Infrastructure Bill: Energy and Climate Change measures

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The Queen's Speech announced that an Infrastructure Bill would be introduced in this Parliamentary session. The Infrastructure Bill started in the House of Lords and is now in the Commons as Bill 154 2014-15. The Bill had its Commons second reading debate on 8 December 2014. The committee stage of the Bill in the Commons was held from 16 December 2014 – 15 January 2015. The next stage for the Bill, the report stage, is schedule for 26 January 2015. This note explains the planning provisions in the Bill in more detail.

The Bill is wide-ranging and covers many areas. The following clauses deal with energy or climate change (numbered following Commons committee stage).

- Carbon abatement measures for new housing (clause 33)
- The community right to by a stake in their local renewable electricity scheme (clauses 34-35)
- The Extractive Industries Transparency Initiative (clause 36)
- A strategy to Maximise the Recovery of UK petroleum (clauses 37-38)
- Access to petroleum (for example for fracking) and geothermal energy in deep-level land (clauses 39-44)
- Renewable heat incentives (clause. 45)
- Reimbursement in making electrical connections (clause 46)

This note provides information on the most contentious of these clauses for the Commons Debate on Report: the carbon abatement measures for new housing; the community right to by a stake in their local renewable electricity scheme; the strategy to Maximise the Recovery of UK petroleum and; access to petroleum and geothermal energy in deep-level land. It also covers the new clause on reimbursement in making electrical connections Other clauses are not covered by this paper but further information is available in the Library Research Paper, *Infrastructure Bill* (RP 14/65).

Contents

1 Carbon abatement measures for new housing

In December 2006 the Labour Government published a consultation document setting out plans to move towards zero carbon in new housing using three main 'policy levers': the planning system; the Code for Sustainable Homes; and the Building Regulations.[1] The *Code for Sustainable Homes*, a voluntary set of standards for assessing new homes, whose highest level (6) requires zero carbon, was published at the same time.[2]

The March 2011 Budget furthered the requirements for zero carbon homes. The accompanying *Plan for Growth* said that cooking and plug-in electrical appliances would not be counted, since these were beyond the influence of house builders and would be addressed through other policies. It also said the Government would introduce "more realistic solutions" for carbon reductions, and allow for off-site reductions, stating that these proposals would "ensure that it remains viable to build new houses":

> 2.299 The Government will introduce more realistic requirements for on-site carbon reductions, endorsing the Zero Carbon Hub's expert recommendations on the appropriate levels of on-site reductions as the starting point for future consultation, along with their advice to move to an approach based on the carbon reductions that are achieved in real life, rather than those predicted by models. This will be complemented by cost-effective options for off-site carbon reductions, relative to the Government's pricing of carbon, and Government will work with industry through consultation on how to take this forward.
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> 2.300 This approach will deliver zero-carbon homes on a practical basis from 2016, with significantly reduced costs to industry, compared to previous proposals. [3]

The Impact Assessment (IA) on zero carbon homes, published by the Department for Communities and Local Government in May 2011, said:

> From 2016, developers will be required to deal with all emissions from new build homes that fall under the scope of building regulations. A specified portion of this will have to be dealt with on-site through energy efficiency measures such as insulation and onsite renewables such as solar panels. The remaining emissions can be dealt with through offsite measures, the mechanism for which has yet to be decided. [4]

Savings could be made through off-site measures so the homes and developments themselves will not necessarily be zero carbon. The minimum requirement will be to meet existing building regulations, with the remainder met with additional on-site measures or through off-site allowable solutions. The IA also said:

> Since this is, ultimately, about asking industry to build better-performing homes, it will inevitably come at a cost. This could be in the region of £3,000 to £8,000 per house by the time the policy starts to have an effect, depending on the dwelling type (for example just over £4,000 for a typical semi-detached house built in 2017). These are significantly reduced costs from the previous definition of the policy – which had costs of £8,000 to £12,500 per house. [5]

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[1] CLG, *Building A Greener Future: Towards Zero Carbon Development*, December 2006

[2] HC Deb 1 March 2010, c960W and CLG, *Code for Sustainable Homes: A step-change in sustainable home building practice*, December 2006

[3] HM Treasury/BIS, *Plan for Growth*, March 2011

[4] CLG, *Zero-carbon homes: impact assessment*, 17 May 2011

[5] ibid.

1.1 Allowable Solutions Consultation

In August 2013, the Government launched the *Next steps to zero carbon homes: allowable solutions* consultation.[6] In July 2014 the Government published its response to the consultation, in which it explained its decision to set an onsite standard as being equivalent to Level 4 of the Code for Sustainable Homes (the original intention was for it to be set at Level 6). This would represent "an improvement on current Building Regulations' requirements of approximately 20% across the new homes build mix".[7]

There would also be an exemption for small sites to ensure that small house builders did not face unreasonable extra costs. A national design framework for allowable solutions would be established, and developers would be allowed to meet the extra requirements onsite or offsite themselves, or contract or pay others to do so on their behalf.

