

Energy Bill

Supplementary Delegated Powers Memorandum

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Introduction

1. This Memorandum has been prepared by the Department for Energy Security and Net Zero (“the Department”) to assist with scrutiny of the Energy Bill (“the Bill”). The Bill was introduced in the House of Lords on 6 July 2022, and moved to the House of Commons (second House) on 25 April 2023.
2. To support its policy objectives, the Government has introduced a number of new measures and made essential amendments to existing parts of the Bill during its parliamentary stages in the second House. This Memorandum describes powers in the Bill conferring power to make subordinate legislation and other delegated powers which were added or amended during Committee and Report Stages in the House of Commons. A summary table can be found at Annex A.
3. This Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced, supplementary Delegated Powers Memoranda on amendments to the Bill in the House of Lords and consolidates supplementary Delegated Power Memoranda published during passage in the House of Commons.
4. Please note that clause references refer to the Bill as amended in Committee (House of Commons). Amendment numbers have been added to amendments made in Report Stage (House of Commons), as they appear on the Commons Amendments Paper, published 6 September.

Amendments made at Commons Committee Stage

Amendments to Part 2: Carbon Dioxide Capture, Storage etc and Hydrogen Production

Amendments to Clause 57: Revenue support contracts

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative

Context and purpose

5. The new revenue support regulations added to clause 57(9) will be subject to the affirmative procedure. This provides that the powers to determine an eligible transport or storage provider and to make regulations about a direction to offer to contract are subject to the affirmative procedure.
6. Any revenue support regulations not specified in clause 57(9) would be subject to the negative procedure.
7. Clause 57 sets out the overarching power of the Secretary of State to make regulations in relation to revenue support contracts (including the funding of liabilities and costs in relation to such contracts). There are a number of provisions which set out the matters which regulations made under the overarching power in clause 57(1) may cover. This amendment expands clause 57(2) by adding to the definition of a “revenue support contract” to enable the Secretary of State to make regulations in relation to hydrogen transport revenue support contracts and hydrogen storage revenue support contracts.
8. The amendments will enable the Secretary of State to make regulations relating to hydrogen transport and hydrogen storage revenue support contracts. The amendments will also expand existing powers to make levy regulations relating to the funding of liabilities and costs in relation to such contracts. The purpose of these regulations will be to ensure that the Secretary of State is able to set out and maintain the business model schemes and ensure contracts are managed effectively and stable funding flows are in place.
9. Where regulations to be made under this power contain provision that would be within devolved legislative competence, the Secretary of State must first consult the relevant devolved administration(s) (the Scottish Ministers, the Welsh Ministers and/or the Department for the Economy in Northern Ireland). The Secretary of State must also consult such other persons as the Secretary of State considers appropriate in order to provide an opportunity for those directly affected by the regulations and those with special expertise to express their views on their design.

Justification for the power

10. As with the existing powers in the bill for hydrogen production and carbon capture business models, the Department judges that it is appropriate that these powers be delegated to the Secretary of State, as the detailed technical and administrative nature of the provisions is unsuitable for including in primary legislation. These regulations underpin the effective operation of a revenue support contract and are essential to the credibility of the business models with industry and their investors. Without the power for the Secretary of State to set out these requirements in regulations, it is unlikely that the business models could be successfully implemented to support the development of these new technologies, meeting the Government's decarbonisation ambitions.

Justification for the procedure

11. In respect of the amendments to clause 57(9), these provisions deal with the fundamental parameters of the hydrogen transport and storage schemes, including how support is allocated and who is eligible for support. Therefore, it is appropriate for these to be subject to a greater level of parliamentary scrutiny through the affirmative procedure. Use of the affirmative procedure will also reassure prospective contract holders that fundamental aspects of the process upon which they will need to rely on when applying, are unlikely to change frequently or at short notice.

Amendment to Clause 58: Duties of revenue support counterparty

Power conferred on: Secretary of State

Power exercised by: Secretary of State's direction

Parliamentary procedure: None

Context and purpose

12. This amendment expands the provision for a revenue support counterparty to comply with any direction given by the Secretary of State in accordance with this Chapter to include a hydrogen transport counterparty and a hydrogen storage counterparty.

13. This power sits alongside but is distinct from the delegated power relating to the Secretary of State making regulations under the Chapter.

Justification for the power

14. This power is required to give the Secretary of State sufficient ability to exert control over activities of the revenue support counterparty for hydrogen transport and hydrogen storage revenue support contracts. This is consistent with the existing powers for revenue support counterparties.

Justification for the procedure

15. It is the department's view that, given the accompanying regulations made will set out the detailed nature of directions made to the revenue support counterparty, and that these will be subject to Parliamentary scrutiny through the affirmative procedure, that no procedure for this power is required.
16. Clause 58 (duties of a revenue support counterparty) sets out the control the Secretary of State has over the activities of a revenue support counterparty, given that its role is of critical importance to the effectiveness of a revenue support contract.
17. We have set out the provisions that the Secretary of State would likely make under the revenue support regulations from clause 58(2). These may include:
 - a. Requiring a revenue support counterparty to enter into arrangements or to offer to contract for purposes connected to a revenue support contract.
 - b. Specifying things that a revenue support counterparty may or must do, or things that a revenue support counterparty may not do.
 - c. Conferring on the Secretary of State further powers to direct a revenue support counterparty to do, or not to do, things specified in the regulations or direction.
18. Additionally, clause 58(2)(b) and (c) includes provisions which require consultation with, or the consent of, the Secretary of State in relation to modification of standard terms, variation, termination or enforcement of a revenue support contract, settlement or compromise of claims, conduct of legal proceedings and/or any other exercise of rights under a revenue support contract.

Clause 61 (new clause): Designation of hydrogen transport counterparty

Clause 63 (new clause): Designation of hydrogen storage counterparty

Power conferred on: Secretary of State

Power exercised by: Notice

Parliamentary procedure: None

Context and purpose

19. Two new clauses have been added which provide the Secretary of State with a power to designate consenting person(s) to be the counterparty for hydrogen transport revenue support contracts and hydrogen storage revenue support contracts (two types of contracts added by these amendments). The counterparties will be responsible for managing the contracts and making payments to the contract holders, as well as collecting any necessary payments from contract holders, as set out in the contracts. The power will also enable the

Secretary of State to end a designation using the same process to that of the designation itself. A designation will also cease to have effect if the person withdraws consent by giving not less than 3 months' notice in writing to the Secretary of State (see clause 81(1)).

20. The power is very similar to existing clauses in the Bill (59(1), 65(1) and 67(1)) which give the Secretary of State a power to designate a counterparty for carbon dioxide transport and storage, hydrogen production revenue support contracts and carbon capture revenue support contracts.

Justification for the power

21. For revenues to flow to contract holders effectively, it is necessary to have counterparties charged with managing the contracts and making payments. A counterparty needs to be designated to fulfil this function effectively.
22. It also is likely that, in the event of a change of revenue support counterparty, the Department will need to act more quickly than would normally be compatible with the timetable primary legislation allows. The likelihood of the need for a quick response justifies the necessity of a delegated power. Failure to provide continuity of counterparties would undermine investor and developer trust in these business models. Developers and investors are likely to see the need for parliamentary approval as increasing the risk that a new counterparty would not be in place in a timely manner.

Justification for the procedure

23. Prior to the appointment of a revenue support counterparty, the government will conduct internal assessments in order to determine its suitability for the role. The Department will also seek the consent of the counterparty prior to the designation, in line with the requirement in subsection (5) of each of the new clauses. We consider that the appropriate route for designation in this context is for the Secretary of State to give notice to a person (and publish that notice). This is aligned with provisions already included in the Bill for a hydrogen production counterparty and carbon capture counterparty.
24. The appointment of a revenue support counterparty is an administrative exercise and would be carried out only with the consent of the person in question. Due to this, the Department judges that it is appropriate to appoint this body by notice without parliamentary procedure.

Clause 61 (new clause): Designation of hydrogen transport counterparty - Power for Secretary of State to specify qualifying compounds for transporting hydrogen

Clause 63 (new clause): Designation of hydrogen storage counterparty - Power for Secretary of State to specify qualifying compounds for storage of hydrogen

Power conferred on: Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Negative

Context and purpose

25. Subsection (10)(b) of these clauses allows for the Secretary of State to make provisions in revenue support regulations to specify a qualifying compound that is included in the definition of “transporting hydrogen” or “storing hydrogen” for the purpose of the hydrogen transport and hydrogen storage business models. This will allow the Secretary of State to specify compounds that include hydrogen as an element and are hydrogen carriers to qualify for the hydrogen transport and hydrogen storage business models. This will allow the hydrogen transport and hydrogen storage business models to adapt to emergent technologies as and when they develop.

Justification for the power

26. As the hydrogen economy develops, and as new hydrogen transport and storage technologies are developed, Government may want to expand the hydrogen transport and storage business models to hydrogen compounds, such as ammonia or metal hydrides, which can be used as hydrogen carriers. These compounds may change as industry and technologies evolve. Therefore, it would not be appropriate to define these on the face of the Bill.

Justification for the procedure

27. Sub-section (10)(b) of these clauses is subject to the negative procedure. The department considers this the most appropriate procedure because a change to the qualifying compounds for business model support is anticipated to change as technologies develop and will be a technical change to the business models.

Clause 62(1) (new clause): Direction to offer to contract with eligible hydrogen transport provider – Power to direct a hydrogen transport counterparty

Clause 64(1) (new clause): Direction to offer to contract with eligible hydrogen storage provider – Power to direct a hydrogen storage counterparty

Power conferred on: Secretary of State

Power exercised by: Secretary of State's direction

Parliamentary procedure: N/A

Context and purpose

28. This power allows for the Secretary of State to issue a direction, in accordance with any provision made by revenue support regulations, requiring a revenue support counterparty to enter into a revenue support contract with an eligible person. This is separate to the delegated power to make regulations governing the direction by Secretary of State (see below).
29. The power is very similar to existing clauses in the Bill (60(1), 66(1) and 68(1)) which give the Secretary of State a power to direct a counterparty to offer to enter into a hydrogen production revenue support contract or carbon capture revenue support contract.

Justification for the power

30. The power to direct a revenue support counterparty is linked to the regulations governing how the Secretary of State may make that direction, which will be provided for in the revenue support regulations.
31. This power is necessary in order for the Secretary of State to make a direction that allow for eligible persons to be offered to enter into a hydrogen transport or hydrogen storage revenue support contract. A revenue support contract is part of the package of measures considered necessary to secure development of hydrogen transport and storage infrastructure, and so a specific power is required.
32. This power is similar to section 18 of the Nuclear Energy (Financing) Act 2022 and to the CFD scheme, namely section 10 of the Energy Act 2013.

Justification for the procedure

33. It is the Department's view that, given the accompanying regulations to this power will set out the detailed nature of directions made to a revenue support counterparty, and that these will be subject to Parliamentary scrutiny through the affirmative procedure, that no procedure for this power is required. This follows the precedent of section 10 of the Energy Act 2013 and section 18 of the nuclear energy (Financing) Act 2022.

