

ENERGY BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Energy Bill [HL] as introduced in the House of Lords on 9 July 2015 (HL Bill 56).

- 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 is intended to deliver the Conservative Party's manifesto commitment to continue to support the development of North Sea oil and gas, change the law so that local authorities decide onshore wind applications and end any new public subsidy for onshore wind specifically in relation to the Renewables Obligation.
- 2 The Bill aims 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 (termed "MER UK") to maximise the economic recovery of oil and gas from beneath UK waters. 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. The Bill makes changes so that local authorities decide whether to approve planning applications for new onshore wind farms. The Bill also provides for closure of the Renewables Obligation to new onshore wind in Great Britain.
- 3 In summary the Bill will:
 - Formally establish the OGA as an independent regulator, which will take the form of a government company, charged with 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 on oil and gas to the OGA. The Secretary of State's regulatory functions in relation to the environment 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) 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.
 - End public subsidies for new onshore wind in Great Britain under the Renewables Obligation (RO) from 1 April 2016

Policy background

- 4 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.
- 5 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 maximise the economic recovery ("MER") of oil and gas from beneath UK waters.
- 6 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.
- 7 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.
- 8 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.
- 9 The Government has committed to ending new public subsidies for onshore wind generation. On 18 June 2015, the Government announced that the Renewables Obligation (RO) would close on 31 March 2016 to new onshore wind generation and that primary legislation would be introduced to implement this ([Written Ministerial Statement](#)). The Government has proposed a grace period for projects which, as of 18 June 2015, already have planning consent, a grid connection offer and acceptance, and evidence of land rights for the site on which their project will be built, but has said that it wants to engage with industry and other stakeholders to hear their views before framing the terms of the legislation.

Legal background

These Explanatory Notes relate to the Energy Bill [HL] as introduced in the House of Lords on 09 July 2015 (HL Bill 56)

The Oil and Gas Authority (OGA)

- 10 The OGA will exercise 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 (2013/20/EU). It will also exercise licensing functions under the Energy Act 2008, relating to, carbon capture and storage and gas storage and unloading. 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 MER UK Strategy, required by the Petroleum Act 1998, section 9A (inserted by the Infrastructure Act 2015).

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 subsection (2) of clause 58 of this Bill. Fees are validly charged in relation to the remainder of OGED's functions.
- 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 57 makes that provision here. The existing fees schemes are 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.

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.
- 15 The renewables obligation (RO) is an obligation placed on licensed electricity suppliers. Suppliers must produce, by a specified day, a certain number of renewables obligation certificates (ROCs) in respect of each megawatt hour of electricity that each supplies to customers in Great Britain during a specified period. The RO is administered by the Gas and Electricity Markets Authority which issues ROCs to renewable electricity generators in respect of their eligible renewable output.

- 16 The RO is provided for in relation to England and Wales by the Renewables Obligation Order 2009 (S.I. 2009/785) which is made by the Secretary of State, and in relation to Scotland by the Renewables Obligation (Scotland) Order 2009 (S.S.I. 2009/140) which is made by Scottish Ministers. There is also a renewables obligation in Northern Ireland, which is provided for by the Renewables Obligation Order (Northern Ireland) 2009 (S.R. 2009/154) made by the Northern Ireland Department of Enterprise, Trade and Investment. These complementary obligation orders together in effect create a UK-wide renewables obligation.
- 17 Under the Renewables Obligation Closure Order 2014 (S.I. 2014/2388), the RO in England and Wales, and the RO in Scotland, will close to new generating capacity on 31 March 2017 subject to a number of grace periods. Subsequently, the Renewables Obligation Closure Order 2014 was amended by the Renewables Obligation Closure (Amendment) Order 2015 (S.I. 2015/920) to bring forward the closure date for large-scale solar (photovoltaic) stations to 31 March 2015, also subject to certain grace periods..

Territorial extent and application

- 18 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.
- 19 The provision relating to onshore wind planning extends to Great Britain, but only makes changes in relation to England and Wales. The extent of the RO closure provision is Great Britain.

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

- 20 Clause 1 establishes the OGA.
- 21 Clause 2 and the Schedule 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.
- 22 Clause 2(5) provides that regulations may not give the OGA the power to make secondary legislation.
- 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.

Clause 3: Contracting out of functions of the OGA

- 24 This clause enables functions to be carried out by the OGA on behalf of the Secretary of State.