The consultation also set out three possible cost caps for offsite allowable solutions: low (£36 per tonne of carbon), central (£60 per tonne of carbon) and high (£90 per tonne of carbon). The consultation did not speak to the potential impacts of the different cap levels, so the Government committed to carrying out further analysis before taking a decision.

1.2 The Bill

The Bill as originally presented in the Lords did not include the section on off-site carbon abatement measures. The Government introduced them as an amendment and they are now **clause 32** of the Bill. The clause would amend the *Building Act 1984*, to extend the matters that may be covered by the Building Regulations to "the action to be taken as a result of a building's contribution to or effect on emissions of carbon dioxide (whether or not from the building itself)".

1.3 Lords Stages

Although there were several opposition amendments to the Bill in the Lords, all were all withdrawn after debate. There were no votes on this clause.

Debate in the Lords focused on the details of the proposals. One of the main issues of debate was the size of developments that should be exempt from the requirements, with amendments tabled that would limit this to five dwellings or less and remove the exemption completely in 2018.[8] The Government stated its intention to consult on this issue but said it was minded to set it at around sites of 10 units or less:

> We want to ensure that the exemption is proportionate and targeted to help small builders, that there are clear criteria as to its application and that it is designed to ensure that it helps only those that it is meant to help. I reassure noble Lords that the key questions about site size will sit at the heart of the consultation.[9]

There was also some criticism that the Government had not set out its rationale for an exemption for small developers, [10] and that the proposal would have disproportionate impact

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6 CLG, *Next steps to zero carbon homes: allowable solutions*, August 2013

7 CLG, *Next steps to zero carbon homes – Allowable Solutions: Government response and summary of responses to the Consultation*, July 2014, p5

8 HL Deb 17 July 2014, c288GC

9 ibid., c298GC

10 ibid., c290GC

on rural areas where smaller developments are more common and fuel poverty is often a concern.[11]

The Minister opposed limiting the distance from a development for off-site measures:

> While we are very keen that local projects are supported through allowable solutions, this proposal is not workable. We asked in our consultation whether there should be a spatial limit on off-site carbon measures. Views were evenly matched, but slightly more of those responding did not think the measures should be limited to just those in the vicinity of the development.[12]

The Government was pressed on the decision to lower the onsite requirements to Level 4 of the Code for Sustainable Homes, and questioned on the evidence base for this decision.[13]

There were proposals put forward to include requirements for annual progress reports to be included in the legislation. The Minister referred to the reporting requirements in the *Sustainable and Secure Buildings Act 2004*, which could be adapted to include information on zero carbon homes and the new proposed powers allowing the creation of a register of certificates of evidence of compliance.[14]

A further amendment was tabled to ensure that there was no gap between the removal, under the *Deregulation Bill*, of powers for local authorities to impose their own higher emissions standards on new developments, and the introduction of the zero carbon homes standard.[15] The Minister stated in response that the Government was conscious of the need for a sensible transition arrangement.[16]

During Report Stage, their Lordships returned to the size of smaller developments that are exempt from the provisions, and whether this exemption should be extended to 2018. In response the Minister said:

> Research recently published by the National House Building Council on improving prospects for small housebuilders suggests that the availability of suitable small sites—which they indeed prefer—is declining. It also indicates that any extra regulatory costs can impact on the viability of development. We are concerned that if the costs of zero carbon lead to fewer small sites being brought forward, this will further hinder the prospects for small housebuilding firms.[17]

1.4 Small Site Exemption Consultation

More recently, in November 2014, the Government published a consultation on the small sites exemption. This set out the Government's preferred option of setting a 10 site exemption limit:

> Under this option all developers in England would be required to build to a minimum requirement set in Part L of the Building Regulations, but smaller sites or developers would not have to support or carry out any further carbon abatement measures.[18]

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[11] ibid., c305GC
[12] ibid., c299GC
[13] ibid., c314GC
[14] ibid., c315GC
[15] ibid., c317GC
[16] ibid., c318GC
[17] HL Deb 5 November 2014, c1707
[18] DECC, *Next steps to zero carbon homes: Small sites exemption*, November 2014

However it also recognised potential difficulties of doing so:

> Alongside the benefits of a site based exemption, Government recognises that there are risks:
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> - not all developments on small sites are undertaken by smaller developers. In rural areas in particular, smaller development sites account for around 80% of total housing delivery and there are some large companies operating in this market.
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> - there could be a risk that larger developments are artificially split into a number of smaller sites.
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> The risks could be managed in two ways. Firstly, the Government could introduce criteria for a maximum floor space alongside the unit based criteria. An approach could be to set a maximum size of 1000 square metres of floor space for a 10 unit development – so 100 square metres of floor space for every property captured by the site size set.
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> A maximum floor space would ensure that larger sites that are delivering a few bigger properties do not automatically benefit from the exemption. This is arguably proportionate, as larger sites delivering a small number of large properties are generally more profitable for developers.
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> Alternatively, a completely different approach to the exemption could be designed. It could be targeted at smaller developers themselves rather than smaller sites. A smaller developer could be based on the Government's definition of a small company, which is based on having 49 employees or less.[19]

