PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ENERGY BILL [*LORDS*]

Second Sitting

Tuesday 23 May 2023

(Afternoon)

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Saturday 27 May 2023

The Committee consisted of the following Members:

Chairs: Dr Rupa Huq, † James Gray, Mr Virendra Sharma, Caroline Nokes

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Blake, Olivia *(Sheffield, Hallam)* (Lab)
† Bowie, Andrew *(Parliamentary Under-Secretary of State for Energy Security and Net Zero)*
† Britcliffe, Sara *(Hyndburn)* (Con)
† Brown, Alan *(Kilmarnock and Loudoun)* (SNP)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Fletcher, Katherine *(South Ribble)* (Con)
Gideon, Jo *(Stoke-on-Trent Central)* (Con)
† Jenkinson, Mark *(Workington)* (Con)
† Levy, Ian *(Blyth Valley)* (Con)
† McCarthy, Kerry *(Bristol East)* (Lab)
† Morrissey, Joy *(Beaconsfield)* (Con)
† Nichols, Charlotte *(Warrington North)* (Lab)
† Owatemi, Taiwo *(Coventry North West)* (Lab)
† Shelbrooke, Alec *(Elmet and Rothwell)* (Con)
Western, Andrew *(Stretford and Urmston)* (Lab)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)

Sarah Thatcher, Chris Watson, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 23 May 2023

(Afternoon)

[James Gray *in the Chair*]

Energy Bill [*Lords*]

Clause 7

Power to grant licences

Question (this day) again proposed, That the clause stand part of the Bill.

2 pm

Dr Alan Whitehead (Southampton, Test) (Lab): I do not have anything much to say about clause 7 standing part. I will have some things to say about some of the clauses that follow, but the power to grant licences is pretty unexceptional, and we do not have anything to add or take away from the clause.

Alan Brown (Kilmarnock and Loudoun) (SNP): Unusually, I will speak for longer than the hon. Gentleman—I say that just as everybody was getting excited. I understand that clause 7 and subsequent clauses on granting licences and the economic models are critical to getting carbon capture up and running. Obviously, I want these provisions in place, but I ask the Minister for a bit more detail.

Clause 7 is all about the grant of licences, which is to be undertaken by the regulator. That will be Ofgem, as was said earlier in response to an intervention. The Minister assures us that it has the expertise and resource to do all the additional licensing work, but we discover in the explanatory notes for clause 7 that under clause 16, for an interim period, it is actually the Secretary of State who has responsibility for granting licences. Why is that? Why have the interim period? What expertise is available to the Secretary of State in-house when they are granting these licences? Who will oversee that? How long does the interim period last? From what I can see in schedule 1, it lasts until the Secretary of State passes regulations to end the interim period. I would like a bit more clarity on how long the interim period will last.

Is the interim period and the granting of licences by the Secretary of State a mechanism to speed up the grant of licences for track 1 projects that have already been selected by the Government? Does that not potentially give them an unfair financial advantage? The Minister touched, in his opening remarks, on competition for licensing and keeping everything competitive. How does he square these two things?

When does the Minister envisage the first licences being granted by the Secretary of State, and when does he envisage them being granted by the regulator? How will the licences that are issued in the interim period be compliant with clause 12, which is still to come and is all about standardisation? That helps to keep things competitive and transparent.

The Parliamentary Under-Secretary of State for Energy Security and Net Zero (Andrew Bowie): I thank the hon. Gentleman for his multiple questions. Given the number of them, I will write to him with greater detail, but the point at which the Secretary of State's power to grant licences is transferred to Ofgem will depend on developments in the market in the early years of the operation and the evolution of carbon capture, usage and storage. We are in the nascent stages of this technology. It is standard practice for the Secretary of State to have a power over something like this before it is transferred across to Ofgem. As I said, the timing will depend on market forces as the technology develops and matures.

The hon. Gentleman asked when the first licences will be granted. Licences will be granted to transport and storage operators for track 1 CCS clusters for deployment in the mid-2020s, subject to the final decision of Ministers. The final decisions on any Government support will be taken only if a CCS cluster represents value for money for the consumer and the taxpayer. He referred to subsequent clauses that deal with these issues directly; we will come to his other questions when we debate those clauses, and I will be happy to engage in more detail then.

Alan Brown: What is going on when it comes to the Department and Ofgem building up and sharing expertise? They are both looking at licensing. As the Minister said, with this nascent technology, there is a whole ramping up, so we need to ensure that the right resource is allocated to the right place to move forward.

Andrew Bowie: I completely agree. We will share expertise with Ofgem as we move forward. This is a whole new technology being deployed in the United Kingdom, and the expertise being developed in the Department will of course be shared with Ofgem, so that when the regulator takes responsibility for licensing, it will have at its fingertips the ability to conduct the processes properly.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Clause 8

Power to create licence types

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

Andrew Bowie: The clause enables different types of carbon dioxide transport and storage licences to be granted. That will enable the economic licensing framework for carbon dioxide transport and storage to evolve as the market grows and matures.

For the first carbon dioxide transport and storage networks, a cluster-based approach is being taken. Under that approach, the licences for the first transport and storage networks are expected to cover the full network, which includes a set of onshore pipelines, the offshore pipeline and associated offshore storage facilities. As the market matures, however, we recognise that it may become desirable to licence separately constituent parts of a network, such as an onshore pipeline network or an offshore geological storage site. It may be appropriate

for licence conditions to look quite different for different transport and storage activities. Providing for that will allow operators to specialise in provision of different transport and storage services. The delegated power under the clause enables the regulatory regime to respond to market developments by allowing different licence types to be created and granted for different types of transport and storage facility. I commend the clause to the Committee.

The Chair: Dr Whitehead?

Dr Whitehead: I am attempting to get to my feet, Mr Gray.

The Chair: You do not have to, but you can do.

Dr Whitehead: My knees get worse as the afternoon goes on.

The clause is, as the Minister said, about the power to create a licence type. I appreciate that that is in the gift of the Secretary of State in the first instance; the power will be transferred subsequently, as we said when debating clause 7. This clause, however, appears to do two things, and possibly goes far wider than the Minister envisages. It allows for regulations so that

"different types of licence may be granted…in respect of different descriptions of activity falling within section 2(2)."

Clause 2(2), as we have discussed, defines activities that are prohibited if unlicensed. Those are:

"operating a site for the disposal of carbon dioxide by way of geological storage";

and

"providing a service of transporting carbon dioxide by a licensable means of transportation".

We mentioned the possibility of an amendment that would have covered carbon dioxide usage as well, as the Minister will be aware. The power under clause 8 would allow different licence types within that overall framework. As the Minister said, different activities may emerge. Various activities will fall well within clause 2(2), and others will be to the side of that.

As far as I can see, the power in clause 8 allows the Secretary of State to sweep up what is both central to and to the side of the activities in clause 2(2). That may be good for the Secretary of State, but it is not good for the companies developing carbon capture and storage, who are not sure whether this power will or will not sweep them up—they do not know. They are not sure whether the activity they are carrying out on the margins of the licensing arrangement is non-licensable, or will become licensable if and when the Secretary of State decides by regulation that different kinds of licences can be provided. A lot of that depends on what the regulations say. If they are broad, as this power to create licence types appears to be, companies will not have any assurances about what they are doing. When the regulations come out, they might prefer a menu of the different licence types in the Secretary of State's mind.

