the capacity providers.

The Minister acknowledged that a strategic reserve could be effective in the short term but was not sure it offered the right long-term signals on security of supply. International experience suggested that a capacity market balanced the use of existing capacity with investment in new capacity. If the New Clause enabled both a strategic reserve and capacity mechanism, that would send a confused signal to investors. He felt it would be delaying the decision on which mechanism to use. The Bill also allowed for interventions if gaming occurred. Members including Barry Gardiner were not convinced by these provisions, such as a requirement to participate in a capacity auction.<sup>116</sup>

Nevertheless the Minister reiterated the 'slippery slope' argument. The Government's analysis was that a strategic reserve would, in the longer term, undermine the market signals for existing and new capacity by undermining revenue certainty. If prices rose and the reserve was deployed more frequently, this would affect revenues for other participants.

Clause 17 was agreed to.<sup>117</sup> New Clause 2 was not moved.

#### **4.10 Energy efficiency, and demand reduction**

NEA told the Bill Committee that on promoting demand reduction, there were the macro-measures such as a capacity market, a non-domestic ECO, or an energy efficient FiT. NEA was also seeking to highlight other ways of promoting demand reduction such as changing the role of the Green Investment Bank, or enhancing the role of electricity distribution network operators. NEA said it was in the process of responding to DECC's electricity demand consultation, and had some concerns about domestic customers potentially picking up the tab for non-domestic customers.<sup>118</sup>

Friends of the Earth felt that, alongside demand-side response, storage and interconnectors needed to be helped by the Bill, and that a strategic reserve was preferable to a capacity market. The Government's consultation, which witnesses commended, had shown the reduction potential of the non-domestic and industrial sector.<sup>119</sup>

Both the Combined Heat and Power Association (CHPA) and E3G said that they could not see at present what the Bill could do for demand reduction, although the CHPA welcomed some of the suggestions in DECC's electricity demand reduction (EDR) consultation (premium payments and a supplier obligation).<sup>120</sup> E3G said, when asked whether demand reduction could be mandated in the current Bill;

That would need to be more clearly set out now. It would fit alongside whatever decisions are taken on the exact form of the financial mechanism. There is a piece of architecture missing from the Bill, which would need to give a very clear signal that the

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<sup>115</sup> c327

<sup>116</sup> c331

<sup>117</sup> c332

<sup>118</sup> c150

<sup>119</sup> cc107-8

<sup>120</sup> c161

demand side needs to be prioritised before significant supply-side procurement is undertaken. It should essentially set out a range of targets for the five-yearly delivery plan. That would start to create a logic about how the demand side could really start to tackle cost-effectiveness and consumer bills.<sup>121</sup>

**Clause 18 allows for capacity agreements.** Alan Whitehead moved amendment 73, seeking to add demand reduction to the capacity market provisions in the Bill. Under Clause 18, on capacity agreements, as well as providing capacity, the holder of a capacity agreement might hold an agreement to permanently and verifiably reduce demand. This was considered alongside a similar amendment 74 and a New Clause 3 requiring Energy Efficiency Regulations to be made, seeking to reward the installation of electricity saving measures.<sup>122</sup>

Dr Whitehead pointed out that one of the ECC Committee's major concerns with the draft Bill had been its focus on generation and not energy efficiency or demand reduction. He said that the "Most efficient power station is the one that does not exist because the demand has been taken out of the system and therefore that power station is not used". A consultation had now been published including various demand-side mechanisms, and there was the possibility of Government amendments, but there remained nothing as yet in the Bill. He felt the Bill should have at least an outline power for the Government to act.

Peter Aldous said he had added his name to New Clause 3, in the spirit of probing the Government's intentions, given that the consultation was due to close two days later. Luciana Berger, for the Opposition, said there had been too many delays already on demand side and hoped the Government would take action to "Plug one of the gaping holes in the Bill".<sup>123</sup> Mike Weir for the SNP also added his support for the New Clause, causing Barry Gardiner to welcome an all-party consensus.<sup>124</sup>

The Minister Gregory Barker replied. He said the Government was 'absolutely committed' to being the first to bring forward radical demand reduction policies for the market. He had previously said that its response would include legislation.<sup>125</sup> Following its energy efficiency strategy, the Government would be publishing its 'national energy efficiency mission' on 4 February 2013 (this has been delayed; see below under the list of Government assurances). It had also commissioned McKinsey analysis which showed that potential demand reduction in 2030 representing 26% of total electricity consumption would not be realised under current policies. Yet the 'detail was very difficult' on putting this into practice with possible unintended consequences. He assured the Committee that work was progressing on a timetable to allow amendments to the Bill during its passage "should it be required to deliver the most effective policy option".<sup>126</sup>

Luciana Berger pressed the Minister on this. She said that his reply had allowed that Government amendments might not be forthcoming. The Minister declined to give any undertakings given that the consultation had not closed, and outlined the related powers already in the Bill. He also mentioned that the Government would "return in this carry-over Bill to this issue at the appropriate time"<sup>127</sup>

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<sup>121</sup> c158

<sup>122</sup> c335

<sup>123</sup> c340

<sup>124</sup> c343

<sup>125</sup> c346

<sup>126</sup> c350

<sup>127</sup> cc350-1

Dr Whitehead withdrew his amendment but sought leave to defer consideration of the New Clause until the end of the Committee's proceedings, by which time the consultation would have closed.<sup>128</sup>

New Clause 3 was not moved.

Tom Greatrex moved amendment 58 alongside 59, 63 and 65, intended largely as probing amendments. Amendment 63 sought to remove the power in the Bill allowing the Secretary of State to restrict the use of generating plant for parties to a capacity agreement. It sought to replace it with the power to amend or terminate a capacity agreement. The power was there to prevent gaming, but Tom Greatrex felt it might be used more widely. The other amendments sought to explore how a capacity market interacted with CfDs. Amendment 59 sought to ensure that plant receiving capacity payments would not also be eligible for CfD payments, which might be the case for CCS power stations down the line, or possibly for storage. Following assurances from the Minister John Hayes that the powers restricting the use of generating plant could not be used more widely, and a promise to write to the Committee, the amendments were withdrawn.<sup>129</sup>

### **Government assurances on demand reduction and energy efficiency**

- Publishing a 'national energy efficiency mission' on 4 February 2013 (but according to a Parliamentary Question there will now be a call for evidence in 'the spring')<sup>130</sup>
- Work progressing to allow demand reduction amendments to 'this carry-over Bill' during its passage should this be appropriate
- No guarantee of amendments, but Government 'absolutely committed' to being the first to bring forward radical demand reduction policies for the market and had previously said that its response would include legislation

### **Clause 19 Capacity auctions; timings**

There were no amendments tabled to this Clause, but Tom Greatrex started by referring to Ofgem's October 2012 capacity assessment (which has since been highlighted again in a [speech](#) by Ofgem's Chief Executive Alistair Buchanan on 19 February 2013).<sup>131</sup>

He said there was evidence that people were holding off investment decisions such as on 13 combined cycle gas turbine plants. Written and oral evidence to the Committee expressed concern about lack of detail, particularly whether a capacity market would be introduced.

The Minister John Hayes said that the plan was to run the first capacity market in 2014 to deliver in 2018-19. Decisions on the amount to contract for would be taken with reference to a reliability standard to balance cost to consumers. More information would be provided. The Clause was ordered to stand part of the Bill.<sup>132</sup>

### **Clause 20 Settlement body**

Tom Greatrex tabled probing amendment 62, on the identity, powers, terms of reference and funding of a settlement body, which he assumed would be an equivalent middleperson for the capacity market as the counterparty was for CfDs. He wanted more detail on what kind of body it would be. The Minister John Hayes said that this was yet to be determined and

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<sup>128</sup> c351

<sup>129</sup> c358

<sup>130</sup> HC Deb 11 February 2013 c456W

<sup>131</sup> Ofgem, 19 February 2013 [Alistair Buchanan's Security of Supply Lecture](#); Will GB's lights stay on and will the gas keep flowing: a look at the next decade?

<sup>132</sup> PBC (Bill 100) 2012 – 2013 Tuesday 29 January 2013 (Morning) c359

would follow a consultation on the regulations and codes relating to the capacity market. One option might be to consider Elexon (which is the balancing and settlement body for the electricity half-hourly market; see Library Research Paper 12/79 on the Bill) but there were other options including a procurement process. He committed to reporting on the Government's thinking in this area in May 2013, in the report on the capacity market design details. Clauses 20 and 21 were ordered to stand part of the Bill.<sup>133</sup>

Clauses 22 to 29 were ordered to stand part of the Bill, following assurances from the Minister that the 'other requirements' allowed for by the electricity capacity Regulations under Clause 22 were not intended to be permissive and could relate to the capacity market only.<sup>134</sup>

#### **Government assurances on the capacity market**

- To run the first market in 2014 to deliver in 2018-19
- To report on the Government's thinking in May 2013, in the report on the capacity market design details
- Decisions on the amount to contract for to be taken with reference to a reliability standard to balance cost to consumers.
- Another public consultation in autumn to finalise the Regulations, licence and code changes

#### **4.11 National Grid and conflicts of interest**

##### **Clause 29 Modifications of licences; business separation**

National Grid has been appointed the system operator (SO) and 'delivery body' for EMR. The delivery body has powers relating to administering, providing and organising CfDs and the capacity market. Yet National Grid is a private company, with interests in metering, interconnectors and gas imports. The ECC Committee highlighted these possible conflicts of interest, and recommended a new not-for-profit body be established.