1.5 Commons Second Reading

During Second Reading of the Bill, on 8 December 2014, concerns were again raised by several MPs about the intention to exclude smaller developments from the offsite abatement requirements. In response the Minister reiterated the Government's position as follows:

> there is always a balance between inhibiting or even preventing development at all and achieving our desired outcomes on carbon. I am happy to hear representations on all these matters, as I want this Bill to be as good as it can be.[20]

1.6 Commons Committee Stage

Several amendments were tabled during Committee Stage but there were no Government amendments or divisions during the debate on allowable solutions. A full transcript of the debate, together with the latest version of the Bill and Explanatory notes, and written submissions to the Public Bill Committee, are available online on the Parliament website Bill Page.

During the Committee Stage debate the main areas of focus were again the threshold below which the builders would be exempt from including allowable solutions and under what circumstances offsite allowable solutions should be permitted. During the debate the Minister made clear that as the consolation had just close, these issues were not finalised:

> Consultation has only just finished. It did ask about site size, based on the number of units, and there were questions about square metreage and the size of the builder,

[19] ibid.
[20] HC Deb 8 December 2014, c659

> which is the point he is making. We have not yet decided what we are going to do. We are minded to use the number of units per site, because not only do we want small builders to come into the market, we also want small difficult sites to be developed. No absolute decision has yet been made. I gave an assurance earlier that we would design the exemption to ensure there was no gaming of the system, and I am sure we would look at square metreage and the size of the building firm as part of that.[21].

However, he did reiterate that all builders would have to build to Level 4 of the Code for Sustainable Homes, and that extra requirement for on or off site allowable solutions would only apply to larger developers.[22] Members questioned why level had not been set at 5 or 6 instead, and disagreed with the Government on the cost implications of more stringent requirements..[23]

An amendment was tabled by Nick Raynsford to exclude an exemption being given solely on the basis of the number of units on site. The amendment was withdrawn but Mr Raynsford did signal his intention to return to this at Report stage.[24]

There was also a several amendments aimed at ensuring allowable solutions where implemented in the same planning authority area, or in the built environment only, so that the benefits could be felt locally, rather than where they were cheaper to implement. Alistair Burt gave the example of the Energy Company Obligation stating, "despite having a 13% share of housing, in the first year of the energy company obligation, London received only 6.4% of spending. That lets down those in fuel poverty in the capital who might otherwise have been helped"[25]

The Minister did not support this, preferring a national scheme or fund, which would be more cost effective for builders:[26] "the guiding principle of the allowable solutions scheme is freedom of choice for house builders in how they meet their obligations"[27] This was reiterated later on in the debate:

> We want to ensure a competitive marketplace for allowable solutions so that the house building industry and other people can innovate and come up with allowable solutions to drive down the price and obtain the best value. [28]

There was also discussion of what kind of measures will be considered allowable solutions. The Minister listed the following examples during the debate of those that had been part of the discussion so far:

> Low carbon infrastructure, such as district heating schemes and retrofitting low carbon technologies in existing buildings [...] a huge opportunity exists here to augment the green deal to retrofit older homes.

And

> District heating, retrofitting, low energy street lighting and electric car charging points.[29]

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[21] PBC 8 January 2015, c215
[22] Ibid c214
[23] Ibid c 216
[24] Ibid c215
[25] Ibid c 232
[26] Ibid c233
[27] Ibid c232
[28] Ibid c234
[29] Ibid c233

He was also asked to rule out that tree planting would be included in the allowable solutions. He did not do so, but did say that "in all of the discussions I have had, trees have never been mentioned".[30]

2 Community Right to Buy

The community electricity right was not specifically mentioned in the proposals in the June 2014 Queen's Speech but the background briefing notes to the speech included the following details on the community right to buy proposals that would be included in the *Infrastructure Bill*:

> The Bill would enable the Secretary of State to give communities the right to buy a stake in their local renewable electricity scheme so that they can gain a greater share in the associated financial benefits.[31]

The policy brief published on the same day by the Department of Energy and Climate Change (DECC) summarised the proposals as follows:

> **The Community Electricity Right:**
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> - The Community Electricity Right measures create a broad enabling framework in primary legislation. If these powers were ever exercised they would require commercial renewable electricity developers to offer communities the chance to invest in new schemes being developed in their area.
> - A formal consultation would precede any decision to exercise the powers and would inform the details of secondary legislation.
> - The power would apply to new commercial renewable electricity schemes in Great Britain above a minimum threshold of 5MW installed capacity, and expansions of existing sites above this 5MW threshold.
> - This includes solar, hydro, and onshore wind. There is also scope in future for offshore renewable projects to offer shared ownership opportunities to communities; however this would be on a longer timescale.
> - The types of stake that could be offered by developers to the community include shares, a royalty instrument and a loan.[32]

