Queen's Speech 2015--the Energy Bill

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Environment analysis: How will the energy sector react to the government's proposed Energy Bill? Simon Buchler and Helen Miller, associates in the energy and infrastructure team at Berwin Leighton Paisner LLP, explore some of the crucial points and explain that the energy sector has mixed feelings about the proposals.

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A change in the law to give local communities the final say on wind farm applications is among a number of measures relating to energy announced by the government. The Energy Bill, as announced in the Queen's Speech, also aims to ensure affordable and reliable energy for businesses and consumers and increase energy security.

What impact would the establishment of the Oil and Gas Authority (OGA) have on the energy sector?

One of the main aspects of the proposed Energy Bill is the establishment of the OGA as 'a robust, independent and effective regulator' of UK oil and gas assets.

The OGA takes the form of a public body, charged with the asset stewardship and regulation of offshore and onshore oil and gas operations and recovery in the UK. It has been established following the recommendations of industry expert Sir Ian Wood in his UK Continental Shelf Maximising Recovery Review 2014--otherwise known as the Wood Review.

According to the new Secretary of State for Energy and Climate Change, Amber Rudd, the intention behind the introduction of the OGA is to develop Sir Ian Wood's idea of 'industry collaboration'. She asserts this will 'help drive down costs and improve the sector's efficiency' with the aim of attracting further investment to improve the overall competitiveness of the UK continental shelf (UKCS).

The Department of Energy and Climate Change argue that the new Energy Bill will give the OGA the powers it needs to 'maximise the economic recovery of oil and gas from UK waters'.

The stated intention behind the proposals is to achieve a positive effect on both the energy sector and the wider UK economy too. The proposals would generate further revenue if they managed to prolong the life of the UK's oil and gas producing basin. An associated intention on the part of UK government is to safeguard and add to the 375,000 jobs this industry already supports in the UK.

How would the OGA operate?

The proposed Energy Bill will see Amber Rudd's existing regulatory powers transferred to the OGA. However, regulatory functions in relation to the environment would remain with the Secretary of State for Energy and Climate Change.

Additionally, the Bill would give the OGA further powers, including:

- access to company meetings
- data acquisition, retention and transfer
- dispute resolution
- sanctions

It is clear that the OGA's right to attend corporate meetings and to see sensitive company data is an attack on the secrecy that has long been widespread within the oil & gas industry about reserves and investment plans.

The ability to impose sanctions appears to be in line with the government's response to the Wood Review, where it recommended that the OGA be able to sanction companies that do not comply with the terms of their licences. It was proposed that this would range from improvement notices to fines of up to £1m if companies do not comply with the regulator's requirements, and the power to ultimately revoke licences where necessary. The maximum fine could be increased to £5m through regulations if necessary.

The OGA would also be able to provide dispute resolution services where required, prioritising those disputes that present the most significant strategic risks to the successful recovery of oil and gas from the North Sea. As announced alongside the 2015 Budget, the OGA would also be given the necessary powers to allow it to scrutinise companies' decommissioning plans to ensure that they are cost effective.

How do the proposals affect renewable energy in the UK?

Currently an onshore wind farm with a generating capacity of 50MW or more falls within the definition of a 'nationally significant infrastructure project' for the purposes of the Planning Act 2008. This means that the final decision in relation to the grant of planning consent is made by the Secretary of State and not the local planning authority. Under the proposed Energy Bill, the power to make final decisions on planning applications will be transferred to local planning authorities. This will also be supported by changes to the national planning policy framework to 'give effect to the manifesto commitment that local communities should have the final say on planning applications for wind farms'.

It is important to note that these changes will only apply to the planning approvals process for wind farms in England and Wales, whereas the planning regime in Scotland and Northern Ireland will not be affected. However, in relation to Wales, the position is yet to be set in stone, as the Welsh Commission on Devolution has made strong proposals that Wales should have the power to decide how it manages planning applications for onshore wind farms up to 350MW.