I appreciate that we are in the realm of known knowns, known unknowns and unknown unknowns, but a menu of different licence types that are reasonably close to licensability in the mind of the Secretary of State would be very helpful for companies operating in this sphere. Will they be more or less likely to need to apply for a license? Would the licensing situation hold up their activities in any way, or could they go ahead with what they were doing on the margins, not within the new license type? Could the Minister comment on what is in his mind about the regulations? Will he provide that menu? If so, what might it consist of?

Andrew Bowie: I thank the hon. Member for his questions. I do not think the former Defence Secretary of the United States would have expected to be mentioned so much in the UK's Energy Bill Committee—we have talked about known knowns, known unknowns and unknown unknowns. The hon. Member is correct: we are dealing with a lot of unknown unknowns when we talk about exactly how and when the industry and technology will develop. As they develop, a decision will be taken at an appropriate point about what will and will not be licensable, and what types of licence will and will not apply.

The hon. Member talks about the regulations and whether there will be a menu of options. Clarity is good for everyone, especially when developing a new technology and deciding whether to invest in carbon capture, usage and storage. We will be as clear as we can in regulations about what will and will not be licensable and what licences will apply. However, I would not like to be drawn at this stage on what will be in the regulations. That will be for Government and industry to work up together as we move toward the date when they will apply.

Question put and agreed to.

Clause 8 accordingly ordered to stand part of the Bill.

Clause 9

Procedure for licence applications

Dr Whitehead: I beg to move amendment 77, in clause 9, page 10, line 6, after "the Secretary of State" insert

"must ensure that licences are only granted to fit and proper persons, and".

The aim of this amendment is to put the onus on the Secretary of State to personally deem the individual as "fit and proper".

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

Amendment 78, in clause 18, page 19, line 33, at end insert—

"(c) may only be transferred to a person the Secretary of State considers to be a fit and proper person for this purpose."

The aim of this amendment is to put the onus on the Secretary of State to personally deem the individual as "fit and proper".

Amendment 79, in clause 43, page 39, line 16, at end insert

"provided that the transferee is considered by the Secretary of State to be a fit and proper person for this purpose".

The aim of this amendment is to put the onus on the Secretary of State to personally deem the individual as "fit and proper".

Amendment 80, in clause 50, page 45, line 35, after "any" insert "fit and proper".

[The Chair]

The aim of this amendment is to put the onus on the Secretary of State to personally deem the individual as "fit and proper".

Amendment 82, in clause 61, page 54, line 16, after "given to a" insert "fit and proper".

The aim of this amendment is to put the onus on the Secretary of State to personally deem the individual as "fit and proper".

Amendment 83, in clause 61, page 55, line 5, at end insert

"provided that the transferee is considered by the Secretary of State to be a fit and proper person for this purpose".

This amendment refers specifically to the need for the hydrogen counter party to be a fit and proper person. The aim of this amendment is to put the onus on the Secretary of State to personally deem the individual as "fit and proper".

Amendment 87, in clause 82, page 71, line 42, at end insert—

"(l) for the certification by the Secretary of State that the transferee is a fit and proper person."

If the Secretary of State needs to find a new counterparty this amendment obligates that they must ensure they are a fit and proper person.

Dr Whitehead: Amendment 77 concerns licences being granted to fit and proper persons; the other amendments relate to matters such as the transfer of licences. Members may think that the application of the term "fit and proper" to licensing arrangements is pretty obscure, but I will try to disabuse them of that notion. The term "fit and proper" can apply to both a real person and a person in law, which can be a company or an organisation. It appears in a number of laws and regulations where the Government or a regulator have a responsibility for appointing or licensing individuals or companies.

2.15 pm

There was an explosion of new energy companies on to the market a few years ago, and as we know, that led, among other things, to a massive de-explosion of those energy companies a little while afterwards, when they did not really pass the test of hard times. A number of companies went bust, and people then said to the regulator, "A number of these companies should never have got into retailing energy," because of issues to do with their directors, or the way they were set up, or the way their organisation functioned. If there had been a fit and proper persons test in the relevant legislation, it may well have prevented at least some of that.

Let me give an example of how a fit and proper person test works. The Financial Conduct Authority uses a fit and proper person test to assess whether an individual is suitable to perform a controlled or senior management function in an authorised body. Its test assesses whether that person

"has obtained a qualification…has undergone, or is undergoing, training…possesses a level of competence"

and

"has the personal characteristics"

required. However, the test goes on to say that

"In the FCA's view, the most important considerations will be the person's:

(1) honesty, integrity and reputation;

(2) competence and capability; and

(3) financial soundness."

That, of course, is a test for a real person, but those principles ought to apply to bodies seeking licences for carbon capture and storage activities.

That fit and proper persons test has been extended. I was on the Public Bill Committee for the National Security and Investment Act 2021, which, among other things, considers circumstances where investment is effectively taken over by a foreign power that might be not very friendly towards the UK. For example, a foreign power might take over intellectual property, and then the question might arise as to whether the property's owner, in the shape of a company or organisation, was fit and proper. We know that across the world there are a number of front companies that carry out foreign powers' activities in particular countries. The 2021 Act extended the fit and proper persons test to include those sorts of considerations.

Let us say that a company appeared to be conducting carbon capture and storage activities, simply to steal the IP of what was going on and use it for other purposes. Under the 2021 Act, the company could fail the fit and proper persons test. In the Bill, however, we have no mention of that phrase, which is now reasonably well-trodden in parts of Government, including the health service. It is a phrase that has case law attached to it and is a reliable piece of wording. Far be it from the Opposition to give the Government more powers, but the phrase would give the Secretary of State a pre-emptive ability to assess what is going on with the operation of the licence at a very early stage. We would then not have to pick up the pieces afterwards; we could put the pieces together before we even started.

The fit and proper persons test is pretty proof against judicial review and various other things, and it is well established as a phrase. What we have done in the amendments is try to introduce that phrase as a part of the process of granting a licence. I will not go into detail, but other amendments mention the phrase when we come to clauses on transferring the licence, for example—where a licence exists with one organisation and is transferred to someone else. The Secretary of State can then take a judgment as to whether that transferee is fit and proper to take over the licence. That means we do not get a situation where a licence starts with a reliable body but is subsequently transferred to an unreliable body, or even one where the whole thing is a bit of a front, in that one person applied for a licence and then another operated it as soon as it was granted.

The amendments give a substantial degree of security to the Secretary of State in the granting, transfer and operation of licences. Of course, I assume that the arrangement would and could be transferred to Ofgem at the point where the licences, when they become more quotidian, would be operated under delegated authority by Ofgem, with the approval of the Secretary of State. Amendment 77 is a modest but helpful small amendment to the Bill, and one that I hope the Minister will react positively to—or possibly even say, "This is great. Let's put it in the legislation right now."

Andrew Bowie: I thank the hon. Gentleman for his amendments. They seek to place responsibility on the Secretary of State to ensure that individuals obtaining a carbon dioxide transfer and storage licence are fit and proper. The amendments would affect the licence application, the licence transfer, the special administrative regime and transfer schemes.

It is clear that the Opposition and the Government share the same desire here, requiring the utmost standards for those wishing to engage in the transport and storage of carbon dioxide, in support of the Government's ambitions to scale up the deployment of CCUS and its important role of achieving our net zero target. I therefore support the hon. Member for Southampton, Test's aim; however, as addressed in the other place, the specific inclusion of "fit and proper" within the drafting of clauses across part 1 is actually unnecessary. That assurance is already inherent within the Secretary of State and the economic regulator's role within the licensing regime. Despite sharing the desire, I ask for the amendment to be withdrawn because I believe that it is superfluous in this instance.