The Government also published an impact assessment of the proposed legislation in June 2014. In October 2014 it published a document entitled *Briefing on Community Electricity Right: secondary regulations*, clarifying its approach:

> The powers are designed to provide sufficient detail to make the nature of the obligation clear while at the same time retaining sufficient flexibility so that, if the powers were ever exercised, the lessons and experience of the voluntary approach can be taken into consideration. We consider that the provisions as they stand strike the right balance between the need for certainty on the one hand and the need to provide future flexibility on the other.[33]

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[30] ibid
[31] Cabinet Office, *Queen's Speech 2014: background briefing notes*, 4 June 2014, p26
[32] DECC, *Infrastructure Bill: The Community Electricity Right Policy Brief*, 4 June 204
[33] DECC, *Briefing on Community Electricity Right: secondary regulations*, 9 October 2014

2.1 Shared Ownership Taskforce

The Government published a Community Energy Strategy in January 2014, following consultation in 2013. It also created a Shared Ownership Taskforce with representatives of the renewables industry and the community energy sector with the aim of assessing the potential of a voluntary approach for the renewables sector to improve community ownership. If the voluntary approach is not deemed to be effective the Government made clear it intended to introduce powers in the *Infrastructure Bill* to require developers to offer shared ownership:

> The Secretary of State for Energy & Climate Change has asked an industry taskforce to work with the community sector and report back to him by summer 2014. This report will include a robust framework and timetable for implementation. In addition to identifying measures to increase community ownership of new commercial developments, the taskforce will work with community energy groups to set an overall level of ambition for community ownership of new renewables developments (including both wholly and partly community-owned developments).
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> We expect that by 2015 it will be the norm for communities to be offered the opportunity of some level of ownership of new, commercially developed onshore renewables projects. We will review progress in 2015 and if this is limited, we will consider requiring all developers to offer the opportunity of a shared ownership element to communities.[34]

The Task Force reported in November 2014. Its main recommendation was as follows:

> Commercial project developers seeking to develop significant renewable energy projects (i.e. above £2.5m in project costs) for the primary purpose of exporting energy onto a public network should offer interested communities shared ownership.[35]

The Task force will review progress on a voluntary approach to shared ownership after six and 12 months. The Government also announced the creation of a Register of Community Benefits and Engagement for onshore wind projects on 13 November. This is similar to registers that already exist in Scotland and Wales.

2.2 Comment on Proposals

Before bringing forward legislation DECC published a discussion document, in February 2014, which indicated its preference for a non-legislative approach, although it asked interested parties for their views on proposals for legislation.

Comment from the Community Energy Action Programme was broadly supportive but they thought the proposals for legislation were overly restrictive, for example calling for renewable heat to be included. However, the Renewable Energy Association was strongly opposed to a legislative approach:

> There is no particular downside to sharing ownership with the community provided that developers are not forced into it, in situations where it might not work or is significantly detrimental to a project. It is essential that normal project development activity is not hindered by bureaucratic, expensive and potentially unworkable procedures for investigating whether there is an appetite within the community for investing.[36]

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[34] DECC, *Shared Ownership Taskforce* [accessed 2 December 2014]
[35] REA, *Shared Ownership Taskforce Report*, 4 November 2014
[36] REA, *Community Buy In Discussion Paper* [accessed 2 December 2014]

The CPRE published a briefing for the Lord's Second Reading in which it welcomed the proposals. However it had some concerns:

> The Bill proposes that projects less than 5MW should be excluded; we think this is too high and should be based on capital cost and set at £1 million. We also believe the maximum community stake of 5% of total capital costs of a project is much too low; a maximum of 20% would be in line with best practice elsewhere in Europe.[37]

2.3 Bill Proposals

Clauses 33 and **34**, and **Schedule 5** of the Bill cover the proposals for the Community Electricity Right. They would empower the Secretary of State to make regulations for a community right to buy in relation to onshore wind and solar power renewable developments. Schedule 5 sets out the details of this, providing that the powers would only apply to developments over 5MW, and limiting the maximum stake to five per cent. Other areas, such as who would qualify, would be set out later in regulations following consultation.

Due to a Government amendment in the Lords, it is proposed that this part of the Bill would come into force on 1 June 2016.

2.4 Lords Stages

The proposals were not discussed in detail during the Bill's Second Reading, but were generally welcomed. The Minister stated:

> Part 4 would give communities the right to invest in their local renewable electricity schemes, transforming how they engage in these types of projects. It would give them the opportunity to have a real stake and sense of ownership in projects happening on their doorsteps.[38]

Although the Opposition tabled several amendments, all were withdrawn after debate and the clauses agreed without division.

