

## How will Brexit affect UK energy and climate change policy?

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**Environment analysis:** The Energy & Climate Change (E&CC) Committee recently published a report that, among other things, looked at possible results of Brexit on UK energy and climate change policy. Tom Bainbridge, partner at clean energy law firm Lux Nova Partners Ltd, considers the background to this report and its potential implications.

### Original news

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*The government needs to encourage the energy market to embrace smart technological solutions such as energy storage and demand side response (DSR), the House of Commons E&CC Committee has said in its report on the energy policy implications of leaving the EU. The report's recommendations included that the government should set out a high-level public commitment to making the UK a world-leader in storage, and set a storage procurement target for 2020.*

### What is the background to the report?

This is a significant report for a number of reasons.

Firstly, this was the final report of the E&CC Select Committee before being disbanded on 17 October 2016.

Select Committees follow government departmental structure so the demise of this Select Committee could be said to be an unexpected consequence of the Brexit vote. The results of that vote, of course, triggered a change of PM and government departmental restructuring by the new PM, Theresa May. And, with the demise of the Department of E&CC came the demise of the E&CC Select Committee.

In departmental terms, putting energy and climate change into a new Department for Business, Energy and Industrial Strategy (BEIS) could bring about a degree of policy integration that had been lacking under successive governments, up to and including this one. On the other hand, and more likely, it could too easily see longer term requirements of tackling climate change issues succumb to the shorter-term and energy-hungry needs of business and industry.

Secondly, Select Committee scrutiny of energy and climate change issues has now been transferred to (or also subsumed into) a revamped BIS (now BEIS) Select Committee. On the face of it, it seems likely that momentum will be lost in a number of areas that had been of particular interest or concern to the erstwhile E&CC Select Committee. And it remains to be seen whether the BEIS Select Committee will be as objective as their predecessors in their scrutiny of the tensions between a decarbonisation agenda, business deregulation and industrial growth—particularly, in times when the political slogan of 'green growth' seems to have been abandoned by government.

### What are the practical implications of the report for lawyers and their clients?

This Third Report pulls together various strands of work, some of which were accelerated to their conclusion prior to the demise of the E&CC Select Committee. As such, it summarises findings on:

- o energy storage
- o demand side response
- o digital engagement of energy consumers, and
- o nuclear innovations

It also looks at some possible implications of Brexit for UK energy and climate change policy.

In a number of areas, it highlights barriers to making progress and makes recommendations for improvement. However, particularly in light of the regulatory uncertainty resulting from the Brexit vote, it is difficult to predict to what extent and how the government will respond to the Select Committee's recommendations.

## What were the key conclusions and recommendations made in the report?

### *Storage*

The report concludes that electricity storage presents a real opportunity for the UK. However, financial support and clear legislation have been necessary to lay the foundation for the proper integration of storage infrastructure into the grid elsewhere in the world, and that the same is necessary to support investment into storage in the UK.

The Select Committee recommendations include:

A repeated and urgent call on government:

'...to address regulatory barriers faced by storage, including: [providing] a clear definition of storage, [bringing] an end to double-charging, imposed storage operators (treated as end consumers) and on consumption of that same power (again) by a (real) end-consumer) and [establishing] a separate asset class for grid-level electricity storage'.

A call on government:

'...to review the outdated Capacity Market rules and regulations in relation to storage, including considering increasing the contract length and addressing restrictions around stacking of revenues for storage projects'.

The government making:

'...a high-level public commitment to the UK becoming a world-leader in storage and setting a storage procurement target for 2020'.

The government considering:

'...a possible subsidy framework for energy storage to accelerate deployment given the importance of storage to unlocking the full potential of renewable energy'.

### *Demand Side Response (DSR)*

The Select Committee conclude that the right policy framework is needed to unlock the full potential of [DSR] technologies and that doing so 'will empower consumers, reduce bills, ease grid pressure, and lower carbon dioxide emissions'. However, 'without explicit market mechanisms and target capacity goals DSR will not be able to deliver best value for consumers'.

Their recommendations include:

- o changes to how DSR is, notionally, able to participate in the capacity market
- o 'changing the contract bond requirement for DSR providers bidding in the capacity market...[which imposes] an unnecessary cost for businesses [and] should be removed [or] reduced to a level that is a more reasonable percentage of the cost of the projects that are bidding'
- o explaining why the government believes that 'DSR projects should be limited to one-year contracts'—our view is that significantly longer contract periods should be available to DSR providers
- o giving the market 'a clear signal that DSR capacity is to be procured as a strongly preferred alternative to diesel generation plants', and
- o 'the government should itself become a beacon of good practice by demonstrating the use of flexible demand solutions in its buildings in Whitehall and around the country'

### *Digital engagement of energy consumers*

The report concludes that the global market for smart grid technologies, including sensors, management and control technologies, communication networks, and software, is large and growing rapidly, forecast to exceed \$400bn by 2020. It notes that EU policies are encouraging the development of decentralised electricity generation in which electric vehicles, energy storage and flexible demand are all expected to play a significant role.

