

# **GREEN ENERGY (DEFINITION AND PROMOTION) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Green Energy (Definition and Promotion) Bill which was brought from the House of Commons on 6th July 2009. They have been prepared by the Department of Energy and Climate Change (DECC) 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.

2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### **OVERVIEW**

3. The Bill defines the term “green energy” and states that its purpose is to promote it. The specific proposals contained in the Bill are for the revision and publication of a microgeneration strategy and the revision of permitted development orders.

4. The Bill also requires the Secretary of State, in carrying out the specific functions imposed by it, to bear in mind the desirability of the alleviation of fuel poverty and of a diverse and viable long-term energy supply.

### **SUMMARY AND BACKGROUND**

#### ***Definition and promotion of green energy***

5. Energy efficiency and renewable and low-carbon sources have an important role to play as part of a long term energy strategy. By contributing towards a UK target of reducing emissions by 80% by 2050, they can help tackle climate change and can also increase the diversity and security of UK energy supplies. Energy efficiency measures are critical for reducing the amount of energy needed and for using energy more efficiently and, consequently, for helping to reduce fuel poverty. Renewable or low-carbon sources generate energy in a cleaner and more sustainable way than fossil fuels, and increasing the amount of renewable generating capacity will also help to meet the UK’s share of the EU 2020 renewable energy targets.

### ***Microgeneration Strategy***

6. Section 82 of the Energy Act 2004 required the Secretary of State to prepare a strategy for the promotion of microgeneration. As a result, a strategy was produced in March 2006 with the objective of creating the conditions for microgeneration to become a realistic alternative or supplementary source of energy generation. It contained 25 actions to tackle the barriers to widespread uptake of microgeneration. Of these actions, 21 were completed and 4 were closed.

7. Clause 2 of the Bill requires the Secretary of State to consult upon, and thereafter publish, a new microgeneration strategy.

8. The new strategy would be applicable only to England as aspects of energy policy in the microgeneration area are a devolved matter in Wales.

### ***Permitted development rights***

9. Section 59 of the Town and Country Planning Act 1990 (“the TCPA”) provides the Secretary of State with the power, in relation to England, to provide for the granting of planning permission by order. A development order made under that section may grant planning permission for development specified in the order or for development of any class specified. Development orders may be made either as a general order applicable to all land or may specify the land to which the order applies.

10. Section 60 of the TCPA gives the Secretary of State power to grant planning permission by a development order either unconditionally or subject to conditions or limitations which may be specified in the order. In relation to the grant of planning permission, the order that is currently in force is the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418) (the “GPDO”). The GPDO grants planning permission for specified classes of development subject to a number of conditions and limitations. The rights granted by the GPDO are known as permitted development rights and they may be exercised without the need to submit a planning application provided the applicant ensures the development complies with any conditions or limitations imposed by the GPDO. Removing the requirement to submit a planning application relieves developers from a financial and administrative burden. Permitted development rights are generally granted in respect of development which is minor, non-contentious or has a minimal impact on others.

11. Clauses 3 and 4 relate to the GPDO and permitted development rights. The intention behind these clauses is to ensure that permitted development rights are granted to allow the installation of specified microgeneration equipment on property in domestic use and that there is consideration of granting rights to install microgeneration equipment on property in non-domestic use.

### **TERRITORIAL EXTENT AND APPLICATION**

12. This Bill extends to England and Wales, in the sense that it forms part of the law of England and Wales; however, it has effect only in England.

## **COMMENTARY ON CLAUSES**

### **Clause 1: Definition and promotion of green energy**

13. Clause 1 sets out the purpose of the Bill, which is to promote “green energy”. The clause defines the term green energy as electricity or heat generated from “renewable and low carbon sources” (defined in clause 2, Microgeneration strategy), reflecting the important role that low carbon sources will continue to play alongside renewable technologies in reducing carbon emissions. This definition is supplemented with “energy efficiency”, which recognises the importance of reducing demand for energy as well as using it more efficiently.

