Introduction:

1. The Community Electricity Right measures in the Infrastructure Bill 2014/15 were debated in Lords Grand Committee on 22nd July. During the debate Lord Jenkin requested further details concerning the content of secondary legislation for the proposed backstop powers. This followed a similar request made by the Delegated Powers Committee, who considered that the powers conferred by the Community Electricity Right were appropriate, but expressed the hope to see more detail of the provision that would be included in the regulations.
2. Community energy, and shared ownership of renewable developments in particular, is an embryonic policy area. A Shared Ownership Taskforce is in the process of developing a voluntary framework to guide the offer of shared ownership of renewable developments to communities. Alongside this, we have crafted a deliberately broad, enabling framework in primary legislation to provide a backstop to the voluntary approach should that prove unsuccessful. The powers are designed to provide sufficient detail to make the nature of the obligation clear while at the same time retaining sufficient flexibility so that, if the powers were ever exercised, the lessons and experience of the voluntary approach can be taken into consideration.
3. **We consider that the provisions as they stand strike the right balance between the need for certainty on the one hand and the need to provide future flexibility on the other.** Nevertheless we welcome this opportunity to clarify our approach to assist Peers in their consideration of the measures before the Bill enters Report Stage.
4. In Part 1 of this briefing we set out our overall policy objectives for shared ownership and how the voluntary and mandatory approaches are aligned. In Part 2, for key elements of the legislative provision, we analyse the potential options and the key considerations that are likely to be taken into account in developing any secondary legislation.

PART 1: Voluntary and mandatory approaches to shared ownership

The Government's objective on shared ownership:

5. The Government's first ever Community Energy Strategy published at the start of this year includes an objective that it should be the norm for communities to be offered some form of ownership of new commercial renewable energy projects from 2015. Increased community involvement in renewable energy developments can translate to greater understanding, less opposition and a quicker, cheaper development process benefitting both the renewable energy industry and local communities alike.
6. A Shared Ownership Taskforce was established following the launch of the Strategy, led by representatives from the renewables industry and involving community energy groups. They are preparing a framework to guide the offer of shared ownership to communities. The Taskforce published a draft framework for a 10 week consultation period and is expected to launch their final report later in the autumn.
7. At the same time, the Government is legislating to create reserve powers that would require developers to offer communities the chance to invest in new commercial renewable electricity schemes being developed in their area. The powers would only be used if the voluntary approach is not successful and only then following a formal consultation where the views of stakeholders and lessons from the voluntary approach would be taken into account.
8. The Community Electricity Right provisions set out an enabling framework in primary legislation with further detail to be defined in any secondary legislation, following a formal consultation and preparation of an impact assessment setting out any costs to businesses and consumers associated with exercising these powers. The Government has taken this legislative step now in order to demonstrate our commitment to delivering this agenda and to give the strongest signal to industry that we want to see evidence of shared ownership offers being made on the ground from 2015 onwards.

Conditions under which the powers would be used:

9. The Government is firmly committed to the work of the Shared Ownership Taskforce and we want to achieve a substantial increase in the offer of renewable shared ownership schemes, **by voluntary means**. As we have said, only if the voluntary approach is not successful would we consider exercising the backstop powers contained within the Bill.
10. To demonstrate this, the Secretary of State for Energy and Climate Change has assured the Taskforce that he would not consider exercising the powers before 2016, at the earliest, in order to give sufficient time for the voluntary approach to be implemented.
11. The Taskforce is agreeing a level of ambition for the voluntary approach and how to measure progress. The expectation is that the Taskforce will undertake a review of progress towards the end of 2015 based on the success criteria defined in their report. This is likely to include the number of offers of shared ownership made after their framework is launched and the steps taken by developers to promote these. It is important to note that this assessment will be based on the number of offers made, and not on the actual uptake of offers by communities.
12. The Secretary of State will then take a view on whether sufficient progress has been made based on the Taskforce's review. If this is limited, the Secretary of State will consider whether and when to consult on exercising the legislative powers. This consultation would collect evidence on the areas of the voluntary approach that have been successful and areas that have worked less well, to inform the Secretary of State's decision whether or not to exercise these powers.