The Minister John Hayes moved Government amendment 8, alongside consequential amendments 1, 2, 9 and 3 to 7. They were to move the provisions on possible separation of the system operator's (National Grid's) business functions in its role as EMR delivery body to ensure that they covered its role relating to investment contracts, in addition to CfDs and the capacity market. The amendment was agreed to.<sup>135</sup>

Tom Greatrex then moved Opposition amendment 76, considered alongside amendment 77. Amendment 76 sought to make the business separation stronger, if a body acting as the SO also held a licence to distribute electricity. Amendment 77 sought annual reporting on its role. He outlined the important role of the SO as outlined in Annex D to the Bill. Rather than establish a new not-for-profit body, as recommended by the ECC Committee, he felt that business separation should be rigorous. He felt inclined to agree with the Government's view that National Grid was the right body to act as SO, if appropriate separation was in place. He asked how far up the business separation of business functions would extend, and sought an update on the consultation on this launched at the end of November 2012.<sup>136</sup>

While the general tone was of respect for National Grid's professionalism, Albert Owen and Alan Whitehead, both ECC Committee members, highlighted that the SO role might well now

<sup>133</sup> c361

<sup>134</sup> cc361-2

<sup>135</sup> c363

<sup>136</sup> c365

extend to interconnectors and international supergrid issues. There should be no perception that the SO made decisions about connection of new generation to the grid.

Earlier, under consideration of Clause 17 (power to make capacity regulations), Alan Whitehead had moved amendment 28, seeking to address a perceived conflict of interest relating to the capacity market and National Grid's role as the SO and delivery body. He said the Bill was an improvement on the draft Bill in including mitigating measures and the power to transfer functions if necessary, but ideally National Grid would divest itself of some of its interests to fit the words of his proposed amendment.<sup>137</sup> However, following reassurances from the Minister John Hayes who said the role envisaged was technical, not policy-making, and that there were contingency powers in the Bill, Dr Whitehead withdrew his amendment.<sup>138</sup>

The Minister reassured the Committee that the work the Government was doing on this was open-minded. The synergies were of profound importance and so, if the SO were not National Grid, it would need to be a reinvention of it. He emphasised that decisions would be taken by the Government, not the SO itself. He was sympathetic to the intentions behind the amendments, and was minded to further consider the matter during the Bill's passage. The Government might act to provide further comfort regarding amendment 77, which sought annual reporting of the SO's role in the success of EMR.<sup>139</sup>

The debate was being held on the day on which the consultation on the SO role closed. The Minister said the Government would report on the outcome of the consultation 'in spring' and if necessary use the powers under Clause 29 to put further business separation measures in place. Tom Greatrex welcomed the reassurances on amendment 77 but had concerns about 'the spring' in Whitehall ending up being quite late in the year. He withdrew the amendment but said that if there were not any further reassurances by Report Stage, he might well return to the issue.<sup>140</sup>

Clauses 29 and 30 on the capacity market were ordered to stand part of the Bill subject to Government amendments making it clear that the SO role, and powers on possible business separation, related to investment contracts too.<sup>141</sup>

#### ***Government assurances on possible conflicts of interest for National Grid***

- To report on the outcome of the consultation on the role of the System Operator in 'spring'
- To consider providing extra comfort regarding amendment 77 (annual reporting on the SO's role in the success of EMR)

#### **4.12 Investment contracts or 'early CfDs'**

##### ***Schedule 3 Investment contracts and transparency***

Investment contracts, also known as 'early-CfDs', are to be agreed between generators and the Secretary of State before CfDs are up and running, to allow investment decisions to proceed. They were earlier known as the 'final investment decision' (FID)-enabling process.

These contracts are subject to an administrative process for strike price setting, rather than a competitive process. The best-known example is the current negotiations with EDF Energy

<sup>137</sup> c322

<sup>138</sup> c324

<sup>139</sup> c368

<sup>140</sup> PBC (Bill 100) 2012 – 2013 Tuesday 29 January 2013 (Afternoon) c374

<sup>141</sup> c375

over Hinkley C new nuclear, discussed at length by the ECC Committee and witnesses to the Bill Committee. However, the process may also apply to renewables and CCS projects, and the Government has said that it will publish in March 2013 new details of how the FID-enabling process will work for renewables.<sup>142</sup>

The ECC Committee has just published its report on Building New Nuclear, which gives further background to the challenges involved and how far this Bill is likely to help.<sup>143</sup> Recent reports have alleged that the Government wants to set a strike price at £80 per megawatt hour for Hinkley, while EDF is seeking £100, and possibly new commercial partners.<sup>144</sup>

In its oral evidence to the Bill Committee, EDF stressed that its new nuclear build was 'shovel-ready' and this first contract for difference would be a perfect example of fairness, including for the consumer, while making a reasonable profit.<sup>145</sup>

On setting strike prices and publishing the resulting contract from the early nuclear investment contract process, Consumer Focus told the Committee in its oral evidence that while the Bill was clear that strike prices could not be redacted, other issues that could materially impact consumer costs should not be redacted either. This might include buy-out or opt-out clauses, risk sharing, indexation or anything that might allow contract re-opening; these should be in the public domain. Which? added that publishing strike prices before the contract was signed was also necessary - publishing them after the event would not permit effective scrutiny.<sup>146</sup>

The CCC told the Committee that while it supported the suggestion that it might be a statutory consultee for the delivery plan, it did not want to have a role in overseeing specific investment contracts.<sup>147</sup>

During consideration of Schedule 3, Tom Greatrex moved amendment 78 for the Opposition, requiring an independent panel of experts to oversee the amounts to be paid (or strike prices) under investment contracts. This panel would have to include a consumer representative and its advice would have to be laid before Parliament.

This was considered alongside amendments 75 and 79-94 dealing with the information to be published relating to investment contracts. Amendment 79 sought to ensure that investment contracts were laid before Parliament within three days of being entered into, rather than 'as reasonably practicable', as in the Bill. Tom Greatrex said the issue was not just the strike price; the amendments sought to increase transparency and public confidence in the contracts. Greater clarity was needed on what constituted 'contract variation', and 'materially increasing costs' to consumers, for example.

Mike Weir noted that the explanatory notes stated that if the strike price were to be increased (subsequently varied) that need not be made public.<sup>148</sup> Alan Whitehead concurred and

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<sup>142</sup> HC Deb 27 February 2013 c495W

<sup>143</sup> Energy and Climate Change Select Committee [6th Report - Building New Nuclear: the challenges ahead - Volume I](#) HC 117 4 March 2013

<sup>144</sup> Sunday Times *Pension giants eye nuclear swoop: EDF casts net wider for partners to help fund new reactors at Hinkley Point* 10 March 2013 p.3 and The Times, *Deadlock threatens shutdown of nuclear reactor programme* 12 February 2013 p.35

<sup>145</sup> cc121 and 128

<sup>146</sup> cc143-4

<sup>147</sup> c97

<sup>148</sup> c379

wondered how this all sat with understanding the implications for the Treasury's levy control framework and the pool of CfD money left.<sup>149</sup>

Barry Gardiner spoke to his amendment 75 which sought to stop any information 'which relates to liabilities or risks that would be placed on energy consumers or on the public balance sheet' being redacted. Nuclear incurred huge up front costs but low running costs, and so it was essential that information around construction cost was transparent.<sup>150</sup> Alan Whitehead said that the whole investment contract architecture of Schedule 3 allowed for too much information to be withheld that might materially affect generators developing outside that process; the provisions allowing for variations exacerbated the matter.<sup>151</sup>

The Minister John Hayes was confident that the Bill was adequate on the general matters of clarity and transparency, but that 'trade secrets', which was a legal definition, might be redacted. The Government 'fundamentally believed' that the vast majority of information in investment contracts should be disclosed, "In particular information about likely costs to the consumer". It was not normal practice for contracts to be laid before Parliament. Redactions would be marginal, and based on three specific areas; trade secrets, a commercial interest that could be prejudiced, or a breach of confidence.<sup>152</sup> 'Material' costs to consumers would be anything other than insignificant or trivial costs. There were issues with laying contracts before Parliament within three days, because of recesses, but 'reasonably practicable' should mean 'as soon as possible'.<sup>153</sup> The Minister said he was prepared to consider general transparency and visibility to Parliament further ahead of Report Stage, but while the amendments' sponsors said they appreciated the Minister's responses, they did not withdraw all of the amendments.

Amendment 78 was withdrawn, while amendments 79 and 80 were not pressed. The Committee divided on Opposition amendment 81, which sought to remove variations of investment contracts from any exemption from publication. It was defeated by 12 votes to 9.

The Committee then divided on Barry Gardiner's amendment 75 which sought to remove any exemption from publication for information relating to liabilities or risks that would be passed onto consumers or the public balance sheet (defeated 12 votes to 9).

It went on to divide over amendment 83, requiring an annual report on the impact of these provisions on consumer bills (defeated 12 votes to 9).

Schedule 3 was then agreed, subject to some Government amendments.<sup>154</sup>

#### **4.13 Clause 34 Market liquidity, and routes to market**

Clause 34 provides powers to modify licence conditions to improve market liquidity. The ECC Committee was concerned that a renewable 'obligation' was being replaced by CfDs which conferred no 'obligation' to buy renewable energy.