14. The definition includes capacity limits in relation to the generation of both electricity and heat. The limit of 5MW for electricity reflects the maximum capacity for small-scale low carbon electricity generation set out in the Feed-in Tariff powers in section 41 of the Energy Act 2008. A 5MW thermal capacity limit is set in relation to heat, for symmetry.

### **Clause 2: Microgeneration strategy**

15. Clause 2 of the Bill requires the Secretary of State to prepare and publish a strategy for the promotion of microgeneration in England.

16. The clause requires the Secretary of State to commence a consultation upon a new strategy within six months of the coming into force of the Act and publish the new strategy within six months of the conclusion of the consultation. The microgeneration industry must be consulted on the new strategy.

17. In preparing the strategy the Secretary of State is required to consider the contribution that microgeneration could make to various matters set out in section 82(3) of the Energy Act 2004. Those matters are: cutting emissions of greenhouse gases, reducing the number of people living in fuel poverty, reducing demands on and the need for modification of transmission and distribution systems, and improving availability of electricity and heat for consumers. The Secretary of State is also required to have regard to any other strategy he publishes after 1st July 2009. This would include the Renewable Energy Strategy and the Heat and Energy Saving Strategy. These strategies are due to be published in the summer and later in the year respectively.

18. The clause imposes a duty on the Secretary of State to take reasonable steps to implement the strategy.

19. In defining microgeneration the clause relies on an existing definition found in section 82 of the Energy Act 2004. In that section, microgeneration is defined as the generation of under 50kW electricity or, in relation to heat, the production of under 45kW thermal. Such generation must be wholly or mainly from sources or technology mentioned in that section including biomass, biofuels, fuel cells, photovoltaics, water (including waves and tides), wind, solar power, geothermal sources, combined heat and power, and any other source of energy that will, in the opinion of the Secretary of State, help reduce greenhouse gas emissions. In applying the definition to clause 2 of this bill, the capacity limit of 45kW thermal for heat is increased to 300kW.

**Clause 3: Microgeneration: dwellinghouses**

20. This clause relates to the grant of permitted development rights for specified types of microgeneration equipment on, or within the curtilage of, dwelling houses.

21. *Subsection (1)* requires the Secretary of State to amend the GPDO in relation to England, to grant permitted development rights for specified classes of microgeneration equipment on or within the curtilage of a dwellinghouse. Dwellinghouse is defined for the purposes of clauses 3 and 4 in clause 5 (Interpretation) and reflects the broad concept of what constitutes use as a dwellinghouse for the purposes of planning legislation.

22. *Subsection (2)* provides that amendments to the Order must include the granting of permitted development rights for microgeneration equipment consisting of a wind turbine or air source heat pump.

23. *Subsection (3)* provides that references to “specified” in *subsections (1)* and *(2)* mean specified in the GPDO.

24. *Subsection (4)* requires the Secretary of State to make amendments to the GPDO within six months of the Act coming into force.

25. *Subsection (5)* provides that any amendments to the GPDO, as specified in *subsection (1)*, may be granted subject to limitations, exceptions and conditions. This power ensures that the amendments to the GPDO can take account of the impacts of proposed developments on others (for example, neighbours) and limit the rights accordingly, and is consistent with the powers conferred by the TCPA.

26. *Subsection (6)* requires the Secretary of State to review the effect of the amendments made to the GPDO two years after they are made. The review will enable the Government to examine the effectiveness of the legislation, taking account of any developments in microgeneration technology and the appropriateness of the limitations, exceptions or conditions imposed by the legislation.

27. *Subsection (7)* specifies that microgeneration has the meaning given by section 82 of the Energy Act 2004. This is to ensure consistency between different pieces of legislation that deal with microgeneration.

**Clause 4: Microgeneration: non-domestic land**

28. *Subsection (1)* requires the Secretary of State to consider amending the GPDO for the purpose of facilitating the installation of equipment for microgeneration on non-domestic land in England.