Amendments 82, 83 and 87, which were also tabled by the hon. Member for Southampton, Test, seek to make the Secretary of State responsible for ensuring that an individual designated as a hydrogen production counterparty is deemed "fit and proper". The Government anticipate that the Low Carbon Contracts Company Ltd, or LCCC, which is the existing counterparty for contracts for difference and the planned counterparty for the dispatchable power agreement, will be the counterparty for the low-carbon hydrogen agreement, subject to its successful completion of administrative and legislative amendments.

In taking the decision to proceed with LCCC as the counterparty to the low-carbon hydrogen agreement, the Secretary of State considered, among other things, LCCC's ability to deliver the required functions and its experience and track record in contract management. Those considerations would bear on any future decisions, which would also be subject to normal principles of public decision making. Again, I agree with and share the same aim and desire as the hon. Member for Southampton, Test, but the amendments are superfluous. I politely ask that he withdraw his amendment.

Dr Whitehead: Naturally, the fact that the Minister did not eagerly grasp and endorse the substance of the amendments and run off to the Table Office is disappointing, but I accept that he has perhaps looked in detail at how the legislation will work and is satisfied that an equivalent of the "fit and proper person" test can effectively be carried out under the provisions of the Bill. However, that has not been the judgment of other parts of Government, which have found that particular wording to be of great help in underlining what their responsibilities are. It also ensures that the judgments that they make in exercising their responsibilities are fairly bomb-proof: if the Secretary of State presses the "fit and proper person" button, there is not too much an aggrieved party can do about it. I appreciate that that is different for different licences.

The Government have effectively decided that the LCCC, which I think is a fit and proper person, will be the hydrogen counterparty, although that is still to come in legislation—so we are legislating for something that we think will happen later, but not right this minute. I leave that with the Minister. He has not agreed to amendment 77; he thinks it superfluous. I slightly disagree—I think it would be useful—but that is to some extent a matter of judgment. Perhaps in a few years' time, when a Minister becomes seriously unstuck with a particular appointment, we will get together again and see what can be done about it. For now, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Andrew Bowie: I beg to move amendment 1, in clause 9, page 10, line 15, leave out subsection (10) and insert—

> "(10) Section 10(6) (meaning of 'appropriate devolved authorities') applies for the purposes of subsection (3) of this section as it applies for the purposes of section 10(3)."

This amendment corrects a drafting error in the definition of "appropriate devolved authorities".

The Chair: With this it will be convenient to discuss clause 9 stand part.

Andrew Bowie: I thank the hon. Member for Southampton, Test and share his optimism that in a few years' time we will be in a position to continue with appointments in relation to what we are legislating for today.

Amendment 1 corrects a drafting error in relation to the statutory basis on which the devolved Administrations are to be consulted in relation to regulations that may be made under the powers in part 1. The amendment ensures that the statutory basis for consultation is consistent across the drafting of the relevant clauses.

I turn to clause 9. The Government's CCUS cluster sequencing programme is under way to identify the first CCUS clusters eligible for Government support. The first transport and storage licences will be granted through that process. The enduring regulatory regime will need a licence application process, and clause 9 provides for such a process to be set out in regulations. The process includes the procedure for licence applications, the conditions under which the applications may be made and the procedure for objecting to licence applications.

Kerry McCarthy (Bristol East) (Lab): I was waiting for the Minister to mention the word "fee", and he did not. I apologise for coming in right at the last moment, but clause 9 says that a fee would be payable. I know that the Minister spoke earlier about the need to avoid unnecessary burdens on some of the smaller companies that might come forwards. Does he envisage that the fee would be proportional to the size of the enterprise or would a fixed amount apply to everybody? Is that being considered?

2.30 pm

Andrew Bowie: I can confirm that it is very much being considered. It will certainly be proportional to the size of the entity that might be applying for such a licence.

Amendment 1 agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10

COMPETITIVE TENDERS FOR LICENCES

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

Andrew Bowie: Clause 10 enables the future allocation of carbon dioxide transport and storage licences to be determined on a competitive basis. The Government's current carbon capture, usage and storage cluster sequencing programme is a fair and transparent process. It determines which operators of carbon dioxide transport and storage projects are eligible to be granted a transport and storage licence and any associated Government support according to published criteria.

The future process for granting licences will need to balance a range of considerations and, depending on the evolution of the sector, it may be appropriate for it to be carried out according to competitive procedure. The power to make regulations in clause 10 enables that. It is a discretionary power; while a competitive approach may bring overall value for money and benefits for taxpayers and consumers—

Alan Brown: Can I ask about the overall sequencing? We have the track 1 costs at the moment, but we still do not have certainty on track 2. We are talking about future tenders and competitiveness. Clearly, at the moment only the ones in track 1 can effectively apply for licences. If we are looking for overall value for money, surely we need to completely open the field, as it were, so that we have more companies and projects competing and pushing each other on that competitive cost base as well.

Andrew Bowie: As the hon. Gentleman knows, we have launched a track 2 process; there will be an update on timings in the summer. Of course, we want to open up the process to as many companies and organisations seeking to get into this technology as possible, but it is really important that the appropriate steps are followed to get to that stage. That is why we are proceeding at pace with track 2 and why we will update everybody concerned with that in the summer.

Whether a competitive process is appropriate in the enduring regime will depend on how the CCUS market develops, including the anticipated number of market participants—that relates to the answer I just gave to the hon. Member for Kilmarnock and Loudoun. Any regulations that may be made under the power would first be subject to consultation with the economic regulator and the devolved Administrations, and they would be subject to the affirmative procedure.

Dr Whitehead: This is a bit unsatisfactory, to be honest. I appreciate that the Minister has very carefully said that this is a discretionary power for the future and the Department may, as the CCUS market develops, consider making—I presume—some licences viable on a competitive basis, and that the Government may do that by regulation; I am pleased to hear that the regulation will be subject to the affirmative procedure, should the Government do that. Nevertheless, that seems to leave huge gaps in the procedure by which competitive licences might be determined. Is the determination based on, for example, how much money a company gives for the licence, and would the competitive licence mean that the highest bidder won the licence regardless of their suitability for the purpose?

Would the judgment on the creation of the licence be subsumed in other factors such as finances, or would the competitive licence be tendered on the basis of who is geographically most able to do something in terms of the viability of the body or company complying with a licence? Would there be a financial test? Once a competition has been entered into and the terms are not carefully set, we may get to a situation of "Beware your wishes; they may come true." What we get as an outcome of a competitive tender may not be what we wanted to happen, but if we set it in train through the competitive process and have not defined it carefully enough, there will be no going back at that point.

It will be necessary to think through this way of doing things very carefully before proceeding, even with discretion being exercised. I am concerned that there is not enough in the legislation to guide us on how that thinking process might be carried out. Perhaps the Minister will give us a little guidance on the sort of things that would be to the fore should the competitiveness process be undertaken, and indeed the things that he would not consider in such a process. I am delighted to see that he has received bit of guidance on the matter. That may well help us all.

Andrew Bowie: I thank the hon. Member, and completely understand his concerns and where he is coming from. Ultimately, however, the appropriateness of a competitive approach to licence allocation will be considered, taking into account the learning from both the track 1 and the ongoing track 2 licence allocation processes, as well as the wider developments in CCUS markets and technology. This is not without precedent. In gas and electricity, Ofgem runs different processes for allocating different licence types. Some are allocations that are run competitively, such as offshore transmission licences, and other licence types are not.