34. These new clauses will give the power for the Secretary of State to direct a hydrogen transport or hydrogen storage revenue support counterparty to offer to enter into contract with eligible persons. Under section 2 of these clauses, regulations can make provision about the circumstances and terms of a direction to a revenue support counterparty.
35. This power will allow the Secretary of State to make regulations specifying when directions to offer contracts may or must be made, and what terms may or must be set out in the contracts. The regulations will describe the process and obligations the Secretary of State must adhere to when making the direction to offer a contract. For example, provision is likely to require the direction to be in writing and specify the day on which the revenue support counterparty must comply with a direction.

Clause 62(2) (new clause): Direction to offer to contract with eligible hydrogen transport provider - Power of Secretary of State to make regulations making further provision about a direction to a hydrogen transport counterparty

Clause 64(2) (new clause): Direction to offer to contract with eligible hydrogen storage provider - Power of Secretary of State to make regulations making further provision about a direction to a hydrogen storage counterparty

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

36. This power allows for the Secretary of State to make regulations making further provision about a direction requiring a revenue support counterparty to enter into a revenue support contract with an eligible person. Regulations may make provision about the circumstances and terms of a direction to a revenue support counterparty.
37. These powers will allow the Secretary of State to make regulations specifying when direction to offer contracts may or must be made, and what terms may or must be set out in the contracts. The regulations will describe the process and obligations the Secretary of State must adhere to when making the direction to offer to contract. For example, provision is likely to require the direction to be in writing and specify the day on which the revenue support counterparty must comply with a direction.

Justification for the power

38. The regulation making powers are necessary as the precise circumstances in which a direction to offer to contract may or must be given and the terms which

may or must be specified in a direction may change over time, given the nascent nature of the contracts and the hydrogen economy.

Justification for the procedure

39. How the Secretary of State directs counterparties to enter into contracts is a fundamental parameter of the hydrogen transport and storage business models. It is therefore appropriate for it to be subject to a greater level of parliamentary scrutiny through the affirmative procedure. Use of the affirmative procedure will also reassure prospective contract holders that the process upon which they will rely when entering into a revenue support contract is unlikely to change frequently or at short notice.

Clause 62(4) (new clause): Direction to offer to contract with eligible hydrogen transport provider - Power for Secretary of State to make regulations determining eligibility in relation to hydrogen transport providers

Clause 64(4) (new clause): Direction to offer to contract with eligible hydrogen storage provider - Power for Secretary of State to make regulations determining eligibility in relation to hydrogen storage providers

Power conferred on: Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Affirmative

Context and purpose

40. The amendments provide the Secretary of State with a power to make regulations determining the meaning of “eligible” in relation to a hydrogen transport provider or hydrogen storage provider in subsection (3) of these new clauses. This is required as the Secretary of State is only able to direct a counterparty to enter into a contract with an eligible person.

Justification for the power

41. The clauses will provide the Secretary of State with a power to make regulations determining the meaning of “eligible” in relation to a hydrogen transport provider and a hydrogen storage provider. This is required as the Secretary of State is only able to direct a counterparty to enter into a contract with an ‘eligible’ person.

42. As the hydrogen economy develops, and as new hydrogen transport and storage technologies are developed, the eligibility criteria for the business models may change. Eligibility may change as industry and technologies evolve. Therefore, flexibility will be needed in how transport and storage providers are defined, and it would not be appropriate to define an “eligible hydrogen transport provider” or an “eligible hydrogen storage provider” on the face of the Bill.

Justification for the procedure

43. Subsection (3) of these new clauses is subject to the affirmative procedure. These sections deal with the fundamental parameters of the schemes, determining who is eligible for support. Therefore, it is appropriate for these to be subject to a greater level of parliamentary scrutiny through the affirmative procedure.

Amendment to Clause 70: Obligations of relevant market participants

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: The first regulations making provision falling within clause 70 will be subject to affirmative procedure. Any further regulations making such provisions would be subject to negative procedure.

Context and purpose

44. Clause 70 is an existing clause in the Bill that enables revenue support regulations to make provisions requiring relevant market participants to make payments to a hydrogen levy administrator for the purposes described in subsections (1) and (2). The amendment expands subsection (1) to allow these payments to be made to a hydrogen transport or hydrogen storage counterparty to make payments under a hydrogen transport or hydrogen storage revenue support contract.

Justification for the power

45. This amendment replicates the existing powers in the Bill applying to hydrogen production revenue support counterparties.
46. The amendment will be necessary to expand the scope of the hydrogen levy to hydrogen transport and storage revenue support contracts. It will enable regulations to require levy payments to be made to fund hydrogen transport revenue support contracts and hydrogen storage revenue support contracts.
47. The duties and functions of the hydrogen levy administrator, the types of market participants obliged to pay the levy and the nature of the levy requirements and how the levy works (for example, how it is to be calculated and enforced) may need to change over time to reflect the development of the market for low carbon hydrogen and future changes to the wider energy market (for example, a decrease in the role of natural gas in heating as we progress towards our net zero target). The Department therefore judges that it is appropriate for the Secretary of State to be able to make such provision in regulations.

Justification for the procedure

48. It is considered that the affirmative procedure is most appropriate for first use, so Parliament is able to scrutinise how government intends to exercise those powers when introducing initial regulations to establish the business models. However, given the highly technical nature of this area, it is considered proportionate for subsequent use of those powers to be subject to the negative procedure.

Amendment to Clause 71: Payments to relevant market participants

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: The first regulations making provision falling within clause 71 will be subject to affirmative procedure. Any further regulations making such provisions would be subject to negative procedure.

Context and purpose

49. As stated in the previous supplementary delegated powers memorandum on 8th March 2023, clause 71 enables revenue support regulations to make provisions requiring payments to be made to levied market participants. This sort of provision has precedent; it is similar to section 17 of the Energy Act 2013 and section 20 of the Nuclear Energy (Financing) Act 2022.

50. This amendment extends the power by enabling revenue regulations to make provisions requiring payments to be made by a hydrogen transport or hydrogen storage counterparty, in addition to a hydrogen production counterparty.

Justification for the power

51. This amendment complements the amendments to clause 70 to extend the existing hydrogen levy provisions to include hydrogen transport and hydrogen storage revenue support contracts. This clause enables regulations to allow for payments received by a hydrogen transport or storage counterparty to be passed through to levied market participants and/or energy consumers. This will be critical to helping ensure that the payment and reconciliation arrangements for the hydrogen levy are fair and efficient.

52. As discussed in the original Delegated Powers Memorandum on the Energy Bill, the design of the hydrogen levy may need to change over time as the hydrogen market evolves and/or to reflect changes to the wider energy market. A delegated power is therefore required for this provision, as it is not possible to determine the arrangements for payments to levied market participants and the pass-through of benefits to energy consumers that may be required in the future. In addition, the complexity and detailed nature of these arrangements are likely to be such that it would not be appropriate to include such provisions on the face of the Bill.

Justification for the procedure

53. As stated in the previous supplementary delegated powers memorandum on 8th March, the Department considers that it is appropriate that the first set of regulations made using this power should be subject to the affirmative resolution procedure. This will ensure sufficient parliamentary scrutiny of the levy design. As we expect any subsequent regulations made on the basis of this clause to be technical, it is considered proportionate that such regulations are subject to the negative resolution procedure. This aligns with the parliamentary procedure for regulations that make provisions falling within the other levy design clauses within the Bill, namely clauses 70 and 72.

Amendment to Clause 81: Further provision about designations

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

54. Clause 81(4) enables the Secretary of State to make provision in regulations enabling a person who has ceased to be a revenue support counterparty to continue to be treated as such a counterparty, including provision about the circumstances in which, and the period for which, such a person may be so treated.

55. This amendment extends this to enable the Secretary of State to make such provisions about a hydrogen transport counterparty or hydrogen storage counterparty.

Justification for the power

56. A delegated power is needed to ensure the Department can react appropriately to a situation where a designation of a hydrogen transport or hydrogen storage counterparty is withdrawn. It is imperative that no revenue support contracts are left stranded and that at any one time there is a revenue support counterparty liable for the obligations, and able to exercise the rights, under a contract.

57. The Department would therefore expect the incumbent counterparty to continue in its role until a new revenue support counterparty is identified and ready to operate. However, the Department recognises that there may be circumstances where it would not be possible or reasonable for the incumbent revenue support counterparty to continue in its role until a new revenue support counterparty is identified and ready to operate. The Secretary of State therefore requires this power to provide for the detail in regulations of any requirement on an incumbent revenue support counterparty to continue to be treated as such a revenue support counterparty, rather than on the face of the Bill.

Justification for the procedure

58. The department considers it appropriate for regulations made under this clause to be subject to the affirmative procedure. As the treatment of the counterparty will be fundamental to the hydrogen transport and storage business models, it is appropriate for this measure to be subject to a greater level of parliamentary scrutiny through the affirmative procedure. This will also reassure prospective contract holders that the treatment of a person who has ceased to operate as counterparty is unlikely to change frequently or at short notice.

Amendments to Part 2: New Chapter 5 – Carbon Storage Information and Samples

Clause 107 (new clause): Power to make regulations about retention of information and samples

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative

Context and Purpose

59. The purpose of this provision is to specify in regulations the types of information and samples which need to be retained by those who hold licences and permits for the purposes of permanently storing carbon dioxide.
60. As well as specifying this information, the regulations may make provision for the form and manner in which the information or samples are to be retained, the period for which they are to be retained and the event which triggers the requirement to retain.
61. The obligations imposed by these regulations may continue after a carbon storage licence has expired but will not apply where an information and samples plan has effect (for this provision see new clause “Preparation and agreement of information and samples plans”).
62. The regulations will only apply to licences issued by the Oil and Gas Authority (OGA) and not to licences issued by the devolved administrations where they, rather than the OGA, are the carbon dioxide storage licensing authority under the Energy Act 2008. However, given the type of information to be retained may also be relevant to those licensing authorities, the Secretary of State must consult those licensing authorities before making the regulations.

Justification for the power

63. The storage of carbon dioxide (CO₂) offshore is still a new and emerging industry, and it is necessary for regulations to set out in detail, in the context of carbon dioxide storage in what is a highly technical and specialised area, the types of information and samples which will enable the OGA to fulfil its functions in ensuring the safe and effective storage of CO₂.
64. It is anticipated that, as experience of the storage of CO₂ increases, there may be a need to amend the type of information and samples that are retained.
65. The information retention requirements are expected to be detailed and technical in their nature, and the Department does not consider their inclusion in primary legislation would be appropriate.
66. In addition, similar provision is made using delegated powers in the context of petroleum licensing (see s. 28 of the Energy Act 2016 and S.I. 2018/514) and it

is appropriate to make equivalent provision by regulations in the context of CO2 licensing and storage.

Justification for the procedure

67. We consider that the negative procedure is appropriate for specifying and, in future re-specifying, the types of information and samples to be retained. The OGA are an expert body and will be able to determine the specifics of the type of information and samples which will enable them to fulfil their functions. For example, amending regulations made under this power may involve no more than adding a technical term to an existing list.
68. We would also note that there is existing precedent for this approach as the power to make equivalent regulations in the context of petroleum licensing is subject to the negative procedure.

Clause 116(10) (new clause): Power to amend the financial penalty maximum

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Draft affirmative (Henry VIII power)

Context and Purpose

69. The information retention, reporting and stewardship requirements set out in Chapter 4A are sanctionable, where non-compliance could be subject to a financial penalty up to a maximum of £1 million. This provision allows the maximum amount of a financial penalty of £1 million set out in new clause “Financial penalty notices” to be increased subject to an absolute maximum of £5 million.

