

Energy Bill

Supplementary Delegated Powers Memorandum

Introduction

1. This Memorandum has been prepared by the Department for Energy Security and Net Zero (“the Department”) to assist with scrutiny of the Energy Bill (“the Bill”). This Memorandum describes powers in the Bill conferring power to make subordinate legislation and other delegated powers which were added or amended at the Committee stage in the House of Commons (second House).
2. This Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced and supplementary Delegated Powers Memoranda on amendments to the Bill in the House of Lords.

Amendments to Part 2: Carbon Dioxide Capture, Storage etc and Hydrogen Production

Amendments to Clause 57: Revenue support contracts

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative

Context and purpose

3. The new revenue support regulations added to clause 57(9) will be subject to the affirmative procedure. This provides that the powers to determine an eligible transport or storage provider and to make regulations about a direction to offer to contract are subject to the affirmative procedure.
4. Any revenue support regulations not specified in clause 57(9) would be subject to the negative procedure.
5. Clause 57 sets out the overarching power of the Secretary of State to make regulations in relation to revenue support contracts (including the funding of liabilities and costs in relation to such contracts). There are a number of provisions which set out the matters which regulations made under the overarching power in clause 57(1) may cover. This amendment expands clause 57(2) by adding to the definition of a “revenue support contract” to enable the Secretary of State to make regulations in relation to hydrogen transport revenue support contracts and hydrogen storage revenue support contracts.
6. The amendments will enable the Secretary of State to make regulations relating to hydrogen transport and hydrogen storage revenue support contracts. The amendments will also expand existing powers to make levy regulations relating to the funding of liabilities and costs in relation to such contracts. The purpose of

these regulations will be to ensure that the Secretary of State is able to set out and maintain the business model schemes and ensure contracts are managed effectively and stable funding flows are in place.

7. Where regulations to be made under this power contain provision that would be within devolved legislative competence, the Secretary of State must first consult the relevant devolved administration(s) (the Scottish Ministers, the Welsh Ministers and/or the Department for the Economy in Northern Ireland). The Secretary of State must also consult such other persons as the Secretary of State considers appropriate in order to provide an opportunity for those directly affected by the regulations and those with special expertise to express their views on their design.

Justification for the power

8. As with the existing powers in the bill for hydrogen production and carbon capture business models, the Department judges that it is appropriate that these powers be delegated to the Secretary of State, as the detailed technical and administrative nature of the provisions is unsuitable for including in primary legislation. These regulations underpin the effective operation of a revenue support contract and are essential to the credibility of the business models with industry and their investors. Without the power for the Secretary of State to set out these requirements in regulations, it is unlikely that the business models could be successfully implemented to support the development of these new technologies, meeting the Government's decarbonisation ambitions.

Justification for the procedure

9. In respect of the amendments to clause 57(9), these provisions deal with the fundamental parameters of the hydrogen transport and storage schemes, including how support is allocated and who is eligible for support. Therefore, it is appropriate for these to be subject to a greater level of parliamentary scrutiny through the affirmative procedure. Use of the affirmative procedure will also reassure prospective contract holders that fundamental aspects of the process upon which they will need to rely on when applying, are unlikely to change frequently or at short notice.

Amendment to Clause 58: Duties of revenue support counterparty

Power conferred on: Secretary of State

Power exercised by: Secretary of State's direction

Parliamentary procedure: None

Context and purpose

10. This amendment expands the provision for a revenue support counterparty to comply with any direction given by the Secretary of State in accordance with this Chapter to include a hydrogen transport counterparty and a hydrogen storage counterparty.
11. This power sits alongside but is distinct from the delegated power relating to the Secretary of State making regulations under the Chapter.

Justification for the power

12. This power is required to give the Secretary of State sufficient ability to exert control over activities of the revenue support counterparty for hydrogen transport and hydrogen storage revenue support contracts. This is consistent with the existing powers for revenue support counterparties.

