

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ENERGY BILL [*LORDS*]

Second Sitting

Tuesday 26 January 2016

(Afternoon)

CONTENTS

CLAUSES 10 to 17 agreed to, one with amendments.
Adjourned till Thursday 28 January at half-past Eleven o'clock.
Written evidence reported to the House.

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Saturday 30 January 2016

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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chairs: † PHILIP DAVIES, MR ADRIAN BAILEY

- | | |
|---|--|
| † Boswell, Philip (<i>Coatbridge, Chryston and Bellshill</i>) (SNP) | † McCaig, Callum (<i>Aberdeen South</i>) (SNP) |
| † Cartlidge, James (<i>South Suffolk</i>) (Con) | † Maynard, Paul (<i>Blackpool North and Cleveleys</i>) (Con) |
| † Dowden, Oliver (<i>Hertsmere</i>) (Con) | † Pennycook, Matthew (<i>Greenwich and Woolwich</i>) (Lab) |
| † Fernandes, Suella (<i>Fareham</i>) (Con) | Reynolds, Jonathan (<i>Stalybridge and Hyde</i>) (Lab/Co-op) |
| † Hall, Luke (<i>Thornbury and Yate</i>) (Con) | † Smith, Julian (<i>Skipton and Ripon</i>) (Con) |
| Harpham, Harry (<i>Sheffield, Brightside and Hillsborough</i>) (Lab) | † Sunak, Rishi (<i>Richmond (Yorks)</i>) (Con) |
| † Heaton-Harris, Chris (<i>Daventry</i>) (Con) | † Warman, Matt (<i>Boston and Skegness</i>) (Con) |
| † Hoare, Simon (<i>North Dorset</i>) (Con) | † Whitehead, Dr Alan (<i>Southampton, Test</i>) (Lab) |
| † Kinnock, Stephen (<i>Aberavon</i>) (Lab) | |
| † Leadsom, Andrea (<i>Minister of State, Department of Energy and Climate Change</i>) | Katy Stout, Ben Williams, <i>Committee Clerks</i> |
| † Lewis, Clive (<i>Norwich South</i>) (Lab) | |
| † Lynch, Holly (<i>Halifax</i>) (Lab) | † attended the Committee |

Public Bill Committee

Tuesday 26 January 2016

(Afternoon)

[PHILIP DAVIES *in the Chair*]

Energy Bill [Lords]

Clause 10

DIRECTIONS: NATIONAL SECURITY AND PUBLIC INTEREST

Amendment moved (this day): 10, in clause 10, page 6, line 31, at end insert—

- “(aa) Are necessary in order to inform the OGA’s role in developing and promoting carbon storage;
- (ab) Are necessary to meet the terms of the Climate Change Act 2008 or European or international obligations on climate change”—(*Dr Whitehead.*)

This amendment would allow the Secretary of State to give direction to the OGA if the Secretary of State considers that these are necessary to inform the OGA’s role in developing and promoting carbon storage and/or to meet the terms of the Climate Change Act 2008 or any international obligation on climate change.

2 pm

Dr Alan Whitehead (Southampton, Test) (Lab): It is a pleasure to serve under your chairmanship, Mr Davies. Before lunch, I had more or less said what I was going to say on amendment 10—news that I realise will be greeted very warmly by all Committee members. I will disappoint everyone only slightly by reiterating the importance of the amendment, particularly in the context of our earlier decisions on the issues to which the Oil and Gas Authority should have regard.

Two of those issues are covered by the amendment, which clarifies the matters on which the Secretary of State may provide directions. The amendment would provide a satisfactory way of bringing the wider issues we discussed this morning properly and collectively into the scope of clauses 9 and 10, which deal with basic working guidance for the OGA. For that reason, I hope the Minister will look kindly on the amendment, even if it is not worded as well as it might be, so that we can make some progress.

The Minister of State, Department of Energy and Climate Change (Andrea Leadsom): It is a great pleasure to serve under your chairmanship, Mr Davies. Amendment 10 would amend clause 10 in part 1 of the Bill, which deals with directions that the Secretary of State may give the OGA. The clause gives the Secretary of State the power to direct the OGA as to the exercise of its functions if the Secretary of State considers that the direction is in the interests of national security or otherwise in the public interest. The intention is that the power should be used very rarely, in order to give the OGA the independence it requires to fulfil its role.

