

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT SCOTLAND ACT 2016 AND WALES
ACT 2017 (ONSHORE PETROLEUM)
(CONSEQUENTIAL AMENDMENTS)
REGULATIONS 2018

Monday 4 June 2018

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The Committee consisted of the following Members:

Chair: SIR HENRY BELLINGHAM

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| † Allan, Lucy (<i>Telford</i>) (Con) | † Harris, Rebecca (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Blackman, Bob (<i>Harrow East</i>) (Con) | † Jack, Mr Alister (<i>Dumfries and Galloway</i>) (Con) |
| † Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab) | † Lucas, Ian C. (<i>Wrexham</i>) (Lab) |
| Clwyd, Ann (<i>Cynon Valley</i>) (Lab) | † Perry, Claire (<i>Minister for Energy and Clean Growth</i>) |
| † Crabb, Stephen (<i>Preseli Pembrokeshire</i>) (Con) | † Robinson, Mary (<i>Cheadle</i>) (Con) |
| † Doughty, Stephen (<i>Cardiff South and Penarth</i>)
(Lab/Co-op) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Duguid, David (<i>Banff and Buchan</i>) (Con) | † Thomas, Derek (<i>St Ives</i>) (Con) |
| Gaffney, Hugh (<i>Coatbridge, Chryston and Bellshill</i>)
(Lab) | † Whitehead, Dr Alan (<i>Southampton, Test</i>) (Lab) |
| † Grady, Patrick (<i>Glasgow North</i>) (SNP) | Sarah Rees, <i>Committee Clerk</i> |
| | † attended the Committee |

Second Delegated Legislation Committee

Monday 4 June 2018

[SIR HENRY BELLINGHAM *in the Chair*]

Draft Scotland Act 2016 and Wales Act 2017 (Onshore Petroleum) (Consequential Amendments) Regulations 2018

6 pm

The Minister for Energy and Clean Growth (Claire Perry): I beg to move,

That the Committee has considered the draft Scotland Act 2016 and Wales Act 2017 (Onshore Petroleum) (Consequential Amendments) Regulations 2018.

It is a genuine pleasure to serve under your chairmanship, Sir Henry. The draft regulations, which are part of a series of regulations that we have been bringing forward to fulfil commitments under the Smith and Silk commissions agreements, the Scotland Act 2016 and the Wales Act 2017, provide for the devolution of onshore oil and gas licensing to the Scottish and Welsh Governments.

This debate focuses on the devolution of section 45A of the Petroleum Act 1998 to the Governments of Scotland and Wales. That section provides assurances to the relevant authority that the relevant person will be able to plug and abandon a well or otherwise provide the funds necessary for that to be done. As such, the section is a key part of the licensing regime and needs to be devolved so that Ministers in the devolved Administrations can ensure that all licence obligations can be met as appropriate when wells are decommissioned.

When they have been fully commenced, the Scotland Act 2016 and the Wales Act 2017 will transfer legislative competence for onshore petroleum to the Scottish and Welsh Governments, with the exception of matters relating to the setting and collecting of licence rentals. The Acts also include provisions for Scottish and Welsh Ministers to exercise powers currently held by the Secretary of State or the Oil and Gas Authority in relation to onshore licensing in Scotland and Wales.

In February, we commenced sections 47 and 48 of the Scotland Act 2016, which transferred the existing UK onshore licensing regime as it applied in Scotland to Scottish Ministers. That provided Scottish Ministers with powers to administer the existing onshore oil and gas licensing regime in Scotland and to create a bespoke licensing regime if they wish. We have laid two statutory instruments to implement the relevant powers in the Scotland Act—affirmative regulations to make consequential amendments to taxation legislation, and negative regulations to make consequential amendments to the licensing regime.

Welsh Ministers and the Secretary of State for Wales have agreed that provisions that enable Welsh Ministers to administer the existing onshore oil and gas licensing regime in Wales, or to create a bespoke regime if they

desire, will commence on 1 October. We intend to lay the negative regulations necessary to deliver that in early September.

