

ENERGY BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Energy Bill [HL] as brought from the House of Lords on 5 November 2015 (Bill 92).

- These Explanatory Notes have been prepared by the Department of Energy and Climate Change in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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Overview of the Bill

- 1 The Energy Bill contains provisions which aim to complete the work started in the last Parliament to implement the recommendations in [Sir Ian Wood's review](#) into UK offshore oil and gas recovery and its regulation. Central to this was the establishment of a new arm's length regulatory body charged with effective stewardship and regulation of petroleum recovery. The Bill will formally establish the Oil and Gas Authority (OGA) as an independent regulator (which will take the form of a government company), transfer regulatory powers and functions to it and provide the OGA with new powers. This aims to ensure the OGA has the powers it needs to become a robust, independent and effective regulator, and enable it to deliver on a strategy to give effect to the principal objective, defined in section 9A of the Petroleum Act 1998.
- 2 The Bill also aims to enable more comprehensive charging of the offshore oil and gas industry for permits and licences for environmental and decommissioning activity. The intention of this is to allow government to continue to recover the costs of its environmental and decommissioning activity in line with the 'polluter pays' principle of environmental law and address a perceived gap in current legislation.
- 3 The Bill makes changes so that local authorities decide whether to approve planning applications for new onshore wind farms.
- 4 In summary the Bill will:
 - Formally establish the OGA as an independent regulator, which will take the form of a government company, charged with (amongst other matters) the asset stewardship and regulation of domestic oil and gas recovery.
 - Transfer the Secretary of State for Energy and Climate Change's existing regulatory powers in respect of offshore oil and gas to the OGA. It will transfer the Secretary of State's existing regulatory powers in respect of onshore oil and gas in England to the OGA and in relation to onshore oil and gas in Scotland and Wales will respect the changing devolution position. The Secretary of State's environmental regulatory functions in relation to oil and gas would not be transferred.
 - Give the OGA additional powers including: access to company meetings; data acquisition, retention and transfer; dispute resolution; and sanctions.
 - Introduce provisions in relation to charges for the offshore oil and gas environmental regulator's services to the industry.
 - Make legislative changes to remove the need for the Secretary of State's consent for large onshore wind farms (over 50 Mega Watt (MW)) under the Electricity Act 1989, acting in tandem with other measures to, in effect, transfer the consenting of onshore wind farms into the planning regime in the Town and Country Planning Act 1990.
 - Make an amendment to the Climate Change Act 2008 preventing, from 2028, the net UK carbon account being calculated taking into account carbon units derived from the European Union Emissions Trading System.

Policy background

- 5 The UK's oil and gas industry makes a substantial contribution to the UK's economy, energy security and employment. 42 billion barrels of oil equivalent (BOE) have been produced from the UK Continental Shelf (UKCS), and it is estimated that a further 12 to 24 billion BOE could be produced. The UKCS is one of the most mature offshore basins in the world. It faces challenges of a very different exploration and production environment compared to when production peaked 15 years ago. On 10 June 2013 the then Secretary of State for Energy and Climate Change announced a review into maximising UK offshore oil and gas recovery and its regulation, led by Sir Ian Wood. The final report was published on 24 February 2014.
- 6 The central recommendation from the report was the creation of a new arm's length regulatory body charged with effective stewardship and regulation of petroleum recovery. The Energy Bill, building on the powers contained in the Infrastructure Act 2015, will formally establish the Oil and Gas Authority (OGA) as an independent regulator (which will take the form of a government company) transfer regulatory powers and functions to it and provide it with new powers. This aims to ensure the OGA has the powers it needs to become a robust, independent and effective regulator, and enable it to give effect to the principal objective set out in section 9A of the Petroleum Act 1998.
- 7 Within the Department of Energy and Climate Change ("DECC"), the offshore Oil and Gas Environment and Decommissioning Unit ("OGED") is the body responsible for environmental regulation functions relating to the offshore oil and gas industry on behalf of the Secretary of State.
- 8 OGED has been charging fees annually to operators in the territorial sea and the UKCS to cover the costs of its functions. OGED recently reviewed the current fees charged by the Secretary of State to ensure they were in line with current Treasury Guidance. As a result of this work, it became clear that whilst the majority of fees that were recovered were properly covered by fee schemes, there were elements that were not provided for by the current legislation. The Bill therefore validates those charges that have already been raised without authority. The Bill also provides that the Secretary of State can charge a fee in future for two sets of functions.
- 9 The Government made a manifesto commitment to decentralise decision making on new onshore wind farms. Ministers have said that onshore wind energy development should only get the go-ahead if supported by local people ([Written Ministerial Statement](#)). DECC is implementing measures, including through the Energy Bill, to help fulfil the commitment by removing the requirements for a consent from the Secretary of State for Energy and Climate Change in relation to the construction, extension or operation of onshore wind farms with a capacity greater than 50MW. In future, local authorities (or potentially the Welsh Ministers in the case of Wales) will be the primary decision-makers for all onshore wind projects including those with a capacity greater than 50MW.

Legal background

The Oil and Gas Authority (OGA)

- 10 The OGA will exercise certain licensing and regulatory functions in the Petroleum Act 1998, relating to the licensing of oil and gas exploration and production, which must be exercised in accordance with the Hydrocarbons Licensing Directive (94/22/EC) and the Offshore Safety Directive (2013/30/EU). It will also exercise licensing functions under Chapters 2 and 3 of Part 1 of the Energy Act 2008, relating to the importation and storage of combustible gas and the storage of carbon dioxide. In addition it will be responsible for the exercise of the functions of the Secretary of State under Chapter 3 of Part 2 of the Energy Act 2011, relating to access to upstream petroleum infrastructure and for the production of the Maximising Economic Return UK (MER UK) Strategy, required by the Petroleum Act 1998, section 9A (inserted by the Infrastructure Act 2015). It will also have a role advising on the costs of the decommissioning of offshore installations.

Fees

- 11 OGED exercises environmental regulation functions in relation to offshore oil and gas and charges the industry for the exercise of those functions. It was recently discovered that the necessary fees regulations had not been made in relation to functions exercised under the enactments listed in clause 78(3) of this Bill. Fees are validly charged in relation to the remainder of OGED's functions in fees regulations made under section 2(4) of the Pollution Prevention and Control Act 1999, section 2(2) of the European Communities Act 1972 and section 56 of the Finance Act 1973.
- 12 No power to make fees regulations existed in relation to the functions exercised under Part 4A of the Energy Act 2008 or some aspects of Part 4 of the Marine and Coastal Access Act 2009. Clause 77 makes that provision here. Clause 78 validates all of the fees which have been charged without the requisite statutory authority in place.

Wind power

- 13 At the moment in England and Wales, onshore wind projects with a capacity of 50MW or under require planning permission under the Town and Country Planning Act 1990, where currently local planning authorities generally take decisions. The construction or extension of onshore wind projects with a capacity greater than 50MW requires consent under the Planning Act 2008 from the Secretary of State for Energy and Climate Change. In addition there is a consenting regime in the Electricity Act 1989 for generating stations which have a capacity greater than 50MW, with the Secretary of State for Energy and Climate Change as the decision-maker. However this does not apply where consent is necessary under the Planning Act 2008 - which for onshore wind farms is currently the case.
- 14 The Government currently intends to introduce secondary legislation:
 - a. under the Planning Act 2008 to amend that Act to remove from it the requirement to obtain a consent before constructing or extending an onshore wind farm with a capacity greater than 50MW; and
 - b. under the Electricity Act 1989 to provide in secondary legislation an exemption from the requirement to get consent under that Act for the construction, extension or operation of onshore wind farms greater than 50MW- consents that would be necessary once the Planning Act requirement has been removed. The provision in this Bill would place that exemption in the Electricity Act itself.