Exercise of functions

Clause 4: Matters to which the OGA must have regard

- 25 Clause 4 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.
- 26 "Function" is defined in subsection (2) for the purposes of this clause and clause 5. 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, but is otherwise intended to include all other OGA functions, including functions exercisable under licences where provision is made for these to be transferred to the OGA.

Clauses 5 and 6: Directions: national security and public interest and Directions: requirements to notify the Secretary of State

- 27 Clause 5 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, in particular cases the Secretary of State may give a direction that relates to a regulatory function (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.
- 28 Clause 6 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 5.

Clause 7: Power of Secretary of State to require information and samples

- 29 Clause 7 empowers the Secretary of State to require the OGA to provide it with 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.
- 30 The clause allows the Secretary of State to use protected material for the purposes for which it was provided. Protected material may only be disclosed by the Secretary of State:
- a. so far as is necessary for the purposes for which it was obtained;
 - 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.

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

Chapter 1: Introduction

Clauses 8 and 9: Overview of Part 2 and Interpretation of Part 2

- 31 This group of provisions is self-explanatory.

Chapter 2: Disputes

Clause 10: Qualifying disputes and relevant parties

- 32 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 (the principal objective means the objective of maximising economic recovery of UK petroleum 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. Where the dispute relates to multiple issues, the OGA may only consider those issues that are within the scope of these provisions.
- 33 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 11: Reference of disputes to the OGA

- 34 Only relevant parties may refer a dispute to the OGA, though clause 13 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.
- 35 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 12 and 13: Consideration of disputes

- 36 Clause 12 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.

- 37 Subsection (2) requires that the OGA issue guidance specifying the matters it will have regard to when making its decision.
- 38 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.
- 39 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.
- 40 Clause 13 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 14(1)). Where it does so, the OGA must notify all parties to the dispute, this includes any non-relevant parties.

Clause 14: Procedure for consideration of disputes

- 41 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.
- 42 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.
- 43 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.
- 44 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 15: Power of the OGA to acquire information

- 45 Clause 15 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).
- 46 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.
- 47 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 the provisions set out in Chapter 5.

Clause 16: Power of the OGA to require attendance at meetings

- 48 Clause 16 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. in considering a dispute and making a recommendation.

49 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 17: Disputes: disclosure

- 50 The OGA may only disclose information obtained by it under this Chapter:
- a. with the consent of the person that provided the information, or the person on whose behalf the information was provided;
 - b. where the disclosure is required by or under an Act (including this one);
 - c. where the disclosure is due to the OGA exercising its powers to publish its recommendation, in accordance with section 14(6); or
 - d. as part of publishing details of sanctions in accordance with section 48.

Clause 18: Appeals against decisions of the OGA: disputes

51 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 14(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

Clause 19: Petroleum related information and samples

52 This clause provides the definitions of "petroleum related information" and "petroleum-related samples" applicable to this Chapter.

Clauses 20 and 21: Retention of information and samples

- 53 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. 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 61.
- 54 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 22) is in place.
- 55 Any failure to comply with a requirement set out in the regulations is sanctionable under the provisions contained in Chapter 5.

Clauses 22, 23, 24 and 25: Information and samples plans

- 56 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) 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.
- 57 The information and samples plan will deal with what is to happen to petroleum related information and samples held prior to the licence event taking place. When a plan takes effect, either on agreement or after imposition, the responsible person must comply with the plan. 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.
- 58 Once a plan is agreed, the retention requirements imposed by regulations made under clause 20 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.
- 59 Clause 25 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.
- 60 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.

Clause 26: Power of the OGA to require information and samples

- 61 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, 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.
- 62 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.
- 63 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.

Clauses 27 and 28: Disclosure of information and provision of samples

- 64 Information or samples acquired by the OGA under Chapter 3, in the exercise of its statutory functions is referred to in sections 27 and 28 as protected material.
- 65 These clauses allow the OGA to use protected material for the purposes of preparing such returns and reports as may be required under obligations imposed on it, and for it to provide

protected material to the Natural Environmental Research Council (NERC), or any other similar body carrying out geological activities. The OGA, NERC or other body to which such information or samples are disclosed may prepare and publish reports and surveys of a general nature using information derived from the protected material.

- 66 Subsection (8) provides for the Secretary of State to make regulations allowing for protected material to be published or made available to the public. In accordance with clause 28 the regulations may allow for information to be published or made available to the public immediately after it is provided, therefore providing for no confidentiality period.
- 67 In addition protected material may be disclosed by the OGA:
 - a. with the consent of the person who provided the information or sample;
 - b. in accordance with a statutory obligation; and
 - c. in accordance with the OGA's powers to publish a sanctions notice under section 48.
- 68 Where protected material is provided under subsection (3)(b) they may only use the protected material for the purposes for which it was provided. That person may only disclose the protected information:
 - a. when disclosure is required by or under any Act;
 - b. 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; or
 - c. in accordance with regulations made under subsection (8).