The power in clause 8 also enables consequential amendments to be made to the Bill should they be considered necessary to facilitate the making of different licence types, but as the hon. Member pointed out, and as I said, the power is discretionary, and it should be for the Secretary of State to choose whether to exercise such powers.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11

Conditions of licences: general

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

Andrew Bowie: Clause 11 makes general provisions regarding the conditions of transport and storage economic licences. The licence allows an operator to charge network users for delivering and operating the network. The licence conditions will set out the allowed revenue that the licence holder is entitled to receive, which will reflect its efficient cost and a reasonable return on its capital investment. The conditions of the licence will also include requirements on the licence holder that they must comply with or consent to.

In order that the economic regulator may cover the cost of administering the licence, the clause additionally confirms that the licence may contain conditions requiring a payment to be made to the economic regulator during

the term of the licence. Any money received by the economic regulator pursuant to the conditions must be paid into the consolidated fund.

Alan Brown: Will the Minister give way?

Andrew Bowie: Yes, I will.

Alan Brown: I thank the Minister for giving way; I noticed an eye-roll, though.

Andrew Bowie: Nothing personal.

Alan Brown: The Minister referred to the regulator assessing the allowable rate of returns in a fair chance model. How does that square with the interim period when the Secretary of State will grant licences? How do you make that assessment of value for money and fair returns, and will there be any scope to revisit that? If we look at networks and transmission systems, Ofgem had to reduce the allowable rate of returns in the next investment period, because it had been allowing network companies to make too much money. What safeguards are there to ensure that there is a review following an initial assessment of what would be a fair rate of return?

Andrew Bowie: The hon. Gentleman makes reasonable and sensible points. He is right that we have to ensure that the same regulations that will apply to Ofgem when it administers the process in future apply also to the Secretary of State and the Department when administering it in the interim. He is right, too, that there need to be safeguards and that Parliament overall will have responsibility for holding the Department to account—as it does the Government, in every respect, when it comes to making such decisions. I commend the clause to the Committee.

Question put and agreed to.

Clause 11 accordingly ordered to stand part of the Bill.

Clause 12

STANDARD CONDITIONS OF LICENCES

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

Andrew Bowie: A number of conditions will be appropriate to include as standard in all licences of the relevant type. The power in clause 12 enables the Secretary of State to specify what those standards are. The Secretary of State will be required to publish the standard conditions in an appropriate manner once they have been determined, and they will then be automatically included when a licence is granted.

To allow for the possibility that the standard conditions may need to be tailored to the circumstances of a particular licensee, the clause also enables standard conditions to be either excluded or amended in an individual licence. That can be done only if both the licence holder in question and other holders of the same licence type would not be unduly disadvantaged as a result.

Notice must be given of the intent to modify or exclude standard conditions in an individual licence, setting out the proposed modifications or omissions and the reasons for them, with sufficient opportunity for representations or objections to be made. Any objections or representations must be fully considered. I commend the clause to the Committee.

Dr Whitehead: The Minister has set out what the standard conditions of licences are likely to be and how they are going to be determined by the Secretary of State, but the clause goes a bit further than that. It says in subsection (2) that

"the Secretary of State must"

—that is a good thing—

"publish any standard conditions determined under subsection (1)",

which says:

"The Secretary of State may determine the conditions that are to be the standard conditions of licences",

and subsection (2) then says the Secretary of State must publish the conditions

"in whatever manner the Secretary of State considers appropriate."

That is a bit of an odd formulation. I am more used to the idea that the Secretary of State must publish any standard conditions determined under subsection (1)—full stop.

The question of publication has always been important when conditions are to be published that licence applicants will be expected to look at and know about. The onus is, or should be, on the Department to publish those conditions as widely as possible, whereas this power appears to narrow that substantially. I am not suggesting that in any way the Minister would seek to restrict the public's free access to information, but under this formulation it is possible that, just as publications are set up specifically for the purpose of obscuring the publication of various things from the general public, the Secretary of State could decide to publish the conditions in something like *The Competitors Journal*. Indeed, they could be published as—I don't know—a TikTok video, as I mentioned earlier, or in some other way that is inappropriate to the circumstances under which their publication should appear, which should give those who apply for licences the maximum amount of, and ease of access to, the information that would be necessary to inform their application.

We have not moved an amendment to strike out the second part of subsection (2), but I would like from the Minister at least an assurance that he will place an emphasis on the first part, which requires the Secretary of State to publish the conditions, and that, in pretty much all circumstances, "publish" means that the publication is widespread and easily accessible in the public domain, so that it can be digested and read by all concerned.

2.45 pm

Andrew Bowie: I am happy to give that assurance that the information will be published, widespread and easily accessible while that power resides with the Secretary of

[Andrew Bowie]

State. Of course, as has already been said, it will be up to Parliament—as is the case with every other piece of legislation—to hold the Government and the Secretary of State, whoever may be in that post at the time, to account when that time arises.

Question put and agreed to.

Clause 12 accordingly ordered to stand part of the Bill.

Clause 13

MODIFICATION OF CONDITIONS OF LICENCES

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

The Chair: With this it will be convenient to consider clauses 14 and 15 stand part.

Andrew Bowie: Clauses 13 to 15 relate to the modification of licences for carbon dioxide transport and storage.

Clause 13 enables the economic regulator to modify the conditions of a licence after it has been granted. That is to ensure that licence conditions can keep pace with the evolution of the market. It also enables the economic regulator to undertake periodic reviews of the amount of allowed revenue an operator can receive, which will then be set out in the licence. In economically regulated sectors, price controls are a method of setting the amount of allowed revenue that can be earned by network companies over the length of a given period. Regulated companies then recover their allowed revenues through the charges they set.

Alec Shelbrooke (Elmet and Rothwell) (Con): Does my hon. Friend agree that clause 13 is about precisely what I was touching on earlier? It is important to have the flexibility in the legislation to adapt as technology and innovation adapt too.

Andrew Bowie: Yes, I agree with my right hon. Friend. It is precisely about what he was touching on earlier: we are able to provide in the legislation the flexibility to allow the technologies for which we are legislating the space to grow, develop and become commercially viable. That is why it is essential to strike the balance between regulation and ensuring freedom for companies to operate. That is exactly why we would like the clause to stand part of the Bill.

As I was saying, allowed revenues must be set at a level that covers the companies' costs and allows them to earn a reasonable return, subject to their delivering value for consumers, behaving efficiently and achieving their targets as set by the economic regulator. The amount of allowed revenue that an operator is able earn is set out in the licence conditions, which will need to be updated to reflect the outcomes of the periodic regulatory reviews and to keep pace with the evolution of the market more broadly. The power provides for the economic regulator to make such licence modifications, subject to an appropriate consultation process.

Before making any modifications to licence conditions, the economic regulator must give notice of the proposed modifications, the rationale for them, and an appropriate timeframe within which representations may be made. Any representations that are made must be duly considered. As Exchequer support will be available to certain users of the networks, the Secretary of State must be consulted on licence modification proposals and retains the power to direct that a modification may not be made.

Should the Secretary of State object to a particular modification, the economic regulator would need to consider whether to pursue the modification in an alternative form, which would require restarting the process of notifying and consulting on the new proposals. As is the case in other regulated sectors, licensees should have the right of appeal regarding modifications that are made to licences after they have been granted. The Bill provides for that later in chapter 1.