Justification for the power

70. The Department considers that, in order to ensure that the enforcement regime is sufficiently dissuasive and capable of driving the desired behaviour, it is necessary to retain some flexibility in increasing the level of financial penalty whilst maintaining a proportionate approach in the initial enforcement regime. Taking a power to amend the level of financial penalty (subject to an absolute limit) should that prove necessary is the appropriate way of achieving that objective.
71. There is existing precedent for taking a Henry VIII power to increase a financial penalty of £1 million to a maximum of £5 million, in the regime that exists in the Energy Act 2016 in relation to petroleum licenses (see section 45(7) of that Act). Given the similarities and overlap between the carbon storage and petroleum industries the Department considers it appropriate to have an equivalent power to maintain parity and consistency between the two sectors, where there are likely to be companies who operate across both sectors.

Justification for the procedure

72. This provision amends a figure set in primary legislation and, as such, we consider it appropriate for these regulations to follow the draft affirmative procedure. This will provide Parliament with sufficient opportunity for scrutiny and debate of the regulations.

Schedule 7 (new schedule): paragraph 1(6) to (8) (Power to amend the list of specified persons to whom disclosure of protected material can be made)

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Draft affirmative (Henry VIII power)

Context and Purpose

73. This power enables the Secretary of State to add to or remove entries from the table set out in paragraph 1 of the new Schedule “Permitted disclosures of materials held by the OGA”. That table sets out a list of public bodies or office holders to whom disclosure of certain types of information obtained by the OGA under the powers created by these amendments can be made. Disclosure of this material can only be made where it is for the purpose of facilitating that person in carrying out their functions.

74. The power is only capable of being used to add office holders under the Crown, people in the service of the Crown, persons acting on behalf of the Crown, government departments or publicly owned companies to the table.

Justification for the power

75. This power enables any changes to the names or roles of public bodies in the list of persons to whom information can be disclosed to be reflected in the primary legislation without the need for further primary legislation. We think that enabling changes of this nature, which may be needed to reflect changes within government or within other publicly controlled bodies, is something for which secondary legislation is suitable.

Justification for the procedure

76. Given this provision amends a list set out in primary legislation, we consider it appropriate for these regulations to follow the draft affirmative procedure. This will provide Parliament with sufficient opportunity for scrutiny and debate of the regulations.

Schedule 7 (new schedule): paragraph 4 (Power to specify the time from which certain information can be published or made available to the public)

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Draft affirmative

Context and Purpose

77. Paragraph 4 of the new Schedule “Permitted disclosures of materials held by the OGA” enables the OGA to publish information or make samples available to the public after a specified period of time has elapsed.
78. To ensure the time limits for the disclosure of protected information balance relevant factors, sub-paragraph (6) establishes statutory considerations which the Secretary of State must have regard to in making regulations. The factors to be balanced include whether the time limits are sufficient to enable the main purpose for which information was acquired, and the potential risk that early disclosure may discourage the collection of carbon storage information, compared to the potential benefits of early disclosure to the sector more broadly.

Justification for the power

79. This power will need to be used when it is clear what sort of information is to be retained and who it has been created by. The equivalent regulations under the petroleum regime (see S.I. 2018/898) set out different time periods for different types of information and depending on whether the information was obtained by the licensee or on the licensee’s behalf.
80. The Department does not consider it appropriate for this information to be set out on the face of the primary legislation because that can only be done once regulations have set out the type of information to be retained and therefore what would be available to disclose under this power.
81. Regulations under this power would also need to be consulted on (either by the Secretary of State or by the OGA) to ensure that industry is satisfied with the time limits for general publication which also means that setting these time limits in primary legislation would not be appropriate. It may also be appropriate to review the time limits as the sector matures.

Justification for the procedure

82. Whilst these regulations may appear to be similar to those under the new power to make regulations about retention of information and samples and therefore could be said to follow a similar procedure the Department does not think that would be appropriate given the potentially significant (positive or negative) effect that these regulations might have on the industry.

83. The Department is of the view that an additional level of Parliamentary scrutiny provided for by the draft affirmative procedure is more appropriate for this subject matter. This will provide Parliament with sufficient opportunity for scrutiny and debate of the regulations.

New Part 3: Licensing of hydrogen pipeline projects

Clause 130 (new clause): Designation

Clause 131 (new clause): Designation: procedure

Power conferred on: Secretary of State

Power exercised by: Notice

Parliamentary procedure: None

Context and purpose

84. This power enables the Secretary of State to designate a person in relation to a hydrogen pipeline project which is being, or is proposed to be, undertaken by (or on behalf of) the person. This requires consent from the person with the related hydrogen transport pipeline project. A designation attaches to a single pipeline project, though a person may be designated more than once e.g. in relation to different hydrogen pipeline projects. The overarching purpose of this power is to provide a process for the identification, by the Secretary of State, of hydrogen pipeline projects considered suitable for receiving the benefit of support by way of economic regulation, namely a Regulated Asset Base (RAB). A RAB is a method of funding future projects, providing support for their design, construction, commissioning, and operation. A hydrogen pipeline project is defined for the purpose of the new Part.
85. The concept of “designated person” is used to limit how a number of delegated powers in this Part can be used. For example, the power of the Secretary of State to grant, extend or restrict a gas transporter licence as conferred by section 7(2) of the Gas Act 1986 (“GA 1986”) can only be used if the relevant licence is granted to a designated person. There are also limits on the designation itself and new clause (Revocation or lapse of designation) sets out how such designations may come to an end.

Justification for the power

86. The Department considers this power is necessary as the designation unlocks the remainder of the new Part which, in turn, facilitates use of the RAB to support hydrogen pipelines projects.
87. Furthermore, the power is considered necessary as the Secretary of State will need to be able to consider individual projects, on a case-by-case basis, to determine whether RAB support is appropriate. Such determinations cannot be made effectively in advance of this Bill and are not considered well suited for legislation. This approach is similar to gas transporter licencing where the construct and limitations of gas transporter licences are set out in the GA 1986 but decision on who should be licenced sits with the Authority.
88. Subsection (2) of new clause (Designation) sets clear parameters for the circumstances in which designation may take place. Subsection (3) of new

clause (Designation: procedure) expressly provides for what the notice of designation must include and this includes the reasons for, and conditions on, the designation. This approach is broadly similar to gas transporter licencing where the construct and limitations of gas transporter licences are set out in the GA 1986 but decision on who should be licenced sits with the Authority.

89. This approach to designation follows a clear precedent by way of section 2 of the Nuclear Energy (Finance) Act 2022 which uses a similar approach for nuclear projects. In that Act the Secretary of State's designation also, in turn, unlocks provisions in the rest of the Act and ultimately the availability of RAB funding.
90. The decision on designation may be made by Secretary of State at the same time as decisions on whether to award a parallel revenue support contract to the relevant project under Part 2 of the Bill. The Department considers increases the appropriateness of designation being delegated to the Secretary of State, noting the restrictions in subsection (2) of new clause (Designation).

Justification for the procedure

91. This power is exercised by notice and the procedure for the issue of a notice is engaged by subsection (1) of new clause (Designation: procedure), where the Secretary of State must publish a statement setting out the procedure that they expect to follow and how they expect to determine the relevant conditions have been met. There is precedent for this approach in section 3(1) of the Nuclear Energy (Financing) Act 2022 which dealt with a very similar issue and near identical approach to procedure.
92. As set out in the justification for taking the power, the decision to designate is one that will need to be made on a case-by-case basis as relevant projects put themselves forward. The Department does not consider this, nor the procedure, well suited to being on the face of legislation. The more appropriate course appears to be designation by notice – consistent with the Nuclear Energy (Financing) Act 2022. The Department considers that the need to publish the notice - including reasons - and the parameters within which use of this power operates enable sufficient transparency and oversight so as to justify use of notices.

Clause 132 (new clause): Revocation of designation

Power conferred on: Secretary of State

Power exercised by: Notice

Parliamentary procedure: None

Context and purpose

93. The powers set out in this new clause (Revocation of designation) are the natural counterpart to the power for the Secretary of State to designate by notice. It ensures the Secretary of State is able to undo that designation by notice, though only if the specific grounds for doing so, as set out in the clause, are met. There is precedent in a power of this nature in section 5 of the Nuclear Energy (Financing) Act 2022, though the conditions differ to ensure they are appropriate for specific nature of designating a hydrogen pipeline project.

Justification for the power

94. This power is needed to ensure that designation remains appropriate and relevant. The power mirrors that for the initial designation and ensures Secretary of State may revoke a designation, though only in specific circumstances.

95. The power is limited to the circumstances set out in subsections (1), namely that the conditions for designation in subsection (2) of new clause (Designation) cease to be met, Secretary of State determines that a condition to which the designation is subject has not been met, or that the person concerned has consented. To be without this power, projects could continue to be entitled to a RAB even if the Secretary of State considered it inappropriate e.g. if the relevant project(s) were no longer likely to be value for money.

96. The power is also constrained by subsection (4) which clarifies that revocation of a person's designation in relation to a hydrogen pipeline project does not affect anything done in relation to the licence by the Secretary of State under or by virtue of this Part while the person was designated in relation to the project. For example, a modification of a condition in a gas transporter licence whilst the designation was in place would not be automatically removed if the designation was revoked.

97. In light of the above, use of notice – consistent with that for designation in the first place – appears the most appropriate course. As for the power to designate, the Secretary of State will need to be able to consider individual projects, on a case-by-case basis. Such determinations cannot be made effectively in advance and are not considered well suited for legislation.

98. There is also precedent in respect of the ability to revoke notices as set out in both section 5 of the Nuclear Energy (Financing) Act 2022 and regulation 4(7)(b)

of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013.

Justification for the procedure

99. This power is exercised by notice. The powers needed to enact designation will also be by notice, with this package of measures being sufficiently reviewed in parliament in this Bill and therefore not requiring any further parliamentary scrutiny before they are used.

Clause 133 (new clause): Grant, extension or restriction of gas transporter licence by Secretary of State

Clause 135 (new clause): Modification of gas transporter licence by Secretary of State

Power conferred on: Secretary of State

Power exercised by: Notice

Parliamentary procedure: None

Context and purpose

100. Powers are needed to allow the Secretary of State to grant, extend, modify and restrict gas transporter licences only following the successful designation of a person in relation to a hydrogen pipeline project. These licence powers are what enable Secretary of State to ensure the gas transporter licence appropriately accounts for the use of hydrogen and facilitates the RAB support to which the designation relates. The power is at the heart of this new Part and ensures the hydrogen transport RAB can operate.

101. Any licence granted, extended or restricted by the Secretary of State has effect for all purposes as if it had been granted, extended or restricted by the GEMA.

Justification for the power

102. These power are necessary to allow the Secretary of State to grant, extend, modify or restrict gas transporter licences. As explained above, this is the necessary consequence of designation and ensures the RAB regime is able to operate as this will be done through the licence conditions themselves.

Grant, extension or modification

103. The grant, extension or modification of a gas transporter licence is what will allow Secretary of State to ensure the licence incorporates bespoke hydrogen

provisions which facilitate the operation of the RAB support model for the benefit of the appropriate project concerned.