Clause 29: Information and samples coordinator

- 69 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.
- 70 Any failure to comply with a requirement imposed by this section is sanctionable under the provisions contained in Chapter 5.

Clause 30: Appeals against decisions of the OGA: information and samples plans

- 71 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 31: Meetings: interpretation

- 72 Clause 31 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 9), 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 9) 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.
- 73 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 32: Duty to inform the OGA of meetings

- 74 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.
- 75 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.
- 76 Failure to comply with the obligation imposed under this clause will be sanctionable by the OGA in accordance with chapter 5.

Clause 33: Attendance by the OGA at meetings

- 77 Clause 33 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.
- 78 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 34: Provision of information to the OGA after meetings

- 79 Clause 34 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.
- 80 Failure to comply with this obligation may result in the application of sanctions in accordance with Chapter 5.

Clause 35: Meetings: disclosure

- 81 The OGA is prohibited from disclosing any information obtained by it under this Chapter unless: it has the consent to disclose it of the person that provided the information, or the person on whose behalf the information was provided; its disclosure is required by or under an Act (including this Bill); or that disclosure is allowed as part of the publication of a sanctions notice under section 48.

Clause 36: Notices

- 82 This clause is self-explanatory.

Chapter 5: Sanctions

- 83 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").

Clause 37: Power of OGA to give sanction notices

- 84 Clause 37 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.
- 85 Subsection (3) defines the petroleum-related requirements to which sanctions can apply.
- 86 Sanction notices include enforcement notices, financial penalty notices, revocation notices and removal of operator notices. It is these notices that impose the sanctions.
- 87 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.
- 88 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.
- 89 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.
- 90 If a breach of a petroleum-related requirement is not remedied within a period of time specified in either an enforcement notice or a financial penalty notice, then the OGA may give a further sanction notice in respect of the same breach (subsection (6)(b) and clause 49).

Clause 38: Enforcement notices

- 91 Clause 38 specifies what must be contained in an enforcement notice.
- 92 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.
- 93 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.
- 94 The effect of subsection (4) is that the OGA has a power to give a sanction notice for a failure to comply with directions given in enforcement notices within the specified timeframe.

Clause 39: Financial penalty notices

- 95 Clause 39 sets out what must be contained in a financial penalty notice.
- 96 These notices will contain information about how a person has failed to comply with a petroleum-related requirement and 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 upon which payment of the penalty must be made cannot be earlier than the period in which a person can bring an appeal against the sanction notice.

Clause 40: Amount of financial penalty

- 97 Clause 40 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.
- 98 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.
- 99 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.
- 100 Subsection (6) 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 61(4)(b)).

Clause 41: Payment of financial penalty

- 101 Clause 41 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 42: Revocation notices

- 102 Clause 42 sets out what must be contained in a revocation notice, which revokes a petroleum licence for failure to comply with a petroleum-related requirement. 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 the period in which an appeal may be brought in the Tribunal (see clause 45(2)).
- 103 The revocation of a licence under this power does not affect any obligations or liabilities incurred or imposed under the terms of a licence (subsection (7)).

Clause 43: Operator removal notices

- 104 Clause 43 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 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 the period in which an appeal may be brought in the Tribunal (see clause 45(2)).
- 105 The effect of subsection (7) 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.

Clause 44: Duty of OGA to give sanction warning notices

106 Clause 43 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.

107 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.

Clause 45: Appeals in relation to sanction notices

108 Clause 45 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. An appeal must be brought within 28 days of the period on which the sanction notice was given. Bringing an appeal will suspend the effect of a sanction notice.

Clause 46: Appeals: against finding of failure to comply

109 Clause 46 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.

110 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 so 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 47.

Clause 47: Appeals against sanction imposed

111 Clause 47 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.

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

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

Clause 48: Publication of details of sanctions

114 Clause 48 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 49: Subsequent sanction notices

115 Clause 49 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 in respect of a failure to comply with a petroleum-related requirement, a further sanction notice may not be given in respect of that failure until the period for compliance specified in the original notice has passed.