In its first sitting the Bill Committee touched on using what is called a 'merit order', which has been recommended by the CCC. This resembles the system used previously by the Central Electricity Generating Board to determine the order in which generating plants were brought on-line using the lowest cost first. However, it was replaced by a more sophisticated computer programme which took into account technical factors such as start up costs,

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<sup>149</sup> c380

<sup>150</sup> c383

<sup>151</sup> cc386-90

<sup>152</sup> c394

<sup>153</sup> c397

<sup>154</sup> c401

minimum run times and minimum shut down times.<sup>155</sup> In turn, and with the move to the New Electricity Trading Arrangements (NETA) and BETTA, this was replaced by the current incentivised balancing and settlement system (see the [Commons Library Research Paper 12/79 on the Bill](#) for more details).

The Committee went on to explore Power Purchase Agreements (PPAs) which are agreements made between smaller independent generators and the larger firms. They guarantee a price for the independents' energy, normally discounted to below the market price, but so reducing their risk. The witnesses said that their replacements under a CfD regime would be different and that at the moment it was hard to write a 20 year PPA given the difficulty of modelling what would be happening to the wholesale markets (presumably meaning prices).<sup>156</sup>

DONG Energy, Ecotricity and Renewable Energy Systems (RES) in their oral evidence discussed the merits for independent generators and small suppliers of a decarbonisation target, a ranking merit order giving priority dispatch to renewables, and routes to market and PPAs. RES said that a secure route to market was one of the key fundamental things missing from the Bill as it stood.<sup>157</sup> The witnesses were more in favour of securing a liquid wholesale market than introducing a capacity market.<sup>158</sup>

Both Greenpeace and FoE supported a 'green power auction market'. Greenpeace felt that necessary amendments need not be complex because the administrative infrastructure was already in place in the form of the Non-Fossil Purchasing Agency of the 1990s.<sup>159</sup>

During consideration of the Bill's clauses, Luciana Berger, for the Opposition, said that Clause 34 was the only one of all the Bill's 126 Clauses that addressed liquidity in the market, and it was only a backstop power. The energy market was opaque, with vertical integration of companies (who both generated and sold electricity), and a captive audience. Since liberalisation no new entrant had approached the dominance of the 'Big 6'. The Opposition would return to a pool system, like the Nord Pool in Northern Europe, but with many more generators than in the old GB pool, providing an open marketplace. She asked the Minister to explain how the Bill's powers would be used.<sup>160</sup>

The Minister John Hayes agreed that the market was "insufficiently liquid at present" and also lower than most other European markets, especially in the forward markets. The Government took the view that this was urgent, and Ofgem's consultation which had run to December 2012 had led them to a "firm preference for intervention to improve liquidity". They would make a decision by summer 2013 and if they decided to proceed would aim to modify licence conditions by the end of 2013. Mr Hayes said this was a far more pro-active approach than previously from Ofgem on this subject. Barry Gardiner said that he had spoken with Ofgem recently about its work on liquidity, but could not yet see good outcomes.

The Minister said that specific proposals from Ofgem on a proposed mandatory auction of 25% of the Big 6's generation had not gone down well with independents, so Ofgem was now consulting on its 'secure and promote' package of licence conditions. This consultation would close on 13 February 2013 and comprised three measures; minimum day-ahead auction volumes, fair and reasonable trading terms, and trading obligations.

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<sup>155</sup> Source: National Grid pers. comm., 17 January 2013

<sup>156</sup> c29

<sup>157</sup> c61

<sup>158</sup> c67

<sup>159</sup> c111

<sup>160</sup> cc401-4

Clause 34 was ordered to stand part of the Bill.<sup>161</sup>

### ***Government assurances on improving liquidity***

- Ofgem to make a decision by summer 2013 on intervention to improve liquidity following its 'secure and promote' consultation, and to modify licence conditions by end of 2013 if necessary

### ***Helping independent renewable generators***

Under Clause 35 (Modifying licence conditions to facilitate investment in generation) Alan Whitehead moved amendment 124 seeking to prevent licence conditions being changed so as to give any land-based low carbon generation technology an advantage over another. This was considered alongside a New Clause 4 seeking to establish a 'green power auction market' for independent renewable generators.

Dr Whitehead said that amendment 124 sought to prevent administrative decisions on strike prices or allocations favouring one technology. New Clause 4 sought to address the problems for independent generators in obtaining power purchase agreements (PPAs) once the renewables obligation ended. There would be no obligation to purchase with CfDs. There was a back-stop in the Bill that would allow the Secretary of State to take measures, such as introducing an auction market at a later date, 'if things did not go well'. But as things stood, this would make it hard for projects to prove their future viability, not knowing if they would get CfDs.

The Bill proposed sending for the undertaker once the patient had died rather than an ambulance while the patient was unwell. Independent generators might be in the position of not being able to access the market at all, while the Big 6 could always make bilateral deals with themselves. Ofgem's proposals should make deals and likely prices more transparent, but would not be a guarantee that these deals would be viable.

Sir Robert Smith supported these views and repeated his concerns that the feeling was that the Ofgem liquidity review might increase transparency but not the investment climate. He hoped the Minister would reassure the Committee that it was addressing this problem for independent generators. Luciana Berger for the Opposition also sought more information on how the backstop powers in the Bill would be used.<sup>162</sup>

The Minister John Hayes did not support amendment 124, because there might be a valid case at any given time for favouring different technologies because of their stage of development. On New Clause 4, he had met with independent generators who said the PPA market was not always easy to navigate or to judge regarding value for money. There was no restriction on the powers in the current Bill's Clause; it would be available immediately after Royal Assent and not only once CfDs had been tried. He did not support the New Clause immediately because it might overcompensate and too fully protect investors in particular technologies from risk, at cost to consumers. However, the Government knew the arguments for having this sort of power in the Bill, did not rule out a similar sort of provision, and undertook to consider further before Report.

Given these reassurances Dr Whitehead withdrew his amendment. Clauses 35 and 36 were ordered to stand part of the Bill.<sup>163</sup>

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<sup>161</sup> c408

<sup>162</sup> cc415-6

<sup>163</sup> c421

New Clause 4 on market access for independent renewable generators was divided upon during the Committee's last (sixteenth) sitting, and rejected by 12 votes to 9.<sup>164</sup>

### **Clause 37 Transition to certificate purchase scheme**

Clause 37 allows for the transitional arrangements during RO phase-out. During this time the Regulators, Secretary of State or the counterparty will purchase certificates in place of ROCs. Clause 37 seeks to insert new Sections 32N to 32Z1 into the *Electricity Act 1989* to allow for this.

Tom Greatrex said the transition from ROCs to CfDs had been debated (see section 4.2) and indeed the Opposition's amendment seeking to preserve a two year certificate purchasing period even if CfDs were delayed had been defeated. He asked about the purpose of some of the new Clauses which seemed to duplicate 8(4) of the current Bill. The Minister explained that some of the new Clauses were required to allow exemptions to be made from the levy, such as for very small suppliers or self-generators. Subject to the passage of the Bill certificate prices would be set out in an Order which should be laid in early 2015, and would be subject to parliamentary approval and state-aid clearance.

Clause 37 was agreed to stand part of the Bill.<sup>165</sup>

### **Government assurances on routes to market for independent generators**

- The Government understands the arguments for some form of 'green power auction market' provisions but does not want to overcompensate
- It did not rule out a similar sort of provision to proposed New Clause 4, and undertook to consider further before Report

#### **4.14 Clause 38 Emissions performance standard**

While supportive of a decarbonisation target, the CCC in its oral evidence to the Bill Committee was less concerned about setting an emissions performance standard (EPS). The CCC was relatively relaxed about the low level of the EPS and grandfathered unabated gas, because the capacity needed to be there to keep the lights on in the short term (although running hours could be limited).<sup>166</sup> An EPS should not be set that assumed carbon capture and storage (CCS) would be successfully developed.

E.ON also said they were not concerned about an EPS being on the face of the Bill since new coal-fired stations were effectively banned anyway, and so at the level it was set the EPS meant little. Scottish Power pointed out however that the grandfathering of the EPS (any plant consented now would be allowed that emissions limit for decades) provided investor certainty.<sup>167</sup>

Clause 38 sets out the duty not to exceed an annual carbon dioxide emissions limit, or EPS. During its consideration, Barry Gardiner spoke to his amendment 122. It sought to tighten the EPS from 450g/kWh to 200g/kWh for power stations consented between 1 January 2020 and 2034. This was considered alongside amendments 115, 121 and 123.

He felt the EPS as set in the Bill, with a grandfathering period to 2045, failed to incentivise CCS. The Don Valley project (a CCS coal fired station) was not pursued on the grounds that CCS for gas was more important for the energy mix, but in the longer term use of coal was

<sup>164</sup> c591

<sup>165</sup> c423

<sup>166</sup> cc95 and 99

<sup>167</sup> PBC (Bill 100) 2012-2013 15 January 2013 c27

rising and the best way for Britain to make a contribution to combating anthropomorphic climate change was coal CCS. The current Bill was not sending the right signal to industry that GB wanted CCS; it would simply take out unabated coal. He quoted E3G's submission that grandfathering to 2045 was not politically sustainable and would increase the costs of bringing forward CCS in competition with unabated gas. By limiting the 450g/kWh grandfathering to 2029, he argued, investors would see the point of developing CCS now.

In response to points raised by Sir Robert Smith, he felt that the other policy levers available (the carbon price and CfDs alone) would not be enough to incentivise and drive through CCS.<sup>168</sup> Amendment 123 sought to include the EPS in the five year review of the other EMR elements, under Clause 46.<sup>169</sup>

Tom Greatrex said the Opposition understood the need for new gas in the mix. But he cited E.ON's support for generation "backed up by gas, not based on gas". CCS was vital in helping to decarbonise and have a balanced generation mix. A combination of lack of detail on how CfDs would apply to CCS and the EPS could lead to a real problem.<sup>170</sup>

Mike Weir said he supported gas CCS but evidence from the CCSA suggested that the carbon price floor would drive CCS more than the EPS. The current Bill would require CCS to operate under the EPS from day one and he was concerned about the effect of amendment 122 making that worse, since plant planned now might not be up and running until the 2020s.<sup>171</sup> Barry Gardiner's response was that plant could be gas fired for now and seek to fit and upgrade to CCS later.