I turn to the detail of these affirmative regulations. As I said, the draft SI will make amendments to section 45A of the Petroleum Act 1998 consequential to the devolution of onshore petroleum licensing functions to Scottish Ministers under section 48 of the Scotland Act 2016, and to Welsh Ministers under section 23 of the Wales Act 2017. We are debating not the ins and outs of onshore shale gas extraction, for example, but simply a set of consequential amendments to Acts of Parliament that we have already consulted on and passed. Those consequential amendments reflect the role of Scottish Ministers as the licensing authority in Scotland, and allow the licensing regime to work as intended in relation to onshore areas in Scotland. They also provide for the position both before and after commencement of the Wales Act 2017, which makes equivalent provision for devolution of onshore oil and gas licensing to Wales.

As I set out, section 45A gives the relevant authority the power to issue a notice requiring a responsible person, once they have begun drilling a well, to provide information regarding their financial affairs. If the relevant authority is not satisfied with the financial information that is submitted, section 45A allows it to issue a notice requiring the relevant person to take the action set out in the notice. Such a notice may include, for example, a requirement to provide security to the relevant authority to ensure that the costs of plugging and abandoning the well are covered. Although that power has not to date been used onshore, we consider that it can apply onshore and therefore that section 45A forms part of the regime that should be transferred. We intend to transfer the section 45A powers to Ministers in Scotland and Wales for their respective territories, using powers to make consequential amendments under the aforesaid Scotland Act and Wales Act.

There might be a question about timing. This affirmative SI could be laid in Parliament only after the Wales Bill received Royal Assent in January 2017, as it makes amendments that anticipate amendments made by the Wales Act 2017. A negative SI will follow these affirmative regulations to make consequential amendments to the onshore licensing regime in Wales.

Transferring powers from the UK Administration to a devolved Administration does not count as a regulatory provision, and therefore—in case hon. Members are wondering—there is no requirement for a regulatory impact assessment. Also, as these are consequential amendments to the Scotland Act and the Wales Act, which were consulted on separately, no specific consultation is required on these technical amendments.

The regulations are part of the transfer of competencies for onshore oil and gas resources to the devolved Administrations, complementing the provisions of the Scotland Act and the Wales Act. They simply make minor amendments to legislation governing the oil and gas licensing regime to ensure that there is a smooth devolution of powers for licensing. They are an important step towards delivering a recommendation of the Smith and Silk commissions agreements.

6.6 pm

Dr Alan Whitehead (Southampton, Test) (Lab): It is a pleasure to serve under your chairmanship, Sir Henry. For the purposes of our debate, the Minister has done

all the heavy lifting and explained in some detail and with great clarity what the statutory instrument before us concerns. As she set out, essentially it concerns the completion—I think it is fair to say—of a number of steps to devolve authority to the Scottish Government in particular for licensing onshore petroleum activities. Of course, it also completes the process of devolving such responsibility to the Welsh Government in principle, except we have not done the first bit: undertaking the devolution of authority to the Welsh Government. Presumably we will have to catch up with that at some stage. I see there is a provision in the regulations for those two elements to come together at the point at which it has been agreed that the Welsh Government will have responsibility for licensing onshore within Wales, as defined by the legislation.

The process is admirably straightforward, following from what was in legislation previously and trying to bring all the processes together. The notes are all there. However, as Morecambe and Wise once said, they are “not necessarily in the right order.”

There is an issue about what happens now with the Welsh provisions. The Minister might want to say a few words about her Department’s intentions on laying provisions for Wales to complete the picture—albeit in the wrong order.

As far as Scotland is concerned, the provisions are in the right order. Essentially we are discussing the process, following the devolution of licensing authority, to ensure that the Scottish Government have the ability, currently in the purview of the Oil and Gas Authority, to require financial assurances to be given about the ability of a company engaged in onshore petroleum activities to clear up after itself: to cap and decommission wells that it may have drilled. As the Minister says, tempting though it is to think about the Scottish Government and onshore gas and oil exploration, fracking and so on, that is not, essentially, what the statutory instrument is about. It is about putting into order what is done, as far as the Scottish Government in particular are concerned.

There may, however, be a need to clarify one area of the statutory instrument, in addition to what the Minister has mentioned this afternoon: the extent to which the devolution to the Scottish Government really means onshore petroleum. The draft regulations include a provision that the competence of the devolved Administration will relate to the Scottish onshore area, which the explanatory memorandum states is

“the area of Scotland that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (c.49) and The Wales Act 2017”

which

“devolved onshore petroleum licensing to Welsh Ministers in respect of the Welsh onshore area (the area of Wales that is within such baselines).”

The Territorial Sea Act 1987 states that

“the breadth of the territorial sea adjacent to the United Kingdom shall for all purposes be 12 nautical miles”.