Territorial extent and application

- 15 The Bill will have UK extent where it relates to oil and gas. It will not apply onshore in Northern Ireland, but will apply:
 - a. offshore in the territorial sea around the UK and in the continental shelf;
 - b. onshore in England; and
 - c. onshore in Scotland and Wales in a manner that respects the changing devolution position.
- 16 The provision relating to onshore wind planning extends to Great Britain, but only makes changes in relation to England and Wales.
- 17 The provision relating to the UK carbon account extends to the UK as it amends section 27 of the Climate Change Act 2008, which extends to the UK (see section 99(1) of the 2008 Act).

Commentary on provisions of Bill

Part 1: The Oil and Gas Authority (OGA)

The OGA and its core functions

Clauses 1 and 2 and Schedule 1: The OGA and Transfer of functions to the OGA

- 18 Clause 1 establishes the OGA.
- 19 Clause 2 and Schedule 1 transfer statutory functions to the OGA by amending the relevant legislation. Clause 2 also confers a power on the Secretary of State to transfer relevant functions to the OGA and make consequential amendments by regulations.
- 20 Clause 2(5) provides that regulations may not give the OGA the power to make secondary legislation.
- 21 Schedule 1 slightly modifies the duty transferred to the OGA under section 9B(b) of the Petroleum Act 1998.
- 22 Schedule 1 inserts a new section 9BA into the Petroleum Act 1998 so that the Secretary of State continues to be under a duty to act in accordance with any strategy produced under section 9A(2) when exercising her functions under Part 4, with minor modifications.
- 23 Since onshore petroleum licensing functions in Scotland and Wales are to be devolved to Ministers in those territories, provision is made here to allow the OGA to carry out relevant functions on an interim basis.

Clauses 3: Transfer of property, rights, and liabilities to the OGA

- 24 Clause 3 provides for the Secretary of State to create transfer schemes enabling the transfer of property, rights and liabilities from a Minister of the Crown to the OGA.

Clause 4: Transfer of Staff to the OGA

- 25 Clause 4 provides for the Secretary of State to create transfer schemes enabling the transfer of civil servants of the State to become employees of the OGA. This power is subject to any provision within the scheme that allows a person to object to becoming an employee of the OGA.

Clause 5: Transfer schemes supplementary

- 26 This clause makes specific provision for certain matters that either of the sorts of transfer scheme may provide for. This includes the power to modify a transfer scheme, subject to the agreement of affected parties where such a scheme has taken effect at the time of modification.

Clause 6: Pensions

- 27 Clause 6 amends Schedule 1 of the Superannuation Act 1972 to insert "The Oil and Gas Authority," allowing certain employees of the OGA to participate in the Principal Civil Service Pension Scheme.
- 28 Subsection (3) also provides for OGA employees to be treated as persons listed in Regulation 3(2) of the Public Service (Civil Servants and Others) Pensions Regulations 2014 in relation to whom the alpha pension scheme potentially relates.

Clause 7: Contracting out of functions of the OGA

- 29 Clause 7(2) enables orders under section 69 of the Deregulation and Contracting Out Act 1994 under which functions are carried out by the OGA on behalf of a Minister or Office Holder to be of greater than 10 years duration.
- 30 Clause 7(3) provides for Welsh Ministers, with certain limitations, to contract with the OGA for the OGA to exercise functions on their behalf.

Greenhouse gases

Clause 8: Transportation and storage of greenhouse gases

- 31 This clause amends the principal objective set out in section 9A of the Petroleum Act 1998 so that it relates not to maximising economic recovery, but to maximising economic return and also covers the retention of functions relating to the decommissioning of oil and gas infrastructure and securing its use for carbon capture and storage.

Exercise of functions

Clause 9: Matters to which the OGA must have regard

- 32 Clause 9 sets out a non-exhaustive list of the matters to which the OGA must have regard when exercising its functions, so far as relevant. These include, for example, the need to maintain a stable and predictable system of regulation which encourages investment and the development and use of facilities and other things needed for carbon capture and storage.
- 33 "Function" is defined in subsection (2) for the purposes of this clause and clause 10. The definition excludes functions which the OGA is authorised to exercise by virtue of an order under section 69 of the Deregulation and Contracting Out Act 1994 or an agreement with the Welsh Ministers under clause 7(3). Otherwise it is intended to include all other OGA functions, including functions exercisable under licences where provision is made for these to be transferred to the OGA and specifically including functions in relation to carbon storage under Chapter 3 of Part 1 of the Energy Act 2008.

Clauses 10 and 11: Directions: national security and public interest and Directions: requirements to notify the Secretary of State

- 34 Clause 10 gives the Secretary of State the power to give directions to the OGA as to the exercise of any of its functions if the Secretary of State considers that the directions are necessary in the interests of national security or are otherwise in the public interest. However, unless directions are given in the interests of national security, the Secretary of State may give a direction that relates to a regulatory function in particular cases (as defined) only if the Secretary of State considers that the circumstances are exceptional. A copy of the direction must be laid before Parliament, but the Secretary of State may exclude material that is considered to be contrary to the interests of national security or otherwise is not in the public interest to publish.
- 35 Clause 11 gives the Secretary of State the power to give directions to the OGA specifying matters with respect to which the OGA must notify the Secretary of State when they arise or if the OGA considers that they are likely to arise. This power will enable the Secretary of State to specify matters, for example, in relation to which the Secretary of State wishes to consider exercising the power in clause 10.

Information and samples

Clause 12: Power of Secretary of State to require information and samples

- 36 Clause 12 allows the Secretary of State to acquire from the OGA information or samples held by or on behalf of the OGA for the purposes specified in subsection (1). Any such information and samples are, for the purposes of this section, referred to as protected material.
- 37 The clause allows the Secretary of State to use protected material only for the purposes for which it was provided. Protected material may only be disclosed by the Secretary of State or any subsequent holder:
- a. so far as is necessary for the purposes for which it was provided;
 - b. when disclosure is required by or under any Act; and
 - c. with the consent of the OGA, provided that where the protected material was provided to the OGA by or on behalf of another person, the OGA confirms that person also consents.

Funding

Clause 13: Powers of the OGA to charge fees

- 38 This clause provides the OGA with the power to charge fees for certain services it provides to the oil and gas industry, such as considering an application for a licence to explore for petroleum. Clause 13(2) gives the Secretary of State the power to make regulations determining the amount of the fees.
- 39 The clause does not give the OGA the power to charge fees in relation to functions which it carries out either under an order under section 69 of the Deregulation and Contracting Out Act 1994 or under an agreement with the Welsh Ministers under clause 7.

Clauses 14 and 15: Levy on licence holders and The licencing levy: regulations

- 40 Clause 14 provides the Secretary of State with a power to make regulations imposing a levy on the holders of certain licences. The levy will fund the Oil and Gas Authority's functions and costs of providing the Tribunal Service to consider appeals against decisions of the OGA. The levy may not be imposed in respect of costs incurred where a fee is charged under clause 13.
- 41 This provision replaces the existing levy provision which is currently set out in the Infrastructure Act 2015.
- 42 Clause 15 sets out what the regulations made by the Secretary of State under clause 14 may make provision for.

Clause 16: Payments and financial assistance

- 43 The clause provides a general power for the Secretary of State to make payments and provide financial assistance, through grants, loans guarantees or indemnities or any other kind of financial assistance, to the OGA.

Review

Clause 17: Review of OGA and guidance from Secretary of State

- 44 Clause 17 requires the Secretary of State to carry out reviews of the OGA's performance. Subsection (4) sets out matters which must be considered as part of a review.

