

OFFSHORE PETROLEUM LICENSING BILL

DELEGATED POWERS MEMORANDUM

A. Summary

Introduction

1. This memorandum has been prepared by the Department for Energy Security and Net Zero for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Offshore Petroleum Licensing Bill (“the Bill”). The Bill will be introduced in the House of Commons in the Fourth Parliamentary session.
2. There are two provisions relating to delegated powers in the Bill, which:
 - a. extend an existing power for the Secretary of State to make regulations in section 4 of the Petroleum Act 1998; and
 - b. allow the Secretary of State to change the definition of carbon intensity for the purposes of one of the new statutory tests, to account for emissions of other greenhouse gases in addition to carbon dioxide.
3. This memorandum explains the nature of, and the reason for, the provisions.

Purpose and effect of the Bill

4. While the Government is scaling up homegrown clean energy sources such as offshore wind and nuclear, the UK still relies on oil and gas and this will continue to be the case over the coming decades. As the Government takes forward a pragmatic, proportionate and realistic response to the path to net zero, a key part of this will be maintaining our domestic oil and gas industry which underpins our energy security and boosts the UK economy.
5. Presently, there are concerns about investor confidence in the UK’s domestic oil and gas industry. Concerns have also been expressed about whether or not licensing rounds will continue predictably into the future and support for continued licensing and exploration is considered an important factor in attracting investment. This Bill is intended to provide assurance to stakeholders that domestic oil and gas production will continue.
6. The Bill will place a duty on the Oil and Gas Authority (“OGA”), currently operating as the North Sea Transition Authority (“NSTA”), requiring it to undertake a process of inviting applications for new oil and gas licences each year, provided that two tests are satisfied. This is in contrast to the current process, in which it is entirely a matter for the OGA to decide whether and when to invite applications for new licences.

Context and Background

7. The vast majority of the UK’s remaining oil and gas resources are located offshore, ie below the UK’s territorial sea and the UK sector of the Continental Shelf (“UKCS”). The UKCS, which covers both the UK portion of the North Sea and other areas of UK waters, is described as a “mature” or “declining” basin. Oil and gas have been commercially extracted from the UKCS since the 1960s, with production peaking in the early 2000s. While there remain some commercially exploitable amounts of oil and gas (discovered and undiscovered), it is expected that overall production levels will continue to decline in future, though remaining above zero beyond 2050. It is also expected that the UK’s demand for

oil and gas will remain greater than domestic production throughout the period to 2050, meaning that the UK will remain a “net importer” of both products.

8. Section 2 of the Petroleum Act 1998 vests all rights to petroleum (which includes both oil and gas) “*in its natural condition in strata in Great Britain or beneath the territorial sea adjacent to the United Kingdom*” in His Majesty. Section 1(1) of the Continental Shelf Act 1964 similarly vests “[a]ny rights exercisable by the United Kingdom outside territorial waters with respect to the sea bed and subsoil and their natural resources, except so far as they are exercisable in relation to coal” in His Majesty.¹ Section 3(1) of the Petroleum Act 1998 provides that the “*appropriate authority*”, on behalf of His Majesty, may “*grant to such persons as the appropriate authority thinks fit licences to search and bore for and get petroleum*”.
9. Since the start of offshore licensing in 1964, licences have been awarded in licensing rounds. The UK’s offshore areas are divided into geographical “blocks” for licensing purposes. A licence is granted in respect of one or more blocks or part-blocks. In each “licensing round”, applications for licences for a number of specified blocks are invited. To date there have been 32 completed offshore licensing rounds, and the 33rd is currently underway (applications invited from October 2022, with the first batch of licences offered in October 2023). Offshore licensing rounds were generally held every year or two from 1964 to 2016, with significant variations in the number of blocks offered and licensed in each round.
10. Prior to 2016, the Secretary of State was responsible for issuing offshore oil and gas licences. Following a review of the UK’s regulatory regime for oil and gas in 2013-14, the OGA was created to operate as an independent regulator. The relevant statutory functions were transferred to the OGA with effect from 1 October 2016, by the Energy Act 2016 and secondary legislation made under that Act (with the OGA now being the “*appropriate authority*” for offshore areas under s3 Petroleum Act 1998). The OGA initially ran annual offshore licensing rounds from 2016 to 2020 (the 29th to 32nd), before a pause of around 2 years (in part related to the newly introduced statutory Net Zero target) prior to the launch of the current 33rd round in October 2022.