104. In respect of grant or extension the power enables this by empowering Secretary of State through the existing licence powers granted to the Authority under the GA 1986. The way this is achieved is by enabling the Secretary of State to use existing powers in the GA 1986 that were previously only available to the Authority. This power opens up section 7(2) and (4) of the GA 1986 to specific use by Secretary of State in respect of designated persons and their hydrogen pipeline project(s).
105. In respect of modification, this power is comprehensively set out in new clause (Modification of gas transporter licence by Secretary of State) and the scope of modifications is also glossed by the description in new clause (Scope of modification powers) to clarify what modifications may include and how the modification may be used. Furthermore, there are procedural protections in new clause (Procedure etc relating to modifications), specifically a duty to consult the holder of the licence, the Authority and such other persons as Secretary of State considers appropriate.
106. These restrictions are considered important to reflect the unique role of Secretary of State modifying a licence in this way. This power is essential to ensure that existing holders of gas transporter licences can apply for RAB support in respect of hydrogen pipeline projects and that the RAB can operate within the context of their existing licence. It is anticipated that some existing pipelines assets will be suitable for hydrogen use and, as such, modification (in addition to grant and extension) is a fundamental part of enabling existing and new industry to access the support needed to deploy hydrogen infrastructure.
107. Without this power, the Secretary of State would not be able to assign RAB support to selected hydrogen transport projects. The power is very much at the heart of the new Part. There is precedent for similar powers, in addition to section 7 of the GA 1986 which is directly used by this new Part, this approach is broadly similar to the licence modification powers set out in section 6 of the Nuclear Energy (Financing) Act 2022.
108. In addition to the public law protections that apply to a Secretary of State decision of this nature, the powers are subject to a have regard duties, setting out a clear list of wider implications relevant to the decision to use each power that must be taken into account. This approach has precedent in section 6(4) of the Nuclear Energy (Financing) Act 2022.

Restriction

109. This power will also allow the Secretary of State to restrict a licence that is or was previously held by a designated person, if the restriction relates to the person's designation ceasing to have effect. This is a necessary part of ensuring this new Part operates effectively with the new concept of designation and how it interacts with existing licence-holders already operating under the GA 1986 regime. This is achieved, similar to grant and extension, by opening up section

7(4A) of the GA 1986 to use by the Secretary of State as if they were the Authority. This is necessary as without this power it is unclear what, and when, will happen in respect of licencing when designation ceases for a specific person.

Justification for the procedure

110. The procedure to be applied for use of these powers in each case, is non-Parliamentary but is well established under the GA 1986 or precedent.
111. Subsection (5) of new clause (Grant, extension or restriction of gas transporter licence by Secretary of State) specifically clarifies that elements of the relevant procedures in the GA 1986 will apply to Secretary of State use in such a ways that Secretary of State should be considered to be the Authority (and in some cases vice versa) to ensure the appropriate procedural protections apply. The Department considers it most appropriate for essentially the same procedures that apply to the Authority granting, extending or restricting licence – namely by notice – apply to the Secretary of State as well.
112. In respect of modifications, the new clauses aim to reproduce sufficient procedural protections, including through consultation requirements, a have regard duty and scope limitations, and is closely aligned with precedent by way of section 6 of the Nuclear Energy (Financing) Act 2022.
113. Parliament will have approved the overall duties which the Secretary of State will be bound by in carrying out their functions whilst granting, extending or restricting licences, and the Department considers it would be a disproportionate use of Parliamentary time for Parliament to subsequently approve individual licence grant decisions. The additional steps that the Secretary of State must undertake prior to using these powers, as detailed above, also ensure a robust process is followed prior to licences being granted, extended or restricted.

Clause 134: Applications for grant etc of gas transporter licence

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Negative Procedure

Context and purpose

1. This power is needed to ensure the Secretary of State may set out in regulations to procedure for dealing with relevant applications (e.g. those for grant etc as described above).
2. The regulations to which this power relate will therefore provide the detail of the process relating to applications.

Justification for the power

3. The procedure to which this power relates will be detailed and will need to be flexible. It is not well suited to being on the face of the Bill and will need to be updated over time.
4. It is clearly evidenced from similar support regimes (such as contracts for difference under the Energy Act 2013) that learning from each allocation of support may need to be incorporated in the design of the process. Ensuring the procedure is set out in regulations, particularly those subject to the negative procedure, will ensure that Parliamentary time is not disproportionately taken up with tweaks and improvements to the process itself.
5. The Department therefore considers it most appropriate to have the procedure set out in regulations, with the scope of nature of those regulations clearly established on the face of the Bill. This ensures appropriate Parliamentary oversight of what may be done, and industry certain on process, but avoids an undue burden on Parliament for finer points of procedural detail that ultimately relate to powers of Secretary of State that are to be exercised by notice.

Justification for the procedure

6. The Department considers this the appropriate procedure given this relates to the application process for the grant etc of a licence which are themselves done by notice (as explained above). The heavy focus on procedural elements lends this power to negative procedure and avoid an undue burden on Parliamentary time.

Clause 138 (new clause): Information and advice

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Affirmative on first use, Negative thereafter

Context and purpose

7. Information flows within the licensing regime under the GA 1986 will be essential to the efficient and effective operation of the RAB support model.
8. To facilitate and support the operation, monitoring and evaluation of the RAB, a number of information flows will need to be unlocked between various parties and advice sought from different entities. This power ensures those information flows can be established through regulations, giving the parties' involved sufficient certainty on treatment of the information while enabling the regime to be flexible and updated as improvements are needed.

Justification for the power

9. The Department considers the power to make regulations appropriate balancing the flexibility required to set out the relevant information and advice flows in future with sufficient certainty to those affected.
10. It is not currently possible to set out the detail of this element of the regime on the face of the Bill, but it is considered that it is appropriate to place it in legislation given the protections and certainty required for the parties involved. It is also likely that it will need to be updated in light of lessons learned and developments in the market in a way that is better suited to regulations than Primary legislation.

Justification for the procedure

11. We consider that it is appropriate for the first set of regulations made under this power to be subject to the affirmative resolution procedure, and subsequent regulations to be subject to the negative resolution procedure. This reflects the potential importance of the initial intervention and for Parliament to have appropriate oversight of how information is being treated. However, once the first regulations have been made, the Department considered that such intensive parliamentary scrutiny is disproportionate as further changes are to be expected but are anticipated to be technical and incremental, reflecting developments within the hydrogen market, and unlikely to give rise to issues of broader interest.

Clause 140 (new clause): Secretary of State directions to the GEMA

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary procedure: None

Context and purpose

12. This new Part introduces a new role for Secretary of State in the context of the GA 1986 which has previously been occupied by the Authority. To account for both the new role of Secretary of State in this Part and the new deployment of hydrogen at scale, this power is needed as a backstop to ensure the Authority can be directed to act for the purpose of promoting value for money in connection with a hydrogen pipeline project (or in connection with hydrogen pipeline projects generally).

Justification for the power

13. The power is necessary to ensure the purpose of this Part can be given effect not only by Secretary of State but by the actions of the Authority, should it be necessary to direct the Authority to this effect. This direction power can only be used to ensure there is parity of purpose for very specific circumstances regarding the value for money of a hydrogen pipeline project.

14. The power is broadly based in precedent, for example the direction power under section 92 of the Energy Act 2013 where Secretary of State may direct the Office of Nuclear Regulation in certain circumstances. There is also precedent for a Secretary of State direction to the Authority within the GA 1986 itself, such as under section 33BC(9B).

Justification for the procedure

15. The direction power is non-legislative so no Parliamentary procedure is attached. The absence of wider procedure is consistent with the precedents cited above.

Clause 141 (new clause): Repeal of Part

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Affirmative Procedure

Context and purpose

16. The Department envisages a transition to an enduring regime whereby government subsidy is no longer required and RABs could be maintained and

allocated by Ofgem without the need for government strategic intervention. We do not consider it likely that we will require the powers in this new Part permanently and this new clause (Repeal of Part) will ensure a check is placed on longevity of the powers and ultimately enabled them to be repealed.

Justification for the power

17. Decisions as to an appropriate end date for the Part will depend on various factors and, in particular, will be subject to how the hydrogen market develops. This is a nascent market not yet deployed at scale anywhere in the world so there is significant uncertainty over timeframes and the shape of support that the industry will need in the future.
18. Allowing the Secretary of State a power to determine a future end date for these powers strikes an appropriate balance between acquiring necessary powers to support the early stages of the hydrogen economy, against taking powers that should rightfully sit with the regulator. This therefore ensures that these powers will be taken on a temporary basis, but the end date can be defined at a suitable future date after assessing the development of the hydrogen market when it begins to expand. This prevents a notional deadline being set which may inadvertently limit when the Secretary of State can use the powers described here to benefit the hydrogen economy.
19. There is precedent for providing for this by way of regulations in respect of carbon dioxide transport and storage – please see clause 16 and paragraph 1 of Schedule 1 to the Energy Bill.

Justification for the procedure

20. We note that the effect of this power is to switch off provisions in this new Part. As a result, in this particular instance, the affirmative resolution procedure is considered most appropriate.

Clause 142 (new clause): Power to modify Gas Act 1986 in relation to hydrogen

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Affirmative Procedure

Context and purpose

21. The hydrogen economy is in its infancy and will take time to establish at scale. While hydrogen is already a gas for the purpose of the GA 1986, the implications of this at scale cannot be fully tested without transport and storage projects being operationalised. As a result, there is some uncertainty as to whether every provision applying to natural gas in the GA 1986 will technically work for

hydrogen or whether unforeseen problems will arise that require a provision be disapplied or modified in respect of its application to hydrogen.

22. This power is therefore necessary to ensure that provisions of the GA 1986 do not inadvertently prevent the hydrogen economy from establishing. The Department considers it necessary to ensure that the deployment of, and significant investment in, hydrogen projects is not wasted as a result of unforeseen technicalities under the GA 1986 that could be disapplied or modified in a straightforward way to incorporate the specific technical requirements of hydrogen.

Justification for the power

23. The Department considers this a limited and appropriate use of such a power, being the sort of use that Henry VIII powers are meant for. Given the highly technical and granular approach to regulation set out in the GA 1986 it is not possible to assure that hydrogen will be able to operate under that Act until projects are being implemented at scale. As such, any changes that may be needed cannot be put on the face of the Bill. If a problem is identified at the stage of implementation it will need to be addressed swiftly in order to ensure projects are not adversely affected and that hydrogen's role as a key technology for the UK's net zero ambitions is not put in jeopardy.

24. In light of the drafting of the GA 1986, any such changes are expected to be technical within the framing of the GA 1986 and specific to hydrogen which is why the power is being clearly limited in both scope and application. An example is found in section 7(3) and (3A) of the GA 1986 which relates to 'unbundling' requirements deemed necessary as part of ensure a fair natural gas market environment. It is not anticipated that this will create a problem for the hydrogen economy at this stage, but until entities are producing and supplying at scale it will not be clear if that will remain the case. The power can therefore be used to simply switch off, or appropriately modify, the unbundling requirements as they would apply to hydrogen only.

