



## **APSE Energy Briefing 6/20 – Local Electricity Bill**

### **Introduction**

In April 2020, local authorities were contacted by a group called Power for People, which is promoting a Private Members Bill for Parliament. The Bill is being introduced as a Ten Minute Rule Bill on 28 April 2020, sponsored by a wide group of MPs from all parties, including Conservative, Labour, Liberal Democrat, Green, SNP and Plaid Cymru.

A number of local authorities have already said that they will support the Bill in response to an approach by Steve Shaw, the Director of Power for People.

This paper analyses the Local Electricity Bill. It is not intended in any way to be negative, as the concept is good and the solution is required, without any doubt, and most local authorities would support that. However, the Bill will receive significant scrutiny as it progresses and local authorities need to be aware how robust it is for its stated purpose.

### **Background**

Few would disagree that a smoother path for the local supply of energy would be a good outcome. The real issue is how we generate political support for this and bring forward a change in the current law.

The problems are obvious and well documented. Electricity is divided into generation, distribution and supply by the Electricity Act 1989, which is the principal legislation in the area. Whilst supply to commercial customers is relatively easy, supply to consumers is heavily regulated, as public policy suggests that this part of the population needs active protection.

OFGEM is the regulator and the path to obtaining a supply licence to enable sales of electricity and gas to consumers is long, complex and expensive. Almost 20 small supply companies went bankrupt in the last year due to fluctuating wholesale prices and the inability to spread costs. There are two local authority owned supply companies, Robin Hood Energy in Nottingham and Bristol Energy and both have found this a very difficult market in which to survive, even with their financial backing.

The market is still dominated by the 'big six' suppliers, plus one or two very large others (such as OVO) and together they control around 75% of the entire UK market. They avoid the problems suffered by the smaller companies by sheer size and considerable experience in the marketplace.

An independent report by the Competition and Markets Authority in 2017 declared that consumers had been overcharged by the big six for decades and, effectively, everyone is paying too much for their electricity supply. Yet little is done by Government to do anything about this.

Currently the average price for electricity is 14.37 pence per kWh, yet export prices hover around the 5 pence mark for local generators. A provision similar to the concept raised by the Bill would enable both generators to benefit (by getting better prices for their electricity) and also the local inhabitants in the areas in which generation takes place (as consumers paying less).

So a solution is required and the Local Electricity Bill is an attempt to provide this. Historically these Bills have little prospect of passing into law, but it does nonetheless give this issue some important oxygen of publicity. In our view, in order to make the changes sought by this short Bill a wider and more comprehensive movement with a much broader level of support (including the public) will be required.

## **The Concept of Local Energy**

Before moving to look at the Local Electricity Bill itself, it is first important to focus on the concept of this solution. What are the issues and how to address them?

Here is our position on this. The concept needs to address these fundamental issues:

- The function of the concept is to encourage local supply and so promote the market in small scale generation;
- Generation and supply must be linked in any such solution. This is not about local supply irrelevant of the source of the energy *per se*, but instead about providing an avenue for local renewable generators to sell on their supply to local people;
- The electricity involved has to be generated from renewable sources. It is no good having someone seeking to provide diesel generator produced power;
- The energy must be generated locally to the point of supply. The whole point of getting some form of exemption – which is the real purpose here – is to keep this local;
- The activity has to be small scale to justify such a significant relaxation of the normal rules (which after all are there for a purpose themselves);
- The rules applying under the exemption have to be simple and not overly complex, but the activities must remain under proper regulatory control.

If the blueprint above is adhered to, then there may be a chance of getting sufficient support from the right quarters to justify a change in the law.

However, as indicated above, we have to recognise that the rules are there for a legitimate purpose and therefore the Government will be deeply cautious about any such relaxation, particularly at a time when so many smaller energy companies have gone out of business.

So in our view, the supply could be constrained by one of the following:

### *Scale*

- The scale would have to be small – measured perhaps by the number of customers or by the capacity of supply in kWh or MWh.

### *Geography*

- The physical extent over which the energy generated could be sold would need to be carefully controlled by either a defined or an administrative area. Remember city areas often have wide boundaries;
- There are various ways this could be defined.

### *Purpose of the Business*

- The purpose of the business has to be to sell locally generated power to local people;
- Not to set up a standard electricity supply business offering fossil fuel supply, just based at local level.