B. Delegated Powers

Clause 1 / new Section 4ZA of the Petroleum Act 1998: Amends an existing delegated power in section 4 of the Petroleum Act 1998 to make further provision for licences to search and bore for and get petroleum

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative

Application: UK-wide

11. This is not a new delegated power that the Government is seeking from Parliament, it is an amendment to an existing delegated power in section 4 of the Petroleum Act 1998.

¹ Rights in onshore petroleum in Northern Ireland are dealt with in a separate legislative regime and are outside the scope of the Bill.

Context and Purpose

12. Clause 1 of the Bill amends the Petroleum Act 1998 by inserting a new section 4ZA which places a duty on the OGA to publish an application notice inviting applications for seaward area production licences, subject to a decision on whether two new “tests” are met.
13. The new section 4ZA(3) defines the terms “application notice”, “block”, and “seaward area production licence” as having the meaning given to them by the Petroleum Licensing (Applications) Regulations 2015 (S.I. 2015/766) (the “Licensing Regulations”). The Licensing Regulations set out the majority of the procedures applicable to the awarding of offshore oil and gas licences.²
14. The Licensing Regulations were made by the Secretary of State under a power in section 4(1) of the Petroleum Act 1998, which carries with it an implied power of amendment (as set out in section 14 of the Interpretation Act 1978).
15. If any amendments to, or replacement of, the Licensing Regulations were to make changes to the defined terms referenced in the new section 4ZA(3), the new clause would require consequential amendments to that section to be made to ensure that the Petroleum Act 1998 remained consistent with the amended / replacement Licensing Regulations.
16. New section 4ZA, inserted by clause 1, therefore extends the existing power to make regulations under section 4 of the Petroleum Act 1998 to include a power to make consequential amendments to the new section 4ZA.

Justification for the provision

17. Given that the purpose of new section 4ZA is to trigger the licensing process set out in the Licensing Regulations, without changing that process, it makes sense to refer directly to the process in the Licensing Regulations by reference to expressions used in them.
18. As the new section 4ZA uses terms defined in the Licensing Regulations, the section 4 power will need to be extended to allow for consequential amendments to be made to this new section if the defined terms change in the Licensing Regulations. This is similar to the approach taken by section 4B(9) of the Petroleum Act 1998, which also extends the section 4 power so that it includes the power to make consequential amendments relating to the definition of “onshore licence for England and Wales” in section 4B(9).
19. This is a Henry VIII power as the consequential amendments will be made to a provision in primary legislation. However, the nature of these amendments will be narrowly focused and will not involve any substantive changes in law as the new section 4ZA(4) does not itself confer a power to make changes to the licensing process and only envisages consequential amendments arising from any such changes.
20. Additionally, the introduction of the new section 4ZA(2) means that the section 4 power cannot be exercised in such a way as to undermine the substance of the duty imposed by that section. However, if the section 4 power is exercised to make changes to the licensing

² Other aspects of the licensing procedures are set out elsewhere, including in the Hydrocarbons Licensing Directive Regulations 1995 (S.I. 1996/1434), the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (S.I. 2001/1754) and the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (S.I. 2015/385).

process without undermining the new duty, section 4ZA(4) expands that power to allow the Secretary of State to make consequential changes to section 4ZA.

Justification for the procedure

21. The new power is expressed as an extension of the Secretary of State's existing power under section 4 of the Petroleum Act 1998 and is therefore subject to a negative procedure as provided under section 4(3) of that Act. While noting the usual position that Henry VIII powers should be subject to the affirmative resolution procedure, given the narrow and focused scope of this consequential power, it is considered that a negative procedure is appropriate in this case.
22. The definitions used in new section 4ZA are already contained in secondary legislation made under section 4 of the Petroleum Act 1998. Accordingly, there is already a delegated power, subject to the negative procedure, to amend the substance of those definitions through amendment of the relevant regulations (ie to change the meaning of "application notice", "block" and / or "seaward area production licence", provided that each of those terms remain unchanged). The consequential power will only be required if the relevant terms are changed: for example, if an "application notice" were renamed as an "invitation to apply".
23. It would be unusual if the substance of the definitions could be amended by regulations made under the negative procedure, but a single consequential amendment to the defined terms themselves would require the affirmative resolution procedure, requiring separate instruments and the use of debating time for the consequential amendment rather than the substantive one. The use of the negative procedure for such consequential amendments is therefore intended to ensure that this is a symmetrical arrangement.
24. As noted above, section 4B(9) of the Petroleum Act 1998 provides a precedent for an extension of the section 4 power with similar effect to the new section 4ZA(4). That provision is similarly subject to the negative procedure.
25. A similar extension to the section 4 power was also included in section 48(3) of the Infrastructure Act 2015 (subsequently repealed). The DPRRC's report on section 48(3)³ considered the use of the negative procedure in that case to be acceptable given the fact that the power was exercisable only in consequence of a change made in the regulations under section 4 of the Petroleum Act 1998.