25. The justification for this power is also very specific to the unique role of hydrogen. The existing GA 1986 regime was primarily designed around natural gas and was established nearly 40 years ago. The possibility of using hydrogen as part of major utility is recent by comparison. While the Department considers it appropriate to utilise the GA 1986 regime for hydrogen, there is inherent uncertainty in use of a regime designed in a different era and for a different type of gas. This unique position is reflected both in the approach to this new Part and the specific need for this power to ensure that unforeseen issues do not affect the effectiveness of the new Part in a disproportionate manner.

26. The power is therefore carefully framed as only relating to the GA 1986 which has a very specific role in the regulation of gas. The power only permits regulations to ensure provision of the GA 1986 do not apply or apply with modification, and any such regulations can only be made in respect of the

production, transportation, storage or use of hydrogen. The power also contains a purposive restriction in subsection (3) which is that it may only be exercised for the purpose of facilitating or promoting the production, transportation, storage or use of hydrogen.

27. In light of the above the Department considers this power the most appropriate and proportionate solution, with sufficient protection coming from the restrictions of both the single piece of legislation in scope and the clear limitations on use as set out in the new clause.

Justification for the procedure

28. The Department considers it appropriate that regulations made under this power should be subject to affirmative procedure. The Department also considers it important to ensure a procedural limitation is set in that before exercising the power the Secretary of State must consult both the Authority and such other persons as they consider appropriate. The Department considers that the combination of both this consultation requirement and use of the affirmative procedure to be adequate oversight given the nature and potential use of this power.

Amendments to Part 7: Market Reform and Consumer Protection (Support for energy-intensive industries)

Clause 208 (new clause): Electricity support payments for energy-intensive industries

Power conferred on: Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Affirmative

Context and purpose

29. On the 23rd February 2023, HM Government announced the British Industry Supercharger: providing further targeted measures to ensure the energy costs for key UK industries are in line with other major economies around the world – levelling the playing field for British companies across Europe. This is in order to counter the fact that Energy Intensive Industries (EIIs) in the UK have faced the steepest industrial electricity prices in Europe, due in part to Europe’s alternative policy regimes designed to shield industry from high energy costs.
30. One of the measures listed in the package commits HM Government to offer relief to EIIs on their network charging costs. These are the costs for the use of the electricity network.
31. The powers in this clause enable the Secretary of State to make regulations requiring payments (“electricity support payments”) to be made to a person who carries out an energy-intensive activity, for the purpose of alleviating the impact on the person of electricity costs (in particular, network charging costs). The compensation scheme is to be titled the Network Charging Compensation (NCC) Scheme. This power will be exercised by regulations. Through the regulations, the Secretary of State will make provision for determining eligibility and the corresponding application process for the proposed compensation scheme. The Government will make provision for the calculation of compensation payments to designated beneficiaries. The Secretary of State will also make provision for information sharing, enforcement of obligations and dispute resolution.
32. This clause enables the Secretary of State to appoint by regulations and subject to their consent a pre-existing person/persons to carry out functions as administrator with respect to the NCC Scheme.

Justification for the power

33. The Department considers that it is appropriate for the details of the scheme to be implemented via secondary legislation given details of the scheme will be complex and technical in nature. There is an interdependence between the proposed NCC Scheme and the EII Support Levy (which will raise the revenue to fund the NCC Scheme) which may need to be actively managed. It is therefore necessary to take a power to adapt the regimes to ensure they fit together in an

efficient way that minimises burdens on levy payers, beneficiaries, and administrators.

34. Finalisation of the policy will require decisions on whether the appointment of an external administrator would be appropriate. The Government considered it beneficial to run a public consultation on the details of the mechanism for offering compensation on network charging costs. The consultation will also seek views on the compensation offer to eligible ELLs, so detailed provision could not be placed on the face of the Bill. The consultation also sought views on the compensation offer to eligible ELLs. This consultation opened for responses in June 2023 and concluded in August 2023. The Government response is expected to be published by late September 2023.
35. The Government's current policy proposal does not seek to interfere with the ability of the regulator to independently set network charges. However, the technical detail of the network charging regime may be subject to amendments between introduction of this measure to the Bill and the proposed implementation of the measure in 2025. Implementing the scheme through secondary legislation will enable the Government to take account of views raised during the consultation process, ensuring that the details of the scheme are fit for purpose.
36. Lastly, it is commonplace for the details of levy and support schemes to be set out in regulations, rather than on the face of a Bill. We therefore consider that taking a power in these circumstances follows existing and well-established precedent.

Justification for the procedure

37. It is appropriate that the regulations under this clause to develop a new regime relating to the creation of a new compensation scheme are subject to sufficient Parliamentary scrutiny. The Department has therefore concluded that it is appropriate to use the affirmative procedure.

Clause 209 (new clause): Levy to fund electricity support payments

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

38. The NCC Scheme is to be funded via a charge on licenced electricity suppliers, who are expected to pass the costs onto their domestic and non-domestic consumers.
39. The powers in this clause enable regulations to be made requiring the payment of a levy (the EII Support Levy). This will be used to fund the NCC Scheme and any other costs arising by virtue of the NCC Scheme or the EII Support Levy. The regulations will make provision for the calculation of the levy rate to be applied to individual suppliers and establish the process by which the levy is paid by suppliers. It will also make provision for the sharing of information from suppliers to the administrator of the scheme or the Secretary of State in order to aid the calculation of the levy obligation or to confirm accordance with their obligations.
40. This clause also enables the Secretary of State to appoint by regulations and subject to their consent a person/persons to carry out functions as administrator with respect to the EII Support Levy.
41. The regulations will make provision for managing disputes or defaults on levy obligations from suppliers. They will also make provision for the establishment of the process for managing the risk of default in the event a supplier enters insolvency.

Justification for the power

42. The Department considers it appropriate that these powers are delegated to the Secretary of State and the details of the scheme to be implemented through regulations as they will be technical in nature. As set out in the justification for the power under clause 208, there are complex and technical interactions between the levy power and the NCC Scheme power that may need to be managed and to evolve over time to ensure best value for electricity bill-payers. This includes the ability to evolve the regimes as time passes to ensure that the levy only acquires what is necessary to provide targeted and efficient support
43. A public consultation was undertaken in June 2023 which sought the views of stakeholders on the details of the levy scheme. The responses to this consultation will help inform the final policy design which will be outlined in the Government response to the consultation. As such it would not be prudent for the Bill to set out details of the levy design on whole range of issues where

stakeholder input is critical to the design and successful implementation of the levy scheme.

44. Furthermore, given the interdependence between the proposed EII Support Levy and the NCC Scheme, it is considered appropriate that the details of these schemes be set out through regulations given the technical detail of each scheme will affect the other. For the above reasons, it is more appropriate that the proposed measure be implemented via secondary legislation.

Justification for the procedure

45. It is appropriate that the regulations under this clause to develop a new regime relating to the creation of a new levy are subject to sufficient Parliamentary scrutiny. The Department has therefore concluded that it is appropriate to use the affirmative procedure for regulations made by the Secretary of State under this power.

Amendments to Part 14: Civil Nuclear Sector

Clause 301 (new clause): Convention on Supplementary Compensation for Nuclear Damage: implementation power

Power conferred on: Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Affirmative (Henry VIII in respect of amendments to the Nuclear Installations Act 1965 and other primary legislation)

Context and purpose

46. The UK's participation in international Nuclear Third-Party Liability (NTPL) regimes is crucial to ensuring potential victims have compensation available in the highly unlikely event of a nuclear incident. Additionally, it is important for building investor confidence in new nuclear as such regimes ensure channelling of liabilities to the nuclear operator and place limits on their liability.
47. The UK is currently party to the Paris Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention) and the Brussels Convention Supplementary to the Paris Convention on Third Party Liability in the Field of Nuclear Energy (Brussels Supplementary Convention). These conventions are implemented domestically in the Nuclear Installations Act 1965 (NIA). The UK is seeking to enhance its NTPL regime by seeking accession to the Convention on Supplementary Compensation for Nuclear Damage (CSC).
48. The new clause gives the Secretary of State the power to make regulations in connection with the CSC, including provision for the purpose of facilitating the UK's accession to the CSC. The power can only be used to amend Schedule 22 of the Bill (before it enters into force), the NIA and any other enactments having effect in relation to a matter to which the CSC relates. As this power would enable amendments to primary legislation via regulations, it could be considered a Henry VIII power. This power will be subject to the affirmative procedure to ensure the opportunity for Parliamentary scrutiny.
49. Subsection (1) of the new clause sets out the purposes that the power to make regulations may be used for. These are, firstly, to ensure that the UK can implement the requirements of the CSC into UK domestic law. For example, this could involve making any further changes that are needed to facilitate the UK's accession to the CSC. Or, once the UK has acceded, it would enable the UK to adopt future amendments to the CSC or to exercise any of the optional provisions under the CSC.
50. The other aspect is to deal with any other matters arising out of, or related to, the CSC. For example, this might mean consequential changes that are needed in order to ensure the effective operation of the CSC – such as the way in which the international pooled fund works. It might be needed to ensure the CSC

operates alongside the other NTPL conventions that the UK is (or may become in the future) party to. NTPL conventions evolve over time, and it is important for the UK to ensure smooth operation of the conventions it is party to in order to remove barriers to investment and safeguard the interests of potential victims.

51. Regulations may amend the NIA and any other enactments having effect in relation to a matter to which the CSC relates. Subsection (3)(a) also enables Schedule 22 of the Bill to be amended, for example if any further changes are needed to ensure the UK's accession to the CSC following further engagement with international partners and industry - so prior to the commencement of clause 300 and Schedule 22, which commence on the coming into force of the CSC in respect of the UK.
52. As the UK is the first Paris Convention country to seek CSC accession, it is imperative that there is the ability to amend the domestic implementing legislation, if needed, to ensure that the UK can comply with its international obligations under both the CSC and other international NTPL conventions it is party to.

Justification for the power

53. A delegated power is necessary so that the Secretary of State can amend the domestic implementing legislation, if needed, to ensure that the UK can comply with its international obligations. In particular, the Department wants to ensure that the UK can accede to the CSC and respond to treaty changes or other issues in relation to the CSC, should they arise in future.
54. Given the complexities of the NTPL international conventions and the fact the UK is the first country in the world to accede to the CSC as well as being a Paris Convention country, the Department considers that it would be prudent to have the ability to make amendments by secondary legislation.
55. The use of the power will be limited to certain purposes. Those purposes are, firstly, to implement the CSC into UK domestic law, for example to enable UK accession to the CSC or to respond to future treaty changes. It is common for NTPL treaties to evolve over time and be subject to change by the contracting parties. This power is therefore necessary to implement future treaty changes into domestic law, as needed.
56. As with other international NTPL treaties, the CSC also has optional provisions that the contracting parties may exercise. As such, the UK may need to further amend its implementing legislation in order to exercise an optional provision. This is particularly important in relation to the operation of the CSC shared international fund.
57. The second purpose is to deal with any other matters arising out of, or related to, the CSC. This is to enable the Department to respond to issues that come up in the future operation of the CSC, including consequential matters. For example, if a decision was taken in the future to increase the liability limits, this might have implications for the provision of the international pooled fund. The Department

also needs to ensure that the CSC can operate effectively alongside the UK's other NTPL regimes. Additionally, as NTPL conventions evolve over time the Department needs to be able to respond to these changes to ensure the smooth operation of the conventions to safeguard the interests of potential victims and maintain confidence of industry.