29. *Subsection (2)* defines non-domestic land very broadly by excluding buildings which are dwellinghouses or land within the curtilage of a dwellinghouse. This approach will allow the Government to consider the full range of non-domestic land uses when formulating proposals for permitted development rights for microgeneration equipment.

30. *Subsection (3)* requires consideration of amendments to the GPDO to begin within six months of the Act coming into force.

31. *Subsection (4)* requires the Secretary of State to lay a report before Parliament setting out the outcome of the consideration of whether (and if so how) to amend the GPDO to facilitate the installation of microgeneration equipment on non-domestic land.

32. *Subsection (5)(a)* requires the Secretary of State to have regard to the results of any relevant consultation which has been carried out by the Secretary of State in relation to the GPDO, when considering what, if any, amendments to make to the GPDO. This will allow the Secretary of State to take account of the results of any consultation that may have been carried out in relation to the GPDO under other powers (before or after the Act comes into force).

33. *Subsection (5)(b)* provides a power to carry out further consultation if appropriate to inform the consideration of amendments to the GPDO.

34. *Subsection (6)* refers back to clause 3 in defining microgeneration. The effect is that microgeneration has the same meaning as in section 82 of the Energy Act 2004. Again, this is to ensure consistency between different pieces of legislation that deal with microgeneration.

#### **Clause 5: Interpretation**

35. This clause defines terms that are used in the Bill.

#### **Clause 6: Short title, commencement and extent**

36. This clause sets out the short title and extent and provides that the Bill will come into force two months after it is passed.

#### **FINANCIAL EFFECTS OF THE BILL**

37. The clauses in the Bill do not directly incur any new public expenditure. The microgeneration strategy developed as a result of the Bill could lead to additional public expenditure, but this will be subject to a full public consultation and a further Impact Assessment. The permitted development rights which flow from this Bill could also lead to additional public expenditure but will also be subject to a full public consultation and Impact Assessment which will deal with the financial effects of final proposals.

#### **SUMMARY OF IMPACT ASSESSMENT**

38. Should this Bill lead to any additional action to increase installation of microgeneration equipment, cost impacts will depend on the type and extent of any measures proposed and ultimately implemented. However, generally speaking, an increased proportion of microgeneration in the grid mix will lead to higher average (£/MWh) costs. Who would bear the costs will depend on the design of financial, regulatory, informational or other measures. For example, costs that are levied on energy suppliers would be expected to be passed through to end energy consumers; property owners would likely pay for any regulatory measures; and the costs of central government funded measures such as grants would fall on the taxpayer.

**EUROPEAN CONVENTION ON HUMAN RIGHTS**

39. The Government does not consider that this Bill is incompatible with the European Convention on Human Rights. Clause 2 requires the Secretary of State to prepare and publish a strategy, but does not grant him any new powers capable of exercise in a manner having the potential to interfere with Human Rights under the Convention. Accordingly the Government does not consider that this clause gives rise to any human rights issues.

40. The Convention rights most relevant to clauses 3 and 4 of the Bill are Article 8 of the Convention (right to respect for private and family life) and Article 1 of the First Protocol to the Convention (protection of property). If these are engaged in relation to the requirement in clause 3 to introduce permitted development rights to install wind turbines and air source heat pumps on property in domestic use, this is capable of being exercised in a way compatible with the Convention. Similarly, with regard to the provisions of clause 4 of the Bill relating to the introduction of rights to install microgeneration equipment on property in non-domestic use, these will be brought forward following public consultation and any changes made in accordance with existing legislative procedures in the Town and Country Planning Act 1990. In the Government's view, these arrangements are therefore compatible with the Human Rights Act 1998. The Government does not believe that the other clauses of the Bill engage any Convention issues.

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*These notes refer to the Green Energy (Definition and Promotion) Bill  
as brought from the House of Commons on 6th July 2009 [HL Bill 61]*

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