## **The Local Electricity Bill**

This leads us on to the drafted Local Electricity Bill. To be fair to Power for People, it has said that it is open to discussion and suggestions as to drafting and this note is written in the spirit of support. It is written as a Bill and we have reviewed it as such. As it stands we feel it is flawed. There are problems across many of its clauses, each of which can be improved.

This is apparent in the covering email from Power for People which says that the Bill, if made law, would empower local communities to sell locally generated clean energy directly to local customers "by establishing a statutory right to local supply." An early problem appears to be that the drafted document does not actually do this.

Featured below are other problem areas that could be highlighted:

#### *Clause 1*

Clause 1 states that the purpose of the Act is to "encourage and enable the local supply of electricity." This is a far cry from a 'statutory right to local supply'.

Fundamentally, this Clause does not link the electricity to renewable energy and this alone is a fatal omission. Neither does it link it to local generation (although Clause 3 below hints at this).

#### *Clause 2*

This clause creates the concept of a 'local supply licence', which is defined as a licence granted to a local supplier to supply electricity.

This needs to be much more tightly defined and is largely meaningless as drafted.

#### *Clause 3*

Clause 3 concerns regulation and recognises that Ofgem will still need to be involved. It requires Ofgem to issue a local supply licence to a 'generator' if that person understands what they are doing. But the definition of local supply licence in Clause 4 does not include this important fact and this is the first mention of any link to local generation.

Ofgem has to ensure that the costs of the licence are proportional to the size of the business and that the regulations are 'as simple and straightforward as possible.' This is not legislative language and is far too vague.

#### *Clause 4*

Profit is also not addressed properly, as 'business' is defined in Clause 4 as including individuals and not for profit organisations but going no further. The element of profit is not a problem here, as profiteering is both unlikely to happen and unlikely to be successful. Elsewhere, the need for energy supply companies to have some reserves has been well illustrated, so this activity does not need to be of a 'not for profit' nature. The generation of a reasonable surplus will also allow further investment in more renewable energy in the area.

#### *Summary*

It could be construed from the language of the Bill that a local supply licence would be geographically limited but without a proper link to renewable energy or the generation of that power. A small scale supplier could apply for a licence under the provisions as drafted here and provide electricity generated by a diesel generator in his or her garage.

There is a far larger goal here and that is to promote clean energy and to ensure that both the provisions of the Climate Change Act 2008 (as amended) and the declaration by the UK Government of a climate emergency (together with nearly 300 local authorities) are promoted at the same time.

It appears that the overall aim of linking local generation of electricity from renewable sources with local people who need that power has somewhere been lost in poor drafting.

## **Current Exemptions**

It should not be forgotten that there are current exemptions which already exist under the Electricity Act 1989, in order to allow smaller capacities of generation, distribution and supply to avoid the higher levels of regulation.

One example is provided for by Schedule 4 to the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (SI 2001 no 3270), which provides the exemptions for supply of electricity to consumers. In particular:

- Persons other than licenced suppliers who do not supply any electricity except electricity which they generate themselves and who do not at any time supply more electrical power than 5 MW, of which not more than 2.5 MW is supplied to domestic consumers, are exempt;

What these provisions mean is that the Electricity Act 1989 will give smaller generators, distributors and suppliers exemptions from the more onerous parts of the legal rules. So using the example of a solar farm, if it is not generating more than 5 MW of capacity and is providing only 2.5 MW to domestic customers, it will not need to follow the main licencing provisions under the 1989 Act.

The new Bill therefore has to differentiate itself from these provisions and make the case forcefully for further change.

## **Conclusions**

As indicated above, this analysis of the Local Electricity Bill is not intended to be negative. The concept is good and the solution is definitely required, but this is a complex area of regulation.

There is no clarity on how this Bill would interact with current exemptions under the Electricity Act 1989, on Power Purchase Agreements, Feed in Tariffs or the Smart Export Guarantee. There is no clue either as to how it would complement or replace current models for community energy such as the Energy Local model or energy co operatives. These issues all need to be thought through.

The issue here is whether this Bill is the right way to do this. As a Bill it, requires more attention as noted above. Parliamentary draughtsmen and women are highly skilled and experienced lawyers and a more professional approach is required to the wording of any proposed new legislation.

But above and beyond that, local authorities need to consider the shape and form of any such solution and ensure that wide public support is added to their own, that OFGEM and others are properly consulted and that a safer route through Parliament is identified.

## **Contact details**

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