The Minister John Hayes said the Government's commitment to CCS was profound and of four shortlisted projects under the CCS competition, three were coal. The amendment would accelerate investment in CCS, but this would be provided through CfDs and the carbon price floor. The amendment might disincentivise emissions abatement equipment and measures already taken by coal plants. The Government wanted instead to say that vital new gas plant had regulatory certainty.<sup>172</sup> Barry Gardiner withdrew his amendment but not before noting that CCS would not be achieved at the levels predicated and that the only certainty the Bill provided as it stood was that "we will not meet our carbon targets".<sup>173</sup>

Clauses 38-42 were ordered to stand part of the Bill. Clause 43 as amended was also agreed after some discussion about new powers added since the draft Bill, which provided non-liability for damages for National Grid. Clauses 44-46 were ordered to stand part of the Bill, without debate.<sup>174</sup>

### ***The special case of carbon capture and storage (CCS)***

Development on CCS is as yet only at a pilot stage and has not yet been demonstrated at large scale. The ECC Committee considered it a 'special case'. Its needs were considered at various points during Committee Stage, as well as primarily under the EPS provisions.

The Carbon Capture and Storage Association (CCSA) told the Committee in its oral evidence that it was absolutely essential to treat all low-carbon technologies on an equivalent basis. It was optimistic that CCS costs would fall after deployment of the first commercial scale projects, in the 2020s. It supported calls for a decarbonisation target to signal direction of

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<sup>168</sup> cc428-9

<sup>169</sup> c429

<sup>170</sup> c434

<sup>171</sup> c435

<sup>172</sup> c439

<sup>173</sup> c440

<sup>174</sup> cc441-3

travel post-2020. The CCSA was not convinced that we were ‘quite there yet in terms of CfDs working for CCS’. It sought clarity on the CfD allocation process for CCS. It contrasted the long proposed grandfathering EPS period for unabated gas with the 10 or 15 year CfDs possibly on offer to CCS. This was important because it was the support price and CfD, not an EPS or carbon price floor, that would drive the deployment of CCS.<sup>175</sup>

The environmental consultancy E3G told the Committee in oral evidence that support through the Bill and CfDs was intended to be ‘the whole process having a limited amount of capital and then CfDs for operational support’ while the current CCS competition was a different packaging process.<sup>176</sup>

The debate on Clause 1 and the aims of EMR also covered the viability of CCS, and whether it should include gas and coal. This is important because while Government policy currently favours gas, as does the EPS and grandfathering in the Bill, the economics favour greater use of coal.<sup>177</sup>

During consideration of Clause 6 (allocation of CfDs; see section 4.7) the Minister John Hayes said that for new technologies including CCS the price setting could consider levelised costs and hurdle rates were necessary. The CCS cost reduction taskforce’s work had suggested that competitiveness and value for money was attainable sooner than many people anticipated, with commercial viability as early as 2020. The Government was confident about its ability to set the right prices for these technologies and about transparency.

## 5 Consideration of Clauses; other measures

### 5.1 The Office for Nuclear Regulation (ONR)

Clauses 47 - 96 deal with the ONR, and seek to set it on a statutory footing.

Tom Greatrex said he did not want to detain the Committee long on this set of Clauses. The Minister John Hayes was able to confirm that the Department for Work and Pensions (DWP) would have overall accountability for the governance of the ONR, and be responsible to Parliament for that. This complemented its responsibilities for the Health and Safety Executive (HSE). However, DECC would retain responsibility for nuclear safety, security and safeguards and the transport of radioactive material in some circumstances. He thought separating the ONR sponsorship (DWP) from nuclear power policy (DECC) was important, and undertook to write to the Committee setting out Ministerial responsibilities.

Clauses 47 and 48, on the ONR’s purposes, were agreed to stand part of the Bill. Clause 49 was agreed after some discussion of the ONR vs. HSE’s responsibilities. Clauses 49-63 were then agreed without debate.<sup>178</sup>

Clause 64 (the ability of the ONR to hold inquiries) was agreed after some discussion of why the Secretary of State for Energy and Climate Change’s consent was required for the ONR to hold inquiries. Clauses 65-72 were agreed without debate, Clause 73 with one Government amendment, and Clauses 74 to 79 were agreed.<sup>179</sup>

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<sup>175</sup> cc121-2

<sup>176</sup> c160

<sup>177</sup> See for example on the wider geopolitical implications, The [Economist](#) *The unwelcome renaissance* 5 January 2013 which explains how cheap US shale gas has led to cheap coal in Europe and debate at cc181-2

<sup>178</sup> c445

<sup>179</sup> c447

Government amendment 100 and Schedule 9 (disclosure of information) were agreed, along with consequential amendments, which the Minister said were transitional and technical in nature.

Clause 80 was agreed after reassurances from the Minister that the fee-recovery powers would be used to allow the ONR to cover its costs from the industry as at present. If it proposed new fees Regulations, it would need to consult before taking this to the Secretary of State, and there was also a monetary limit on this. Anything approaching a tax or levy on the nuclear industry had been specifically ruled out; the fee recovery was heavily constrained.<sup>180</sup>

The rest of the Clauses and Schedules relating to the ONR were agreed, some with Government amendments.

## 5.2 The Government pipeline and storage system

Clause 103 provides the power to sell or lease the GPSS at a later date. At the Committee's first sitting it heard from the Parliamentary Under-Secretary of State for Defence Philip Dunne, regarding the potential sale of the Government Pipeline and Storage System (GPSS).<sup>181</sup> Philip Dunne said that the MoD now received only 10% of the pipeline's throughput so there was now much more civilian than military use of it, hence the proposed future sale. Capital expenditure was also required following Buncfield and to meet new environmental standards, and yet once in private hands there would be a cost to the MoD for its use. But information on the financial performance of the pipeline had been redacted from the IA to protect the commercial sensitivities of any sale. Mr Dunne provided few more details because he said the current Bill was only enabling legislation.<sup>182</sup>

During the consideration of Clause 103, Luciana Berger for the Opposition noted the Government's assertion that the pipeline was increasingly being used for commercial purposes and the future costs of upgrading.

The Shadow Minister sought assurances on three areas; the security of the pipeline and surrounding area, the cost of maintaining a publically owned pipeline compared to the Government paying for access and use following a sale, and on safety issues including liability should an accident occur. Security issues included protection from physical and cyber attack. The Government had declined to provide the Committee with information on potential costs on which to base a value for money assessment. It was also not clear how access could be guaranteed, including to MoD airbases and in case of the UK being placed on a war footing.<sup>183</sup>

The Minister Greg Barker replied and said that the Government would want to be satisfied by any private sale contract agreed, as would the Public Accounts Committee. The Bill was only an enabling power, and no decision had yet been taken on sale or lease which would depend on issues such as those highlighted by the Opposition. While the sale might make more information about the GPSS public it was not felt to be at greater risk than for instance the electricity and gas distribution networks, because much of the GPSS was underground, to mitigate against attacks.

Work was underway to update a value for money assessment undertaken 'last year' and defence ministers would decide whether to invite bids for the GPSS on the basis of that work. The initial analysis showed that retention within the Government, not sale, currently provided

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<sup>180</sup> c450

<sup>181</sup> PBC (Bill 100) 2012-2013 15 January 2013 (Morning)

<sup>182</sup> cc17-8

<sup>183</sup> c456

best value for money. However, the Minister outlined reasons why that might change in the future (changes to the service charge, increased capital expenditure to comply with environmental legislation, or changes to the commercial revenue stream or asset receipts). Guaranteeing armed forces' requirements post-sale was a high priority for the Government; it could be done through contractual arrangements or a long lease or concession rather than sale. Officials at the Oil and Pipeline Agency regularly discussed with the 'appropriate external organisations' measures to protect the GPSS from attack and that would continue. Biofuels would be allowed only if they did not compromise the pipeline integrity and currently were not used at all.<sup>184</sup>

Clauses 103-108 and Schedule 13 were agreed to stand part of the Bill.

### **5.3 The role of Ofgem**

During the witness sittings the Committee heard briefly from Ofgem, who welcomed the Bill's Strategy and Policy Statement and the measures on consumer redress. Ofgem acknowledged its programme to improve market liquidity had 'been a long one' and more needed to be done.<sup>185</sup>

The GMB Union was critical of Ofgem and its regulatory work, and also its latest price control proposals and the effect of those on the skills base and on safety. It felt Ofgem's reliance on the market to deliver competition had let down consumers.<sup>186</sup>

#### ***Strategy and Policy Statement***

Clause 109 in the Bill provides for a Strategy and Policy Statement (SPS) to be prepared by the Secretary of State, setting out the Government's and the Regulator's (Ofgem's) strategic priorities, responsibilities and objectives, to be reviewed at least every five years.