Justification for the procedure

13. It is the department's view that, given the accompanying regulations made will set out the detailed nature of directions made to the revenue support counterparty, and that these will be subject to Parliamentary scrutiny through the affirmative procedure, that no procedure for this power is required.
14. Clause 58 (duties of a revenue support counterparty) sets out the the control the Secretary of State has over the activities of a revenue support counterparty, given that its role is of critical importance to the effectiveness of a revenue support contract.
15. We have set out the provisions that the Secretary of State would likely make under the revenue support regulations from clause 58(2). These may include:
 - a. Requiring a revenue support counterparty to enter into arrangements or to offer to contract for purposes connected to a revenue support contract.
 - b. Specifying things that a revenue support counterparty may or must do, or things that a revenue support counterparty may not do.
 - c. Conferring on the Secretary of State further powers to direct a revenue support counterparty to do, or not to do, things specified in the regulations or direction.
16. Additionally, clause 58(2)(b) and (c) includes provisions which require consultation with, or the consent of, the Secretary of State in relation to modification of standard terms, variation, termination or enforcement of a revenue support contract, settlement or compromise of claims, conduct of legal proceedings and/or any other exercise of rights under a revenue support contract.

New Clause: Designation of hydrogen transport counterparty – Power for Secretary of State to designate a hydrogen transport counterparty

New Clause: Designation of hydrogen storage counterparty – Power for Secretary of State to designate a hydrogen storage counterparty

Power conferred on: Secretary of State

Power exercised by: Notice

Parliamentary procedure: None

Context and purpose

17. Two new clauses have been added which provide the Secretary of State with a power to designate consenting person(s) to be the counterparty for hydrogen transport revenue support contracts and hydrogen storage revenue support contracts (two types of contract added by these amendments). The counterparties will be responsible for managing the contracts and making payments to the contract holders, as well as collecting any necessary payments from contract holders, as set out in the contracts. The power will also enable the Secretary of State to end a designation using the same process to that of the designation itself. A designation will also cease to have effect if the person withdraws consent by giving not less than 3 months' notice in writing to the Secretary of State (see clause 77(1)).
18. The power is very similar to existing clauses in the Bill (59(1), 61(1) and 63(1)) which give the Secretary of State a power to designate a counterparty for carbon dioxide transport and storage, hydrogen production revenue support contracts and carbon capture revenue support contracts.

Justification for the power

19. For revenues to flow to contract holders effectively, it is necessary to have counterparties charged with managing the contracts and making payments. A counterparty needs to be designated to fulfil this function effectively.
20. It also is likely that, in the event of a change of revenue support counterparty, the Department will need to act more quickly than would normally be compatible with the timetable primary legislation allows. The likelihood of the need for a quick response justifies the necessity of a delegated power. Failure to provide continuity of counterparties would undermine investor and developer trust in these business models. Developers and investors are likely to see the need for parliamentary approval as increasing the risk that a new counterparty would not be in place in a timely manner.

Justification for the procedure

21. Prior to the appointment of a revenue support counterparty, the government will conduct internal assessments in order to determine its suitability for the role. The Department will also seek the consent of the counterparty prior to the designation, in line with the requirement in subsection (5) of each of the new clauses. We consider that the appropriate route for designation in this context is for the Secretary of State to give notice to a person (and publish that notice). This is aligned with provisions already included in the Bill for a hydrogen production counterparty and carbon capture counterparty.
22. The appointment of a revenue support counterparty is an administrative exercise and would be carried out only with the consent of the person in question. Due to this, the Department judges that it is appropriate to appoint this body by notice without parliamentary procedure.

New Clause: Designation of hydrogen transport counterparty - Power for Secretary of State to specify qualifying compounds for transporting hydrogen

New Clause: Designation of hydrogen storage counterparty - Power for Secretary of State to specify qualifying compounds for storage of hydrogen

Power conferred on: Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Negative

Context and purpose

23. Subsection (10)(b) of these clauses allows for the Secretary of State to make provisions in revenue support regulations to specify a qualifying compound that is included in the definition of “transporting hydrogen” or “storing hydrogen” for the purpose of the hydrogen transport and hydrogen storage business models. This will allow the Secretary of State to specify compounds that include hydrogen as an element and are hydrogen carriers to qualify for the hydrogen transport and hydrogen storage business models. This will allow the hydrogen transport and hydrogen storage business models to adapt to emergent technologies as and when they develop.

Justification for the power

24. As the hydrogen economy develops, and as new hydrogen transport and storage technologies are developed, Government may want to expand the hydrogen transport and storage business models to hydrogen compounds, such as ammonia or metal hydrides, which can be used as hydrogen carriers. These compounds may change as industry and technologies evolve. Therefore, it would not be appropriate to define these on the face of the Bill.

Justification for the procedure

25. Sub-section (10)(b) of these clauses is subject to the negative procedure. The department considers this the most appropriate procedure because a change to the qualifying compounds for business model support is anticipated to change as technologies develop and will be a technical change to the business models.