Their Lordships debated the reason renewables generally - and land-based renewables specifically - had been selected for this approach. The Opposition argued that it would put "an administrative burden on to a class of developers that does not apply to other developers" and tabled amendments to remove the reference to renewables, so that the measure would apply to all energy projects.[39] There was also discussion about why the limit of community ownership was set at five per cent. Their Lordships questioned who would qualify to take part, and asked whether charities would be able to participate. In response Baroness Verma, Undersecretary of State for DECC, referred to:

> The importance of not prejudicing the models coming forward through the voluntary approach and the outcome of any formal consultation. It is for these key reasons that we have not set out the finer details of implementation within primary legislation.[40]

However, she said that the Government had set the five per cent upper limit to provide certainty for developers.[41]

During Report Stage, Baroness Verma explained why the proposals focused on renewables:

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[37] CPRE, *Infrastructure Bill Briefing*, 18 June 2014
[38] HL Deb 18 June 2014, c841
[39] HL Deb 22 July 2014, c393GC
[40] ibid., c399GC
[41] ibid., c405GC

> Renewable electricity generation, particularly from technologies such as wind and solar power, is now well established. This typically translates into lower risk profiles for community investors, which is an important safeguard. It is important to remember that shared ownership is still very much a developing concept in this country […] I would like to reassure the noble Baroness again that this is the first step in increasing community shared ownership of renewables. If it is successful, there is nothing to stop us considering extending it to other technologies, because we want lessons to be learnt and to do the proper consultation that everybody would expect to take place when we extend this.[42]

The Minister said that the Government's reason for limiting the approach to renewables was because it wants to "bridge that disconnect between national and local benefits for renewable energy schemes".[43]

There was also concern that, as originally drafted, the regulation-making powers would come into force two months after Royal Assent, particularly in view of the fact the Government stated it favoured a voluntary approach, with regulations been seen as a last resort. The proposed commencement date was subsequently amended by the Government to 1 June 2016.

2.5 Committee Stage

There was no significant mention of this part of the Bill during Second Reading, which took place on 8 December 2014.

During Committee Stage Alan Whitehead tabled the only amendment, which aimed to include an elected authority under the definition of community. In response, the Minister reiterated the Government preferred option of defining which groups would qualify in secondary legislation:

> Our preferred approach is to leave to secondary legislation the specific details of which groups would be able to exercise the right to buy. Therefore, our provisions do not define a "community" in the way that the hon. Gentleman's proposed amendment would. They require secondary legislation to define "community" by reference to a geographical area, and allow that future regulations will define members of that community, which could include groups such as local authorities.[44]

The amendment was withdrawn.

3 Maximising the recovery of UK petroleum

The UK's oil and gas industry supports 450,000 jobs directly or indirectly and paid £4.7 billion in direct taxes in 2012/13. Around 42 billion barrels of oil and gas have so far been produced from the UK continental shelf, and according to the Government around 20 billion could still be discovered.[45]

In 2013 the Government commissioned Sir Ian Wood to lead a review into the challenges the oil and gas industry faced so that the economic benefits of the UK's oil and gas resources could be maximised. The review was launched on 10 June 2013 and evidence was taken from companies accounting for over 95 per cent of UK production and investment, supply

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[42] HL Deb 5 November 2014, c1719 & c1720
[43] ibid., c1719
[44] PBC 8 January 2015 c240
[45] HL Deb 6 November 2014, c152WS

chain, other key stakeholders in continental shelf activities, Government representatives, and international regulators.[46]

The Final Report of the Wood Review was published on 24 February 2014. It set out the following core key recommendations:

- A new shared strategy for "maximising economic recovery (of oil and gas) for the UK", with commitment from the Government (HM Treasury and a new Regulator) and the oil and gas industry;
- Creation of a new arm's-length regulatory body to oversee and develop this programme of change and growth; and
- Greater collaboration and commitments by industry in areas such as development of regional hubs, sharing of infrastructure and reducing the complexity and delays in current legal and commercial processes.[47]

The Bill is concerned with measures to implement the shared strategy and a levy from industry to help fund the costs of regulating this sector.

Industry responded positively to the recommendations. The industry body Oil and Gas UK saw the recommendations as a "necessary catalyst for change" and regarded the new tripartite strategy as crucially important:

> All three parties have a role to play, with the industry, the new regulator and HM Treasury sharing a common vision of the steps that must be taken to deliver the maximum economic benefit for the industry and the country in this critical next phase of the UKCS' life.[48]

The Government's response to this recommendation, published in July 2014, was equally positive:

> The Government therefore [...] supports Sir Ian's call for a new tripartite approach to Maximising Economic Recovery of the UKCS (MER UK) between a new Authority (see recommendation 2), HM Treasury and Industry. The Secretary of State for Energy and Climate Change will remain a key partner in this approach through his role in setting the policy and strategic framework and objectives for the new Authority.[49]

3.1 The Bill

Clause 37 is concerned with the strategy for and maximising the economic recovery of UK offshore petroleum. It inserts new sections into the *Petroleum Act 1998*:

- New section 9A would provide for a principal objective of maximising the economic recovery of UK offshore petroleum and requiring the Secretary of State to produce a strategy;
- Section 9B would place a duty on the Secretary of State to carry out relevant functions in accordance with the strategy;

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[46] *The Wood Review* [accessed 4 December 2014]
[47] Wood Review, *UKCS Maximising Recovery Review: Final Report*, February 2014
[48] Oil and Gas UK press notice, "Wood Review Final Recommendations Can be Game Changers for UK Continental Shelf", 24 February 2014
[49] DECC, *Government Response to Sir Ian Wood's UKCS: Maximising Economic Recovery Review*, July 2014

- Section 9C would place duties on licence holders, operators appointed under those licences and owners of upstream petroleum infrastructure to carry out certain identified activities in accordance with the strategy;

- Section 9D would place a duty on the Secretary of State to lay before Parliament a report at the end of each reporting period about performance against the strategy; and

- Sections 9F and G would make provisions about the production and revision of the strategy, with a requirement for the first strategy to be produced within one year of the date on which the sections come into force.

Clause 38 would provide the Secretary of State with a power to raise a levy from the holders of certain energy industry licences.

The clauses were not controversial though amendments were tabled and debated to specify how the new strategy would apply in assisting the development of carbon capture and storage technologies and, more generally, in considering the climate change impacts of oil and gas extraction.

Baroness Worthington tabled amendments on Report concerning the coordination of the oil and gas strategy with principles of carbon dioxide transport and storage.[50] The Minister replied stating that, although there would be a role for the new regulator and strategy in dealing with carbon abatement technologies, it was too early for this to happen:

> The Government recognise that captured carbon dioxide could play a role in enhanced oil recovery, and likewise that enhanced oil recovery could play a role in the UK's carbon capture and storage industry going forward, but the extent of any interaction between the CCS industry and the concept of maximising economic recovery of petroleum is not yet clear.[51]

The provisions on maximising economic recovery of petroleum apply to Great Britain, UK territorial waters and the UK continental shelf.

3.2 Lords Stages

In Committee, the Government introduced two new clauses to implement the proposals, explained by the Minister, Baroness Verma:

> Amendment 95ZA seeks to put the overriding principle contained in Sir Ian Wood's report into statute, which is maximising the economic recovery of offshore UK petroleum. This is to be achieved, in particular, through the development, construction and deployment of equipment used in the petroleum industry and through collaboration among holders of petroleum licences, operators under petroleum licences, owners of upstream petroleum infrastructure and those planning and carrying out the commissioning of upstream petroleum infrastructure.
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> The Government and industry should work together to maximise the economic recovery of offshore petroleum from the UK. Because of the continually changing nature of regulation, the developing needs of exploration and production in the North Sea, and changes in technology and approaches, we think that the concept of MER UK is something that itself is likely to change over time. We therefore do not think that

[50] HL Deb 10 November 2014, c32
[51] ibid., c34

> setting out the meaning of "maximising economic recovery" in primary legislation is desirable, as greater flexibility is required.
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> We take the view that this is better achieved through a strategy which can adapt to new challenges and the evolving needs of oil and gas regulation in the North Sea. The clause therefore requires the Secretary of State to produce a strategy for enabling the principal objective to be met and places a duty on the Secretary of State to collaborate with industry and carry out his activities in accordance with the strategy. The clause also places duties on petroleum licence holders, operators, infrastructure owners and associates of those persons to comply with that strategy. There is also a duty on those planning and carrying out the commissioning of that infrastructure. The Secretary of State is under a duty to lay before Parliament a report at the end.
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> [...]
>
> The second main provision, set out in Amendments 94B and 95ZB, provides the Secretary of State with the power to raise a levy from industry to help fund the costs of regulating this sector. This is consistent with the user pays principle and the Government's belief that those who benefit from a service should ultimately pay for it.[52]

3.3 Commons Stages

An opposition amendment was moved in committee by Tom Greatrex to extend the scope of a strategy for maximizing economic recovery of petroleum to also cover "the co-ordination of the transportation and storage of CO2" for the purposes of carbon capture and storage (CCS) to mitigate greenhouse gas emissions. Mr Greatrex explained:

> The amendment would ensure that the scope of the proposed Oil and Gas Authority is appropriate to ensuring that those CCS developments, particularly in relation to the point about offshore storage and the storage of carbon dioxide, are given a fair chance to make some progress. The process of establishing the Oil and Gas Authority follows the report from Sir Ian Wood, which we may come to in a little more detail. It is very much focused on maximising economic recovery and there are good reasons for that, as there were prior to the oil price changes that we have seen in the past few weeks, but it is also important in relation to developing potential storage sites and seeing that as an opportunity.[53]

The Minster explained the Government considered it too early for the technology to be included in such a strategy:

> […] the Government are of the view that it is premature to extend the obligations on the Secretary of State and industry to matters on which we cannot say with certainty how relevant they will be to maximising the economic recovery of petroleum. We believe that further discussion with industry and the relevant trade associations is required before we can say with certainty how the principle should apply to areas such as carbon capture and storage.[54]

4 Underground Access

The Queen's Speech confirmed Government plans to streamline the underground access regime and make it easier for companies to drill for shale gas. It also confirmed that the new underground access regime would apply to drilling for geothermal energy.