³ DPRRC 8th Report of the 2014-15 session, available at <https://publications.parliament.uk/pa/ld201415/ldselect/lddelreg/46/4603.htm>. See paragraph 7: the amendment referred to as NC6 is what became section 48 of the Infrastructure Act 2015.

Clause 1 / new Section 4ZB(4) of the Petroleum Act 1998: Power to change definition of carbon intensity to account for emissions of other greenhouse gases

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative

Application: UK-wide

Context and Purpose

26. As above, clause 1 of the Bill amends the Petroleum Act 1998 by placing a duty on the OGA to publish an application notice inviting applications for seaward area production licences, subject to a decision on whether two new “tests” are met.
27. One of the two tests, which is set out at new section 4ZB, is the carbon intensity test. This test compares the carbon intensity of domestic natural gas produced during a relevant assessment period, and the carbon intensity of liquefied natural gas imported into the United Kingdom during that period.
28. The term “carbon intensity” is defined in the new section 4ZB(3) as: in relation to domestic natural gas or imported liquefied natural gas, the carbon dioxide emissions attributable to its production, per barrel of oil equivalent of natural gas.
29. New section 4ZB(4) confers a power on the Secretary of State to amend section 4ZB for the purposes of changing the definition of “carbon intensity” so that it covers emissions other than carbon dioxide.

Justification for the provision

30. The carbon intensity test in the Bill focuses on an analysis of carbon dioxide emissions. There are however other greenhouse gas emissions that are associated with the production of hydrocarbons, including methane and nitrous oxide.
31. At present, there are data set constraints associated with obtaining emissions data relating to these other greenhouse gases which would make it difficult for the OGA to conduct a credible and robust analysis. This is particularly the case in respect of imported liquefied natural gas, for which emissions data has to be obtained and analysed for a number of different countries, not all of which collate and make available the same data as is available in respect of the UK. The clause has therefore been drafted to ensure that the test can be conducted with a degree of certainty whilst acknowledging the current reality of global emissions reporting data.
32. However, there are significant ongoing international efforts to expand the scope of emissions monitoring data, particularly so that methane is included. It appears likely there will be international reporting requirements in the next five to ten years, which will make it mandatory to report on methane emissions, and which will necessitate more reliable and credible datasets. Alternatively, more countries may make a voluntary commitment to record and publish such data.
33. This power is necessary to ensure that at such time, the nature of greenhouse gas emissions being assessed as part of the carbon intensity test is updated appropriately to account for changes in international practice and availability of emissions monitoring data.

34. A similar approach has been taken in section 92 of the Climate Change Act 2008.
35. New section 4ZB(4) is expressed as a power to amend section 4ZB for the purpose of changing the definition of “carbon intensity” in subsection (3) of that section to cover emissions other than carbon dioxide. The reason why the power is framed in this way, rather than being limited to amending section 4ZB(3) itself, is that it may be necessary to make incidental or supplemental provision adding new subsections to section 4ZB in light of the extension of the carbon intensity test to other greenhouse gas emissions. For example, it may be necessary to add provision similar to section 93 of the Climate Change Act 2008 (measurement of emissions etc. by reference to carbon dioxide equivalent).

Justification for the procedure

36. This is a Henry VIII power as any regulations made under this power would amend the new section 4ZB(3), which is a provision in primary legislation. It is subject to the affirmative procedure as is standard for such provisions.
37. This is considered to be appropriate as it gives Parliament the opportunity to scrutinise the addition of any greenhouse gases to the test and make an informed decision based on new developments in internationally accepted practice and availability of reliable datasets.