Clause 14 requires that, where the economic regulator has made a licence modification under clause 13 to a standard licence condition, the standard conditions of all future licences of that type should similarly be modified. That ensures a consistent approach to standard conditions across licences of the same type.

Clause 15 makes provisions for the Competition and Markets Authority or, as may be the case, the Secretary of State, to modify licence conditions in specific circumstances in relation to company mergers. Where there is a merger between licensed entities, that may necessitate licence modifications to ensure compliance with competition law. The power enables the CMA or the Secretary of State to modify licence conditions accordingly. I commend the clauses to the Committee.

Dr Whitehead: I have a question more than anything. Will the Minister state on the record this afternoon who the economic regulator actually is? The reason why I ask is that there does not seem to be any definition in the Bill of who the economic regulator is. It appears to be the CMA, but it might not be, because clause 20, on "Appeal to the CMA", is under the heading "Appeal from decisions of the economic regulator", so those do not appear to be the same thing in the Bill's construction. It is not further defined, so perhaps the Minister will clarify that for us.

Andrew Bowie: I am happy to clarify that the economic regulator to which I and the Bill refer is of course Ofgem. Appeal to the CMA relates to what I have just discussed: occasions when there is a merger between two licensed entities, which may necessitate modifications. That is where the CMA comes into it. To be absolutely clear, Ofgem is the economic regulator.

Dr Whitehead: I point out, therefore, that there are inconsistent references to Ofgem, to the CMA and to the economic regulator. They are one and the same but referred to in different ways in different parts of the Bill. That might be a drafting issue more than anything else.

Andrew Bowie: I have just been reminded by my hon. Friend the Member for Beaconsfield that clause 1 sets out that the economic regulator to which we refer is Ofgem.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Clauses 14 and 15 ordered to stand part of the Bill.

Clause 16

INTERIM POWER OF SECRETARY OF STATE TO GRANT LICENCES

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

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

Government amendment 2.

That schedule 1 be the First schedule to the Bill.

Andrew Bowie: The clause and schedule 1 provide the Secretary of State with the power to grant carbon dioxide transport and storage licences during an interim period, as has been discussed already this afternoon.

In the enduring regulatory regime, we expect the economic regulator to take decisions on who should be granted a carbon dioxide transport and storage licence. That is provided for by clause 7. However, it is the Secretary of State who will determine the first carbon dioxide transport and storage networks to be granted a licence—through the Government's CCUS cluster sequencing programme—and the terms and conditions of those licences. That is appropriate given the Exchequer support available to the first CCUS clusters.

The CCUS cluster sequencing process is specifically designed for first-of-a-kind projects. The interim period during which the Secretary of State has the power to award licences will end on a date to be set in regulations, once the industry is sufficiently mature. After that interim period, the economic regulator will have sole power to grant licences.

Government amendment 2 corrects a cross-reference and renumbers a subsection in schedule 1 to ensure that the schedule is read correctly. Schedule 1 provides the Secretary of State with the power to grant carbon dioxide transport and storage licences during an interim period. The interim period during which the Secretary of State has the power to award licences will end on a date to be set in regulations made under schedule 1, once the industry is sufficiently mature. I think that answers some of the questions asked by the hon. Member for Kilmarnock and Loudoun earlier. After that interim period, the economic regulator, Ofgem, will have sole power to grant licences. I commend the clause and the schedule to the Committee.

Dr Whitehead: The clause itself is brief, but refers to schedule 1 and to the interim power of the Secretary to State to grant licences. As the Minister said, that power will come to an end on a date to be determined at a point when the industry is well established and the Secretary of State therefore no longer has to exercise the interim power. Who decides when the industry is well established? If that is the Secretary of State, is it not a rather circular way of bringing to an end the power of the Secretary of State to grant licences on an interim basis? If the Secretary of State decides that the industry is not that well established, he or she will presumably continue to grant interim licences forever.

Presumably, we want to reach a point when the Secretary of State does not grant licences in his or her own right and Ofgem or the economic regulator does, but we do not appear to have any mechanism in the Bill, other than something to be determined at a particular date, whereby the Secretary of State switches off his or her own power and switches on an Ofgem power. It would be helpful if the Minister could clarify that. There may be something in the legislation that I have not noticed, but it appears from schedule 1 and the clause that there is not a clear switch-off mechanism, other than the intention to do so when the market is mature.

Alan Brown: To follow on from that point, and the point that I made earlier, I know that the Minister said that he would write to us, but I am interested in how he envisages the sequencing and the interim period coming to an end. Although he said that in terms of value for money it is up to Parliament, and us as parliamentarians, to hold the Government to account, if the interim period goes on for a long while and individual licences are granted effectively on an ad hoc basis, it will be almost impossible for parliamentarians to hold the Secretary of State to account. We will continually be told that the information is commercially sensitive, so we will be unable to access it. I want a bit more clarity on how this will all come together in a more transparent manner.

Andrew Bowie: To address the points made by the hon. Members for Southampton, Test and for Kilmarnock and Loudoun, we recognise that visibility and clarity are of the utmost importance when talking to industry and, indeed, the wider country about where we are headed regarding CCUS. I can think of nothing that the Secretary of State, whoever that might be, would like more than to be able to give the power to Ofgem to determine licences. However, that depends on just how mature the sector is and the stage at which the Secretary of State determines it to be right.

The point about clarity, which I have just mentioned, is important. That is why my right hon. Friend the Member for Kingswood (Chris Skidmore) mentioned in his net zero review in March the need for a road map for CCUS. The Department agrees that that is important. We have committed to setting out a vision for the CCUS sector. That work is ongoing, and we will keep stakeholders and parliamentarians updated as we work up our road map and increase the clarity on where we are headed, and to what timescale, and when we expect such a transition period, during which the Secretary of State will hold that power, to come to end.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Schedule 1

INTERIM POWER OF SECRETARY OF STATE TO GRANT LICENCES

Amendment made: 2, in schedule 1, page 245, line 31, leave out from beginning to second "the" in line 32 and insert—

"(d) after subsection (10) insert—

'(10A) For the purposes of subsection (5)'".—*(Andrew Bowie.)*

This amendment corrects a cross-reference and renumbers a subsection.

Schedule 1, as amended, agreed to.

Clause 17

TERMINATION OF LICENCE

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

Andrew Bowie: The terms and conditions of the economic licence will set out the circumstances in which the regulator would revoke or terminate a carbon dioxide transport and storage licence. Such circumstances may include those where a licence holder has contravened or failed to comply with enforcement orders, ceased to carry on as a transport and storage business, or sadly become insolvent.

The clause requires that where a licence termination scenario has arisen, or is likely to arise, the regulator must notify those who are most likely to be affected by a decision to terminate a licence. That will include notifying the relevant carbon storage licensing authority—which may be either the North Sea Transition Authority or Scottish Ministers, Welsh Ministers, or the Department for the Economy in Northern Ireland—where a storage licence is also in place.

It also includes notifying the Secretary of State who, depending on the circumstances, may consider it to be in the public interest to use the powers in chapters 4 or 5 of the Bill to secure the continued operation of the network. Those powers enable the Secretary of State to enact a statutory transfer scheme to transfer the licence and its associated property and rights to another operator to maintain ongoing operations.

If the licence is to be terminated due to company insolvency, the Secretary of State has the option to apply to the courts for a special administration order. I commend the clause to the Committee.

3 pm

Dr Whitehead: The clause concerns termination events, stating:

"If the economic regulator considers that a termination event has arisen, or is likely to arise, the economic regulator must notify the persons mentioned in subsection (2) as soon as reasonably practicable."