New Clause: Direction to offer to contract with eligible hydrogen transport provider – Power to direct a hydrogen transport counterparty

New Clause: Direction to offer to contract with eligible hydrogen storage provider – Power to direct a hydrogen storage counterparty

Power conferred on: Secretary of State

Power exercised by: Secretary of State's direction

Parliamentary procedure: N/A

Context and purpose

26. This power allows for the Secretary of State to issue a direction, in accordance with any provision made by revenue support regulations, requiring a revenue support counterparty to enter into a revenue support contract with an eligible person. This is separate to the delegated power to make regulations governing the direction by Secretary of State (see below).

27. The power is very similar to existing clauses in the Bill (60(1), 62(1) and 64(1)) which give the Secretary of State a power to direct a counterparty to offer to enter into a hydrogen production revenue support contract or carbon capture revenue support contract.

Justification for the power

28. The power to direct a revenue support counterparty is linked to the regulations governing how the Secretary of State may make that direction, which will be provided for in the revenue support regulations.

29. This power is necessary in order for the Secretary of State to make a direction that allow for eligible persons to be offered to enter into a hydrogen transport or hydrogen storage revenue support contract. A revenue support contract is part of the package of measures considered necessary to secure development of hydrogen transport and storage infrastructure, and so a specific power is required.

30. This power is similar to section 18 of the Nuclear Energy (Financing) Act 2022 and to the CFD scheme, namely section 10 of the Energy Act 2013.

Justification for the procedure

31. It is the Department's view that, given the accompanying regulations to this power will set out the detailed nature of directions made to a revenue support counterparty, and that these will be subject to Parliamentary scrutiny through the affirmative procedure, that no procedure for this power is required. This follows the precedent of section 10 of the Energy Act 2013 and section 18 of the nuclear energy (Financing) Act 2022.
32. These new clauses will give the power for the Secretary of State to direct a hydrogen transport or hydrogen storage revenue support counterparty to offer to enter into contract with eligible persons. Under section 2 of these clauses, regulations can make provision about the circumstances and terms of a direction to a revenue support counterparty.
33. This power will allow the Secretary of State to make regulations specifying when directions to offer contracts may or must be made, and what terms may or must be set out in the contracts. The regulations will describe the process and obligations the Secretary of State must adhere to when making the direction to offer a contract. For example, provision is likely to require the direction to be in writing and specify the day on which the revenue support counterparty must comply with a direction.

New Clause: Direction to offer to contract with eligible hydrogen transport provider - Power of Secretary of State to make regulations making further provision about a direction to a hydrogen transport counterparty

New Clause: Direction to offer to contract with eligible hydrogen storage provider - Power of Secretary of State to make regulations making further provision about a direction to a hydrogen storage counterparty

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

34. This power allows for the Secretary of State to make regulations making further provision about a direction requiring a revenue support counterparty to enter into a revenue support contract with an eligible person. Regulations may make provision about the circumstances and terms of a direction to a revenue support counterparty.
35. These powers will allow the Secretary of State to make regulations specifying when direction to offer contracts may or must be made, and what terms may or must be set out in the contracts. The regulations will describe the process and obligations the Secretary of State must adhere to when making the direction to offer to contract. For example, provision is likely to require the direction to be in

writing and specify the day on which the revenue support counterparty must comply with a direction.

Justification for the power

36. The regulation making powers are necessary as the precise circumstances in which a direction to offer to contract may or must be given and the terms which may or must be specified in a direction may change over time, given the nascent nature of the contracts and the hydrogen economy.

Justification for the procedure

37. How the Secretary of State directs counterparties to enter into contracts is a fundamental parameter of the hydrogen transport and storage business models. It is therefore appropriate for it to be subject to a greater level of parliamentary scrutiny through the affirmative procedure. Use of the affirmative procedure will also reassure prospective contract holders that the process upon which they will rely when entering into a revenue support contract is unlikely to change frequently or at short notice.

New Clause: Direction to offer to contract with eligible hydrogen transport provider - Power for Secretary of State to make regulations determining eligibility in relation to hydrogen transport providers

New Clause: Direction to offer to contract with eligible hydrogen storage provider - Power for Secretary of State to make regulations determining eligibility in relation to hydrogen storage providers

Power conferred on: Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Affirmative

Context and purpose

38. The amendments provide the Secretary of State with a power to make regulations determining the meaning of “eligible” in relation to a hydrogen transport provider or hydrogen storage provider in subsection (3) of these new clauses. This is required as the Secretary of State is only able to direct a counterparty to enter into a contract with an eligible person.