Sir Robert Smith moved amendment 132 seeking to ensure that the strategic priorities in the SPS included that the use of biomass must be sustainable. He said dispersed small scale projects were most effective and biomass should not displace wood that should be going to construction.<sup>187</sup> The Minister John Hayes said that a consultation had been held running to 30 November 2012 on sustainability relating to the RO, and results would be announced around the end of March 2013. Graham Jones said that not only financial relationships but renewable and responsible issues should be included in CfDs. The Minister said that the Government had decided that large scale coal conversion should be prioritised over dedicated biomass and the technology capped at 400MW. There was an - as yet voluntary - arrangement to monitor the use of domestic wood. Sir Robert withdrew his amendment.<sup>188</sup>

Clauses 113 to 115 were ordered to stand part of the Bill after some discussion of the role the devolved administrations would have in agreeing the SPS; they are statutory consultees under the Bill. Mike Weir had tabled an amendment on this (number 18) which he withdrew.

#### ***Schedule 14 Consumer redress orders***

These provisions seek to give Ofgem the power to require energy companies to pay compensation to consumers, in addition to fining them, for failures to meet standards of conduct.

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<sup>184</sup> cc457-60

<sup>185</sup> cc37-44

<sup>186</sup> See for example c147

<sup>187</sup> c500

<sup>188</sup> c509

Consumer Focus, in its oral evidence, recommended that the powers in the Bill could be strengthened by requiring Ofgem to publicise its enforcement actions, and by clarifying if the Bill's provisions applied to domestic and to (larger) non-domestic customers. Also, the appeals right should be two-way so that not only the energy companies could complain about too high fines, but consumers and consumer groups could appeal too lenient fines.<sup>189</sup>

Tom Greatrex moved amendment 126 considered alongside amendments 127-131. He said the current provisions did not go far enough because they did not relate to the investigations currently being undertaken by Ofgem, some of which had started in 2010. He did not consider that doing this would be retrospective legislation. The amendments also sought to increase the cap on compensation, currently set at 10% of turnover.<sup>190</sup>

The Minister Greg Barker said the amendments would allow 'retrospective and unlimited liability' and could increase costs for consumers and new entrants. The 10% cap could apply to each separate regulatory breach already. For cases already underway Ofgem would continue to negotiate compensation on a voluntary basis and companies that did not co-operate could expect to see that reflected in the level of their fine. Tom Greatrex withdrew his amendment while saying he might return to it later.<sup>191</sup>

Clause 118 on offshore transmission systems, which is a largely technical measure, was agreed with a Government amendment.

On Clause 121, interpretation, Tom Greatrex moved amendment 72, seeking to insert 'any successor authority' to a reference to Ofgem. He noted that hypothetically, an incoming Government might want to dispense with Ofgem. The Minister John Hayes said Ofgem had been reviewed and the new SPS would clarify its role, and that the Opposition had not come up with a well-worked plan for what to put in Ofgem's place.

However, Tom Greatrex declined to withdraw his amendment 72, on which the Committee divided; it was defeated by 11 votes to 9.<sup>192</sup>

## **6 New Clauses on 'cheapest tariffs'**

### ***Background***

Ofgem has been doing work on its 'retail market review' (RMR) leading to recent proposals on simplifying energy tariffs, but its findings are not yet complete and should be finalised 'in the spring'. The Prime Minister has also announced that the Government would legislate on this matter. DECC then produced a discussion document seeking to draw together this commitment with Ofgem's work. A House of Commons Library Standard Note gives more background to these proposals.<sup>193</sup>

The large energy company witnesses to the Committee spent some time talking about the possible difficulties of drafting the Government's promised amendments on consumer tariffs. Scottish Power urged adding a sunset clause in case this did not work out.<sup>194</sup> One of the Ministers serving on the Committee Gregory Barker offered some clarification of the proposals which he said could be described to people as "The cheapest tariff for them".<sup>195</sup>

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<sup>189</sup> c129 onwards

<sup>190</sup> c514

<sup>191</sup> c518

<sup>192</sup> c522

<sup>193</sup> Library Standard Note 6440/SES [Simpler Energy Tariffs](#) 23 November 2012

<sup>194</sup> cc32-3 and c35

<sup>195</sup> c34

Which? said that a key point was that the promised Government amendments moved simplification in the right direction. They thought a vital element would be ‘simple, single-unit rate pricing’ so that consumers on more expensive tariffs such as pre-payment meters could see with clarity the benefits of moving onto a credit meter. Which? had found people on 1,400 different tariffs, so the proposal to eliminate ‘dead’ tariffs was very helpful. But one danger of moving everyone onto ‘the lowest deal’ was everyone ending up on ‘the best uncompetitive deal’ in an uncompetitive market.

Which? suggested that the Government included ‘simple single-unit pricing’ in its tariff amendment to be brought forward in the next few weeks. That was the ‘vital element’. IPPR agreed that simplicity was needed and an enforcement of the ban on loss-leading tariffs to increase competition.<sup>196</sup> Also, ‘sticky’ customers, or those who are unlikely to switch, including vulnerable groups such as pensioners or on pay-as-you-go tariffs, should not be in situations where their tariffs could be ‘ramped up’ over time without them realising.<sup>197</sup>

National Energy Action (NEA) advocated introducing local, trusted intermediaries to help people switch.<sup>198</sup>

### **Government amendments made during Committee Stage**

During the Committee’s fifteenth sitting, the Minister of State Gregory Barker moved Government amendment 133, which was considered alongside Government New Clauses 13-17 and Opposition New Clause 6, ‘cheapest tariff’. He told the Committee;

The Committee may recall that in October the Prime Minister committed to legislate so that energy companies have to give the lowest tariff to their customers. This group of amendments fulfils that commitment.<sup>199</sup>

The Government’s amendments provided, he said, a legal back-up to Ofgem’s RMR work and a clear signal of intent in this area. They were also subject to a sunset clause so they remained law only if still of value in 2018.<sup>200</sup>

He explained the main provisions. Under New Clause 13 the Secretary of State could require suppliers to offer particular types of tariff. There would be common tariffs across the market, making them easily comparable. It also allowed the number of tariffs to be limited, within categories. The range of options on offer, such as discounts for paying by direct debit, could also be specified. Suppliers could also be required to offer information to consumers.

Examples of the type of information were set out in subsection (4)(a), including information on the cheapest tariff available with the same supplier and savings that could be made by the consumer moving to it. The format for the information could also be proscribed, such as smartphone friendly, or special easily comparable measures.

The Secretary of State could also specify that suppliers move consumers from one tariff to another, notably from poor value ‘dead tariffs’ that are no longer available. In practice,

“The provision will give the Secretary of State the power to make it compulsory for suppliers to move those who could save money on to the cheapest, live standard variable-rate tariffs. This is the meat of what the Prime Minister was pledging to do.

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<sup>196</sup> c133

<sup>197</sup> c135

<sup>198</sup> c145

<sup>199</sup> c525

<sup>200</sup> c526

Customers would have the ability to opt out of the process, if they wish, while the remainder would save money without having to lift a finger.”<sup>201</sup>

New Clause 14 was the sunset provision and New Clause 13(2) made it clear that all these measures were limited to the field of competition and saving consumers money; they could not be used to introduce price control.<sup>202</sup>

The Minister turned to the Opposition’s New Clause 6, cheapest tariff (see below for its text). He agreed with its intent, but said that the Government’s provisions went further in ensuring all households, not only the over-75s, were on the cheapest tariff their supplier offered and which met their preferences.

He said that New Clause 6 would also apply to heating oil companies, but this market was not regulated by Ofgem. The Government believed that market was better regulated by the OFT and Competition Commission and that that ‘open market’ provided the best guarantee of competitive prices for the consumer. In response to an intervention by Albert Owen, the Minister said that while he had sympathies, being an off-grid consumer himself, it was simply not right to regulate heating oil in the same way as electricity, just as the Government would not regulate other commodities that people buy over the phone and had delivered physically to their door. If there were signs of a genuine cartel or monopoly the Government would act and was determined to rigorously watch that sector; but this Bill was not the place for it.<sup>203</sup>

Several Members of the Committee spoke further in support of addressing the question of fuel oil or regulating that market, but the Minister Gregory Barker said that it was already far simpler to compare oil prices than in the more complex electricity tariff area.<sup>204</sup> The Minister John Hayes also intervened, and said that perhaps a new initiative should consider the matter on a cross-party basis to see what could be done. He would be delighted to offer that.<sup>205</sup> He later confirmed that his officials would write to the Committee offering them a meeting about heating oil issues and ‘their possible relationship with the Bill’ because there were issues that went beyond the Bill.<sup>206</sup>

### ***Opposition New Clause 6 on cheapest tariffs***

Luciana Berger spoke to Opposition New Clause 6. This stated;

‘A company supplying electricity, gas or heating oil to a domestic customer shall, at least annually, inform the customer of the cheapest tariff available to that customer (based on that customer’s current method of payment and usage during the previous 12 month period) and move the customer to that tariff if that customer is aged 75 or over.’

She said it would force energy companies once a year to tell all customers if they were on the cheapest available tariff, and automatically move any customer aged over 75 to that tariff. Research by Ofgem showed that pensioners were the least likely group to switch and to shop around and switch on-line. She felt there was still confusion about the new provisions that the Minister had just outlined and the Prime Minister had announced.<sup>207</sup>

She highlighted the increasing use by Ministers of the phrase ‘consistent with their preferences’ following ‘cheapest tariff’, and noted that the measures allowed energy

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<sup>201</sup> c527  
<sup>202</sup> c528  
<sup>203</sup> c529  
<sup>204</sup> c531  
<sup>205</sup> ibid  
<sup>206</sup> c553  
<sup>207</sup> c533

companies to act but did not mandate. It would not be clear what was intended until the secondary legislation appeared. The Opposition had suggested a standing charge and unit price that were easy to compare, which she contrasted to Ofgem's proposed tariff comparison rate (TCR) based on a 'blended price' for high, medium and low users. She also thought the Prime Minister's remarks had suggested an 'opt-out' route, which promoted some further discussion about what 'consistent with their preferences' meant.<sup>208</sup>

Sir Robert Smith raised one issue with proposed New Clause 6 in that the oil market did not have 'tariffs'. Luciana Berger said she had been encouraged by the Minister's comments on the oil market (presumably the cross-party discussions) which were progress, but still hoped the Government would accept New Clause 6 which would guarantee pensioners over 75 the best deal.