- 45 A review must be undertaken for each review period. The first review period will begin with the day on which clause 1 comes into force and end one year after this, unless the Secretary of State specifies an earlier date. Subsequent review periods will begin immediately after the preceding review period and end one year later unless the Secretary of State specifies an earlier date.
- 46 Subsections (5), (6) and (7) set out the process which should be followed by the Secretary of State and the OGA following a review.
- 47 The functions to be considered as part of a review exclude functions which the OGA is authorised to exercise by virtue of an order under section 69 of the Deregulation and Contracting Out Act 1994 or an agreement with the Welsh Ministers under clause 7.

Part 2: Further functions of the OGA relating to offshore petroleum

Chapter 1: Introduction

Clauses 18 and 19: Overview of Part 2 and Interpretation of Part 2

- 48 This group of provisions is self-explanatory.

Chapter 2: Disputes

Clause 20: Qualifying disputes and relevant parties

- 49 This Chapter makes provision for the OGA to consider, and make recommendations in relation to the resolution of, certain disputes (qualifying disputes) and this clause establishes the nature of the disputes to which the Chapter applies. Those are disputes relating to "qualifying issues". Qualifying issues are issues which are either relevant to the fulfilment of the principal objective (as set out in section 9A(1) of the Petroleum Act 1998) or to an activity carried out under an offshore petroleum licence. Qualifying issues exclude issues which are the subject of consideration under the process in Chapter 3 of Part 2 of the Energy Act 2011 (Access to upstream petroleum infrastructure). Where the dispute relates to multiple issues, the OGA may only consider those issues that are within the scope of these provisions.
- 50 They must also be disputes including at least one person listed in section 9A(1)(b) of the Petroleum Act 1998 (a relevant party). These terms are used elsewhere in this Chapter.

Clause 21: Reference of disputes to the OGA

- 51 Only relevant parties may refer a dispute to the OGA, though clause 21 makes provision for the OGA to consider a dispute on its own initiative, which it may choose to do if a complaint is raised by a party to the dispute who is not a relevant party.
- 52 Subsection (2) provides for the OGA to specify requirements for how a referral should be made and the OGA must publish these requirements, and any amendments to them, bringing them to the attention of likely affected persons.

Clauses 22 and 23: Consideration of disputes

- 53 Clause 22 sets out the process which the OGA must follow when a dispute is referred to it by a relevant party. The OGA must decide whether to reject, adjourn for further negotiations or accept the reference. Subsection (4) provides a non-exhaustive list of the grounds upon which the OGA may reject a reference, including grounds enabling the OGA to focus on the disputes with the potential to have the greatest impact on the delivery of the principal objective.

- 54 Subsection (2) requires that the OGA issue guidance specifying the matters it will have regard to when making its decision.
- 55 Where the OGA decides to adjourn the referral of the dispute it must set a timetable for the parties to conduct further negotiations with the aim that the dispute be settled without the need for OGA consideration. The OGA may also give directions to the parties, which they must comply with during the adjournment. After the period of adjournment has expired the OGA must again decide whether to reject, adjourn for a further period of negotiation or accept the reference.
- 56 Any failure by a relevant party to comply with the timetable set by the OGA or any direction given may be the subject of sanctions under the provisions contained in Chapter 5.
- 57 Clause 23 gives the OGA the power to consider a dispute on its own initiative, in which case it is treated in the same manner as if the OGA had accepted a reference of it (clause 24(1)). Where it does so, the OGA must notify all parties to the dispute, this includes any non-relevant parties.

Clause 24: Procedure for consideration of disputes

- 58 This clause requires that where the OGA accepts a reference of a dispute by a relevant party or decides to consider a dispute on its own initiative, it must draw up a timetable for consideration of the dispute and for making a recommendation for resolving it. The OGA may issue directions to relevant parties, but not to other persons, breach of which may result in the application of sanctions, for which provision is made in Chapter 5.
- 59 The OGA's recommendation must be one that it considers will resolve the dispute in the way which best contributes to the fulfilment of the principal objective, whilst being one that is economically viable to the parties to the dispute. This is only a recommendation and is not binding, even on relevant parties.
- 60 Subsection (6) allows for the OGA to publish all or part of its recommendation but before any publication the OGA must give the relevant parties an opportunity to be heard.
- 61 Subsection (8) requires that the OGA issue guidance setting out the matters it will have regard to when considering a dispute and in reaching its recommendation.

Clause 25: Power of the OGA to acquire information

- 62 Clause 25 gives the OGA the power to require a relevant party to a dispute to provide it with information for the purposes listed in subsection (1).
- 63 The OGA is not precluded from requesting information from non-relevant parties, but these parties cannot be sanctioned for failure to comply with such a request.
- 64 The OGA may specify the manner in which the information is to be provided and a reasonable period within which it is to be provided. Any failure to comply with a requirement to provide information by a relevant person is sanctionable in accordance with the provisions set out in Chapter 5.

Clause 26: Power of the OGA to require attendance at meetings

- 65 Clause 26 enables the OGA to require a relevant party to send a representative with the necessary knowledge and expertise of a dispute to a meeting with the OGA for the purposes of assisting the OGA in:
- a. deciding whether to reject, adjourn or accept a dispute;
 - b. deciding whether to consider a dispute on its own initiative; or

c. considering a dispute and making a recommendation.

66 Where attendance at a meeting is required the OGA must give reasonable notice of the meeting. Any failure to comply with a requirement to attend a meeting by a relevant party is sanctionable in accordance with the provisions set out in Chapter 5. The OGA is not precluded from requesting the attendance at a meeting of non-relevant parties but these parties cannot be sanctioned for failure to comply with such a request.

Clause 27: Appeals against decisions of the OGA: disputes

67 This clause allows for any relevant party that is the subject of certain specified decisions of the OGA to appeal against that decision to the First-tier Tribunal on specific grounds. Those decisions and grounds are self-explanatory, as are the powers of the Tribunal. A recommendation made by the OGA under clause 24(2)(b) does not constitute an appealable decision by the OGA on the basis that it is not a binding obligation.

Chapter 3: Information and samples Interpretation

Clause 28: Petroleum related information and samples

68 This clause provides the definitions of "petroleum related information" and "petroleum-related samples" applicable to this Chapter, which specifically includes information and samples acquired or created as mentioned in those definitions that are relevant to activities carried out under a carbon dioxide storage licence, meaning a licence granted under section 18 of the Energy Act 2008.

Retention

Clauses 29 and 30: Retention of information and samples and Retention: supplementary

69 These clauses give the Secretary of State the power to make regulations, which require relevant persons to retain specified petroleum-related information and specified offshore licensees to retain specified petroleum-related samples. These concepts are defined in clause 28. Before making any such regulations the Secretary of State must consult the OGA. The regulations are to be made by statutory instrument and will be subject to the negative resolution procedure in accordance with clause 81.

70 The regulations may provide for any retention requirements to continue following a termination of rights under the licensee's licence, whether the termination relates to the whole or any part of the licence. They may not, though, include any requirement which has effect once an information and samples plan (under clause 32) is in place.

71 Any failure to comply with a requirement set out in the regulations is sanctionable under the provisions contained in Chapter 5.

Information and samples plans

Clauses 31, 32, 33 and 34: Information and samples plans

72 In the event of the ending of a licensee's interest in all or part of a licence, referred to as a "licence event", an information and samples plan must be prepared. This must be agreed with the OGA before the transfer, surrender or expiry of the licence or as soon as reasonably practicable after the revocation of the licence. Where it is not agreed with the OGA by this time, the OGA may impose a sanction on the responsible person in accordance with Chapter 5 and may draw up its own plan, which will take effect as if agreed with the licensee. To enable

it to draw up such a plan, subsection (4)(b) of clause 32 provides the OGA with the power to obtain information from the responsible person. A "responsible person" is the person who is or was, or the persons who are or were, the licensee in respect of the relevant licence immediately before the licence event.