While not contained in the proposed Energy Bill, the Queen's Speech also indicated that the UK government would implement its other manifesto commitment in relation to onshore wind energy -- ending new subsidies for onshore wind farms.

Although few details exist, there are reports that the Renewables Obligation (RO) scheme for large scale onshore wind will end earlier than the current date of 31 March 2017. Under current policy, any large scale onshore wind projects which have applied for, and subsequently awarded, accreditation under the RO by 31 March 2017 will receive subsidies under the RO.

It is not known whether such alteration to the RO scheme would also apply in Scotland and Northern Ireland, as the UK government has promised to consult with the devolved assemblies on this issue.

Would the provisions of the Bill be effective in safeguarding energy security?

One of the government's key aims of the proposed Energy Bill is greater energy security in the UK. Given the lack of detail about the measures that will be included in the Bill, it is difficult to determine whether this will be achieved.

Oil currently constitutes 41% of the UK Energy mix and is the main energy source for transport--at 97%. In 2014, oil produced on the UKCS was equivalent to around 56% of UK oil demand. However, reserves in the UKCS are declining and new fields are becoming harder to access and recover from economically. The UK government hopes that these proposed changes can only serve to improve these conditions.

If the availability of the RO scheme to large-scale onshore wind developments is changed, it may mean a rush to consent projects prior to any 'early' cut-off for a Renewables Obligations Certificate (ROC) and thereafter will accelerate inclusion of large-scale onshore wind projects into the contract for difference (CfD) process. The ability of the UK government to alter ROC closure dates suggests that the regulatory risk associated with CfD contracts may be preferable to seemingly uncertain schemes like RO.

Nevertheless, promoters of projects will note with caution the recently announced Ofgem investigation into allegations that the consenting status of a number of onshore projects was misrepresented during the most recently concluded CfD Auction.

How will the provisions be received by the energy sector?

The energy sector as a whole appears to be suffering from mixed emotions after the proposals for the new Energy Bill were released. Broadly speaking, the reaction relating to the OGA and the UKCS has been positive while those relating to onshore wind have raised concerns.

In this year's Budget, UK Chancellor George Osborne announced a series of tax cuts for the North Sea oil and gas industry. The supplementary charge and petroleum revenue tax are both being cut, and £20m of government funding is going towards seismic surveying of the seabed in a bid to spark renewed exploration. These moves, in addition to the establishment of the OGA as an independent regulator, were all recommended by the Wood Report. This shows the government's desire to listen and take on board viable suggestions to modernise and develop the industry.

Nevertheless, the elephant in the room is the continuation of low oil prices. Although up from late 2014 lows, the price as of 2 June 2015 was still hovering around $65 per barrel. If the mission of the OGA is as Amber Rudd said, to 'maximise the economic recovery of oil and gas from UK waters', the critical word is 'economic'. However active the OGA proves to be, if low prices persist, costs of recovery will need to be recalibrated if 'maximised' yields are in fact to convert to more jobs and greater revenue.

The CEO of IO oil & gas consulting, Dan Jackson, viewed the development positively. He commented:

> 'IO welcomes the government's proposal to give the OGA greater powers to reinvigorate exploration and production and ensure a bright industry future. It demonstrates the government's commitment to maximise the economic recovery of oil and gas as an important part of the energy mix.'

On the other hand, the renewable energy sector is still assessing the impact of the proposals. The thought that onshore wind will no longer benefit from ROs and that CfDs will be the only option for wind farms of at least 5MW is a concern to the industry.

The lack of detail, including when this may occur and how this may affect developments that already have planning approval is creating significant uncertainty and hindering investment in onshore wind. Maria McCaffery, chief executive of RenewableUK, commented that:

> 'Singling out one of the most popular and lowest cost forms of energy technology for different treatment in the planning system sends a worrying message to investors across the energy sector.'

Equally the energy sector probably accepts that these moves are part of an immutable trajectory--that renewables must achieve grid parity over time. The debate is more about how the government can smooth that path without choking investment. It remains to be seen whether further detail on the proposed Energy Bill will allay the sector's concerns.

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