The amendment would create a specific power to issue directions that are necessary to inform the OGA’s role in developing and promoting carbon storage. That

is unnecessary, since the Secretary of State’s powers to give directions to the OGA as to the exercise of its functions already applies to those functions. Similarly, directions that the Secretary of State considers necessary to meet the terms of the Climate Change Act 2008 would clearly be in the public interest, and therefore clause 10 already provides for such directions to be made.

If anything, the amendment limits the scope of the Secretary of State’s ability to issue directions in those areas by limiting them to what is necessary. For example, if the amendment were accepted, it would not be possible to issue a direction that was highly desirable but not necessary for meeting the terms of the 2008 Act.

The OGA is deliberately not an environmental regulator. Environmental regulation will continue to sit within the Department of Energy and Climate Change, which has the expertise and experience in this field. However, there are synergies between the two forms of regulation and the existing strong relationships between the OGA and DECC will continue.

I want to make clear that the OGA’s functions, including its objective to maximise economic recovery, are compatible with our climate change obligations. We are fully committed to delivering on our domestic, EU and international climate change targets. Under this Government, the UK is making good progress towards our EU 2020 renewable energy target, and we have already surpassed our interim targets covering 2013 and 2014. I hope that the hon. Member for Southampton, Test is content with my explanation of why the amendment is unnecessary and will withdraw it.

Dr Whitehead: I am not sure that the Minister has guided us fully as to what clause 10(1) actually says. The amendment would, in effect, add paragraphs (c) and (d) at the end of the subsection. Subsection (1) as it stands states:

“The Secretary of State may give directions to the OGA as to the exercise by it of any of its functions if the Secretary of State considers that the directions—

- (a) are necessary in the interests of national security, or
 (b) are otherwise in the public interest.”

Those two considerations then stand by themselves in terms of what powers are given to the Secretary of State to direct the OGA.

The amendment would add some guidance on issues that might otherwise be obscure but would not cut across that wider guidance on things that are necessary in the interests of national security and the public interest, to give greater comprehensivity of functions where it might be unclear what the OGA should look at. Certainly in my reading of how the clause and the amendment work together, the amendment does not cut across subsection (1)(a) and (b); it merely adds to the completeness of subsection (1) in areas that might otherwise be unclear.

I am not sure that the argument that the amendment may cause things that might otherwise be done not to be done has a great deal of substance. Indeed, if that is the defence against this amendment, I feel it is something we ought to press. I would certainly need rather more comprehensive assurances from the Minister that the issues raised in the amendment could be accommodated in subsection (1)(a) and (b) in a way that they are apparently not. If that is not forthcoming, I fear we will have to divide the Committee.

Andrea Leadsom: All I can say to the hon. Gentleman is that the powers of direction given to the Secretary of State in the areas of public interest and national security have a very broad definition. By specifying particular examples, we would run the risk of narrowing that very broadly defined set of powers, so I fear that I cannot accept the hon. Gentleman's amendment.

Dr Whitehead: I thank the Minister for that response, which I am sure was meant in a spirit of conciliation. However, it does not go as far as we would like, so we will divide the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 11.

Division No. 4]

AYES

Boswell, Philip	McCaig, Callum
Kinnock, Stephen	Pennycook, Matthew
Lewis, Clive	Whitehead, Dr Alan
Lynch, Holly	

NOES

Cartlidge, James	Leadsom, Andrea
Dowden, Oliver	Maynard, Paul
Fernandes, Suella	Smith, Julian
Hall, Luke	Sunak, Rishi
Heaton-Harris, Chris	Warman, Matt
Hoare, Simon	

Question accordingly negated.

Clause 10 ordered to stand part of the Bill.

Clauses 11 and 12 ordered to stand part of the Bill.

Clause 13

POWERS OF THE OGA TO CHARGE FEES

Dr Whitehead: I beg to move amendment 11, in clause 13, page 8, line 44, leave out subsection (3).

This amendment, together with amendments 12 and 13 would require the amount of income the OGA raised by fees and charges to be kept by of the OGA and used to reduce the amount of income raised by the levy on licence holders.

The Chair: With this it will be convenient to discuss the following:

Amendment 12, in clause 13, page 9, line 1, leave out subsection (4).