- 73 The information and samples plan will deal with what is to happen to petroleum related information and samples held by the responsible person prior to the licence event taking place. When a plan takes effect, either on agreement or after imposition, the responsible person must comply with it. These plans may be amended by agreement between all the parties to the plan, except where one of the parties has been dissolved, in which case that party's consent is not required.
- 74 Once a plan is agreed, the retention requirements imposed by regulations made under clause 29 will cease to have effect in relation to such information and samples as are dealt with in the plan, and the retention of that information and those samples will be in accordance with the plan.
- 75 Clause 34 sets out that an information and samples plan may provide, amongst other things, for the storage of information and samples to be the responsibility of the OGA or for the transfer of information and samples to a new licensee or a person holding a carbon dioxide storage licence under section 18 of the Energy Act 2008. However, no obligations may be placed on a person other than the responsible person without their consent. A plan which is prepared by the OGA may not provide for the transfer of information and samples without the consent of the responsible person.
- 76 Where there has been a transfer of rights under an offshore petroleum licence for only part of a licenced area, the information and samples plan must relate to all petroleum-related information and samples held before the transfer, not just those in respect of the area being transferred.

Power to require information and samples

Clause 35: Power of the OGA to require information and samples

- 77 This clause enables the OGA, by written notice, for the purposes of carrying out its functions which are relevant to the fulfilment of the principal objective or which relate to activities carried out under a carbon dioxide storage licence granted under section 18 of the Energy Act 2008 to require:
 - a. a relevant person to provide it with any petroleum related information or a portion of a petroleum-related sample, held by or on behalf of that person; and
 - b. a person who holds information and samples in accordance with an information and samples plan to provide it with any such information or a portion of any such sample.
- 78 Within the notice, the OGA must specify the form and manner in which the information and/or sample is to be provided, and the period within which it must be provided. Any failure to comply with a requirement of an information notice is sanctionable under the provisions contained in Chapter 5.
- 79 Where information or a portion of a sample is provided in accordance with a notice, any other requirements that relate to the retention of that information or sample are unaffected.

Coordinators

Clause 36: Information and samples coordinators

- 80 This clause requires relevant persons to appoint an individual as an information and samples coordinator, and requires them to notify the OGA within a reasonable period of that individual's name and contact details and any subsequent changes to that information. The information and samples coordinator is responsible for monitoring the relevant person's compliance with the obligations under this Chapter.
- 81 Any failure to comply with a requirement imposed by this section is sanctionable under the provisions contained in Chapter 5.

Appeals

Clause 37: Appeals against decisions of the OGA: information and samples plans

- 82 This clause allows for a person affected by certain specified decisions of the OGA to appeal against that decision to the First-tier Tribunal on specific grounds. Those decisions and grounds are self-explanatory, as are the powers of the Tribunal.

Chapter 4: Meetings

Clause 38: Meetings: interpretation

- 83 Clause 38 provides a definition of a relevant meeting for the purposes of this Chapter. Relevant meetings are meetings between two or more relevant persons (as defined in clause 19), including their employees and representatives, at which there is discussion of issues which either are relevant to the fulfilment of the principal objective (also defined in clause 19) or relate to activities under an offshore licence (relevant issues). These issues do not include anything to which a claim to legal professional privilege could be made.
- 84 Subsection (5) provides the OGA with a power to refine the range of meetings and issues to which these provisions apply by issuing a statutory notice to the effect that any meeting or issue, or a description of a meeting or issue, specified in the notice is not a relevant meeting or relevant issue.

Clause 39: Duty to inform the OGA of meetings

- 85 Where a relevant meeting is arranged either by a relevant person or on their behalf, this clause places an obligation upon that relevant person to provide written notice of the meeting to the OGA, to provide the OGA with details as to how it may attend and to provide it with the agenda and other relevant documents. Subsection (9) allows the OGA to issue a notice setting out how these matters are to be communicated to it.
- 86 The relevant person is required to provide at least 14 days' notice of a meeting to the OGA, unless it was not reasonably practicable to do so, in which case it is required to give as much notice as is reasonably practicable and provide to the OGA an explanation of why it was not possible to comply with the 14 day time limit. The documents which the relevant person must provide to the OGA must be provided at the same time they are provided to other meeting attendees or, if that is not possible, as soon after that time as is reasonably practicable.
- 87 Failure to comply with the obligation imposed under this clause will be sanctionable by the OGA in accordance with chapter 5.

Clause 40: Participation by the OGA at meetings

- 88 Clause 40 provides the OGA with an entitlement to attend and speak at a relevant meeting (or such parts of a relevant meeting as cover relevant issues), though it does not confer on the OGA a power to vote.
- 89 The relevant person who arranged the meeting, or on whose behalf the meeting was arranged, is required to ensure that the OGA is able to exercise those rights and failure to do so may result in the imposition of sanctions in accordance with Chapter 5.

Clause 41: Provision of information to the OGA after meetings

- 90 Clause 41 states that where a meeting is held but not attended by a person authorised by the OGA, the relevant person must, within a reasonable period of the end of the meeting, provide a written summary of the sections of the meeting which cover relevant issues.
- 91 Failure to comply with this obligation may result in the application of sanctions in accordance with Chapter 5.

Clause 42: Notices

- 92 This clause is self-explanatory.

Chapter 5: Sanctions

- 93 This Chapter provides the OGA with new powers to impose civil sanctions to regulate compliance with the terms and conditions of offshore petroleum licences as well as to regulate compliance with the duty to act in accordance with the 'MER UK Strategy' as set out in section 9C of the Petroleum Act 1998. It also provides the OGA with powers to impose sanctions in respect of certain requirements that are imposed within Part 2 which are described as being sanctionable in accordance with Chapter 5. This Chapter also provides the OGA with information-gathering powers to support investigations prior to sanctions being imposed. It also creates a right of appeal against the OGA's sanctions through the First-tier Tribunal (the "Tribunal").

Power to give sanction notices

Clause 43: Power of OGA to give sanction notices

- 94 Clause 43 enables the OGA to give sanction notices where it considers that a person has failed to comply with a petroleum-related requirement imposed upon them.
- 95 Subsection (3) defines the petroleum-related requirements to which sanctions can apply.
- 96 Sanction notices include enforcement notices, financial penalty notices, revocation notices and removal of operator notices. It is these notices that impose the sanctions.
- 97 Subsection (2) allows a single sanction notice to be given to a single person or more than one person. This is to ensure that where a petroleum-related requirement is imposed upon a consortium of persons (such as through a Joint Operating Agreement), the OGA is able to impose a sanction upon only those persons who are responsible for the failure to comply with that requirement.
- 98 Subsection (5) states that sanction notices (other than enforcement notices) may be given in respect of breaches of duties that have been remedied at the time of giving the notice. This may apply, for example, where a person who failed to provide information and samples within a required timeframe has since supplied that information to the OGA, but the OGA nevertheless wishes to impose, say, a financial penalty in respect of the breach.

99 More than one sanction notice may be given at the same time in respect of a single failure to comply with a petroleum-related requirement (subsection (6)(a)). For example, an enforcement notice may be given alongside a financial penalty.

100 Subsection (6) provides that the OGA may give subsequent sanction notices in respect of the same breach only in accordance with clause 55.

Sanction notices

Clause 44: Enforcement notices

101 Clause 44 specifies what must be contained in an enforcement notice.

102 Subsection (2) states that enforcement notices must provide information about how a person has failed to comply with a petroleum-related requirement. They must also specify that the person must comply with that requirement within a specified timeframe.

103 Enforcement notices may also include specific directions as to the action to be taken by a person in order to comply with the petroleum-related requirement.

104 The effect of subsection (4) is that the OGA has a power to give a sanction notice for a failure to comply with requirements imposed by directions given in enforcement notices within the specified timeframe.