Mike Weir also supported an 'opt-out' approach and said that those on pre-payment meters should be fixed at the cheapest tariff as Citizens Advice had recommended, given that £7 of each £10 paid into a meter might be to meet debt.<sup>209</sup> Other Members supported this view.

Resuming in the afternoon the Minister Greg Barker said, in response to further requests for clarification, that:

There can be no doubt that the intent of the Bill, which will be complemented by secondary legislation ... is to put people on the cheapest tariff, but respecting their preferences.<sup>210</sup>

The Government's main case is that opting-out might mean moving people on more expensive green tariffs onto cheaper coal-generated tariffs, for example, against their wishes. In Greg Barker's words, people who had made a conscious choice might be moved to a "cheaper, dirtier tariff".<sup>211</sup>

Alan Whitehead pointed out the powers that already existed in section 76 of the *Energy Act 2011* allowing information to be provided about lowest tariffs and how to switch to them; this Bill would repeal those provisions. He asked the Minister to set out what, under New Clauses 13 to 16, the Authority or the Minister could not previously do or would be able to do if the legislation were passed. Promises had been made by the Prime Minister, but if the Minister could not satisfy his questions, the officials in DECC working hard on the legislation had been 'on a fool's errand'.<sup>212</sup>

The Minister Greg Barker countered that s.76 of the 2011 Act provided for information to be provided but not for customers to be moved onto different tariffs and not to simplify the tariff structure. Alan Whitehead said it was for the Authority (Ofgem) to simplify the tariff structure, but the Minister said that while this was 'partly right', the Authority could be challenged on this.<sup>213</sup> The debate continued for some time, and at one point the Minister mentioned that he had asked his officials to do more work on the single unit rate proposal from Which?, as also supported by the Opposition, which had considerable merit.<sup>214</sup>

Government amendment 133 was agreed without division and Clauses 125 and 126 ordered to stand part of the Bill.

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<sup>208</sup> c537

<sup>209</sup> c542

<sup>210</sup> c547

<sup>211</sup> c554

<sup>212</sup> c550

<sup>213</sup> cc556-7

<sup>214</sup> c560

New Government Clauses 13, 14, 15, 16 and 17, providing for the Government's provisions on cheapest tariffs, were added later to the Bill without divisions.<sup>215</sup>

Opposition New Clause 6, cheapest tariff, was divided upon during the Committee's last sitting and negatived by 12 votes to 9.<sup>216</sup>

### **Government assurances on cheapest tariffs**

- A cross-party meeting with Government for Members of the Committee on this issue which included issues such as off-grid fuels which went beyond the Bill
- DECC officials to do more work on 'single unit rate' proposals

## **7 A decarbonisation target?**

A 'decarbonisation target' for the electricity sector by 2030 is now one of the most high profile issues surrounding the Bill. Since many Members have now received representations from constituents following a campaign by an alliance of charities, churches, some energy and other companies and policy organisations.<sup>217</sup> The draft Bill had no provisions on this, and the ECC Select Committee recommended that the Government should take a power to set a target in Regulations; it did not recommend a target on the face of the Bill.

The Government undertook to do this, but has declined to set the target now, preferring to do this in line with its carbon budget timetable. This means in 2016, in effect, after the fifth budget has been set.<sup>218</sup> However, pressure has grown for a target to be set now, and for this to be on the face of the Bill, not in Regulations.

During the debate on Clause 1 of the Bill (on the aims or EMR) several Members of the ECC Committee spoke in favour of a decarbonisation target (of an average of 100 grams per kWh, to allow for occasional peaking plant) being added to the Bill. However, Dan Byles noted that while he had signed up to create a unanimous ECC Committee report, he had his doubts about targets in the Bill which elevated emissions reductions above affordability.<sup>219</sup>

In its oral evidence to the Committee, Centrica (which owns British Gas) said it was not advocating strongly a decarbonisation target in the Bill.<sup>220</sup> Both Vestas wind systems and SSE (Scottish and Southern Energy) supported a 2030 decarbonisation target.<sup>221</sup>

Siemens told the Committee that they supported a decarbonisation target to 2027 or 2030 to provide certainty; the *Climate Change Act* and carbon budgets applied to the whole economy and not sector by sector.<sup>222</sup>

Greenpeace supported a decarbonisation target set in the Bill at 50 grams per kilowatt-hour (kWh), as recommended, it said, by the CCC.<sup>223</sup>

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<sup>215</sup> cc581-5

<sup>216</sup> c591

<sup>217</sup> See for example WWF, [Alliance urges MPs to back decarbonisation target in Energy Bill](#) 20 February 2013

<sup>218</sup> See Library research paper 12/79 on the [Energy Bill](#) 13 December 2012, page 19, paras 2 and 3 for the Government position.

<sup>219</sup> c179

<sup>220</sup> c24

<sup>221</sup> c83

<sup>222</sup> cc163-4

<sup>223</sup> c104

IPPR told the Committee that research it hoped to complete before the Bill's passage ended indicated that consumers might be better off with a 2030 [decarbonisation] target in place.<sup>224</sup>

RenewableUK was in favour of a decarbonisation target. They felt having a levy control framework set was helpful for developers, but for manufacturers, since changing from the RO to CfD was like 'changing horses in midstream', a decarbonisation target would be telling the industry that that journey would be worth it.<sup>225</sup>

This issue was considered during two Committee sittings; one was Alan Whitehead's proposed amendment 118 during consideration of the clauses on the SPS, and the other was following the introduction of Government new Clauses on this.

### ***Opposition amendments on a decarbonisation target***

An Opposition reasoned amendment declining to give the Bill a Second Reading in the absence of a target and other measures was defeated at Second Reading (see section 2).

During consideration of Clause 109 (see section 5.3) on the SPS, Alan Whitehead moved and spoke to amendment 118, requiring the SPS to be prepared within 12 months of the passing of the Act. It was considered alongside amendment 119, inserting that the strategic priorities in the SPS should include a target ('the 2020 target') for decarbonisation of electricity supply. Accompanying amendments required that this should be delivered, and could be amended, in line with the advice of the Committee on Climate Change (CCC), and gave the SO and Ofgem a role in meeting the target.

New Clause 5 set out that a delivery plan for 2030 decarbonisation should be laid 'as soon as is reasonably practicable' after publishing the SPS, and be reported on annually.

Dr Whitehead said that the power sector accounted for over a quarter of UK total greenhouse gas emissions and the amendments followed the CCC's recommendations and set a 2030 decarbonisation target of 50g/kWh. This would also reduce consumer bills by £49 between 2016 and 2030, according to the Government's IA.

The Government had given the ECC Select Committee assurances that it would introduce amendments on this use, and Dr Whitehead, speaking on the 5 February 2013, said these had been tabled by the Government 'yesterday evening'. However, at first glance they did not appear to address the issues.<sup>226</sup>

Dr Whitehead said the Government amendments did not set a decarbonisation target but only said the Secretary of State could set one if he chose to do so. They made any target before 2016 unlawful. He alleged that the Secretary of State himself supported a decarbonisation target on the face of the Bill, but this was a coalition issue. Delaying would prolong uncertainty for investors. Tom Greatrex said the Opposition's policy was for a 2030 target, the Liberal Democrat party had supported this, investors wanted certainty, and the ECC Committee had called for a 2030 carbon intensity target in secondary legislation based on the CCC's recommendations.<sup>227</sup>

Sir Robert Smith, a Liberal Democrat Member of the Bill Committee, argued that passing the Bill speedily was the most important issue, and it would allow for the power to set a decarbonisation target for the electricity sector. The issue had not been included in any manifestos but the power to have a target should be set in the Bill so it could be delivered for

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<sup>224</sup> c131

<sup>225</sup> c166

<sup>226</sup> c466

<sup>227</sup> c469

long term planning horizons. He urged the Conservative Party to make clear its commitment to a low-carbon agenda.<sup>228</sup>

Mike Weir for the SNP ‘strongly supported’ the amendments but Conservative Members pointed out that the UK already had decarbonisation targets under the *Climate Change Act*, and that not all witnesses had been in favour of one in the Bill. Peter Aldous listed some witnesses who he said were opposed, and others that did support a target. One could cherry-pick the evidence but the Bill needed to be passed speedily and he felt that the Government was responding to concerns raised on the Bill and so he would be supporting the Government on this. However, he urged the Government to consider carefully during the Bill’s remaining stages the need for a target.<sup>229</sup>

Dr Phillip Lee, another Conservative Member of the Bill Committee but also of the ECC Select Committee, said he had “Been persuaded that we do not need any further complexity in this field”. The New Clauses tabled by the Government allowed for some wiggle room on the matter, and it was no use setting targets without policy on how to get there, notably on supporting nuclear power.<sup>230</sup>

The Minister responding on this matter was John Hayes, following lengthy contributions from most Members of the Committee. He said the kernel of the Government’s case was that the Strategy and Policy Statement was not the right place for a decarbonisation target, and it was also less desirable to set it out in the Bill than to deal with it in secondary legislation. Both the CCC and ECC Select Committee had called for the target to be in secondary legislation and this is what the new Government amendments would do.<sup>231</sup>

Luciana Berger said this would be more acceptable if the Committee had faith that the Government would bring a target forward and several other Members discussed the likely effects of the gas strategy.