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[52] HL Deb 22 July 2014, GC410
[53] PBC 13 January 2015 c250
[54] PBC 13 January 2015 c252

Under the existing system, licence holders do not have automatic access rights to drill under landowners' property and permission should be sought before they can do this. If permission is refused then licence holders can apply through the Secretary of State and courts to gain access but the Government considers this route to be too time consuming.

The Secretary of State issues Petroleum Exploration and Development Licences (PEDLs) under powers granted by the *Petroleum Act 1998*. They confer the right to search for, bore for and get hydrocarbons, but do not provide access rights to do this. However, section 7(1) of the Act applies the *Mines (Working Facilities and Support) Act 1966* in England, Wales and Scotland so a licensee can acquire ancillary rights to assist with development, including access rights. Such rights can be granted by the court if it is not reasonably practicable to obtain them by private negotiation. In these instances the landowner is entitled to compensation, determined in line with the principles established by the Supreme Court in *Star Energy Weald Basin Ltd & Anor v Bocardo SA* [2010] UKSC 35.

4.1 Consultation

The Government consulted during summer 2014 on proposals to improve the access regime. The changes set out in the consultation would:

- Grant underground access rights to companies extracting petroleum resources (including shale gas and oil) and for geothermal energy in land at least 300 metres below the surface;

- Provide a voluntary community payment of £20,000 for each unique lateral (horizontal) well that extends by more than 200 metres laterally. Alongside this would be powers to make such payments compulsory if companies fail to volunteer; and

- Provide a public notification system, under which the company would set out drilling proposals along with details of the voluntary payment.[55]

The consultation received over forty thousand responses. The vast majority of which came as letters from individuals opposing the proposals.[56] At the same time the *Guardian* reported a YouGov survey that found 74% of people opposed changes allowing companies to drill under peoples' property without permission.[57] Industry stakeholders had few substantial issues with the proposals, other than concerns about the impact of deep drilling on existing mineral rights. The Government considered that existing regulation could manage such issues and that:

> [...] the proposed policy remains the right approach to underground access and that no issues have been identified that would mean that our overall policy approach is not the best available solution.[58]

A side issue that arose during the consultation was the application of the proposals to Scotland and Wales. In particular, their application in Scotland was opposed by Scottish Ministers during the referendum build up.[59] The UK Government considered that the new

[55] DECC, *Underground Drilling Access: Consultation on Proposal for Underground Access for the Extraction of Gas, Oil or Geothermal Energy*, May 2014

[56] DECC, *Government Response to the Consultation on Proposal for Underground Access for the Extraction of Gas, Oil or Geothermal Energy*, 25 September 2014

[57] "Fracking trespass law changes opposed by 74% of British public, poll finds", *The Guardian*, 6 May 2014

[58] op cit., *Government Response to the Consultation on Proposal for Underground Access for the Extraction of Gas, Oil or Geothermal Energy*, p10

[59] BBC News, "Minister opposes change in fracking residential drilling rules", 15 August 2014

rights would apply in both Scotland and Wales and were compatible with devolved legislative powers.[60] However, it has since been confirmed by the Smith Commission that the licensing of onshore oil and gas extraction underlying Scotland will be devolved to the Scottish Parliament.[61]

Further information on the consultation is available from the Gov.uk web site:

- Government proposals to simplify deep underground access for shale gas and geothermal industries
- Access rights workshop presentation
- Underground Drilling Access

4.2 The Bill in the Lords

On 14 October Government amendments were agreed in Lords Grand Committee, taking forward the Government's proposals through the following clauses:

- **Clause 39 (as numbered now)** would provide for a right to use deep-level land for the purpose of exploiting petroleum or deep geothermal energy. It defines deep level land as being 300 metres below the surface;**Clause 40** defines the scope of activity for which the access is provided;**Clauses 41 to 43** would provide the Secretary of State with a power to introduce a payment scheme and a notification scheme and that consultation would be required if these powers were to be used; and
- **Clause 44** is an interpretation provision, defining relevant terms.