Justification for the power

39. The clauses will provide the Secretary of State with a power to make regulations determining the meaning of “eligible” in relation to a hydrogen transport provider

and a hydrogen storage provider. This is required as the Secretary of State is only able to direct a counterparty to enter into a contract with an 'eligible' person.

40. As the hydrogen economy develops, and as new hydrogen transport and storage technologies are developed, the eligibility criteria for the business models may change. Eligibility may change as industry and technologies evolve. Therefore, flexibility will be needed in how transport and storage providers are defined, and it would not be appropriate to define an "eligible hydrogen transport provider" or an "eligible hydrogen storage provider" on the face of the Bill.

Justification for the procedure

41. Subsection (3) of these new clauses is subject to the affirmative procedure. These sections deal with the fundamental parameters of the schemes, determining who is eligible for support. Therefore, it is appropriate for these to be subject to a greater level of parliamentary scrutiny through the affirmative procedure.

Amendment to Clause 66: Obligations of relevant market participants

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: The first regulations making provision falling within clause 66 will be subject to affirmative procedure. Any further regulations making such provisions would be subject to negative procedure.

Context and purpose

42. Clause 66 is an existing clause in the Bill that enables revenue support regulations to make provisions requiring relevant market participants to make payments to a hydrogen levy administrator for the purposes described in subsections (1) and (2). The amendment expands subsection (1) to allow these payments to be made to a hydrogen transport or hydrogen storage counterparty to make payments under a hydrogen transport or hydrogen storage revenue support contract.

Justification for the power

43. This amendment replicates the existing powers in the Bill applying to hydrogen production revenue support counterparties.
44. The amendment will be necessary to expand the scope of the hydrogen levy to hydrogen transport and storage revenue support contracts. It will enable regulations to require levy payments to be made to fund hydrogen transport revenue support contracts and hydrogen storage revenue support contracts.

45. The duties and functions of the hydrogen levy administrator, the types of market participants obliged to pay the levy and the nature of the levy requirements and how the levy works (for example, how it is to be calculated and enforced) may need to change over time to reflect the development of the market for low carbon hydrogen and future changes to the wider energy market (for example, a decrease in the role of natural gas in heating as we progress towards our net zero target). The Department therefore judges that it is appropriate for the Secretary of State to be able to make such provision in regulations.

Justification for the procedure

46. It is considered that the affirmative procedure is most appropriate for first use, so Parliament is able to scrutinise how government intends to exercise those powers when introducing initial regulations to establish the business models. However, given the highly technical nature of this area, it is considered proportionate for subsequent use of those powers to be subject to the negative procedure.

Amendment to Clause 67: Payments to relevant market participants

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: The first regulations making provision falling within clause 67 will be subject to affirmative procedure. Any further regulations making such provisions would be subject to negative procedure.

Context and purpose

47. As stated in the previous supplementary delegated powers memorandum on 8th March 2023, clause 67 enables revenue support regulations to make provisions requiring payments to be made to levied market participants. This sort of provision has precedent; it is similar to section 17 of the Energy Act 2013 and section 20 of the Nuclear Energy (Financing) Act 2022.

48. This amendment extends the power by enabling revenue regulations to make provisions requiring payments to be made by a hydrogen transport or hydrogen storage counterparty, in addition to a hydrogen production counterparty.

Justification for the power

49. This amendment complements the amendments to clause 66 to extend the existing hydrogen levy provisions to include hydrogen transport and hydrogen storage revenue support contracts. This clause enables regulations to allow for payments received by a hydrogen transport or storage counterparty to be passed through to levied market participants and/or energy consumers. This will be critical to helping ensure that the payment and reconciliation arrangements for the hydrogen levy are fair and efficient.

50. As discussed in the original Delegated Powers Memorandum on the Energy Bill, the design of the hydrogen levy may need to change over time as the hydrogen market evolves and/or to reflect changes to the wider energy market. A delegated power is therefore required for this provision, as it is not possible to determine the arrangements for payments to levied market participants and the pass-through of benefits to energy consumers that may be required in the future. In addition, the complexity and detailed nature of these arrangements are likely to be such that it would not be appropriate to include such provisions on the face of the Bill.