The Minister reiterated that once the Government had set the level of the fifth carbon budget in law, which was due to happen in 2016, it would consider a 2030 target. Before then it would issue guidance to the system operator on an indicative range of decarbonisation scenarios for the power sector up to 2030, to deliver the overall 2050 target consistent with a least-cost approach.<sup>232</sup> He also said the right place for decarbonisation targets was in a new Part 1 right at the front of the Bill, and that was what the Government amendment proposed, and this was a reason for rejecting the current amendments.<sup>233</sup>

Alan Whitehead was not happy with the idea that the Minister was rejecting the amendments simply because they were in the wrong place; his amendments suggested that there should be a clear target in the Bill now and introduced certainty.

He withdrew amendment 118 but pressed 119 (that the strategic priorities in the SPS should include a decarbonisation target) to a vote. The Committee divided 9 for, 12 against.<sup>234</sup>

New Clause 5 was not moved.

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<sup>228</sup> cc472-3

<sup>229</sup> cc475-9

<sup>230</sup> c482 and 484

<sup>231</sup> c491

<sup>232</sup> c494

<sup>233</sup> c498

<sup>234</sup> c500

**Government New Clauses on a 'decarbonisation target range'**

During the Committee's last (sixteenth) sitting the promised Government amendments on a decarbonisation target, which comprised 4 New Clauses, were debated.

Government New Clause 8 would allow 'a decarbonisation order' to set a 'decarbonisation target range' in relation to any year from 2030 onwards. The first decarbonisation target may not be set until after the carbon budget for the year 2030 was set. (This is in effect 2016, when the next carbon budget will be set under the *Climate Change Act*.)

The Minister John Hayes spoke to Government New Clause 8 alongside New Clauses 9-11 and Government amendment 134. He said the need for investor certainty had been agreed by all sides in the Committee. Any target for the power sector was inextricably linked to that for the whole economy and so should not be set until the carbon budget had been set in law and in view of the existing 2050 target. Bargaining had indeed taken place within Government on this and these powers were the result.<sup>235</sup> They also allowed for flexibility as advocated by the CCC.<sup>236</sup>

Tom Greatrex said that following the Committee's division on this matter in an earlier sitting, rejecting a target, the Prime Minister had, in evidence to the Liaison Committee, supported a 2030 target. He also pointed out that the wording of the Government's New Clause said a target 'may', not 'must', be set.<sup>237</sup> Governments could set targets without primary legislation; this New Clause was too ambiguous to add to this and allowed that no target might be set at all.<sup>238</sup> The Government amendments also seemed to repeal the requirements to report on CCS development.<sup>239</sup>

Nevertheless, after further debate, New Clause 8 was read a second time and agreed to without division.<sup>240</sup>

The accompanying Government New Clauses on a decarbonisation target range were divided upon before being added to the Bill;

- **New Clause 9**, on matters to be taken into account when setting a decarbonisation range, including scientific knowledge about climate change, technology, and economic, fiscal and social circumstances. Agreed 12 votes to 9 and added to the Bill.
- **New Clause 10**, on further duties of the Secretary of State, on reporting on the decarbonisation target range by laying before Parliament a statement of the carbon intensity of electricity generation in GB each year after a decarbonisation order was laid. Agreed 12 votes to 9 and added to the Bill.
- **New Clause 11**, defining carbon intensity for GB, and requiring that Scottish and Welsh Ministers were statutory consulters for any draft regulations. Agreed 12 votes to 9 and added to the Bill.<sup>241</sup>

The Prime Minister has subsequently, at Prime Minister's Questions on 27 February 2013, repeated the Government position that;

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<sup>235</sup> c563

<sup>236</sup> c567

<sup>237</sup> c568

<sup>238</sup> c569

<sup>239</sup> c571

<sup>240</sup> c573

<sup>241</sup> cc573-7

We do not believe it makes sense to set a target range for 2030 in advance of setting the fifth carbon budget, which covers the period 2028 to 2032. We will be taking a power in the Energy Bill, but setting it in advance would not make sense.<sup>242</sup>

## **8 Other New Clauses not previously debated**

### ***Government New Clause 12 Fees for services for energy resilience purposes***

Tom Greatrex sought clarification because no explanatory notes were available on this new and late tabled Clause. The Minister John Hayes said it was a minor and enabling provision allowing DECC to charge to recover costs when safeguarding supply during extreme events. He gave the industrial dispute between haulage companies and their drivers during 2012 as an example but said that the type of emergency was not limited to industrial disputes. The Minister confirmed in reply to Barry Gardiner that charges would be made to companies who used a service, not the unions, in the event of a strike.<sup>243</sup>

The Clause was read a second time and added to the Bill without a division.<sup>244</sup>

### ***New Clause 1 Payment of winter fuel allowance to pensioners off the gas grid***

Mike Weir spoke to his New Clause on a topic he said he had raised many times, including through his private Member's Bill.<sup>245</sup> His New Clause sought only to ensure winter fuel payments (WFP) were made before 30 September (rather than in November-December) each year to pensioners living off the gas grid, before heating fuel prices rose for the winter.

The Minister (Gregory Barker) said that bringing forward payment for that group was not straightforward. It would require everyone affected completing claim forms and increase administration costs, while WFP payments were made automatically otherwise. The Government could consider bringing forward the payment date for the whole group, but did not think this was desirable because it would distance the payment from the cold weather.

Mike Weir did not accept the points about difficulty, but appreciated an offer of cross-departmental meetings and withdrew his amendment for the time being.<sup>246</sup>

### ***New Clause 7 Extension or operation of renewable energy in Wales***

Albert Owen spoke to his New Clause seeking to ensure that Welsh Ministers had the power to grant consents for renewable energy generation up to 100MW on land or sea in Wales. Seeking such responsibilities was part of the Labour Party's 2011 manifesto and was in line with localism. The Welsh Government wanted such powers, and there was cross party support in the National Assembly.

The Minister (Gregory Barker) said this would extend the competence of Welsh Ministers beyond the devolution settlement. He believed the current arrangements were fit for purpose with nationally significant infrastructure projects vested in the Secretary of State, offshore renewables up to and including 100MW with the Marine Management Organisation, and smaller onshore schemes with local planning authorities. The amendment would fragment decision-making, and three Welsh wind farm applications were also currently the subject of a joint public inquiry. Any requests for further devolution should be made in the light of the recommendations of the Silk Commission, due to report in spring 2014.

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<sup>242</sup> HC Deb 27 February 2013 c308

<sup>243</sup> c579

<sup>244</sup> c581

<sup>245</sup> See House of Commons Library Standard Note 6408, [Winter Fuel Payments for "off-gas grid" households](#) 24 August 2012 for more background

<sup>246</sup> c590

Albert Owen withdrew his New Clause, for the time being.<sup>247</sup>

After final Government amendments which included adding ‘setting a decarbonisation target range’ to the Bill’s long title, the Bill, as amended, was agreed to be reported.<sup>248</sup>

## 9 The Bill sent for Report

[The Bill as amended in Committee](#) was printed on 8 February 2013.<sup>249</sup>

It now includes a new Part 1 (Clauses 1-4) on decarbonisation, coming before Part 2 on the general aims on EMR, previously Clause 1 but now Clause 5. The new Clauses on domestic tariffs (currently Clauses 121-124) are in a new Part 6, Chapter 1, Consumer Protection, alongside the previous measures on consumer redress orders.

### ***Amendment on decarbonisation target tabled for Report stage***

It is beyond the scope of this paper to consider all amendments tabled for Report Stage, but a ‘decarbonisation target for the electricity sector by 2030’ is now one of the most high profile issues surrounding the Bill, and (as discussed in section 7 above) many Members have received representations from constituents following a campaign.<sup>250</sup>

A series of [amendments](#) tabled by Tim Yeo and Barry Gardiner on 8 February 2013 seek to set a target by 1 April 2014, rather than delaying until 2016 in line with the Carbon Budget timetable.

Reporting the amendment, commentators have noted its cross-party nature, in being tabled jointly by a Conservative and Labour Member of the ECC Committee.<sup>251</sup>

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<sup>247</sup> c594

<sup>248</sup> c596

<sup>249</sup> Bill 135

<sup>250</sup> See for example WWF, [Alliance urges MPs to back decarbonisation target in Energy Bill](#) 20 February 2013

<sup>251</sup> [Independent Cross-party support for bid to set decarbonisation target](#) 9 February 2013 and [Business Green Breaking: Bipartisan Energy Bill decarbonisation amendment tabled](#) 8 February 2013

## **Appendix 1 Membership of the Committee**

Chairs: Hugh Bayley, Mr Edward Leigh

21 Members:

- Aldous, Peter (Waveney)(Con)
- Barker, Gregory (Minister of State, Department of Energy and Climate Change)
- Berger, Luciana (Liverpool, Wavertree)(Lab/Co-op)
- Buckland, Mr Robert (South Swindon)(Con)
- Byles, Dan (North Warwickshire)(Con)
- Elliott, Julie (Sunderland Central)(Lab)
- Gardiner, Barry (Brent North) (Lab)
- Gilbert, Stephen (St Austell and Newquay)(LD)
- Greatrex, Tom (Rutherglen and Hamilton West)(Lab/Co-op)
- Hayes, Mr John (Minister of State, Department of Energy and Climate Change)
- Henderson, Gordon (Sittingbourne and Sheppey)(Con)
- Johnson, Joseph (Orpington)(Con)
- Jones, Graham (Hyndburn)(Lab)
- Lavery, Ian (Wansbeck) (Lab)
- Lee, Dr Phillip (Bracknell)(Con)
- Owen, Albert (Ynys Môn)(Lab)
- Sandys, Laura (South Thanet)(Con)
- Smith, Sir Robert (West Aberdeenshire and Kincardine)(LD)
- Stride, Mel (Central Devon)(Con)
- Weir, Mr Mike (Angus)(SNP)
- Whitehead, Dr Alan (Southampton, Test)(Lab)

Committee Clerks: Kate Emms, Alison Groves

## Appendix 2 Sitings and Evidence

The [Public Bill Committee](#) for the Energy Bill 2012-13 held 16 sittings from 15 January 2013 to 7 February 2013.