> The amendments provide for when drilling and fracking companies would be able to pump various substances underground to aid with the fracking process. Clause 39 covers the ways in which the access right may be exercised and includes a right of 'passing any substance through, or putting any substance into, deep-level land or infrastructure installed in deep-level land'. The wording of the legislation was criticised by a number of campaign groups who were concerned it gave 'free reign' to use any chemicals in the fracking process.[62] Such chemicals are regulated through the permissions process that fracking operators are required to adhere to, as explained by Baroness Verma:[…] chemical disclosure, is already required on a well-by-well basis. Operators must notify the environmental regulator of the volume and composition of the frack fluid and seek its permission prior to proceeding. The regulator will set this out when publishing the permit, including each chemical and the maximum concentration authorised for use. In addition, the industry has committed to publish this information, including each of the chemicals used, the total volume of frack fluid used and the maximum volume of each chemical within that.[63]

Subsequent amendments were tabled during Report stage to bring about a statutory monitoring and assessment process for any wells using the new access rights, and for the access rights to be excluded from protected areas such as National Parks, Sites of Special Scientific Interest and Areas of Outstanding Natural Beauty.[64] These were withdrawn

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[60] DECC, *Underground drilling access* [accessed 4 December 2014]

[61] Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, 27 November 2014, p21

[62] "UK to allow fracking companies to use 'any substance' under homes", *The Guardian*, 14 October 2014

[63] HL Deb, 14 October 2014, cc58-61GC

[64] HL Deb, 10 November 2014, cc59-63

following debate. Baroness Verma considered that existing planning policy was sufficient to protect such areas.[65]Renewable Heat Incentive

Clause 45 of the Bill was introduced as a Government amendment in the Lords. The new clause would allow the Secretary of State to appoint an alternative body to administer the Renewable Heat Incentive (RHI), although Ofgem would continue to administer the scheme for the moment. It would also allow payments under the RHI to be made to third parties assigned by the current owner of an installation, and would simplify the procedure to amend the scheme by making it subject to the negative resolution procedure. DECC published a policy briefing explaining the reason for the proposals. With regard to third party payments its states:

> This could lead to an increase in both demand for and supply of renewable heat technologies by allowing consumers to access finance for renewable heat installations more cheaply and easily. This could lead to a mix of higher deployment and lower costs, depending in part on future spending decisions.[66]

4.3 Commons Committee Stage

A series of amendments were debated during the Commons committee stage dealing with environmental regulation and community benefits. However these clauses were not amended.

The first of these were concerned with the regulatory process and in particular the issue of pumping 'any substance' into the ground was revisited. Tom Greatrex said that the term "any substance" was 'needlessly open-ended' and 'provocative-sounding'. An amendment was voted against that would have required any fracking fluid substance to be approved by the Environment Agency.[67] Amendments were also tabled, but not agreed to, to prevent fracking in certain protected areas such as National Parks and to set out, more prescriptively, the process for assessing the environmental impacts of fracking developments, monitoring these sites and disclosing information about processes being used at them.[68]

The set of amendments relating to community benefits was tabled with the aim of providing a more clear assurance and structure around the way contributions from fracking development would be spent in communities. The industry has agreed to pay £100,000 to communities per hydraulically fractured well site at exploratory stage, and 1% of revenue if it successfully goes into production. In addition, the industry has confirmed that operators will contribute a voluntary one-off payment of £20,000 for the right to use deep-level land for each unique lateral well that extends by more than 200 metres, and will notify the public when exercising this power. The Minister explained that more detail on how funding would be spent would emerge from pilot projects:

> The industry will work with UK Community Foundations on two pilot exploration schemes. UK Community Foundations is an independent registered charity, which is experienced in engaging with and consulting communities and in dealing with funding allocation. This will ensure that these community benefit schemes are independent of the industry and that communities have the lead role in identifying local priorities for the funds. In terms of the payment scheme, in return for the right of use, the current

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[65] HL Deb, 14 October 2014 c46GC
[66] DECC, *Infrastructure Bill: The Renewable Heat Incentive*, 24 October 2014
[67] PBC 13 January 2015 c298
[68] PBC 13 January 2015 c293

> provisions already allow the Secretary of State, if not satisfied with the schemes, to introduce regulations to set up a statutory payment or notification mechanism. The focus should now be on exploration, so that we can first know how much shale gas we can really extract, to see what benefits will actually go to communities. [69]

5 Reimbursement in making electrical connections

Distribution network operators (DNOs) are able to charge customers for the full cost of connecting the electricity network. Connections are not monopolised by DNOs, third party providers are also able to offer some of these services. Ofgem, the industry regulator, does regulate the practice by setting service standards, but there is no cap on connection charges. The process for any customer is the same, in fact the regulations set out that operators must not discriminate between customers when carrying out works related to connections.

Ofgem also produce this guidance note that describes the process.

5.1 Commons Debate

Clause 46 on the *Reimbursement of persons who have met expenses of making electrical Connections* was added in Commons Committee on 13 January.[70] It affects the way in which money can be reimbursed when connecting the electricity network. Currently, if a customer connects to the network using infrastructure that was paid for previously by another customer then they can be required to reimburse the earlier party for a proportionate share of the costs they paid. However such payments can only be made for costs paid to the network operators not to other parties involved in the work. The clause now aims to amend this so that cost paid for all works can be reimbursed. It was not contested by the opposition.

[69] PBC 13 January 2015 c299
[70] PBC 13 January 2015 c324