58. The power can only be used to amend Schedule 22 of the Bill (before it enters into force), the NIA and any other enactments having effect in relation to a matter to which the CSC relates. There is precedent for a power of this nature. The UK is currently party to the Paris Convention and Brussels Supplementary Convention, and a similar delegated power exists in relation to these conventions in Section 76 of the Energy Act 2004 (Section 76). This power was used to make the Nuclear Installations (Liability for Damage) Order 2016 to amend the NIA in order to implement changes brought in by the 2004 protocols to the Paris and Brussels Conventions. The power in Section 76 also covers amendments to give effect to the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention.

Justification for the procedure

59. It is appropriate that regulations made under this new clause to amend the domestic legislation implementing the UK's requirements under the CSC are subject to sufficient Parliamentary scrutiny. The Department has therefore concluded that it is appropriate to use the affirmative procedure.

Amendments to Part 14: New Chapter 4 – Great British Nuclear

Clause 316 (new clause): Secretary of State directions and guidance

Power conferred on: Secretary of State

Power exercised by: Giving a direction or guidance

Parliamentary procedure: None

Context and purpose

60. Great British Nuclear (GBN) has been launched and is currently operating through an existing government company, British Nuclear Fuels Limited. The purpose of GBN is to facilitate delivery of the government's programme of new civil nuclear projects. These amendments will ensure that GBN has the long-term mandate to carry out the role that government intends by setting out its role, together with necessary provisions relating to its operations, in legislation.
61. This clause confers power for the Secretary of State to give directions and guidance to GBN in connection with the furtherance of its objects. The directions may be specific or general in nature. GBN must comply with such directions and have regard to guidance given to it by the Secretary of State.
62. The government's policy intention is that GBN will generally be operationally independent. However, given GBN's broad and potentially shifting responsibilities over time it is considered necessary that the Secretary of State has a mechanism through which to direct and guide the strategic direction of GBN in line with government policy.

Justification for the power

63. GBN will be a government-owned company and as such will have broad general powers under the Companies Act 2006. The Bill, in setting out GBN's objects, stipulates that those general powers are to be exercised to facilitate the design, construction, commissioning and operation of nuclear energy generation projects in furtherance of government policy.
64. GBN's role is to drive delivery of government's ambitions for new nuclear. The specific nature and scope of these ambitions (e.g. how many projects, which technology etc.) may change over time. As new nuclear also has a very long lead time GBN is designed to be a flexible delivery vehicle that may undertake different activities and assume and relinquish responsibilities over time.
65. Therefore, instead of including specific functions, powers, duties and objectives for GBN in legislation or referencing particular policy documents GBN is required to have regard to, a power for the Secretary of State to direct and issue guidance to GBN is sought to ensure GBN's enduring role in delivering the government's policy. Specific references to particular guidance would risk limiting the effectiveness of the legislation due to it becoming outdated or unnecessarily restricting GBN's scope. The directions and guidance given by the Secretary of

State – and the process attached to it – is intended to be in addition to and separate from any more general policy or guidance to which GBN is required to comply or have regard to as (subject to Cabinet Office classification) an NDPB.

66. Although the Secretary of State can use shareholder powers in relation to the company designated as GBN, having an explicit power of direction would require certain action to be taken or restricted with legal force under public law. This would provide a more transparent means through which the Secretary of State can focus GBN in its activities.
67. The Secretary of State will be required to first consult with GBN and such persons as the Secretary of State considers appropriate before issuing directions. This will ensure that such directions or guidance are only used where they are necessary and appropriate, respecting GBN's relevant expertise.
68. The clause also requires that all directions are laid before parliament and published and that guidance given to GBN in connection with this power is published. This will ensure appropriate levels of transparency.
69. There are numerous examples of similar powers to direct and give guidance, including where the arm's length bodies in question are companies such as in respect of the UK Infrastructure Bank (UK Infrastructure Bank Act 2023) and Strategic Highways Companies (Infrastructure Act 2015).
70. Example scenarios where this power may be used include:
 - a. **Shift in government policy for new nuclear:** There could be a move to focussing attention on a particular nuclear technology or a change in the stated ambition for nuclear generating capacity which would require GBN to focus on new areas of work, possibly to the exclusion of others, or to scale its operations up or down.
 - b. **Intervention in the public interest:** The Secretary of State may direct GBN to take a specific action that is in the public interest, for example a focus on a particular type of technology.

Justification for the procedure

71. The Department considers that giving directions or guidance would be an executive, rather than legislative, function. It therefore believes that no parliamentary procedure is required, though directions will be laid before parliament and published and guidance will be published for transparency.
72. The circumstances in which this power would be used are likely to be highly context-specific and would generally be matters of policy rather than law. There are appropriate safeguards in place around the use of the power, such as the requirement to consult GBN and such other persons as the Secretary of State considers appropriate, ensuring GBN's position as an expert body is adequately respected. The Secretary of State would also be required as a matter of public law to take GBN's and others' representations in response to consultation in relation to the proposed direction into account.

Clause 320 (new clause): Transfer schemes: compensation

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Negative

Context and purpose

73. As part of designating a company as GBN, and as its activities evolve over time, property, rights and liabilities may need to be transferred to it from other relevant public bodies, companies and/or their subsidiaries, including between a former and proposed GBN company. Consequently, property, rights and liabilities currently held by these bodies must be transferred to GBN. Additionally, there may be future scenarios where GBN assumes or relinquishes involvement in particular civil nuclear generation projects, necessitating the transfer of property, rights and liabilities to or from it. The Bill includes power for these transfers to be effected by transfer schemes made by the Secretary of State. The Bill also specifies that the transferor may be compensated by the Secretary of State or any relevant transferee.

74. Moreover, within this context, there are scenarios whereby the transfer scheme can override agreements with third parties that might otherwise prevent or restrict a transfer.

75. It is therefore possible that third parties (other than a transferor) may suffer loss or damage in consequence of the Secretary of State's exercise of the transfer scheme powers. Where this is the case, it is appropriate that they too should be compensated.

76. This clause sets out that if the Secretary of State and the person entitled to compensation fail to reach an agreement on compensation, an independent valuer must be appointed to determine the compensation. In the absence of an agreement on valuer, the Secretary of State can appoint a valuer on behalf of both parties. There are a number of aspects of this determination which the Secretary of State may provide for in regulations. These are set out at paragraph 8(5) of Schedule 9 to the Bill which will apply equally to regulations made in connection with transfer schemes relating to GBN by virtue of sub-section (5) of this clause and include matters such as the procedure to be followed by the valuer, and the matters to which the valuer must have regard, or assumptions which the valuer must apply.

Justification for the power

77. The matters which will make up the content of the regulations pertain to technical and procedural aspects; providing detailed rules for the valuer's task. These matters will need to be discussed with potential valuers to ensure that the regulations are fit for purpose. The requirements might also change over time, and need to adapt according to the normal business practice amongst providers of independent valuation services. Allowing the Secretary of State to update

these requirements over time will ensure that the valuation procedure remains fair, that it continues to provide good value for money for government, and that it properly reflects how valuers carry out their services.

Justification for the procedure

78. The government considers that the negative resolution procedure is appropriate, given this regulation will be the result of thorough due diligence review and sensitive commercial negotiations that require extensive technical input. This due diligence process is anticipated to be significant in volume and market sensitive in nature. Since the government cannot disclose third-party information used in developing these regulations, the negative resolution procedure ensures a balanced approach to address these complexities.
79. For an example of regulations relating to compensation being subject to the negative procedure, even in sensitive circumstances, see sections 37 and 64(3) of the Commonhold and Leasehold Reform Act 2002.

Clause 321 (new clause): Transfer schemes: Taxation

Power conferred on: HM Treasury

Power exercised by: Statutory instrument

Parliamentary procedure: Negative (Commons only)

Context and purpose

80. As part of the designation of a company as GBN and as its activities evolve, various property, rights and liabilities may need to be transferred to it from other relevant public bodies, companies and/or their subsidiaries, including between a former and newly designated GBN company. This will require that property currently owned by such other bodies be moved into the ownership of GBN.
81. There may also, in future, be circumstances in which GBN assumes or relinquishes involvement in particular civil nuclear generation projects, which means that property, rights and liabilities need to be transferred to or from it. The Bill includes powers for these transfers to be affected by transfer schemes made by the Secretary of State. Such transfer schemes may result in tax liabilities on the Secretary of State (as a potential transferee under the scheme) or on other parties to the transfer scheme, or on those who are otherwise affected by the transfer scheme.
82. It may be appropriate to vary how such tax liabilities apply, to ensure value for money for government, allow the most efficient structure to be adopted for the transfer, and protect against inadvertent imposition of tax liabilities on persons who are not best placed to take on the burden of those liabilities.

Justification for the power

83. The variation of how relevant tax applies will need to be adapted to the actual scheme or schemes which may be made under the transfer scheme powers set out in the Bill. It would not be appropriate to put the tax variation on the face of the Bill before it has become apparent how the transfers are likely to be structured and what tax issues may arise. It may also be necessary for the Treasury to amend the variation over time.
84. It is not uncommon for variations to tax liabilities to be drafted by way of power for the Treasury, as here. Examples include paragraph 4 of Schedule 5 to the Investigatory Powers Act 2016 and section 25 Public Bodies Act 2011.

Justification for the procedure

85. The government considers that the Commons-only negative resolution procedure is appropriate, given that the Treasury will be well placed to determine the technical details and policy drivers of what taxes should apply to the relevant transfers. The resulting SI would most likely be technical and focused on internal government administration and is unlikely to justify lengthy parliamentary scrutiny.

Clause 324 (new clause): Pension arrangements in connection with Great British Nuclear

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Negative

Context and purpose

86. Within the nuclear and electricity sector there are special pension protections for certain employees which give them the right to continued membership of a defined benefit (DB) pension scheme (DB scheme). Similar protections apply in other sectors and for employees of local or central government. Where those employees are subject to a compulsory transfer of employment, those protections require their new employer to continue to provide them with a DB Scheme.
87. The designation of a company as GBN and GBN's anticipated long-term role are likely to result in transfers of employment of employees who are currently active members of a DB scheme, some of whom will have special pension protections and some of whom may not. It is therefore likely that changes to DB Schemes will be required over time in connection with the transfer schemes for the designation of GBN and subsequent transfer schemes in connection with its activities. Similarly, there are likely to be employees who are active members of defined contribution/money purchase (DC) pension schemes who will be impacted which may require changes to such DC schemes.

88. As part of any such transfer of employees, it is important to separate the pension arrangements of GBN and any new employer of employees who are the subject of a transfer scheme (including determining how any historic DB liabilities should be apportioned) whilst ensuring that employees' accrued DB pension benefits are not adversely impacted (for example, by the loss of the employees' final salary link). It is also important that future service benefits can be required to be broadly the same immediately after the transfer for employees with existing pension protections or those who may benefit from any future changes in pensions policy. Resolving issues around the pension arrangements of transferring employees should not be unnecessarily delayed or disturbed by the process of setting up new pension schemes, changing existing schemes or by requiring any third-party consents.
89. Broad powers are therefore required to allow the Secretary of State to make provision to facilitate the participation of GBN and any related entities in pension schemes which are currently in existence for transferring employees. In addition, to ensure durable pensions arrangements the powers to allow the Secretary of State to make provision for the following are required:
- a. the division of the relevant pension schemes into different sections;
 - b. the participation of existing and new employers in those different sections;
 - c. the allocation of DB assets and rights between those sections (and for the valuation of assets and rights in that context); and
 - d. the transfer of assets and rights from the newly created sections to another pension scheme.
90. These provisions will ensure that the pension arrangements will take into account both the requirements of GBN and associated entities and also the DB pension liabilities of the employees and former employees which may remain the responsibility of a transferor.