Clause 45: Financial penalty notices

105 Clause 45 sets out what must be contained in a financial penalty notice.

106 These notices will contain information about how a person has failed to comply with a petroleum-related requirement and (where appropriate) they will specify that the person must comply with that requirement within a specified timeframe. They will also specify that the relevant person must pay a financial penalty of an amount specified in the notice within a specified time frame. The date before which payment of the penalty must be made cannot be earlier than 28 days from the day on which the financial penalty notice was given.

Clause 46: Amount of financial penalty

107 Clause 46 places restrictions upon the maximum amount of a financial penalty that can be imposed by the OGA. No financial penalty may exceed £1 million per breach of a petroleum-related requirement, including in cases where a penalty is imposed on more than one person.

108 The OGA is required to publish guidance as to the matters to which it will have regard when determining the amount of a financial penalty. The OGA is required to have regard to this guidance when determining a financial penalty.

109 The OGA can review and update its guidance periodically. Before giving or revising any guidance, the OGA is required to carry out consultation with such persons as it considers appropriate. This will include the UK petroleum industry.

110 Subsection (7) gives the Secretary of State the power, by regulations to amend the maximum cap on a financial penalty to any amount up to a maximum of £5 million per breach. This is intended to allow a degree of flexibility if, in future, it is deemed that a £1 million cap is not sufficient to ensure compliance with the petroleum-related requirements. Regulations made under this subsection are subject to the affirmative resolution procedure (see clause 81(4)(b)).

Clause 47: Payment of financial penalty

111 Clause 47 makes provision about the payment of a financial penalty. Subsection (1) is self-explanatory. Subsections (2) and (3) provide that financial penalties which are not paid within the deadline specified in a financial penalty notice are recoverable as a civil debt, and the money recovered by the OGA under a financial penalty notice must be paid into the Consolidated Fund.

Clause 48: Revocation notices

112 Clause 48 sets out what must be contained in a revocation notice, which revokes a petroleum licence for failure to comply with a petroleum-related requirement (providing that the failure to comply was carried out by a person in their capacity as licensee). Subsection (3) allows the OGA to revoke licences in respect of one or more of the licence holders who comprise the licensee (known as 'partial revocation'). The revocation notice will contain information about how a licensee has failed to comply with a petroleum-related requirement and specify a date on which the revocation will take place. The date upon which revocation will take place must not be earlier than 28 days from the day on which the revocation notice was given. The revocation of a licence under this clause does not affect any obligations or liabilities incurred or imposed under the terms and conditions of a licence which apply as if the licence had been revoked in accordance with those conditions (subject to clause 57(2)). The effect of subsection (6) is that revocation notices may only be given where the licence to be revoked is one which, on the date the notice is given, the OGA would have the power to grant. This reflects the proposed devolution (through the Scotland Bill and the forthcoming Wales Bill, respectively) of the licence-granting functions in respect of "onshore" licences under the Petroleum Act 1998.

Clause 49: Operator removal notices

113 Clause 49 sets out what must be contained in an operator removal notice. An operator removal notice will contain information about how an operator has failed to comply with a petroleum-related requirement in their capacity as operator under the relevant petroleum licence and specify a date on which the licensee is to be required to remove the operator (the "removal date"). The OGA is required to give the operator removal notice to the operator (subsection (2)). The OGA is also required to give a copy of the notice to the licensee and require the licensee to remove the operator with effect from the removal date (subsection (4)). The removal date must not be earlier than 28 days from the day on which the operator removal notice was given.

114 The effect of subsection (7) is that an operator removal notice may only be given where the licence under which the operator operates is one which, on the date the notice is given, the OGA would have the power to grant. This reflects the proposed devolution (through the Scotland Bill and the forthcoming Wales Bill, respectively) of the licence-granting functions in respect of "onshore" licences under the Petroleum Act 1998.

115 The effect of subsection (8) is that the OGA will be able to give a sanction notice to the licensee for a failure to remove the operator in accordance with the requirement imposed on it by the OGA.

Sanction warning notices

Clause 50: Duty of OGA to give sanction warning notices

116 Clause 50 places an obligation upon the OGA to give a sanction warning notice to a person before imposing a sanction notice. The notice will contain details of why the OGA thinks a breach of a petroleum-related requirement has occurred and will state the OGA's proposed

intention to give a sanction notice.

117 The sanction warning notice provides a person with an opportunity to make representations to the OGA and for the OGA to take these into account prior to the imposition of any sanction notice. Subsection (3)(d) states that the OGA will be required to specify a period of time in which the person can make representations. No minimum time period is specified as the circumstances and complexity of a sanction for different breaches of the petroleum-related requirements is likely to vary. Subsection (4) is intended to allow the OGA to set different time periods for different cases.

Appeals

Clause 51: Appeals in relation to sanction notices

118 Clause 51 creates an appeal right to the Tribunal against the OGA's sanctions in relation to both an alleged breach of a petroleum-related requirement and a sanction imposed in response to that breach. Bringing an appeal will suspend the effect of a sanction notice. Where a decision of the Tribunal is subject to an onward appeal to the Upper Tribunal, the Tribunal and Upper Tribunal are given a power to suspend the effect of a sanction notice for the duration of any onward appeal.

Clause 52: Appeals: against finding of failure to comply

119 Clause 52 makes provision about appeals where a person contests that they did not fail to comply with a petroleum-related requirement. The Tribunal is given powers to confirm a sanction notice or cancel it if it finds that no breach of a petroleum-related requirement has occurred.

120 Subsection (4) is about cases where a sanction notice is given on more than one occasion in respect of the same failure to comply with a petroleum-related requirement (i.e. in cases where a person has failed to comply with an earlier sanction notice given by the OGA). The effect of subsection (4) is that a person who wishes to appeal against the alleged failure to comply with a petroleum-related requirement must do when in receipt of the first sanction notice or lose that right. Appeals against subsequent sanction notices can still be brought against the sanction imposed (as opposed to the alleged breach of the petroleum-related requirement) in accordance with clause 53.

Clause 53: Appeals against sanction imposed

121 Clause 53 sets out the grounds on which an appeal may be brought against the decisions of the OGA set out in subsection (3). These include decisions as to the directions given in an enforcement notice, the decision to impose a financial penalty and the amount, and the decisions to revoke a licence and to require removal of an operator.

122 The grounds upon which an appeal can be brought against a sanction are listed in subsection (4).

123 The action that the Tribunal can take in relation to each type of sanction is listed in subsections (5), (6) and (8).

Supplementary

Clause 54: Publication of details of sanctions

124 Clause 54 provides the OGA with a power, but not an obligation, to publish details of a sanction. The OGA is not permitted to publish any information that it considers to be commercially sensitive or not in the public interest to publish. If, following publication, the sanction is cancelled by either the OGA or the Tribunal, then the OGA must publish details of

the cancellation or withdrawal.

Clause 55: Subsequent sanction notices

125 Clause 55 provides that, following the giving of a revocation notice or an operator removal notice, the OGA cannot give a further sanction notice. Where the OGA gives an enforcement notice or a financial penalty notice which requires compliance with a “petroleum-related requirement” by a specified period, a further sanction notice may not be given in respect of the failure to comply with the “petroleum-related requirement” until the period for compliance specified in the original notice has passed. If the OGA gives a financial penalty notice which does not require compliance with a “petroleum-related requirement” by a specified period (for example, because the requirement has already been remedied at the time the notice is given), no further sanction notice may be given in respect of the breach.

Clause 56: Withdrawal of sanction notices

126 Clause 56 states that the OGA can withdraw a sanction notice at any time, which has the effect of cancelling the sanction. Subsection (2)(b) lists the persons who must be informed of the withdrawal of the notice.

Clause 57: Alternative means of enforcement

127 Clause 57 provides that where the OGA gives a sanction notice to the holder of an offshore petroleum licence, the matter is to be dealt with in accordance with Chapter 5. Its effect is to disapply any right under a licence for the matter to be dealt with in some other way - for example, by arbitration. The intention is that Chapter 5 provides an alternative method of enforcement for breaches of offshore petroleum licences.