The importance of a broad, enabling framework:

13. We recognise that industry needs to know certain details about the shape and size of the obligation that they would face and have addressed this on the face of the Bill by:
    - specifying that the legislation applies only to projects of 5MW or more in size (see **Qualifying Facilities** below);
    - setting a cap on the size of the minimum stake that developers are required to offer equivalent to 5% of the project capital cost (see **Size of Stakes** below);
    - ensuring that stakes are offered at fair market value, rather than at a discount (see **Pricing of Stakes** below);
    - guaranteeing that the regulations would allow developers to choose the form of stake that they decide to offer depending on their circumstances (see **Forms of Stake** below); and
    - providing for facilities to be exempted from the requirements where they involve alternative models of community ownership that achieve the same ends (see **Exemptions** below).
14. However we also recognise that flexibility is needed so that if the powers were ever exercised, regulations could take into account the circumstances prevailing in the industry at that time. The purpose of this is to ensure that regulations are developed in a way that limits the costs to developers of making shared ownership offers to communities and to promote effective partnerships on the ground that suit the needs of different local areas.
15. There are very few tried and tested shared ownership models in operation at present. So what will work on the ground at scale is as yet uncertain. Developers will need to be able to tailor their business models as they see fit in order to raise finance and develop projects that are bankable. The majority of the provisions are therefore broad and enabling leaving the details to be worked out in secondary legislation.
16. The details of the regulations would be informed by the views of stakeholders expressed through formal consultation and by the innovative and creative solutions that have yet to come forward through the voluntary approach.

PART 2: Details of the Community Electricity Right provisions

Overview

17. The Government is introducing Community Electricity Right backstop powers in Part 4 of the Infrastructure Bill 2014/15. The provision includes 2 clauses and one schedule:
    - Clause 26 enables the Secretary of State to make regulations for a Community Electricity Right – this would give individuals and/or community groups the right to purchase a stake in a renewable electricity generation facility in their local area (including onshore and offshore facilities).
    - Clause 27 and Schedule 5 make further provision including on the ownership of qualifying facilities, the supply of information, and the enforcement regime.
18. This section sets out the key elements of the provisions contained within the Bill. Statutory references to the provisions are provided to facilitate cross-referencing.
19. In shaping this legislation the Government has sought to address the principal questions facing renewable electricity developers and generators in making the offer of shared ownership to communities, in particular:
    a. Who is required to offer stakes to communities?
    b. Who is **not** required to offer a stake?
    c. What kind, and what size, of stakes should they offer?
    d. How should stakes be priced?
    e. When would their obligation be discharged? and
    f. How would the legislation be enforced?
20. The Government has also sought to address the key issues facing community investors when considering the purchase of a stake in a renewable electricity development, namely:
    a. Who can buy a stake?
    b. What kind of stake can they buy?
    c. What is the stake in (ie. what exactly will they own)? and
    d. What can they do with it?
21. This section is framed in the context of these key questions and focuses on the detail of the legislative provision that addresses them. Not all of the answers can be provided now, for the reasons cited in each particular case, but the following paragraphs set out how the provision currently addresses these questions and the potential options and key considerations that would be taken into account in the development of any regulations.
22. Many of these issues were debated in Grand Committee. This note can therefore be read in conjunction with the Hansard Report of Grand Committee of 22nd July 2014[1].