Justification for the power

91. The pensions and employment arrangements regarding the designation of a company as GBN and for any future transfer schemes relating to GBN can only be properly determined as part of the overall structuring of each respective transfer scheme and cannot be determined in advance. Provision will need to be made taking into account the detail of the relevant DB and DC pension schemes themselves, and the decisions on how employees and property will transfer to the receiving entity as well as how, where appropriate, the historic DB pension liabilities will be apportioned between the transferring and receiving entities.
92. The detailed provision of these matters can only be made once the due diligence process associated with any transfer scheme has taken place in the future. Any immediate due diligence needed can only take place once powers within the Bill are secured as government can only rely on voluntary disclosure by the relevant parties otherwise prior to this. Further, any speculative information gathering undertaken at this stage would become out of date and therefore of limited use.

Consequently, this process must wait and be carried out once legislation has passed and as GBN's activities develop and evolve. Given GBN's anticipated long-term role, there are then likely to be a number of transfer schemes which are made over time of varying natures, and with different parties involved, each of which will require due diligence around the pensions position.

93. The legislation will provide that the Secretary of State must ensure that relevant employees are, in all material respects, no worse off in terms of their pensions provision immediately after the exercise of the power. Before the power is exercised, the relevant pension scheme trustees and principal employers must be consulted. The proposed power is modelled on the ISOP pension provisions in Schedule 10 to the Energy Bill, and the power in section 96 Transport Act 2000 is to some extent a precedent for taking this kind of delegated power.

Justification for the procedure

94. The government considers that the negative resolution procedure is appropriate, given that the regulations have the potential to be highly technical requiring actuarial expertise once the full evidence is available. There is potential for this evidence to include granular information on pensions, access to which may need to be necessarily restricted. The regulations will be, in essence, the technical working out of the key principle of protecting existing scheme member rights set out in primary legislation, or which might be set out in future legislation where there are changes in pensions policy.

Amendments made at Commons Report Stage

Amendments to Part 2: Carbon Dioxide Capture, Storage etc and Hydrogen Production

Amendment to Clause 62: Direction to offer to contract with eligible hydrogen transport provider (Commons Amendment 52)

Amendment to Clause 64: Direction to offer to contract with eligible hydrogen storage provider (Commons Amendments 54)

Amendment to Clause 66: Direction to offer to contract (with eligible low carbon hydrogen producer) (Commons Amendments 59-60)

Amendment to Clause 68: Direction to offer to contract (with eligible carbon capture entity) (Commons Amendments 69-70)

Power conferred on: Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Affirmative procedure

Context and purpose

95. As discussed in paragraph 118 of the Delegated Powers Memorandum published at Introduction, the Bill will provide the Secretary of State with a power to make regulations determining the meaning of “eligible” in relation to a low carbon hydrogen producer and a carbon capture entity. This is enabled by the overarching power in clause 57(1) to make regulations relating to revenue support contracts, with an obligation to do so in clauses 66(4) and 68(4) respectively. Since introduction, similar provisions have been added in relation to a hydrogen transport provider (clause 62(4)) and a hydrogen storage provider (clause 64(4)). This is required as the Secretary of State is only able to direct a counterparty to enter into a contract with an ‘eligible’ person. An allocation body will also only be able to give a notification to a counterparty specifying an ‘eligible’ person to enter into a contract with.

96. The amendments to clauses 62, 64, 66 and 68 make it clear that such revenue support regulations defining “eligible” under Chapter 1, Part 2 may make reference to standards and other published documents (as they have effect from time to time).

Justification for the power

97. In the consultation on proposals for hydrogen production and industrial carbon capture regulations, published on 30 March 2023, government put forward

proposals to determine the meaning of “eligible” in relation to a “low carbon hydrogen producer” in revenue support regulations, in accordance with clause 61(3) of the Bill as it then was (the same provision is now clause 66(4)). This included the option to refer to the live version of the UK low carbon hydrogen standard (LCHS).

98. However, under current drafting the Bill does not contain an express power for revenue support regulations to make ambulatory reference to the LCHS or an equivalent standard and this amendment seeks to address this.
99. The Department considers this necessary as the level of detail covered by standards would not be suited for regulations. Given the nascency of the CCUS and hydrogen industry and the need for regulations underpinning the revenue support contracts to provide sufficient certainty to investors, the ability to make ambulatory reference in regulations would provide the flexibility to help ensure the revenue support schemes are in line with latest technological developments to encourage ongoing innovation and investment. This will also provide administrative benefits whereby eligibility requirements would always be aligned with updates to the relevant standard, helping to ensure strong alignment between the regulations and round-by-round allocation guidance.
100. The Department has also assessed that it is appropriate to extend this power to revenue support regulations defining “eligibility” under clauses 62, 64 and 68 in order to provide flexibility in case it is considered appropriate to refer to standards and other published documents (as they have effect from time to time) for carbon capture, hydrogen transport and hydrogen storage revenue support.

Justification for the procedure

101. As discussed in paragraph 155 of the Delegated Powers Memorandum published at Introduction, as these provisions deal with the fundamental parameters of the schemes, including who is eligible for support, it is appropriate for these measures to be subject to a greater level of parliamentary scrutiny through the affirmative procedure. Use of the affirmative procedure will also reassure prospective contract holders that fundamental aspects of the process upon which they will need to rely when applying, are unlikely to change frequently or at short notice.

***Amendment to Clause 70: Obligations of relevant market participants
(Commons Amendment 74)***

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: The first revenue support regulations making provision falling within Clause 70 will be in accordance with affirmative procedure, and any further regulations made as relate to those provisions, would be made by negative procedure.

Context and purpose

102. Clause 70 is an existing clause in the Bill that enables revenue support regulations to make provision requiring relevant market participants to pay a hydrogen levy administrator so that a relevant hydrogen revenue support counterparty can make payments under relevant hydrogen revenue support contracts and to cover other related costs.
103. The original clause set out that “relevant market participants” means one or more descriptions of persons specified in revenue support regulations, but such description(s) cannot include persons other than gas suppliers, electricity suppliers or gas shippers. This amendment restricts the options for who can be considered a ‘relevant market participant’. Specifically, it amends clause 70 to set out that a “relevant market participant” means one or more descriptions of persons specified in revenue support regulations, but such description(s) cannot include persons other than GB gas shippers or Northern Ireland gas shippers (as defined in clause 56 (as amended)).
104. The Committee may also wish to note that consequential amendments have also been made to clauses 56, 83, 84, 89, 91, 163 and Schedule 14.

Justification for the power

105. As set out in more detail in paragraph 138 of the Delegated Powers Memorandum, published 7 July 2022, this power is required to enable the Secretary of State to update the levy design in the future to reflect the development of the market for low carbon hydrogen and changes to the wider energy market.

Justification for the procedure

106. The Department considers that it is appropriate that the first set of regulations made using this power is subject to the affirmative resolution procedure, with subsequent regulations subject to the negative resolution procedure. This position is set out in more detail in paragraph 156 of the Delegated Powers Memorandum, published 7 July 2022.

Amendment to Clause 76: Allocation of Contracts (Commons Amendment 85)

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Affirmative procedure

Context and purpose

107. As discussed in paragraph 125 of the Delegated Powers Memorandum published at Introduction, clause 76(2)(a) and (7) allows revenue support regulations to make provision conferring a power on the Secretary of State to make rules about the allocation of hydrogen production revenue support contracts or carbon capture revenue support contracts (known as an “allocation framework”), as well as a power to amend, add to or remove an allocation framework.
108. Subsections (4) to (6) provide examples of what may be included in an allocation framework. This amendment to subsection (4) enables an allocation framework to refer to standards and other published documents (as they have effect from time to time).

Justification for the power

109. Further to the justification for the preceding amendment, it may also be necessary to include references to standards and other published documents (as they have effect from time to time) in allocation frameworks.

Justification for the procedure

110. As set out in the Delegated Powers Memorandum published at Introduction, provisions which may be included in regulations by virtue of clause 76, which deal with the fundamental parameters of the schemes, including how support is allocated, it is appropriate for these measures to be subject to a greater level of parliamentary scrutiny through the affirmative procedure.
111. However, as discussed in paragraph 161 of the Delegated Powers Memorandum published at Introduction, the allocation framework, a technical sub-component of the process, will not be subject to parliamentary scrutiny due to the highly technical information and administrative rules it will include. The Department also needs to ensure that it can organise and run allocation rounds to short timeframes to avoid investor uncertainty as well as avoid wasted costs. This would be challenging if an allocation framework were to be subject to parliamentary time.

Amendment to Part 4: New Technology

New clause: Renewable Liquid Heating Fuel (Commons Amendment 166)

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

112. This clause provides the Secretary of State with a power to make regulations: (i) imposing on off-gas grid heating fuel suppliers an obligation in respect of renewable liquid heating fuel that corresponds to or is similar to the Renewable Transport Fuel Obligation (RTFO) provided for in the Energy Act 2004 and (ii) making provision connected with that obligation which corresponds to or is similar to provision made by, or that may be made under, Chapter 5 of Part 2 of the Energy Act 2004. The RTFO obligates suppliers of relevant transport fuels in the UK to produce evidence showing that a percentage of the fuel that they supply comes from renewable sources.

113. Accordingly, this clause would permit the Secretary of State to impose by regulations on off-gas-grid heating fuel suppliers an obligation to produce evidence that they have supplied a specified amount of renewable liquid heating fuels within a given period. The regulations could also provide for operational arrangements relating to the administration and enforcement of the obligation. This includes:

- Establishing and appointing an Administrator to administer the obligation (corresponding to sections 125-125C of the Energy Act 2004).
- Making provision about how amounts of heating fuel are to be counted or determined for the purposes of the obligation (corresponding to section 126 of the Energy Act 2004).
- Making provision for the Administrator to issue certificates evidencing supply of renewable liquid heating fuels. The regulations may authorise transfers of certificates between persons (including for consideration) (corresponding to section 126 of the Energy Act 2004).
- Making provision for a supplier to pay a specified sum to the Administrator if they do not fulfil their obligation to supply the specified amount of renewable liquid heating fuel (corresponding to section 128 of the Energy Act 2004).
- Providing for the Administrator to impose civil penalties on persons who contravene specified obligations (corresponding to section 129 of the Energy Act 2004).

- Providing for a procedure for individuals to object to penalties and appeal against penalties to the courts (corresponding to sections 130 and 131 of the Energy Act 2004).
 - Providing for HMRC to disclose specified information to the Administrator, impose constraints on the further disclosure of such information and make it an offence to wrongfully disclose such information (corresponding to sections 131A to 131C of the Energy Act 2004.)
114. Decarbonisation of heating is an important part of meeting our Net Zero targets. Where buildings are not suitable for electrification technologies such as heat pumps, renewable liquid fuels may be useful alternatives, allowing decarbonisation of a broader range of buildings.
115. These powers enable the Secretary of State to promote the decarbonisation of heating off the gas grid through renewable liquid fuels. The subsequent regulations are market-based, establishing tradeable credits where renewable liquid fuels are sold, to incentivise their supply.
116. The RTFO in the Energy Act 2004 has proven to be an effective piece of legislation to oblige transport fuel suppliers to supply renewable fuels, so these powers seek to draw on the RTFO powers.