Clause 50: Withdrawal of sanction notices

116 Clause 50 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 51: Alternative means of enforcement

117 Clause 51 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.

Clauses 52 and 53: Sanctions: information powers and Appeals against information requests

118 Clause 52 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 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.

119 Clause 53 creates a right of appeal to the Tribunal against this power on grounds set out within the clause.

Clause 54 Sanctions: Disclosure

120 The OGA is prohibited from disclosing any information obtained by it under Chapter 5 unless: it has the consent of the person that provided the information; or the person on whose behalf the information was provided or its disclosure is required by or under an Act; or that disclosure is allowed as part of the publication of a sanctions notice under section 48.

Clause 55: Procedure for enforcement decisions

121 Clause 55 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.

122 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.

123 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.

Clause 56: Sanctions: Interpretation

124 Clause 56 is self-explanatory and defines certain terms used in Chapter 5.

Part 3: Fees

Clause 57: Powers to charge fees

125 The powers 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.

126 Subsection (1) allows the Secretary of State to charge for functions performed under Part 4A of the Energy Act 2008.

127 Subsection (2) allows the Secretary of State to charge for performing functions under Part 4 of the Marine and Coastal Access Act 2009, so far as those functions relate to activities regulated under other oil and gas regimes.

Clause 58: Validation of fees charged

128 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 4: Wind power

Clause 59: Onshore wind generating stations

129 Clause 59 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).

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

Clause 60: Onshore wind power: closure of renewables obligation on 31 March 2016

131 Clause 60 amends the Electricity Act 1989 to provide for the closure of the RO to new onshore wind generating stations located within Great Britain on 31 March 2016. It does this by preventing renewables obligation certificates from being issued for electricity generated by these generating stations after the closure date of 31 March 2016.

132 Clause 60 also gives the Secretary of State a power to make regulations to give further effect and to make more detailed provision in relation to the RO closure measure. This is subject to the affirmative resolution procedure. In addition, the clause makes a number of consequential amendments to the Renewables Obligation Closure Order 2014.

Part 5: Final provisions

Clause 61: Regulations

133 Clause 61 outlines that the powers to make regulations under the Act are exercisable by statutory instruments.

Clause 62: Commencement

134 Commencement of the provisions of the Bill is specified in clause 62. Part 5 of the Bill comes into force on the day on which the Act is passed. Part 3 comes into force two months after the day on which this Act is passed. The remainder of the provisions come into force on such day or days that the Secretary of State may by regulations appoint.

Clause 63: Short title and extent

135 Clause 63 confirms the title of the Act when Royal Assent is given. This clause also sets out the area covered by the clauses.

Commencement

136 OGA clauses (clauses 1-56) of this Bill will come into force on such day or days the Secretary of State may by regulations appoint.

137 Part 3, the fees clauses (clauses 57-58) come into force two months after the day on which this Bill becomes an Act.

138 The provisions in respect of onshore wind in Part 4 (clauses 59-60) will be commenced by regulations on a date or dates set out in those regulations.

Financial implications of the Bill

139 Clause 2 and the schedule 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 a reduction in public expenditure.

140 Clauses 57 and 58 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 58) 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.

141 The powers set out in Clause 59 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.

142 Clause 60 prevents ROCs from being issued for electricity generated by new onshore wind generating stations after the closure date of 31 March 2016 - a year earlier than currently planned. This will restrict the number of onshore wind generating stations that are able to receive support under the RO and hence result in a reduction in public expenditure.

Compatibility with the European Convention on Human Rights

143 The Minister for the Bill has signed a statement to the effect that it is believed the measures in the Bill are compatible with the Convention Rights.

Related documents

144 The following documents are relevant to the Bill:

- Impact Assessment(s)
- Delegated Powers Memorandum
- Legal Issues Memorandum

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?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
1 The OGA Clause 1 - 7	Yes	Yes	No	Yes	No	Yes	No
2 Further Functions of the OGA relating to Offshore Petroleum Clause 8 - 56	Yes	Yes	No	Yes	No	Yes	No
3 Fees Clause 57 - 58	Yes	Yes	No	Yes	No	Yes	No
4 Wind Power Clause 59	Yes	Yes	No	Yes, but the provisions only make changes in relation to England and Wales.	No	No	No
4 Wind Power Clause 60	Yes	Yes	No	Yes	No	No	No
5 Final Provisions Clause 61 - 63 Clause 59 - 60	Yes	Yes	No	Yes	No	Yes	No

ENERGY BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Energy Bill [HL] as introduced in the House of Lords on 9 July 2015 (HL Bill 56).

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