Qualifying Facilities:

23. It is important that the legislation defines **who is required to offer stakes** to communities. This is so that it is clearly understood the type of facility and the minimum size of development to which these provisions could apply.
24. We have been clear that the primary powers would apply to commercial renewable electricity schemes in Great Britain above a minimum threshold of 5MW installed capacity (Sch 5, para 2), and expansions of existing sites above this 5MW threshold (Sch 5, para 3(3)). This size threshold was chosen to ensure that small developments are not adversely affected, given that some of the costs of complying with the legislation are likely to be fixed, irrespective of the size of the development. We would of course encourage schemes below 5MW in size to offer shared ownership on a voluntary basis but we would not wish to mandate this in legislation.
25. It is intended that these powers, if they were ever exercised, would apply to new projects coming forward in the development process, and would **not apply retrospectively**. The exact

[1] http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140722-gc0001.htm#14072259000088

stage of the development process to which the powers would apply (clause 27(5)) would be determined in any secondary legislation following a formal consultation and taking on board lessons from the voluntary approach.

26. If these provisions were ever exercised, we expect in the first instance that they would apply to the onshore renewable technologies that currently form part of the voluntary approach such as solar, hydro and onshore wind.
27. The provisions also allow scope in future for offshore renewable projects to be included, but we intend that this would be on a longer timescale. These provisions give us the flexibility to include these technologies in future without requiring new primary legislation. If the powers were to be extended to include offshore renewables this decision would be subject to formal consultation and would be informed by the experiences of the voluntary approach and views from relevant stakeholders in respect of offshore facilities.

Exemptions:

28. We have been clear that the primary powers should retain the flexibility to specify that certain renewable electricity facilities (defined as 'excepted facilities') may be exempt from any future regulations (Sch 5, paras 3(4) to 3(6)). It is important to define **who is not required to offer a stake** so that where renewable electricity generators are already providing a community stake, or other form of benefit to the community, in a way that is specified in regulations as an acceptable alternative, they are not also required then to comply with these regulations.
29. This may include, for example, facilities that are wholly-owned by the community. In these cases community members will typically already have had the opportunity to invest in these schemes. It may include developers offering innovative approaches to shared ownership. For example, generators offering certain revenue sharing arrangements to local residents that are passed on in the form of electricity bill discounts, which are in addition to any community benefits payments.
30. It may also include projects not participating in statutory energy schemes such as the Feed-in-Tariffs or Renewables Obligation. These projects are likely to have a higher risk profile as they will not benefit from the certainty of revenue generation provided by these schemes. To protect community investors, regulations may specify that such projects would be exempt from the legislation. However we would wish to consult on this point before making any regulations and would take stakeholders' views into account.
31. The regulations will also set out how exemption cases that are considered to be acceptable alternatives are to be determined. This may be through case-by-case determinations, where a generator makes a proposal to the Secretary of State who then decides whether or not to exempt them. Alternatively, or in addition to individual exemptions, we may establish class exemptions, where exemption criteria are determined in advance.
32. The Government would wish to consult stakeholders on these and other options available taking into account factors such as cost implications before setting out detailed exemption parameters in regulations.

Ownership of facilities:

33. It is important that the legislation is clear about ownership of the facilities that are required to offer stakes to communities. This is so that community investors know **what they will have an interest in** and developers know what they will need to offer stakes in.
34. The provisions enable the Secretary of State to prescribe in secondary legislation that the ownership of facilities must be carried out through a separate legal entity (for example, a subsidiary company or a trust structure). There are various aspects within the powers which enable this, e.g. making regulations as to the constitution of the company (Sch 5 para 16), ownership of facility operators (Sch 5 para 17) and as to treatment of revenues (Sch 5 para 19),

in connection with the exercise of these powers. The 'equitable interest' kind of stake (Sch 5 para 7(2)(c)) is specifically included to accommodate a trust structure.

35. The Government's intent is to ensure that regulations describe the type of entity to which the obligation applies, but before making regulations which prescribed this we would wish to consider the models that come forward through the voluntary approach and seek the views of stakeholders through consultation.
36. The regulations could also specify what should happen in cases where one company owns sites in different geographical locations. The policy intent is that the local community should benefit financially from the income generated by their local renewable energy installation, rather than from a portfolio of geographically separated developments that are owned or operated by the same entity. Again the Government would wish to consult the views of stakeholders before prescribing the content of secondary legislation on this matter.