Justification for the power

117. The Department considers the power to make regulations appropriate, as the scope of the obligations under the regulations is limited to businesses supplying heating fuel for use off the gas grid.
118. The clause enables the specification in regulations of the parties on whom renewable liquid fuel obligations will be imposed, the levels of the obligations, and the fuels which will qualify towards meeting the obligations.
119. The regulations made under this power will be highly technical in nature, so it is appropriate that they should be made via regulation rather than on the face of the Bill. Regulations also allow for the details and rules of the obligations to be changed in response to shifts in market conditions.
120. For example, due to the potential for competition for renewable liquid fuels from other sectors such as road transport, aviation, and power generation, it may be desirable to adjust the obligations on heating fuel suppliers in order to meet strategic goals in other sectors. Equally, should renewable liquid fuels prove to be more available and strategically desirable than previously thought, obligations on heating fuel suppliers could be changed.
121. The scheme on which the obligation is based, the RTFO, is similarly established and adjusted by regulations.

Justification for the procedure

122. The Department is of the view that the additional level of Parliamentary scrutiny provided for by the draft affirmative procedure is more appropriate for this subject matter. This will provide Parliament with sufficient opportunity for scrutiny and debate of the regulations.

123. Given that this power gives the Secretary of State powers to place obligations on fuel suppliers, it is appropriate that Parliament should have the opportunity to scrutinise the detail of those obligations.

Amendments to Part 10: Energy Performance of Premises

Amendments to Clause 246: Power to make energy performance regulations (Commons Amendments 188-190)

Amendment to Clause 248: Sanctions (Commons Amendment 191)

Amendments to Clause 249: Regulations under Part 10 (Commons Amendments 192-199)

Power conferred on: Scottish Ministers and the Department of Finance in Northern Ireland.

Power exercised by: Regulations made by Statutory Instrument.

Parliamentary procedure: Negative procedure (Scotland); negative resolution (Northern Ireland), save that the affirmative procedure will be used for regulations introducing any new civil penalties or new criminal offences and in respect of any regulations which amend primary legislation.

Context and purpose

124. The purpose of these amendments is to enable Scottish Ministers and the Department of Finance in Northern Ireland to make changes to their existing Energy Performance of Buildings (EPB) regime, as set out in the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 (SI 2008/170) and Energy Performance of Buildings (Scotland) Regulations 2008 (SSI 2008/309) respectively.
125. This will ensure that it is fit for purpose and contributes effectively to improving the energy efficiency of buildings, which, in turn, will advance efforts to achieve the Government's target of net zero carbon emissions by 2050, as set out in s.1 of the Climate Change Act 2008.
126. The energy performance of buildings was regulated by the EU before EU exit and s.2(2) of the European Communities Act 1972 was used to make existing regulations. That power no longer exists. Instead this new power will allow Scottish Ministers and the Department of Finance in Northern Ireland to change how the energy performance of buildings is regulated according to domestic priorities. These amendments will provide new primary powers which will enable Scottish Ministers and the Department of Finance in Northern Ireland to:
- Change the circumstances where and when an energy certificate is required, the process and timeframes to secure an energy certificate and validity periods of energy certificates.
 - Enhance the extent to which Energy Performance Certificates (EPC) and Display Energy Certificates (DEC) are capable of stimulating action to reduce carbon emissions from buildings, for example, by increasing the range of recommendations shown on every certificate, by potentially extending the scope of DECs to all non-domestic buildings and varying the validity period for DECs. An EPC contains

information about a property's energy use and typical energy costs and recommendations about how to reduce energy use and save money Display Energy Certificates (DECs) are designed to show the energy performance of public buildings.

- Improve the standards of assessment and of quality assurance in relation to Energy Assessors and Accreditation Schemes.
- Address specific issues relating to the performance and inspection of air conditioning, ventilation and heating systems.
- Consider making changes to the enforcement regime to improve its effectiveness and encourage high levels of compliance by building owners, Energy Assessors and Accreditation Schemes with the Energy Performance of Premises (EPP) regime (along with sufficient, flexible enforcement options to support this).
- Improve the accuracy, accessibility and use of EPP data to support enforcement and our wider energy efficiency policy and powers to charge fees.

Justification for the power

127. Section 1 of the European Union (Withdrawal) Act 2018 repealed the European Communities Act 1972. This means that the only way to substantively amend the existing EPB regulations will be by obtaining new powers in primary legislation. The Retained EU Law (Revocation and Reform) Act 2023 contains powers that could be used to amend energy performance of buildings regulations however they are limited in scope and not designed to meet our policy objectives.

128. The Department is seeking, through these amendments, a replacement power for Scottish Ministers and Department of Finance in Northern Ireland, to amend, revoke or replace their existing EPB regime. This power is required specifically for the purposes of amending the existing EPB regime in Northern Ireland and Scotland to ensure that it remains fit for purpose. These amendments demonstrate our support for Devolved Administrations in this area as well as providing a degree of consistency of regulation across the UK.

129. Further, the Department's view is that the amount of technical detail will be such that it is appropriate for it to be set out in secondary, not primary, legislation. Proposals to change the regime and regulations themselves (including on technical matters) have not yet been consulted on. The consultation process is expected to take place before changes to the regimes are brought forward.

Justification for the procedure

130. The Department considers the negative procedure is appropriate for most uses of the power and proposed future amendments to regulations dealing with energy performance of buildings include provisions relating to technical matters.

Sufficient flexibility is required in order to update and revise the regulations over time in order to meet the net zero commitment, especially given the pace of technological change. The affirmative procedure will, however, be used for the creation of new civil penalties or new criminal offences and in respect of any regulations which amend primary legislation.

Note to the Committee on amendments to Part 13 - Clause 289: Assessment of environmental effects etc

131. The Committee may wish to note that clause 289 of the Bill, which is a delegated power to make regulations about environmental assessments for offshore wind, is being amended to remove the power to disapply or modify any rights arising from Article 6 of the Habitats Directive (rights preserved under section 4 of the European Union (Withdrawal) Act 2018). Section 2 of the Retained EU Law (Revocation and Reform) Act 2023 will repeal section 4 of the European Union (Withdrawal) Act 2018 at the end of 2023. As a result, such rights will cease to be recognised or enforceable in domestic law and it is therefore no longer necessary for regulations made under clause 289(1) to disapply or modify those rights.
132. The Department's justification for the remaining delegated power in clause 289 was set out in paragraphs 22-40 of the supplementary Delegated Powers Memorandum published when the clause was introduced as an amendment in January 2023.

Note to the Committee on amendments relating to the devolved administrations

133. The Committee may also wish to note that amendments were agreed with the Scottish Government to strengthen several of the Bill's consultation provisions and require the Secretary of State to seek the consent of devolved ministers before exercising powers under Clauses 2, 3 and 293. These amendments have been extended to apply in Wales and Northern Ireland where appropriate.

Delegated Powers Summary Table – House of Commons Amendments

Clause/Schedule	Power	New power/Amendment to existing power	Procedure
<i>Part 2: Carbon Dioxide Capture, Storage etc and Hydrogen</i>			
Clause 57	Revenue support contracts	Amendment to existing power	Affirmative
Clause 58	Duties of revenue support counterparty	Amendment to existing power	None
Clause 61	Designation of hydrogen transport counterparty	New power	None
	Power for Secretary of State to specify qualifying compounds for transporting hydrogen	New power	Negative
Clause 62	Direction to offer to contract with eligible hydrogen transport provider	New power	None
	Power of Secretary of State to make regulations making further provision about a direction to a hydrogen transport counterparty	New power	Affirmative
	Power for Secretary of State to make regulations determining eligibility in relation to hydrogen transport providers	New power	Affirmative
Clause 63	Designation of hydrogen storage counterparty	New power	None
	Power for Secretary of State to specify qualifying compounds for storage of hydrogen	New power	Negative
Clause 64	Direction to offer to contract with eligible hydrogen storage provider	New power	None
	Power of Secretary of State to make regulations making further provision about a direction to a hydrogen storage counterparty	New power	Affirmative
	Power for Secretary of State to make regulations determining eligibility in relation to hydrogen storage providers	New power	Affirmative
Clause 66	Direction to offer to contract (with eligible low carbon hydrogen producer)	Amendment to existing power	Affirmative

Clause 68	Direction to offer to contract (with eligible carbon capture entity)	Amendment to existing power	Affirmative
Clause 70	Obligations of relevant market participants	Amendment to existing power	Affirmative first, negative for subsequent regulations
Clause 71	Payments to relevant market participants	Amendment to existing power	Affirmative first, negative for subsequent regulations
Clause 76	Allocation of contracts	Amendment to existing power	
Clause 81	Further provision about designations	Amendment to existing power	Affirmative
Clause 107	Retention of information and samples	New power	Negative
Clause 116(10)	Financial penalty notices (Henry VIII power)	New power	Affirmative
Schedule 7 – paragraph 1(6) to (8)	Disclosure by OGA to specified persons (Henry VIII)	New power	Affirmative
Schedule 7 – paragraph 4	Disclosure after specified period	New power	Affirmative
<i>Part 3: Licensing of hydrogen pipeline projects</i>			
Clause 130	Designation	New power	None
Clause 131	Designation: Procedure	New power	None
Clause 132	Revocation of designation	New power	None
Clause 133	Grant, extension or restriction of gas transporter licence by Secretary of State	New power	None
Clause 134	Applications for grant etc of gas transporter licence	New power	Negative
Clause 135	Modification of gas transporter licence by Secretary of State	New power	None
Clause 138	Information and advice	New power	Affirmative first, negative for

			subsequent regulations
Clause 140	Secretary of State directions to the GEMA	New power	None
Clause 141	Repeal of Part	New power	Affirmative
Clause 142	Power to modify Gas Act 1986 in relation to hydrogen	New power	Affirmative
<i>Part 4: New Technology</i>			
Clause 157	Renewable Liquid Heating Fuel	New power	Affirmative
<i>Part 7: Market reform and consumer protection</i>			
Clause 208	Electricity support payments for energy-intensive industries	New power	Affirmative
Clause 209	Levy to fund electricity support payments	New power	Affirmative
<i>Part 10: Energy performance of premises</i>			
Clause 246	Power to make energy performance regulations	Amendment to existing power	Negative, except affirmative procedure for regulations introducing any new civil penalties or new criminal offences and for regulations amending primary legislation
Clause 248	Sanctions	Amendment to existing power	
Clause 249	Regulations under Part 10	Amendment to existing power	

Part 14: Civil nuclear sector

Clause 301	Convention on Supplementary Compensation for Nuclear Damage: implementation power (Henry VIII in respect of amendments to the Nuclear Installations Act and other primary legislation)	New power	Affirmative
Clause 316	Secretary of State directions and guidance	New power	None
Clause 320	Transfer schemes: compensation	New power	Negative
Clause 321	Transfer schemes: taxation	New power	Negative (Commons only)
Clause 324	Pension arrangements in connection with Great British Nuclear	New power	Negative