Information

Clauses 58 and 59: Sanctions: information powers and Appeals against information requests

128 Clause 58 provides the OGA with a power to acquire information, by written notice, from a person to whom the petroleum-related requirements apply. This can be done for the purposes of establishing whether a breach of those requirements has occurred and whether, or on what terms, a sanction notice should be given. Subsection (5) specifies the types of documents or information that can be acquired. Subsection (4) states that non-compliance with a notice will, in itself, be subject to sanctions.

129 Clause 59 creates a right of appeal to the Tribunal against this power on grounds set out within the clause.

The OGA's procedures

Clause 60: Procedure for enforcement decisions

130 Clause 60 requires the OGA to establish and publish a statement of the procedure that it will follow when making a decision on whether or not to impose a sanction and which sanction to impose. The main requirement in this process will be for the OGA to ensure that a person deciding on whether or not to give a sanction notice has not been directly involved in establishing the evidence on which the enforcement decision was based.

131 This is predominately intended to avoid the potential for conflicts of interest which could arise if a person who is acquiring information from companies, and gathering evidence associated with an alleged breach of a petroleum-related duty, is also the person who is deciding on whether or not to impose a sanction.

132 Failure by the OGA to follow its process does not automatically override the validity of a sanction, but it will be an available consideration to the Tribunal in an appeal case when determining, amongst other things, whether the imposition of the sanction was reasonable.

Interpretation

Clause 61: Sanctions: Interpretation

133 Clause 61 is self-explanatory and defines certain terms used in Chapter 5.

Chapter 6: Disclosure

General prohibition

Clauses 62 and 63: Prohibition on disclosure and meaning of protected material and related terms

134 Clause 62 provides a general prohibition of protected material by the OGA or by a subsequent holder. Clause 63 defines "protected material" and "subsequent holder" along with other terms for the purposes of Chapter 6.

Permitted disclosures

Clause 64: Permitted disclosures - Disclosure by OGA to certain persons

135 This clause will allow the OGA to disclose information obtained under specified Chapters of Part 2 of the Bill to listed UK governmental bodies, including Ministers of the Crown, agencies and the devolved administrations, in order for these bodies to carry out their functions. These bodies may only use the information for the purpose for which it was provided. Onward-disclosure by recipients of information obtained under this clause is limited to the purposes for which it was provided.

136 The clause also permits the OGA to disclose protected material obtained under Chapter 3 of the Bill to the Natural Environmental Research Council (NERC), or any other similar body carrying out geological activities, where the disclosure is made for the purpose of enabling such a body to prepare and publish reports and surveys of a general nature.

137 Changes to the list of bodies or to the categories of information that may be disclosed (the Chapters in Part 2 of the Bill) may be made by regulations approved by a resolution of each House of Parliament.

Clause 65: Disclosure required for returns and reports prepared by the OGA

138 This clause allows the OGA to use and disclose protected material acquired under Chapter 3 (information and samples) of the Bill for the purposes of preparing such returns and reports as may be required under obligations imposed by or under any Act; and preparing and publishing reports and surveys of a general nature using information derived from the protected material.

Clause 66: Disclosure in exercise of certain OGA powers

139 This clause provides that disclosure of protected material is not prohibited where the disclosure is made by the OGA in the exercise of specified powers contained elsewhere in the Bill, namely:

- a. where the OGA is exercising the power to publish recommendations under clause

- 24(6)(resolving disputes);
- b. where the OGA is exercising the power under clause 54 regarding publication of details of sanctions;
 - c. permitted disclosures under the provisions of clause 76 regarding information exchange under international agreements.

Clause 67: Disclosure after specified period

140 This clause provides for the Secretary of State to make regulations allowing for protected material obtained under Chapter 3 (information and samples) to be published or made available to the public by the OGA or by a subsequent holder after such period as may be specified in the regulations.

141 In determining the timeframe, the clause requires the Secretary of State to consult such persons as considered appropriate, unless satisfied that the OGA has carried out a suitable consultation, and lists the factors to which the Secretary of State must have regard.

Clauses 68 and 69: Disclosure with appropriate consent and Disclosure required by legislation

142 These clauses allow, respectively, for the disclosure of protected information where appropriate consent has been given (by the original owner and/or by the OGA as applicable) and where disclosure is required by virtue of an obligation imposed by or under any Act.

Clause 70: Disclosure for purpose of proceedings

143 Clause 70 provides authority for the OGA to disclose information both if required for civil or arbitration proceedings and in connection with the investigation or prosecution of criminal offences or the prevention of criminal activities.

Part 3: Infrastructure and Information

Rights to use upstream petroleum infrastructure

Clause 71: Requirements to provide information

144 Clause 71 amends section 87 of the Energy Act 2011 (powers to require information) which relates to the third party access to upstream petroleum infrastructure regime, found in Chapter 3 of Part 2 of that Act. It also inserts new sections 87A and 87B into that Chapter.

145 Section 87 of the Energy Act 2011 is amended to require that where the Secretary of State, and the OGA once this function is transferred to it, issues a notice under that section requiring information to be provided, that notice must specify when the requirement is to be complied with. New section 87B of the Energy Act 2011 provides that the requirements imposed by a notice are to be treated as a petroleum related requirement for the purposes of Chapter 5 of Part 2 of this Bill (sanctions) but the OGA may not issue a revocation notice or operator removal notice in relation to requirements imposed by a notice issued under section 87(1), (2) or (3) of the Energy Act 2011.

146 New section 87A of the Energy Act 2011 enables any person on whom a requirement to provide information is imposed under section 87 of that Act to appeal against the notice to the First-tier Tribunal on specific grounds. Those grounds are self-explanatory, as are the powers of the Tribunal.

Clause 72: Application to use infrastructure: changes of applicant and owner

- 147 This clause inserts two new sections, sections 89A and 89B, into the Energy Act 2011. Section 89A allows an application for access to upstream petroleum infrastructure made under section 82 of that Act to be assigned to another party. This must be done by the applicant (within the meaning of section 82) and does not happen as an automatic consequence of the transfer of the assets in respect of which the application is made.
- 148 Section 89B provides that where the ownership of the infrastructure in respect of which an application under section 82 has been made is transferred, all things done by the person to whom the application was made are treated as being done by the new infrastructure owner. These provisions allow for the process to continue rather than having to restart on a change in parties. That section also ensures that obligations or rights conferred in respect of a piece of infrastructure transfer with a change in ownership so where ownership of a piece of infrastructure, in respect of which a notice under section 82(11) has been issued, is transferred then the obligations under the notice transfer as well.
- 149 Under new section 89A any information previously provided to the OGA by the original applicant before the assignment occurred may be disclosed to the party to whom the application was assigned. Similarly under new section 89B, any information relating to the application obtained by the OGA prior to the transfer in ownership of the infrastructure may be disclosed to the new owner. Before any information is disclosed anything, which the OGA considers may prejudice the commercial interests of the person that provided the information must be removed.

Decommissioning

Clause 73 and Schedule 2: Abandonment of offshore installations

- 150 Clause 73 and Schedule 2 make provision about the abandonment of offshore installations by amending Part 4 of the Petroleum Act 1998 and section 30 of the Energy Act 2008.
- 151 Paragraph 2 of Schedule 2 inserts new section 28A into the Petroleum Act 1998 which places a restriction on abandonment or decommissioning of an offshore installation or submarine pipeline unless an abandonment programme has been approved by the Secretary of State and has effect in relation to such infrastructure under section 29 of the Petroleum Act 1998.
- 152 New section 28A(2) makes it an offence to, without reasonable excuse, abandon or decommission a relevant installation otherwise than in accordance with an approved abandonment programme.
- 153 Paragraph 3 amends section 29 of the Petroleum Act 1998 to require persons to whom a notice is issued under that section to consult the OGA before submitting an abandonment programme for approval. This is to enable the OGA to consider and advise on, in particular, possible alternatives to decommissioning, such as preservation or re-use, and making appropriate provision in the abandonment programme to reduce the costs of carrying out the programme. The requirement to consider re-use includes re-use for purposes other than for which the infrastructure was originally put.
- 154 Paragraph 3 also amends section 29 to create a duty on persons to whom a notice under section 29 is given to frame the abandonment plan (whether by means of the timing of the measures proposed, the inclusion of provision for collaboration with other persons, or otherwise) in such a way as to enable decommissioning to be carried out at the lowest practicable cost. The requirement that abandonment programmes are carried out at the lowest cost reasonably practicable in the circumstances is without prejudice to any existing obligations under both primary and secondary legislation, including, for example, those relating to the environment or health and safety.