This amendment should be read together with amendment 11.

Amendment 13, in clause 14, page 9, line 38, after “period” insert

“minus the income derived from fees under section 13”.

This amendment should be read together with amendment 11.

Amendment 14, in clause 14, page 10, line 15, leave out subsection (6).

This amendment, together with amendment 15, would require the OGA to keep the income from the levy on licence holder, rather than pay it into the consolidated fund.

Amendment 15, in clause 14, page 10, line 17, leave out subsection (7).

This amendment should be read together with amendment 14.

Dr Whitehead: I should draw hon. Members' attention to the fact that this is going to be a little obscure. It could be long and obscure, medium-length and obscure or short and obscure—it depends how the debate goes. I want to do what is best by the Committee, so if it thinks that short and obscure is the best way to proceed I am happy to do that, although hon. Members may find the exposition rather more obscure than short. *[Laughter.]*

The amendments relate to what the OGA is required to do in regard to its income and expenditure and the way it may charge fees and obtain income from a levy on licence holders. The understanding during the discussions, particularly with the industry, about how the OGA would be set up was that while the OGA itself would be run essentially from a levy on industry, the industry would have assurances about the extent of that levy. Indeed, one can look at assurances in the Bill. The extent of the levy would essentially be balanced by what the OGA would get through in terms of running costs. In theory, the levy on industry would effectively fund the OGA for its activities. If the OGA were to be profligate with its expenses and the way it went about things, in theory that levy could get a little larger, but the industry, which is clearly under considerable financial pressure because of what is happening in the North sea, felt positively that paying a modest levy for the OGA to work well in partnership with it and on its behalf in the North sea was worth it, provided that levy could be put into clear context.

There are powers in these clauses to enable the Secretary of State to ensure that that is the case as far as possible. The Secretary of State can exercise a power, as set out in clause 14(2), to ensure

“that the total amount of licensing levy which is payable in respect of a charging period does not exceed the sum of...the costs incurred by the OGA...and...the costs incurred in respect of that period by the Lord Chancellor in connection with the provision of Tribunals to consider appeals against decisions of the OGA”.

2.15 pm

Moving back to the previous clause, the OGA has the power to charge fees. In principle, one might think that the levy arrangements—a levy is charged but that levy is reasonable—might extend to the powers of the OGA to charge fees. One might think, in principle, that the total amount of levy charged on licence holders and the total amount of OGA income from fees would be the amount required to run the OGA, and that the income from fees to the OGA would be a minus category relative to the levy—one would offset the other—so there would be a total amount required by either process for running the OGA. That is what the industry probably understood would happen, but it is by no means apparent to me from the wording of the Bill that that is, in fact, what will happen. Indeed, it appears that when the OGA charges fees, those fees, by and large, should not go towards offsetting the levy on licence holders and lowering it. Instead, as clause 13(3) states:

“The OGA must pay into the Consolidated Fund any amount which it receives in...fees”.

Consolidated Fund is obviously another term for Her Majesty's Treasury.

Money that comes in from fees is paid to HMT and is not offset against the levy on licence holders to make that levy more appropriate regarding the overall running

cost of the OGA. That seems to undermine some of the confidence that the industry might place in the OGA as a body that really does, with the contribution of a modest fee, undertake its activities on the industry's behalf. I do not want to put it in too nasty a context, but if the industry considers that part of the process may look, at least in part, like a money-making scheme on behalf of HMT, that hard-pressed industry may have a few words to say about whether that is indeed the best way to set up the OGA.

The purpose of the amendments is to ensure that it really is the case that the income that comes into the OGA from the levy and from fees stays with the OGA and is used to carry out the OGA's functions and nothing else. I do not want to see, as the eventual outcome of how the OGA is funded, a system that looks rather like a penny machine in an arcade at the end of a pier, where people put money in and think they have won something but some of the money goes off the side before they have actually got their winnings in. I do not want to see that and I do not think the industry does either.

I hope that all the consequential amendments which go on the back of this attempt to tuck in the idea that the costs incurred by the OGA are minus fees and that additional fees do not go to the Consolidated Fund will be taken positively on board by the Minister as an effort to ensure that the OGA's funding is as transparent as possible for the industry, and therefore that the OGA retains the confidence of the industry in its operations. If the Minister thinks that there are some consequences that I have not spotted which need to be considered, I would of course be very happy to take that on board, but I hope that she will want to take that principle on board this afternoon. If it is necessary to table amendments at a future date to make this work properly, I would be very happy for that to happen.

