

# 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 Report 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 and at Commons Committee stage.

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

***Amendment to Clause 62: Direction to offer to contract with eligible hydrogen transport provider***

***Amendment to Clause 64: Direction to offer to contract with eligible hydrogen storage provider***

***Amendment to Clause 66: Direction to offer to contract (with eligible low carbon hydrogen producer)***

***Amendment to Clause 68: Direction to offer to contract (with eligible carbon capture entity)***

*Power conferred on:* Secretary of State

*Power exercised by:* Statutory instrument

*Parliamentary procedure:* Affirmative procedure

### Context and purpose

3. As discussed in paragraph 118 of the Delegated Powers Memorandum published at Introduction, the Bill will provide the Secretary of State with a power to make regulations determining the meaning of “eligible” in relation to a low carbon hydrogen producer and a carbon capture entity. This is enabled by the overarching power in clause 57(1) to make regulations relating to revenue support contracts, with an obligation to do so in clauses 66(4) and 68(4) respectively. Since introduction, similar provisions have been added in relation to a hydrogen transport provider (clause 62(4)) and a hydrogen storage provider (clause 64(4)). This is required as the Secretary of State is only able to direct a counterparty to enter into a contract with an ‘eligible’ person. An allocation body

will also only be able to give a notification to a counterparty specifying an 'eligible' person to enter into a contract with.

4. The amendments to clauses 62, 64, 66 and 68 make it clear that such revenue support regulations defining "eligible" under Chapter 1, Part 2 may make reference to standards and other published documents (as they have effect from time to time).

#### Justification for the power

5. In the consultation on proposals for hydrogen production and industrial carbon capture regulations, published on 30 March 2023, government put forward proposals to determine the meaning of "eligible" in relation to a "low carbon hydrogen producer" in revenue support regulations, in accordance with clause 61(3) of the Bill as it then was (the same provision is now clause 66(4)). This included the option to refer to the live version of the UK low carbon hydrogen standard (LCHS).
6. However, under current drafting the Bill does not contain an express power for revenue support regulations to make ambulatory reference to the LCHS or an equivalent standard and this amendment seeks to address this.
7. The Department considers this necessary as the level of detail covered by standards would not be suited for regulations. Given the nascency of the CCUS and hydrogen industry and the need for regulations underpinning the revenue support contracts to provide sufficient certainty to investors, the ability to make ambulatory reference in regulations would provide the flexibility to help ensure the revenue support schemes are in line with latest technological developments to encourage ongoing innovation and investment. This will also provide administrative benefits whereby eligibility requirements would always be aligned with updates to the relevant standard, helping to ensure strong alignment between the regulations and round-by-round allocation guidance.
8. The Department has also assessed that it is appropriate to extend this power to revenue support regulations defining "eligibility" under clauses 62, 64 and 68 in order to provide flexibility in case it is considered appropriate to refer to standards and other published documents (as they have effect from time to time) for carbon capture, hydrogen transport and hydrogen storage revenue support.

#### Justification for the procedure

9. As discussed in paragraph 155 of the Delegated Powers Memorandum published at Introduction, as these provisions deal with the fundamental parameters of the schemes, including who is eligible for support, it is appropriate for these measures 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 when applying, are unlikely to change frequently or at short notice.

## **Amendments to Clause 76: Allocation of Contracts**

*Power conferred on:* Secretary of State

*Power exercised by:* Statutory Instrument

*Parliamentary procedure:* Affirmative procedure

### Context and purpose

10. As discussed in paragraph 125 of the Delegated Powers Memorandum published at Introduction, clause 76(2)(a) and (7) allows revenue support regulations to make provision conferring a power on the Secretary of State to make rules about the allocation of hydrogen production revenue support contracts or carbon capture revenue support contracts (known as an “allocation framework”), as well as a power to amend, add to or remove an allocation framework.
11. Subsections (4) to (6) provide examples of what may be included in an allocation framework. This amendment to subsection (4) enables an allocation framework to refer to standards and other published documents (as they have effect from time to time).

### Justification for the power

12. Further to the justification for the preceding amendment, it may also be necessary to include references to standards and other published documents (as they have effect from time to time) in allocation frameworks.

### Justification for the procedure

13. As set out in the Delegated Powers Memorandum published at Introduction, provisions which may be included in regulations by virtue of clause 76, which deal with the fundamental parameters of the schemes, including how support is allocated, it is appropriate for these measures to be subject to a greater level of parliamentary scrutiny through the affirmative procedure.
14. However, as discussed in paragraph 161 of the Delegated Powers Memorandum published at Introduction, the allocation framework, a technical sub-component of the process, will not be subject to parliamentary scrutiny due to the highly technical information and administrative rules it will include. The Department also needs to ensure that it can organise and run allocation rounds to short timeframes to avoid investor uncertainty as well as avoid wasted costs. This would be challenging if an allocation framework were to be subject to parliamentary time.