- 155 Paragraph 4 amends section 32 of the Petroleum Act 1998 to clarify that any modifications or conditions imposed by the Secretary of State under an abandonment programme pursuant to section 32 may, in particular, include those intended to reduce the total cost of carrying out the programme and those requiring persons who submitted a programme to carry out and publish a review of the programme and its implementation. These amendments require that modifications or conditions may not increase the total costs to be met any person who is subject to obligations under an abandonment programme.
- 156 Paragraph 4 also amends section 32 to create a duty on the Secretary of State to take into account the costs of carrying out the abandonment programme when reaching a decision regarding an abandonment programme submitted under section 29, and whether these costs can be reduced by modifying the programme or making it subject to conditions. It also creates a duty on the Secretary of State to consult the OGA before approving an abandonment programme.
- 157 Paragraph 5 amends section 33 of the Petroleum Act 1998 (failure to submit a programme) to create a duty on the Secretary of State, when preparing an abandonment programme pursuant to that section, to frame the abandonment programme (whether by means of the timing of the measures proposed, the inclusion of provision for collaboration with other persons, or otherwise) in such a way as to enable decommissioning to be carried out at the lowest cost reasonably practicable. This cost requirement is without prejudice to any existing obligations under both primary and secondary legislation, including, for example, those relating to the environment or health and safety.
- 158 Paragraph 5 also creates a duty on the Secretary of State, when preparing an abandonment programme pursuant to section 33, to consult the OGA. This is to enable the OGA to consider and advise on, in particular, possible alternatives to decommissioning, such as preservation or re-use, and making appropriate provision in the abandonment programme to reduce the costs of carrying out the programme.
- 159 Paragraph 6 amends section 34 of the Petroleum Act 1998 (revision of programmes) to create a duty on those proposing revisions to an abandonment programme pursuant to the section which are likely to have an effect on the cost of carrying it out to frame those revisions as to ensure that the cost of decommissioning is kept to the minimum reasonably practicable in the circumstances. This requirement is without prejudice to any existing obligations under both primary and secondary legislation, including, for example, those relating to the environment or health and safety.
- 160 Paragraph 6 also creates a duty on the Secretary of State to consult the OGA before making a determination on whether the revision in question should be made if it appears likely that the revision will have an effect on the cost of carrying out the abandonment plan. This is to enable the OGA to consider and advise on, in particular, possible alternatives to decommissioning, such as preservation or re-use, and making appropriate provision in the abandonment programme to reduce the costs of carrying out the programme.
- 161 Paragraph 7 inserts a new section 34A in to the Petroleum Act 1998 regarding approved abandonment programmes that include provision by which the programme may be amended. It creates a duty on a person who proposes an amendment under such a provision that is likely to have an effect on costs to frame the amendment so as to ensure that the cost of carrying out the abandonment plan is kept to the minimum reasonably practicable in the circumstances. This requirement is without prejudice to any existing obligations under both primary and secondary legislation, including, for example, those relating to the environment or health and safety.
- 162 If it appears to the person making such an amendment that it is likely to have an effect on

costs, the person must consult the OGA before making the amendment. This is to enable the OGA to consider and advise on, in particular, possible alternatives to decommissioning, such as preservation or re-use, and making appropriate provision in the abandonment programme to reduce the costs of carrying out the programme.

163 Paragraph 8 inserts a new section 36A into the Petroleum Act 1998 which gives the Secretary of State the power to require a person to take action (or refrain from taking action), by written notice, to ensure the total cost of decommissioning is minimised whilst the abandonment programme is being carried out. It specifies that such a notice may, in particular, relate to the timing of decommissioning measures or collaboration with others.

164 Failure to comply with such a written notice from the Secretary of State without reasonable excuse is an offence.

165 Paragraph 9 amends section 37 of the Petroleum Act 1998 (default in carrying out programmes) to create a duty on the Secretary of State to consult the OGA if it appears to the Secretary of State that any remedial action proposed pursuant to the section is likely to have an effect on the cost of carrying out the abandonment programme.

166 Paragraphs 10 -12 make a number of minor and consequential changes for the purpose of Part 4 of the Petroleum Act 1998 as a result of the provisions made under paragraphs 2 and 8.

167 Paragraph 13 amends section 30 of the Energy Act 2008 (abandonment of carbon storage installations) to disapply the changes made by Schedule 2 to Part 4 of the Petroleum Act 1998 to the decommissioning of carbon capture and storage installations and infrastructure.

Clause 74: Duty to act in accordance with strategy: decommissioning and alternatives

168 Clause 74 amends Part 1A of the Petroleum Act 1998 (maximising economic recovery of UK petroleum) to replace the existing duty under section 9C(3) with a wider duty under new section 9C(5) which applies to owners of relevant offshore installations (as defined in new section 9HA inserted by clause 74(4)) and owners of upstream petroleum infrastructure (as defined in new section 9H inserted by clause 75(2)). The new duty requires those persons to act in accordance with the current strategy or strategies produced under section 9A(2) when planning and carrying out activities as the owner of the installation or infrastructure, or when planning and carrying out the abandonment or decommissioning of the installation or infrastructure.

169 New section 9C(7) clarifies that the duty to act in accordance with the current strategy when planning the decommissioning of the installation or infrastructure includes consideration of alternatives to decommissioning such as preservation or re-use. The requirement to consider re-use includes re-use for purposes other than for which the infrastructure was originally put.

Northern Ireland

Clause 75: Part 1A of the Petroleum Act 1998: Northern Ireland

170 This clause amends Part 1A of the Petroleum Act 1998, ("the MER UK provisions") to ensure that the provisions within that Act extend to Northern Ireland (as well as to England and Wales and Scotland). Section 9H of the Petroleum Act 1998 is substituted to define "upstream petroleum infrastructure" by reference to relevant upstream petroleum pipelines, relevant oil processing facilities and relevant gas processing facilities (as defined in section 82(1) of the Energy Act 2011), and restrict it to infrastructure used in relation to petroleum which for the time being exists in its natural condition in strata beneath the territorial sea adjacent to Great Britain, or the UK Continental Shelf.

International Agreements

Clause 76: International oil and gas agreements: information exchange

171 This clause provides the OGA, acting as a representative of the UK Government, and the Secretary of State with the power to disclose information to foreign governments for the purposes of giving effect to international treaties concerning cooperation in relation to oil and gas activities. The Secretary of State or the OGA must be content that adequate safeguards are in place regarding the applicable information exchange requirements and the law in force in that territory.

Part 4: Fees

Clause 77: Powers to charge fees

172 The powers contained in the provisions inserted by this clause enable DECC to make secondary legislation to set fees or charges to recoup the costs associated with providing functions under the provisions mentioned. The detail of the regime will be set through secondary legislation, with an impact assessment prepared at that time.

173 Subsection (1) inserts new section 82OA into the Energy Act 2008 which allows the Secretary of State to charge for functions performed under Part 4A of that Act.