The committee heard from witnesses during its first four sittings:

### First sitting 15 January 2013 am

- Rt Hon Edward Davey MP, Secretary of State, Department for Energy and Climate Change
- John Hayes MP, Minister of State, Department for Energy and Climate Change
- Philip Dunne MP, Parliamentary Under-Secretary of State for Defence
- Emily Bourne, Electricity Market Reform Programme, Department for Energy and Climate Change
- Nick Winsor, Executive director, National Grid
- Keith Anderson, chief Corporate Officer, ScottishPower
- Sue Wheeler, Head of Electricity Market Design, Centrica
- Sara Vaughan, Director of Strategy and Regulation, E.ON UK
- Andrew Wright, Senior Partner, Markets, Ofgem

### Second sitting 15 January 2013 pm

- Andrew Buglass, Managing Director and Head of Energy, RBS, on behalf of the Low Carbon Finance Group
- Dr Matthew Brown, Head of Energy and Climate Change, Director of Business Environment, CBI
- David Handley, Chief Economist, Renewable Energy Systems
- Danielle Lane, Regulatory Affairs Manager, DONG Energy
- Asif Rehmanwala, Director of Wholesale, Ecotricity
- Nigel Cornwall, Managing Director, Cornwall Energy Associates
- Professor Catherine Mitchell, Exeter University
- Professor Dieter Helm CBE, Oxford University
- Sarah Merrick, Public Affairs Manager, Vestas Wind Systems
- Dr Keith MacLean, Director of Policy and Research, SSE

### Third sitting 17 January 2013 am

- Dr David Kennedy, Chief Executive, Committee on Climate Change
- Doug Parr, Chief Scientist and Director of Policy, Greenpeace

- Dave Timms, UK Climate and Energy Campaigner, Friends of the Earth

#### [Fourth sitting 17 January 2013 pm](#)

- Alan Brandwood, Chair, Safety Directors Forum
- Vincent de Rivaz, Chief Executive, EDF Energy
- Dr Luke Warren, Deputy Chief Executive, Carbon Capture and Storage Association
- Richard Hall, Head of Energy Regulation, Consumer Focus
- Will Straw, Associate Director for Globalisation and Climate Change, Institute for Public Policy Research
- Pete Moorey, Energy Campaign Manager, Which?
- Jenny Saunders, CEO, National Energy Action
- Peter Smith, Policy and Campaigns Manager, National Energy Action
- Gary Smith, National Secretary, GMB
- Graham Meeks, Director, Combined Heat and Power Association
- Michael Rolls, Director, Business Development, Sustainability and Government Affairs, SiemensUKEnergy Sector
- Chris Littlecott, Senior Policy Adviser, E3G
- Maria McCaffery, Chief Executive, RenewableUK
- Maf Smith, Deputy Chief Executive, RenewableUK

Consideration of Clauses took place during the following sessions:

- [Committee Debate: 5th sitting](#) 22.01.2013
- [Committee Debate: 6th sitting](#) 22.01.2013
- [Committee Debate: 7th sitting](#) 24.01.2013
- [Committee Debate: 8th sitting](#) 24.01.2013
- [Committee Debate: 9th sitting](#) 29.01.2013
- [Committee Debate: 10th sitting](#) 29.01.2013
- [Committee Debate: 11th sitting](#) 31.01.2013
- [Committee Debate: 12th sitting](#) 31.01.2013
- [Committee Debate: 13th sitting](#) 05.02.2013
- [Committee Debate: 14th sitting](#) 05.02.2013
- [Committee Debate: 15th sitting](#) 07.02.2013

- [Committee Debate: 16th sitting 07.02.2013](#)

The following written evidence was submitted to the Committee:

<a href="#">Associated Memorandum submitted by E.ON (supplementary evidence) (EN34)</a>	31.01.2013
<a href="#">Associated Memorandum submitted by EEF (EN35)</a>	31.01.2013
<a href="#">Associated Memorandum submitted by CCSA (EN29)</a>	30.01.2013
<a href="#">Associated Memorandum submitted by the Centre for Energy Policy and Technology, Imperial College London (EN30)</a>	30.01.2013
<a href="#">Associated Memorandum submitted by Sedgemoor District Council (EN31)</a>	30.01.2013
<a href="#">Associated Memorandum submitted by Statkraft (EN32)</a>	30.01.2013
<a href="#">Associated Memorandum submitted by the Nuclear Industry Association (NIA) (EN33)</a>	30.01.2013
<a href="#">Associated Memorandum submitted by Dr Nick Eyre, University of Oxford (EN26)</a>	25.01.2013
<a href="#">Associated Memorandum submitted by Renewable Energy Association (EN27)</a>	25.01.2013
<a href="#">Associated Memorandum submitted by Independent Renewable Energy Generator (IREGG) (EN28)</a>	25.01.2013
<a href="#">Associated Memorandum submitted by British Chambers of Commerce (EN02)</a>	24.01.2013
<a href="#">Associated Memorandum submitted by Dalestone Energy (EN19)</a>	23.01.2013
<a href="#">Associated Memorandum submitted by UK Youth Climate Coalition (EN20)</a>	23.01.2013
<a href="#">Associated Memorandum submitted by RWE npower (EN21)</a>	23.01.2013
<a href="#">Associated Memorandum submitted by National Grid (EN22)</a>	23.01.2013
<a href="#">Associated Memorandum submitted by Dong Energy (EN23)</a>	23.01.2013
<a href="#">Associated Memorandum submitted by Solar Trade Association (EN24)</a>	23.01.2013
<a href="#">Associated Memorandum submitted by Dept of Energy and Climate Change (EN25)</a>	23.01.2013
<a href="#">Associated Memorandum submitted by E.ON (EN10)</a>	18.01.2013
<a href="#">Associated Memorandum submitted by Energy UK (EN11)</a>	18.01.2013
<a href="#">Associated Memorandum submitted by Vattenfall (EN12)</a>	18.01.2013
<a href="#">Associated Memorandum submitted by Prof Catherine Mitchell (EN13)</a>	18.01.2013
<a href="#">Associated Memorandum submitted by WWF (EN14)</a>	18.01.2013
<a href="#">Memorandum in Chief submitted by RenewableUK (EN15)</a>	18.01.2013
<a href="#">Memorandum in Chief submitted by Combined Heat and Power Association (CHPA)</a>	18.01.2013

(EN16)

Memorandum in Chief submitted by EDF Energy (EN17)	18.01.2013
Memorandum in Chief submitted by Consumer Focus (EN18)	18.01.2013
Memorandum in Chief submitted by Centrica (EN01)	16.01.2013
Associated Memorandum submitted by Centrica (EN01)	16.01.2013
Associated Memorandum submitted by Opus Energy Limited (EN03)	16.01.2013
Associated Memorandum submitted by ESB International (EN04)	16.01.2013
Memorandum in Chief submitted by National Energy Action (EN05)	16.01.2013
Memorandum in Chief submitted by Vestas Wind Systems (EN06)	16.01.2013
Memorandum in Chief submitted by IPPR (EN07)	16.01.2013
Memorandum in Chief submitted by CBI (EN08)	16.01.2013
Memorandum in Chief submitted by SSE (EN09)	16.01.2013

### Appendix 3 Abbreviations

BIS	Department for Business, Innovation and Skills
BSC	Balancing and Settlement Code
CCC	Committee on Climate Change
CCS	carbon capture and storage
CCSA	Carbon Capture and Storage Association
CfD	Contracts for Difference
DECC	Department of Energy and Climate Change
DSR	demand side response
ECC	Energy and Climate Change (Select Committee)
EDF	Électricité de France
EDR	Electricity demand reduction
EII	Energy intensive industries
EMR	electricity market reform
EPS	emissions performance standard
FID	final investment decision (and FID-enabling)
FiT	feed-in-tariff
FoE	Friends of the Earth
gCO <sub>2</sub> /kWh	grams of carbon dioxide [emitted] per kilowatt-hour
GPPS	Government Pipeline and Storage System
GW	Gigawatts
HSE	Health and Safety Executive
IA	Impact Assessment
IPPR	Institute of Public Policy Research
LCF	(HM Treasury's) Levy Control Framework
MoD	Ministry of Defence
MW	Megawatts
MWh	Megawatt-hours
NEA	National Energy Action
NI	Northern Ireland
NII	Nuclear Installations Inspectorate
ONR	Office for Nuclear Regulation
PPA	power purchase agreement
RMR	(Ofgem's) retail market review (of tariffs and bills)
RO	Renewables Obligation
ROC	Renewables Obligation Certificates
SEM	Single Electricity Market (Ireland)
SO	System Operator
SG	Scottish Government
SPS	Strategy and Policy Statement