Philip Boswell (Coatbridge, Chryston and Bellshill) (SNP): I rise to speak to amendments 11 to 15. The Scottish National party would welcome the powers for the OGA to levy charges for services such as attending or carrying out tests or inspections on applications, storage, samples or information. We recognise that the licence holder levy is an important piece of funding infrastructure for the OGA. We recognise that subsection (4) of the clause provides for the Secretary of State, with the agreement of the Treasury, to do exactly what Labour's amendments suggest. Nevertheless, we would be happy to support the Labour amendments if they went to a vote. We also recognise that subsection (7) of the clause actually provides for the Secretary of State, again with the agreement of the Treasury, to do exactly what Labour's amendments suggest, but we would still be happy to support these amendments on the basis that they would guarantee that the funds raised by the OGA are kept by OGA.

Andrea Leadsom: I love the analogy of the penny arcades. I have spent many an hour on those myself, and I know the frustration they can bring. I can assure the hon. Member for Southampton, Test that that is not the case here, and I would gently point out that to suggest this is to misunderstand what is intended.

The amendments are designed to allow the OGA to keep the proceeds of fees and charges made under clauses 13 and 14 and to subtract that from the levy, but in accordance with Government policy that the user pays, the OGA will be funded by the industry through fees—for licences and consents, for example—and through the levy. These are separate income streams to recover the costs of the OGA in carrying out certain functions.

Clause 14(2)(b) specifically provides

“that no levy is payable in respect of costs incurred in the exercise of functions—

for which fees are charged under section 13”.

The prospect about which the hon. Gentleman is concerned of somehow charging double will not arise. It is standard practice for legislation to provide that income paid to a body such as the OGA is paid into the Consolidated Fund, hence the wording of the clauses. However, the Bill also contains provisions that provide that this does not apply if the Secretary of State, with the consent of the Treasury, directs otherwise. That will enable income paid to the OGA to be retained by it and not transferred to the Consolidated Fund. We have reached such an agreement with the Treasury, so levy income will be retained by the OGA, and we are considering the position on fees.

The key point for the hon. Gentleman to note is that while we have the agreement to enable the OGA to retain levy income, the clauses need to remain because theoretically that agreement could be revoked at some point. That is not to say that we anticipate that it would be, but that is the purpose of the clauses being there. I hope that hon. Members will appreciate that the proposed amendments, while absolutely genuinely intended to solve a problem, are in fact unnecessary. I hope the hon. Gentleman will not press them.

Dr Whitehead: I am not minded to divide the Committee on this. We are trying collectively, I hope, to arrive at a position where what goes into the OGA is what the OGA uses to run its activities, as the Opposition have suggested. It is important that a very clear line of accountability ensures that that happens so that the industry has confidence in the OGA in the future.

I am a little concerned about subsection (4). Clearly, we have a Secretary of State who is honourable and straightforward and a Treasury that can consent to an honourable and straightforward view that she may take about directing the circumstance outlined in subsection (4) to come about. However, it still worries me that the lever that allows that to happen is in the Bill, but the actual process is not.

I therefore make the caveat that that requires that no one at any stage attempts to rob—not to put too fine a point on it—some of the funds for other purposes by not otherwise directing, not coming to an agreement or by otherwise interfering with the process. That possibility is still there.

I am greatly reassured by the Minister's suggestion that agreement with the Treasury has already been obtained on how this will work. That appears to be a very solid way forward. However, if this goes seriously wrong over the long term, further guidance, either in secondary legislation or primary legislation may be

necessary to put it right. With the assurances I have received, I am not minded to press the amendment to a Division. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 13 ordered to stand part of the Bill.

Clause 14 ordered to stand part of the Bill.

Clause 15

THE LICENSING LEVY: REGULATIONS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 16 stand part.