Therefore, a regime would be in place that devolved not only onshore petroleum activity but, to a limited extent, offshore petroleum activity, to the Scottish Government. What happens outside the 12-mile zone and up to the 200-mile limit of course remains a reserved matter, and is the responsibility of the Oil and Gas Authority, but there could be circumstances in which a proposal for what is essentially offshore activity would be taken under onshore petroleum legislation.

There might be something 11.5 miles offshore. By the way, the 1987 Act handily defines a nautical mile as 1,852 metres, so an offshore installation could be 12 times 1,800 metres offshore and be the responsibility of the Scottish Government. Slightly outside that, it would be the responsibility of the OGA. How will those two authorities work together in the circumstances to ensure that what is done is done properly, with respect to something that to all intents and purposes is offshore, but which the legislation effectively defines as onshore? Does the Minister have any reflections on that point, or are there legislative provisions that I have not seen, specifying that the shoreline and not the territorial sea limit is meant?

Finally, I would like brief clarification on one point. I assume that the draft regulations are the final brick in the arch and that there is nothing more to come, other than to put right the devolution to Wales to match the regulations before the Committee. I assume that the Minister will be able to confirm that. I want that clarification to make sure we have really finished the business that we set out to do under previous measures and the measure before the Committee today.

6.14 pm

Patrick Grady (Glasgow North) (SNP): It is a pleasure to serve under your chairmanship, Sir Henry.

The Scottish National party is happy to support the statutory instrument. We are always happy to support the devolution of more powers to the Scottish Parliament. As the Minister said, the draft regulations help to implement the agreement undertaken as part of the Smith commission, which some saw as the fulfilment of the vow that was made during the independence referendum, although we read in the papers today that not everyone thought the vow was such a good idea. They relate to onshore oil and gas extraction and, although they are not explicitly related to unconventional extraction, it is worth putting on the record that both the Scottish Government and the Scottish Parliament have made their position very clear. We oppose the development of unconventional oil and gas in Scotland. If any of the consequences of these draft regulations help to deliver that, that will be well received by the Government, the Parliament and the population as a whole.

I appreciate, as the Minister says, that they are largely technical and consequential amendments. We welcome the moves to bring them forward. I echo the Labour spokesperson’s comments about when and how they will be applied to Wales. We are always very happy to support enhanced powers for the Welsh Assembly. It is nice to find a bit of consensus for once.

6.16 pm

Claire Perry: As always, we have managed to have an interesting canter even through what looks like the driest of technical amendments. I want to try to answer some of the questions. I also thank Committee members for their support.

The hon. Member for Southampton, Test asked when the transfer to Welsh Ministers will be complete. That was a point of negotiation and agreement. The Wales Act 2017 provisions will commence on 1 October 2018. He asked if this was the final brick in the wall of the legislation; it is the last piece for Scotland, but there will be one additional statutory instrument for Wales.

Dr Whitehead: I am sorry, but I thought the Minister was finishing her comments about bringing together the various pieces of secondary legislation relating to Wales with the commencement of the Act, but I assume she has something to say about an additional negative instrument that is to come.

Claire Perry: I am happy to clarify. The Wales Act 2017 provisions overall commence on 1 October 2018. I have been informed that there is one additional statutory instrument for Wales. I assume we will have to detain our colleagues one more time to ensure we have all the relevant pieces of legislation in order for the Wales Act to commence. I am looking forward to a final conversation about that. Clearly, it is right to ensure that we have the correct licensing provision flowing to the devolved Administrations, to fulfil the commitments made with our various commissions.

The hon. Gentleman asked a series of questions about what was on and offshore. I am happy to write to him to clarify further. I am told that the Territorial Sea Act sets baselines and that within 12 nautical miles is regarded as onshore.¹ Outside that is territorial sea. We are transferring functions only in the onshore areas. He will ask what happens if there is a field that straddles both; I assume that there will be joint responsibility. We may have to debate that at a later date. If he is not satisfied with that answer, I am happy to go away and see if there is more information that I might be able to give him.

I cannot read what has been passed to me by my officials, so we will have to leave it there, unless the hon. Gentleman has any further questions. If not, I commend the regulations to the Committee.

Question put and agreed to.

6.19 pm

Committee rose.

1. [Official Report, 19 June 2018, Vol. 643, c. 1MC.]