The Minister has given company insolvency as an example of a possible termination event, but I am sure he will agree that there are a number of others.

Subsection (5) says that a

"'termination event' means a state of affairs in which the economic regulator is authorised to revoke the licence."

That explains precisely nothing; it does not give examples of termination events or explain the circumstances in which the economic regulator is authorised to revoke a licence. It does not take us very far.

Is there a roster of termination events? Is there a list of likely termination events that the Minister could put into a menu? Insolvency is one such event, but I can think of a number of other circumstances in which termination may take place either voluntarily or involuntarily. For example, a company may request that the regulator terminate its licence, stating that it cannot carry on with its licence arrangement for reasons other than insolvency.

The clause does not list any circumstances that could constitute a termination event. Is the Minister satisfied that the rather circular definition in the clause is sufficient? Or does he think that more clarity on what a termination event could constitute and how one might be dealt with is required?

Andrew Bowie: I understand the hon. Gentleman's point. However, I think it is fairly well recognised and understood within the industry that the termination of a licence will come in the event that a licence holder ceases to carry on as a transport and storage business and therefore no longer requires a licence; if it becomes insolvent; or if it contravenes or fails to comply with enforcement orders made by the economic regulator or, in certain situations, the courts. I am not sure what would be added by setting that out in the Bill. I suspect that it is fairly well understood across the industry.

To answer the question of what would happen in the event of licence termination, the Bill provides certain step-in rights for the Secretary of State in a licence termination scenario to be able to transfer the ongoing operation of the transport and storage network to another operator or, where that is not possible, to ensure the safe decommissioning of the infrastructure. If a licence is terminated because of the insolvency of a transport and storage company, the Bill enables the application of a special administration regime to support the ongoing operation of the transport and storage network, prioritising its rescue as a going concern and securing the ongoing safety and security of the network. I reassure the hon. Gentleman that a great deal of consideration has gone into this specific element of the Bill, and we are happy that it is clear in its intent.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clause 18

TRANSFER OF LICENCES

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

The Chair: With this it will be convenient to discuss clause 19 stand part.

Andrew Bowie: We are powering our way through this afternoon. Clause 18 enables carbon dioxide transport and storage licences to be transferred from one legal entity to another, subject to the consent of the economic regulator, Ofgem. Carbon dioxide transport and storage licences will be granted to a legal entity, and they cannot be bought or sold separate from that legal entity. Circumstances may arise in which it is appropriate or necessary to transfer a licence to another legal entity, and the clause provides for that. For example, a licence may need to be transferred as a result of a company merger or acquisition, or a company restructuring, where the legal entity that is proposed to carry on the licensable activity is not the same legal entity to which the licence was awarded. A transfer may relate to the whole or any part of the licence. The regulator's consent is required for any licence transfer.

Clause 19 sets out the process that the economic regulator must follow before giving consent to any transfer. That includes public notice of the regulator's intent to consent to a licence transfer, the reasons for it,

any conditions to be attached to the consent to transfer, and a time period within which objections or representations can be made. The economic regulator must also notify the Secretary of State of an intended transfer, and the Secretary of State has the right to direct that a transfer may not be consented to. That is appropriate, as there may have been contractual financial support agreements in place between the Secretary of State and the current licence holder pursuant to the licence.

Dr Whitehead: The clauses deal with transfer of licences when, as mentioned in the previous clause, a termination event takes place. Subsequent to such an event, the licence will have to be put into action again and will be transferred. I am interested to see whether I can get the words "termination event" into common language, so that I can say to people, "That is a bit of a termination event". However, I will not do that this afternoon.

The transfer of licences under such circumstances, as we have emphasised, needs to be put under the general heading of "fit and proper people", whether we explicitly say that or not. A termination event may have occurred because someone has proven not to be a fit and proper person—for example, if they were gambling the company's proceeds on local casinos—and therefore the company or person has been determined not to be able to carry out the term of the licence. The licence therefore needs to be transferred at least to a better kind of person.

Will the Minister expatiate briefly on the circumstances under which transfers will be judged? We need to be sure that when a licence needs to be transferred after a termination event, no one can say, "You over there—you will do. We are in a bit of a fix as far as the licence is concerned, so you get on with it." I am sure that that is the last thing on the Minister's mind, but it could conceivably happen if someone wished to cut corners and keep a licensed line of activity going. If the Minister could give an assurance about how licences will be transferred, that would be helpful.

Andrew Bowie: I am glad that we are not going to focus too much on termination or even extermination events during our debate. Indeed, it is to be hoped that we will not need to refer to this aspect of the Bill very much, if at all. However, we have to legislate in the expectation that at some point, there may be termination events for a licensed entity. That is why we have set out the provision for a licence transfer in the Bill.

The hon. Member for Southampton, Test referred to his earlier point regarding the inclusion of the phrase "fit and proper person". As I said, we believe that the Bill sets out exactly how the Government will determine that a company or an individual is well placed to be a licence holder and carry out their duties as they relate to the Bill. However, let us say that they are not—we hope that that will not be the case—and a transfer takes place. A new licensee will be found, and if they intend to commence the licensable activity shortly after consent is granted, the regulator—Ofgem, in this case—may ask them to demonstrate, for example, that arrangements to accede to relevant codes by the proposed transfer date are in place. I understand why the hon. Member asks these questions, and it is right to do so. It is right that we state on the record today exactly what we expect in the event that a termination event takes place in regard to a licensed entity.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clause 19 ordered to stand part of the Bill.

Clause 20

Appeal to the CMA

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

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

Clause 21 stand part.

That schedule 2 be the Second schedule to the Bill.

Clauses 22 to 25 stand part.

Andrew Bowie: I will now speak to clauses 20 to 25, which relate to appeals in relation to licence modification decisions made by the economic regulator for carbon dioxide transport and storage. I will start with clause 20. To ensure that sufficient safeguards for licensees are in place, this provision of the Bill provides for licence modification decisions to be appealable to the Competition and Markets Authority. That is consistent with the CMA's role in appeals in other economically regulated sectors, including gas and electricity. The CMA's permission is required to bring an appeal, and the specific grounds on which the CMA may refuse to allow an appeal are set out in the clause. They include, for example, grounds for appeal that are "trivial or vexatious".

Clauses 21 to 25 and schedule 2 set out the process and procedures for appeals to the CMA. Schedule 2 sets out the detailed process by which appeals to the CMA regarding licence modification decisions must be made, including matters to be considered by the CMA and timeframes within which the CMA must determine outcomes. To ensure a fair process and in order that the CMA may make a fully informed decision, schedule 2 establishes a right for the CMA to require the production of documents and written statements, and for persons to attend to give oral evidence. It establishes an offence of failure to comply with a notice to provide information, and it allows the CMA to make a costs order relating to the appeal. The provisions of schedule 2 are consistent with the process and provisions for appeals to the CMA in relation to gas and electricity licence modification decisions made by Ofgem.

Clause 22 sets out the matters to which the CMA must have regard when determining an appeal against a licence modification decision. It also sets out the circumstances in which the CMA may allow an appeal. In determining an appeal, the CMA must have regard to the same matters to which the economic regulator must have regard in carrying out its principal objectives and statutory duties in relation to carbon dioxide transport and storage. The CMA may allow the appeal if it considers that the decision being appealed does not sufficiently have regard to, or give sufficient weight to, matters covered by the principal objectives and statutory duties set out in clause 1; is legally wrong; is based on a factual error; or does not achieve its stated objectives. If

[Andrew Bowie]

the CMA does not allow the appeal on any of those grounds, the original decision made by the economic regulator stands.