Dr Whitehead: I merely wish to ask the Minister to give a little further expatiation on what payments and financial assistance might mean as far as the OGA is concerned. The Bill gives the Secretary of State the power to make payments and provide financial assistance to the OGA. I presume that the payments or financial assistance will be from the public purse and not in the form of additional levies or arrangements that might fall on industry, but that is not entirely clear in the Bill. I assume that payments or financial assistance might be undertaken if the OGA had particular cost circumstances, which could not otherwise be covered by the arrangements we have just talked about: the levy and fees.

There is no clarity in the Bill about what the circumstances might be and how they might be determined before the Secretary of State decides to make those payments or provide financial assistance. It would be helpful if the Minister provided more detail on how and in what circumstances those things might happen. In what form would assistance be granted—I presume, with the agreement of the Treasury to make it available?

2.30 pm

Andrea Leadsom: As the hon. Gentleman points out, clause 16 provides a general power for the Secretary of State to make payments and provide financial assistance to the OGA. The power is not restricted to specific functions of the OGA and therefore payments may be made at the Secretary of State's discretion to fund any of the OGA's functions. As well as covering statutory functions, it will cover functions contracted out.

The OGA will be funded through a levy on holders of certain energy industry licences and fees, for which industry will pay for carrying out particular services. The Secretary of State might need to provide funds to the OGA to cover any unforeseeable events. That is the purpose of the clause.

For reassurance, I can tell the hon. Gentleman that one would not want some unforeseen circumstance to result in the failure of that Government company. Nevertheless, as accounting officer, the chief executive of the OGA is personally responsible and accountable to Parliament for the organisation and quality of management in the OGA, including its use of public money and the stewardship of its assets.

The chief executive has specific responsibility for ensuring that the OGA operates in accordance with the guidance in the Cabinet Office's "Managing Public Money". The OGA is also required, promptly and without delay, to disclose to DECC any information

regarding the OGA that is likely to have a material, financial, reputational or otherwise adverse effect on the delivery of the OGA's purposes and duties.

In essence, this is a general permission for the Secretary of State to support the OGA in the event of unforeseen circumstances. While there is a clear intention that that will not be the case—that the industry will pay for the services it uses and so on—nevertheless, because it is a Government company, it must be important that, in the event of something unforeseen, there is the ability to provide emergency financial assistance.

Dr Whitehead: May I prevail further on the Minister's good offices on the status of the OGA as a Government company? That company could become insolvent. The point at which the company would have to cease trading on grounds of insolvency could well be before the Secretary of State has been able to exercise these powers. Or can the Minister say that this company could not become insolvent because there would be an automatic infusion of funds to keep it solvent so that it could continue trading?

If that is not the case, due to the unusual structure of the OGA, we could face circumstances where the OGA would be unable to trade but not necessarily have access to funds, grants or assistance to enable it to trade. At that point, we would be in the odd situation, for the first time in the history of regulation in the UK, of having an insolvent regulator. What would regulation consist of at that point, bearing in mind the restrictions on how the funding for the OGA might come about? Where we would stand with the security of the regulator at that point is anybody's guess. Could the Minister provide reassurance on that point?

Andrea Leadsom: The important point is that clause 16 is designed to enable the Secretary of State to avoid exactly the kind of scenario that the hon. Gentleman describes, so I hope that he and his hon. Friends will support it.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

Clause 16 ordered to stand part of the Bill.

Clause 17

REVIEW OF OGA AND GUIDANCE FROM SECRETARY OF STATE

Amendments made: 2, in clause 17, page 12, line 7, leave out "one year" and insert "three years".

This extends the maximum period after which the first review of the OGA's performance is to take place from one year to three years.

Amendment 3, in clause 17, page 12, line 12, leave out "one year" and insert "three years".—(Andrea Leadsom.)

This extends the maximum period after which subsequent reviews of the OGA's performance are to take place from one year to three years.

Clause 17, as amended, ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.—(Julian Smith.)

2.35 pm

Adjourned till Thursday 28 January at half-past Eleven o'clock.

Written evidence reported to the House

EB 01 Dr Alan Lennon

EB 02 Carbon Capture and Storage Association

EB 03 Mary Young

EB 04 Mrs. V.C.K. Metcalfe

EB 05 North Calliachar Wind Farm Ltd. Owner I and
H Brown NC Ltd, Perthshire, ScotlandEB 06 Partnerships for Renewables Development Company
Limited

EB 07 Lyndsey Ward

EB 08 EDF Energy

EB 09 Martin E. Payne