Justification for the procedure

51. As stated in the previous supplementary delegated powers memorandum on 8th March, the Department considers that it is appropriate that the first set of regulations made using this power should be subject to the affirmative resolution procedure. This will ensure sufficient parliamentary scrutiny of the levy design. As we expect any subsequent regulations made on the basis of this clause to be technical, it is considered proportionate that such regulations are subject to the negative resolution procedure. This aligns with the parliamentary procedure for regulations that make provisions falling within the other levy design clauses within the Bill, namely clauses 66 and 68.

Amendment to Clause 77: Further provision about designations

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

52. Clause 77(4) enables the Secretary of State to make provision in regulations enabling a person who has ceased to be a revenue support counterparty to continue to be treated as such a counterparty, including provision about the circumstances in which, and the period for which, such a person may be so treated.

53. This amendment extends this to enable the Secretary of State to make such provisions about a hydrogen transport counterparty or hydrogen storage counterparty.

Justification for the power

54. A delegated power is needed to ensure the Department can react appropriately to a situation where a designation of a hydrogen transport or hydrogen storage counterparty is withdrawn. It is imperative that no revenue support contracts are left stranded and that at any one time there is a revenue support counterparty liable for the obligations, and able to exercise the rights, under a contract.

55. The Department would therefore expect the incumbent counterparty to continue in its role until a new revenue support counterparty is identified and ready to operate. However, the Department recognises that there may be circumstances where it would not be possible or reasonable for the incumbent revenue support counterparty to continue in its role until a new revenue support counterparty is identified and ready to operate. The Secretary of State therefore requires this power to provide for the detail in regulations of any requirement on an incumbent revenue support counterparty to continue to be treated as such a revenue support counterparty, rather than on the face of the Bill.

Justification for the procedure

56. The department considers it appropriate for regulations made under this clause to be subject to the affirmative procedure. As the treatment of the counterparty will be fundamental to the hydrogen transport and storage business models, it is appropriate for this measure to be subject to a greater level of parliamentary scrutiny through the affirmative procedure. This will also reassure prospective contract holders that the treatment of a person who has ceased to operate as counterparty is unlikely to change frequently or at short notice.

New Chapter: Carbon Storage Information and Samples

New Clause: Power to make regulations about retention of information and samples

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative

Context and Purpose

2. The purpose of this provision is to specify in regulations the types of information and samples which need to be retained by those who hold licences and permits for the purposes of permanently storing carbon dioxide.
3. As well as specifying this information, the regulations may make provision for the form and manner in which the information or samples are to be retained, the period for which they are to be retained and the event which triggers the requirement to retain.
4. The obligations imposed by these regulations may continue after a carbon storage licence has expired but will not apply where an information and samples plan has effect (for this provision see new clause “Preparation and agreement of information and samples plans”).
5. The regulations will only apply to licences issued by the Oil and Gas Authority (OGA) and not to licences issued by the devolved administrations where they, rather than the OGA, are the carbon dioxide storage licensing authority under the Energy Act 2008. However, given the type of information to be retained may also be relevant to those licensing authorities, the Secretary of State must consult those licensing authorities before making the regulations.

Justification for the power

6. The storage of carbon dioxide (CO₂) offshore is still a new and emerging industry, and it is necessary for a regulations to set out in detail, in the context of carbon dioxide storage in what is a highly technical and specialised area, the types of information and samples which will enable the OGA to fulfil its functions in ensuring the safe and effective storage of CO₂.
7. It is anticipated that, as experience of the storage of CO₂ increases, there may be a need to amend the type of information and samples that are retained.
8. The information retention requirements are expected to be detailed and technical in their nature, and the Department does not consider their inclusion in primary legislation would be appropriate.
9. In addition, similar provision is made using delegated powers in the context of petroleum licensing (see s. 28 of the Energy Act 2016 and S.I. 2018/514) and it is appropriate to make equivalent provision by regulations in the context of CO₂ licensing and storage.

Justification for the procedure

10. We consider that the negative procedure is appropriate for specifying and, in future re-specifying, the types of information and samples to be retained. The OGA are an expert body and will be able to determine the specifics of the type of information and samples which will enable them to fulfil their functions. For example, amending regulations made under this power may involve no more than adding a technical term to an existing list.
11. We would also note that there is existing precedent for this approach as the power to make equivalent regulations in the context of petroleum licensing is subject to the negative procedure.