The Select Committee recognise the sometimes competing objectives of data privacy and interoperability, but that interoperability and interchangeability help prevent existing monopoly companies taking advantage of consumers, while data privacy remains a key consumer concern.

They recommend that the government:

- o stays on top of the developing challenges associated with data protection and privacy, not just in relation to the smart-meter roll-out, but also thinking ahead in the context of more fully-connected smart homes and businesses
- o communicates effectively to consumers the benefits of smart meters and intelligent devices to manage energy use in homes and businesses
- o nudges the energy sector towards embracing the opportunities arising from developing a smarter market in which consumers are more engaged and where reduction of demand is valued over increasing supplies of energy, and
- o should investigate the pros and cons of alternative approaches, including the potential for a demand reduction obligation

#### *Nuclear innovations*

The report notes two nuclear energy technologies that could revolutionise the energy system: small modular reactors and nuclear fusion technologies, including small spherical tokamaks. However, no particular regulatory barriers were highlighted.

#### *'Economic opportunities of the energy revolution'*

The report recognises that technological leadership can be lucrative, but notes that it:

'...often occurs on longer timescales than private investment is comfortable with so there is a role for government in driving energy innovation...The energy revolution presents a huge economic opportunity for the UK. With the appropriate strategy, policies and regulatory framework in place, Britain can become a world leader in the green technology sector. The government should make green technology a top priority in its forthcoming industrial strategy'.

### **What did the report conclude with regard to the implications of Brexit and retaining EU derived laws?**

The report notes how successive UK governments 'have championed the liberalisation and decarbonisation agendas within the EU'. This has flowed into the promotion of unbundling of energy networks, competition in energy supply, the setting of ambitious emissions reductions targets and the promotion of emissions trading. It is clear that the Select Committee see:

- o a complex body of EU energy and climate change policy and legislation, the principles behind which have been promoted by successive UK governments, have been incorporated into UK law and many of which the UK would benefit from retaining, and
- o significant potential downside for the UK in the substantial weakening of influence over future EU policy and legislation shaping markets that the UK will continue to be heavily dependent upon and that is likely to be the result of Brexit negotiations

In respect of security of supply, the report notes that the UK 'is heavily dependent on Europe for its electricity and gas imports. Pan-European coordination has helped to improve the UK's security of supply. The government should seek to build investor confidence, to avoid exacerbating difficulties in bringing forward investment in new electricity capacity and new indigenous resources. The government should also examine the role of the 'solidarity principle' in managing potential gas crises, specifically how the UK can continue to participate. If excluded from the 'solidarity principle', the government must urgently investigate alternative back-up arrangements to ensure security of supply in the event of a crisis.'

In respect of funding, the report notes that the EU 'has provided substantial financial support for energy infrastructure and R&D in the UK. The government should provide clarity to Parliament on whether funds awarded from EU schemes will be retained and/or underwritten. The government should also ascertain whether access to EU financial institutions and funds, including but not limited to the European Investment Bank, will be available to British applicants in the longer term. It should develop credible alternatives where this is not possible.'

In respect of investor confidence, the report notes that:

'...the vote to leave has reduced already weakened investor confidence in the energy sector. The government should promote investment by providing clear signals on the direction of domestic energy policy to be followed throughout, and after, the exit negotiations, for example through the timely publication of a detailed Emissions Reduction Plan.'

### **EU Emissions Trading System (ETS) is identified as an area of particular concern post-Brexit. What did the report recommend?**

The report advocates remaining within the EU ETS. It is commonly seen as 'the single most important policy instrument for the potential reduction of greenhouse gases in Europe', and in the UK, with emissions trading accounting for 50% of the emissions reduction required by 2020 under the Climate Change Act 2008.

The Select Committee report the view from stakeholders that the UK is a net beneficiary of the EU ETS, and that the UK, as a relatively small market on its own, gains significantly from the increased liquidity of being part of the EU ETS, with resulting cost-saving opportunities for industrial emissions reductions. For many larger industries, where companies are present in a number of EU Member States, withdrawal from the EU ETS would, in itself, add significant and undesirable complexity to corporate carbon trading policies.

At a time when, internationally, the move is towards forging links between emissions trading schemes, the UK, having been a key player in the shaping and improving of the EU ETS should remain in the EU ETS, and benefit from the clearer price signals and improved governance due to be introduced in the next phase.

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*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor*



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