Clause 23 sets out the powers of the CMA to remedy a licence modification decision where an appeal has been allowed. Where an appeal has been allowed, the CMA can quash the decision or require the economic regulator to reconsider it. If the appeal relates to a price control decision, the CMA additionally has the option to substitute its own decision for the economic regulator's decision. These powers mirror those that exist for the CMA in gas and electricity licence modification appeals.

Clause 24 sets out time limits within which an appeal to the CMA must be determined. An appeal against a licence modification decision must be determined by the CMA within a period of four months from the date on which permission to bring the appeal was given. For appeals against price control decisions, the CMA has a period of six months to make a determination. Where representations on timing are made and the CMA considers that there are special reasons why the time limits cannot be met, it may have an extra month for its decision. In such circumstances, the CMA must inform the parties of the time limit and publish it in such a manner as it considers appropriate to bring it to the attention of parties who may be affected by the determination.

3.15 pm

Finally, Clause 25 sets out the manner in which the CMA must make its determination of an appeal. The determination by the CMA of a licence modification decision appeal must be contained in an order. The order must set out the CMA's determination and the reasons for it, as well as the time at which the determination is to take effect. The order must be notified to the parties to the appeal and published as soon as is reasonably practicable. The order must be notified in such manner as the CMA considers appropriate to bring it to the attention of parties who may be affected by such a determination. The CMA is not required to publish commercially sensitive information or personal data. The economic regulator, Ofgem, must take necessary steps to comply within the time specified in the order or, where not specified, within a reasonable timeframe.

Bim Afolami (Hitchin and Harpenden) (Con): I want to add a note of caution in relation to this set of clauses—a word for those on the Treasury Bench and the Minister, who is a good friend and a good parliamentarian, and who is doing a fantastic job on the Bill and in his role.

There is a hidden danger in the Secretary of State and, indeed, the Department not having the ability, outside of an interim period, to intervene at all in the process vis-à-vis licences. If I have misunderstood anything, I stand corrected, but as I understand it, once we have gone past the interim period—in peacetime, so to speak—the regulator, Ofgem, will make a decision. That decision can be, rightly and very understandably, scrutinised. Appeals can be made to the CMA, which is the right place, but there is no provision for the Secretary of State to involve themselves in that process.

If my understanding is right, and it may be wrong, there is no ability for the Secretary of State to intervene in that process. That strikes me as dangerous in the event that there is an emergency, the economic situation changes hugely or the broader political environment changes to the point that the regulator has a very different view of the issue from that of the Department. I should have referred Members at the beginning to my entry in the Register of Members' Financial Interests: I am chair of the Regulatory Reform Group.

My point is not a dry, technical one that has no real political or economic bearing; it could be hugely significant over the coming years. I urge the Minister and his officials to consider whether we should retain some ability for the Secretary of State to intervene directly in the process if that were required, although I suspect that most of the time it would not be.

Dr Whitehead: I was going to make a slightly different point from that made by the hon. Member for—

The Chair: Hitchin and Harpenden.

Dr Whitehead: I remembered the Hitchin bit, but I could not remember the Harpenden bit; I am sure that the hon. Member treats both parts of his constituency with equal reverence.

Bim Afolami: Of course.

Dr Whitehead: I was tempted to refer the hon. Member to the Energy Prices Act 2022, which was recently passed—I think, to paraphrase the Minister, not on his watch. The Act allows the Secretary of State to do pretty much anything that he or she wants in the energy sphere. I do not know whether that applies to the circumstances that the hon. Member for Hitchin and Harpenden suggested, but we are particularly concerned about the powers in that Act, and whether they need to be rowed back a little in this Bill.

I draw the Committee's attention to the process of appeal from the economic regulator to the CMA. It appears to be a linear process. The appeal is set up by the CMA, effectively, and there is no going back afterwards. There is not a circumstance in which the economic regulator can say, "Actually, we think the CMA didn't work as well it should in terms of casting that appeal. Can we appeal the appeal—not necessarily the substance of the appeal, but the way in which it has been carried out?"

What is apparent in terms of the CMA's powers regarding appeals is that they give the CMA a lot of ability to misstep. Clause 20(4) states:

"The CMA may refuse permission to bring an appeal only on one of the following grounds".

The CMA, actually on fairly wide grounds, can therefore refuse to bring an appeal. It appears to have pretty widespread powers to make a determination without any comeback. For example, clause 22(4) states:

"The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on"

various grounds, including, among others,

"that the decision was based, wholly or partly, on an error of fact".

Various things in the clauses emphasise the linear nature of the appeal process—that is, the CMA decides, and no one is looking at what the CMA is doing in

terms of its appeal processes. I would like to hear whether the Minister thinks that that is adequate or whether a little more attention ought to be paid to what the CMA is doing in those circumstances, and whether the relationship between the CMA and the economic regulator under those circumstances is as good as it could be.

Andrew Bowie: Turning first to the points made by my hon. Friend the Member for Hitchin and Harpenden, who does treat both parts of his constituency with equal diligence—having visited, I have seen that at first hand—he is right: the Secretary of State does not have the power to directly modify licence conditions once they are granted, but he does have a veto over Ofgem decisions. That is set out in clause 13(6).

I genuinely understand the concerns of the hon. Member for Southampton, Test, but the provisions and procedures directly mirror the appeals process in respect of electricity and gas licence modification, set out in the Gas Act 1986 and the Electricity Act 1989. We believe that it will ensure consistency of approach for the economic regulator Ofgem and, indeed, the Competition and Markets Authority, which will provide confidence for the sector, and indeed sectors, as we move forward.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21 ordered to stand part of the Bill.

Schedule 2 agreed to.

Clauses 22 to 25 ordered to stand part of the Bill.

Clause 26

PROVISION OF INFORMATION TO OR BY THE ECONOMIC REGULATOR

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

The Chair: With this it will be convenient to consider clause 27 stand part.

Andrew Bowie: Clause 26 allows the economic regulator to request information from, and provide information to, other bodies with carbon capture, usage and storage regulatory or statutory functions, in circumstances where the sharing of information may be appropriate to facilitate the effective functioning of the respective regulatory regimes.

The clause permits the sharing of information between the economic regulator and the relevant bodies with statutory functions in respect of CCUS listed at subsection (2). The clause also allows for sharing of information with any other person the economic regulator considers appropriate if they have statutory powers or duties that the economic regulator considers relevant to the exercise of its functions. That could include, for example, the counterparty to any contracts providing consumer or taxpayer support for associated carbon capture activities. The clause limits information requests to those that the economic regulator considers necessary to facilitate the exercise of its functions.

These information-sharing provisions are intended to enable information to be shared between relevant regulatory authorities, not to permit public disclosure. Information shared with the economic regulator will remain protected under the Data Protection Act.

Alan Brown: What happens if any of the bodies do not give information to the economic regulator in the requested timeframe?

Andrew Bowie: They would be subject to the same stringent actions as have been set out, and in the interim the Secretary of State would determine what action should be taken in that respect.

Clause 27 gives the Secretary of State a power to require information directly from a carbon dioxide transport and storage licence holder, to ensure that he has access to information needed to support the effective conduct of his CCUS functions. The clause does not enable the Secretary of State to share or publish the information. To ensure protection of sensitive information, information provided to the Secretary of State will remain protected under the Data Protection Act, and an information request cannot be made to obtain information protected by legal professional privilege or, in Scotland, confidentiality of communications.