174 Subsection (2) inserts new section 110A into the Marine and Coastal Access Act 2009 which allows the Secretary of State to charge for performing functions under Part 4 of that Act, so far as those functions relate to activities regulated under other oil and gas regimes.

Clause 78: Validation of fees charged

175 This clause validates charges already made by the Secretary of State for carrying out functions under the provisions listed in subsection (3). Part 4 of the Marine and Coastal Access Act 2009 authorises a wide range of activities, but the charges that are validated under the clause are only those that relate to activities regulated under the oil and gas regimes listed in subsection (5).

Part 5: Wind power

Clause 79: Onshore wind generating stations

176 Clause 79 amends section 36 of the Electricity Act 1989. The amendment removes the obligation to get consent under that section to construct, extend or operate an onshore wind farm in England or Wales. That requirement relates to wind farms with a capacity greater than 50MW. The effect of this provision, when combined with secondary legislation to be made by Government to amend the Planning Act 2008, will mean that the developer of such a project will need to apply for planning permission under the Town and Country Planning Act 1990, generally to the local planning authority (subject to any changes made to the general planning regime in Wales by the Welsh Ministers, for a project in Wales).

177 The Government currently expects that applications which have already been made under section 36 of the Electricity Act 1989 but not yet decided when clause 79 comes into force, will continue to be considered under that Act (i.e. with the Secretary of State for Energy and Climate Change taking the decision).

Part 6: United Kingdom Carbon Account

Clause 80: Emissions trading: United Kingdom Carbon Account

178 Clause 80 restricts the power which the Secretary of State has under section 27(1) of the Climate Change Act 2008 (“the 2008 Act”) to make regulations prescribing how carbon units are to be debited or credited in calculating the “net UK carbon account”. The target set under section 1 of the 2008 Act for 2050 is expressed by reference to the net UK carbon account for that year. In addition, the carbon budgets set by order for the purposes of section 4 of that Act are amounts for the net UK carbon account for each 5 year budget period.

179 The effect of the amendment is to prevent the Secretary of State to make regulations permitting carbon units deriving from the European Union Emissions Trading Scheme to be used in calculating whether the 2050 target has been met or any budget for any period after the end of 2027 (i.e. in relation to the 5th carbon budget and beyond).

Part 7: Final provisions

Clause 81: Regulations

180 Clause 81 outlines that the powers to make regulations under the Act are exercisable by statutory instruments and sets out the relevant Parliamentary procedures.

Clause 82: Regulations and orders: disapplication of the requirement to consult the OGA

181 This Clause dis-applies certain requirements imposed on the Secretary of State to consult the OGA before exercising a power to make regulations, on the first exercise of each power within one year of clause 1 of this Bill coming into force.

Clause 83: Commencement

182 Commencement of the provisions of the Bill is specified in clause 83. Part 7 of the Bill comes into force on the day on which the Act is passed.

Clause 84: Short title and extent

183 Clause 84 confirms the title of the Act when Royal Assent is given. This clause also sets out the extent of the Bill.

Commencement

184 OGA clauses (clauses 1-76) of this Bill will come into force on such day or days the Secretary of State may by regulations appoint.

185 Part 4, the fees clauses (clauses 77-78) come into force two months after the day on which this Bill becomes an Act.

186 The provisions in Parts 5 and 6 (clauses 79 and 80) of this Bill will come into force on such day or days the Secretary of State may by regulations appoint.

Financial implications of the Bill

187 Clause 2 and Schedule 1 will transfer functions currently carried out on the Secretary of State's behalf by civil servants. Once the OGA is established as a Government Company, these employees will cease to be civil servants and will become public servants, the expenditure for whom will be met for the most part by the levy on industry. This will mean there is no impact on public expenditure.

188 Clauses 77 and 78 will allow DECC to charge fees to industry for certain functions of environmental regulation, enabling the full cost recovery of DECC's cost of environmental regulation. The retrospective provisions (clause 78) are intended to remove the risk that claims for restitution could be successfully brought against the Department. These proposals will ensure the costs are borne by the businesses which have benefited.

189 The powers set out in clause 79 which transfer decision making powers on planning from the Secretary of State to local authorities, is expected to have a neutral impact on public expenditure.

190 It is possible that giving effect to clause 80 will involve an increase in amounts charged under paragraph 26 of Schedule 2 to the Climate Change Act 2008 and section 21 of the Finance Act 2008.

Parliamentary approval for financial costs or for charges imposed

191 The Bill will require a money resolution to cover expenditure under the Bill (in particular because of expenditure of the Secretary of State under clause 16) and increased expenditure under other Acts (including, for example, functions under the Petroleum Act 1998 that will remain with the Secretary of State). A ways and means resolution is needed to cover fees charged under clauses 13 and 77 and fees validated under clause 78. It is also needed to cover the levy charged under clause 14, financial penalties under Chapter 5 of Part 2, increases in charges in connection with trading schemes as a result of clause 80 and payments into the Consolidated Fund under various provisions of the Bill.

Compatibility with the European Convention on Human Rights

192 Secretary Amber Rudd has stated that, in her view, the provisions of the Bill are compatible with the Convention Rights.

Related documents

193 The following documents are relevant to the Bill:

- Impact Assessments
- Delegated Powers Memorandum
- Legal Issues Memorandum

These Explanatory Notes relate to the Energy Bill [HL] as brought from the House of Lords on 5 November 2015 (Bill 92)

Annex A - Territorial extent and application

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Is the matter devolved in Wales?	Extends and applies to Scotland?	Is the matter devolved in Scotland?	Extends and applies to Northern Ireland?	Is the matter devolved in Northern Ireland?
Clauses 1 – 17: (Oil and Gas Authority and its core functions)	Yes	Yes	No	Yes	No	Yes	No
Clauses 18 – 70: Further functions of the Oil and Gas Authority relating to offshore petroleum	Yes	Yes	No	Yes	No	Yes	No
Clauses 71 – 76: Infrastructure and information	Yes	Yes	No	Yes	No	Yes (except clauses 71 and 72)	No
Clauses 77 and 78: Fees	Yes	Yes	No	Yes	No	Yes	No
Clause 79: Wind Power	Yes	Yes	No	No	No	No	Yes
Clause 80: United Kingdom Carbon Account	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clauses 81 – 84: Final provision	Yes	Yes	No	Yes	No	Yes	No
Schedule 1: Transfer of functions to the OGA	Yes	Yes	No	Yes	No	Yes (except paras 63 to 76)	No
Schedule 2: Abandonment of offshore installations	Yes	Yes	No	Yes	No	Yes	No

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Annex B - Hansard References

195 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Lords		
Introduction	09 July 2015	09 July 2015 : Column 247
Second Reading	22 July 2015	22 July 2015 : Column 1167
Committee of the Whole House (first sitting)	07 September 2015	07 September 2015 : Column 1219 07 September 2015 : Column 1267
Committee of the Whole House (second sitting)	09 September 2015	09 September 2015 : Column 1436
Committee of the Whole House (third sitting)	14 September 2015	14 September 2015 : Column 1661
Recommittal of the onshore wind clauses	14 October 2015	14 October 2015 : Column GC1
Report 1st Sitting	19 October 2015	19 October 2015 : Column 447 19 October 2015 : Column 525
Report 2nd Sitting	21 October 2015	21 Oct 2015 : Column 666
Third Reading	2nd November 2015	
House of Commons		
Introduction		
Second Reading		
Public Bill Committee		
Report and Third Reading		
Commons Consideration of Lords Amendments		
Royal Assent		

These Explanatory Notes relate to the Energy Bill [HL] as brought from the House of Lords on 5 November 2015 (Bill 92)

ENERGY BILL [HL]

EXPLANATORY NOTES

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Ordered by the House of Commons to be printed, 5 November 2015

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LONDON - THE STATIONERY OFFICE LIMITED

Printed In the United Kingdom by The Stationery Office Limited

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