New Clause: Power to amend the financial penalty maximum

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Draft affirmative (Henry VIII power)

Context and Purpose

12. The information retention, reporting and stewardship requirements set out in Chapter 4A are sanctionable, where non-compliance could be subject to a financial penalty up to a maximum of £1 million. This provision allows the maximum amount of a financial penalty of £1 million set out in new clause “Financial penalty notices” to be increased subject to an absolute maximum of £5 million.

Justification for the power

13. The Department considers that, in order to ensure that the enforcement regime is sufficiently dissuasive and capable of driving the desired behaviour, it is necessary to retain some flexibility in increasing the level of financial penalty whilst maintaining a proportionate approach in the initial enforcement regime. Taking a power to amend the level of financial penalty (subject to an absolute limit) should that prove necessary is the appropriate way of achieving that objective.
14. There is existing precedent for taking a Henry VIII power to increase a financial penalty of £1 million to a maximum of £5 million, in the regime that exists in the Energy Act 2016 in relation to petroleum licenses (see section 45(7) of that Act). Given the similarities and overlap between the carbon storage and petroleum industries the Department considers it appropriate to have an equivalent power to maintain parity and consistency between the two sectors, where there are likely to be companies who operate across both sectors.

Justification for the procedure

15. This provision amends a figure set in primary legislation and, as such, we consider it appropriate for these regulations to follow the draft affirmative procedure. This will provide Parliament with sufficient opportunity for scrutiny and debate of the regulations.

New Schedule: paragraph 1(6) to (8) of Schedule (Power to amend the list of specified persons to whom disclosure of protected material can be made)

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Draft affirmative (Henry VIII power)

Context and Purpose

16. This power enables the Secretary of State to add to or remove entries from the table set out in paragraph 1 of the new Schedule “Permitted disclosures of materials held by the OGA”. That table sets out a list of public bodies or office holders to whom disclosure of certain types of information obtained by the OGA under the powers created by these amendments can be made. Disclosure of this material can only be made where it is for the purpose of facilitating that person in carrying out their functions.
17. The power is only capable of being used to add office holders under the Crown, people in the service of the Crown, persons acting on behalf of the Crown, government departments or publicly owned companies to the table.

Justification for the power

18. This power enables any changes to the names or roles of public bodies in the list of persons to whom information can be disclosed to be reflected in the primary legislation without the need for further primary legislation. We think that enabling changes of this nature, which may be needed to reflect changes within government or within other publicly controlled bodies, is something for which secondary legislation is suitable.

Justification for the procedure

19. Given this provision amends a list set out in primary legislation, we consider it appropriate for these regulations to follow the draft affirmative procedure. This will provide Parliament with sufficient opportunity for scrutiny and debate of the regulations.

New Schedule: paragraph 4 of Schedule (Power to specify the time from which certain information can be published or made available to the public)

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Draft affirmative

Context and Purpose

20. Paragraph 4 of the new Schedule “Permitted disclosures of materials held by the OGA” enables the OGA to publish information or make samples available to the public after a specified period of time has elapsed.
21. To ensure the time limits for the disclosure of protected information balance relevant factors, sub-paragraph (6) establishes statutory considerations which the Secretary of State must have regard to in making regulations. The factors to be balanced include whether the time limits are sufficient to enable the main purpose for which information was acquired, and the potential risk that early disclosure may discourage the collection of carbon storage information, compared to the potential benefits of early disclosure to the sector more broadly.

Justification for the power

22. This power will need to be used when it is clear what sort of information is to be retained and who it has been created by. The equivalent regulations under the petroleum regime (see S.I. 2018/898) set out different time periods for different types of information and depending on whether the information was obtained by the licensee or on the licensee’s behalf.
23. The Department does not consider it appropriate for this information to be set out on the face of the primary legislation because that can only be done once regulations have set out the type of information to be retained and therefore what would be available to disclose under this power.
24. Regulations under this power would also need to be consulted on (either by the Secretary of State or by the OGA) to ensure that industry is satisfied with the time limits for general publication which also means that setting these time limits in primary legislation would not be appropriate. It may also be appropriate to review the time limits as the sector matures.

Justification for the procedure

25. Whilst these regulations may appear to be similar to those under the new power to make regulations about retention of information and samples and therefore could be said to follow a similar procedure the Department does not think that would be appropriate given the potentially significant (positive or negative) effect that these regulations might have on the industry.

26. The Department is of the view that an additional level of Parliamentary scrutiny provided for by the draft affirmative procedure is more appropriate for this subject matter. This will provide Parliament with sufficient opportunity for scrutiny and debate of the regulations.