Dr Whitehead: The Minister's final few words appear to show—the hon. Member for Kilmarnock and Loudoun may have a few things to say about this—that there are different conditions for disclosure or production in legal proceedings in England and Wales and in Scotland. I am not a lawyer, so I do not know exactly what the difference is likely to be, but it appears that there is greater protection for the licence holder with respect to information provision in Scotland than in England and Wales. Perhaps I am reading that wrong. Is it the case that, in effect, the two conditions are the same and the wording of the Bill just bows in the direction of the formulation in Scotland, or is there a material difference?

Andrew Bowie: There is no material difference at all. As the hon. Member suggests, it is just a reference to the different regulations that apply in Scotland and in England and Wales, as a result of the devolved legislature in Edinburgh legislating slightly differently from the way that we have for the rest of the United Kingdom. That is the only difference. As this is a pan-UK Bill that affects each area of the United Kingdom, we have to make clear in the Bill the different regulations that will have to be conformed to. That is why the language of clause 27 is as it is.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Clause 27 ordered to stand part of the Bill.

Clause 28

MONITORING, INFORMATION GATHERING ETC

The Chair: With this it will be convenient to consider clauses 29 to 31 stand part.

3.30 pm

Andrew Bowie: Thank you very much, Mr Gray. I fear that you will be hearing my voice in your sleep tonight.

The Chair: I very much hope not!

Andrew Bowie: Clauses 28 to 31 relate to other functions of the economic regulator. Starting with clause 28, as I have already said, carbon capture, transport and storage are nascent industries in the UK and, indeed, globally.

The economic regulation framework for carbon dioxide transport and storage, established by part 1 of the Bill, is focused on the transport of carbon by pipeline for the purposes of geological storage. Through that framework, our aim is to both provide certainty for investors and protect user interests.

As the CCUS market becomes established, we may need to keep the framework under review—for example, on how it is applied to non-pipeline forms of carbon transportation and the most appropriate licensing structure for different types of onshore and offshore infrastructure. To help inform such considerations, clause 28 requires the economic regulator to keep the carbon dioxide transport and storage market under review.

The economic regulator may collect information for the carrying out of such monitoring functions. The regulator is also obliged to share relevant information with the Secretary of State or the CMA if requested to do so, to assist their competition and market functions. Clause 29 establishes the procedure for requesting such information and establishes a penalty if a licence holder does not comply with a request for relevant information.

Where the economic regulator is considering implementing proposals that may have a significant impact on licence holders, on others who are involved in related CCUS activities, on the general public or on the environment, clause 30 requires that the economic regulator carries out an impact assessment ahead of implementing the proposals. The economic regulator is required to carry out and publish an assessment of the likely impact of implementing the proposal or set out why it considers it unnecessary to carry out such an assessment.

An impact assessment for a proposal must be published in an appropriate manner and provide an opportunity for those who are likely to be significantly affected by the proposal's implementation to make representations. In its annual report, the economic regulator must report on the impact assessments undertaken in the relevant financial year and the decisions taken as a result of those assessments.

Lastly, to ensure transparency of decision making, clause 31 establishes that, for certain decisions, the economic regulator and the Secretary of State must give reasons for the decisions taken. The reasons must be set out in the published notice and sent to the relevant licence holder. Before publishing a notice, the economic regulator or the Secretary of State must give regard to the need to exclude information that could seriously and prejudicially affect the interests of an individual or body.

Dr Whitehead: I must say that these passages are so dry that I may be hearing the Minister's voice in my sleep this afternoon, rather than tonight. Having said that, I assure you, Mr Gray, that I am wide awake and listening to what is being said.

When considering any piece of legislation, I always think that the first thing we should look at is the impact assessments, because they have to tell the truth about what is going on. It is, therefore, always useful to have impact assessments. Indeed, it is important that an impact assessment is available as often as possible both for Bill Committees and for secondary legislation.

Clause 30, however, appears to be rather vague about whether impact assessments should actually be undertaken. On the duty to carry out impact assessment, it states that

"the economic regulator is proposing to do anything for the purposes of, or in connection with, the carrying out of any function exercisable by it under or by virtue of this Part, and…it appears to the economic regulator that the proposal is important",

but the clause does not specify what is meant by "important". It goes on to say:

"but this section does not apply if it appears to the economic regulator that the urgency of the matter makes it impracticable or inappropriate for the economic regulator to comply with the requirements of this section."

In other words, if the economic regulator thinks that an issue has some significance—subjectively judged, I assume, by the economic regulator—it may carry out an impact assessment. On the other hand, if there is no time to do it or it does not appear to be terribly appropriate to the economic regulator, it does not have to do it anyway. Therefore, we might get an impact assessment, or we might not.

There are a number of grounds in the process under which the impact assessment can be voided or avoided. Although subsection (2) attempts to define what "important" means in connection with a proposal, it also states:

"A proposal is important for the purposes of this section only if its implementation would be likely to do one or more of the following".

and thereby further downgrades the question of what is still a rather subjective view of what constitutes importance.

I assume that the Minister shares my view that impact assessments are really important not just for important subjects but for most things. Although we have not tabled an amendment, will the Minister consider tightening the wording so as to ensure that carrying out impact assessments is the norm and not something to be decided by the regulator? To use the word "important" again, it is important that we are clear about impact assessments. Indeed, that has been set out in guidance to Ministers, who should seek to undertake impact assessments at all times, where possible, and should not hide behind speed issues or other circumstances in order to avoid them. However, it appears that that is not the case for the economic regulator, and that is not satisfactory.

Andrew Bowie: The Government are always open to suggestions and ideas about how we can improve legislation. As I said earlier, it is important for the industry, nascent as it is, that there is as much clarity as possible about how it is governed and about the regulatory process that it must follow. We must also understand that, as the market and the technology grow, evolve and develop, we will need to keep that under review. However, I am happy to give a commitment to the hon. Member that we will consider whether it is possible to tighten up the language so that exactly what is meant is made clear to industry.

Kerry McCarthy: As we have heard, there could be subjective interpretations regarding the importance and urgency of an impact assessment, and questions raised over whether one is appropriate or impracticable. I think the Minister will share my concern that the broadly worded clause could result in people seeking judicial review if they feel that the economic regulator should

have carried out an impact assessment. I do not know what the process would be for bringing such a review, but does he share my concern that the vaguer the language, the more open it is to challenge?

Andrew Bowie: I also do not know the exact procedure that would lead to a judicial review in this instance, but I agree that we need to be clear and give certainty to the industry. Where we can, we should look at what we can do to tidy up the language so as to ensure that we do not end up in that situation.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Clauses 29 to 31 ordered to stand part of the Bill.

Joy Morrissey (Beaconsfield) (Con): I beg to move, that further consideration be now adjourned—or, as one might say, be a termination event. *[Laughter.]*

The Chair: That is, of course, entirely out of order.

Ordered, That further consideration be now adjourned. *—(Joy Morrissey.)*

3.40 pm

Adjourned till Thursday 25 May at half-past Eleven o'clock.

Written evidence reported to the House

EB01 OFTEC and UKIFDA

EB02 Vilnis Vesma MA(Oxon) Ceng MIE, Director, VESMA.COM

EB03 Energy and Utilities Alliance (EUA)

EB04 SSE plc

EB05 RenewableUK

EB06 Carbon Capture and Storage Association (CCSA)

EB07 National Energy Action (NEA)