Definition of community and eligible individuals/groups:

37. It is important to define the community, and the members of that community, so that it is clear **who can buy a stake** in a renewable electricity development.
38. There are many ways in which a community can be defined in respect of this and other statutory 'community rights' such as the community right to bid, the community right to build and the community right to challenge.
39. The definition of community in relation to this legislation was raised during the Grand Committee Debate, in particular whether the Government would consider including charities or Local Authorities in the definition. There is no single, unified definition of community and it is generally tailored depending on the context in which it is used. As such we have sought to retain flexibility on the definition of community in the primary legislation, and envisage that there could be different definitions set out in regulations for particular technologies if appropriate.
40. The primary legislation requires that the community is defined with reference to a specific geographical area (Sch 5 para 5). Beyond this, the criteria for determining precisely how that area is defined eg. how far away from the facility it is, how many people live there or with reference to administrative boundaries, may be set out in regulations. The Government would wish to consult views on this matter before prescribing the details in regulations.
41. The primary legislation also requires regulations to be made that identify the individuals and groups forming part of that community who are eligible to buy a stake in renewable developments. The criteria determining the eligible individuals have not been defined in primary legislation but could include their age, the length of time that they have lived in the area or whether it is their main place of residence. The legal precedent for this arises in Denmark where similar legislation requires wind developers to offer ownership shares to adults of 18 years of age living within 4.5km of the perimeter of an installation.
42. The criteria determining the eligible groups could include the legal form, the members or the activities of the group. Any existing regulations and guidance for legally constituted community organisations would apply and not be replicated here.
43. Before making regulations that tie down the definition of community and eligible individuals and groups, the Government would wish to take into consideration the experiences and lessons from the voluntary approach.

Community Stakes:

- ***Forms of stake***

44. It is important to define **what kind of stake** the legislation requires to be offered to communities. This is so that industry is clear about the types of stake they may offer and communities understand the type of investment they are making.

45. The provisions require regulations to be made that specify the forms of stake that developers are required to offer to community investors (Sch 5, para 7(2)). These could include shares, an equitable interest (for example through a community company), a royalty instrument or a loan. Regulations will need to set out in more detail the types of instrument that could be used including equity and debt-based instruments. There is evidence of developers offering these types of stakes to communities and, at present, there is no one preferred model coming forward.
46. We have incorporated flexibility into the provisions to enable developers to choose to offer the kind of stake that is appropriate to their business including their corporate tax structure and the needs of any external investors. We expect that developers will take their own tax considerations into account when choosing the form and structure of the offer that they make to the community.
47. For equity shares to be offered, the Government envisages that the entity owning each development would need to take the form of a separate company limited by shares. This ensures that the community buyer is offered shares in their local development rather than a larger parent company with multiple developments, so their financial return is directly linked to the performance of their local renewable electricity generation development.
48. Revenue instruments could include an offer for sale of the right to a proportion of gross or net revenues (a royalty) or loans with a revenue-linked return. Regulations could specify the share of gross or net revenue to be provided by each individual instrument.
49. The primary powers require developers to consult the community on the form of stake they would prefer to be offered (Sch 5 para 8(3)). The details of how and when that consultation should take place may be defined further in regulations.
50. On each of these matters, the Government would wish to consult the views of stakeholders and take into consideration the range of commercial models being deployed through the voluntary approach before prescribing details in secondary legislation. Our approach also recognises that the market, and the regulatory environment affecting it, may evolve over the coming years.

- ***Pricing of stakes***

51. It is important that there is clarity in relation to the pricing of stakes. This is so that industry understands **how stakes will be priced** and the likely impact on the economic returns of the other investors in the project. It is also so that both communities and industry understand that shared ownership would be offered at a fair market value and not discounted.
52. The provisions specify that communities buy into projects at a later stage in the development process, once planning consent has been received. This means they will be exposed to lower risk, which would need to be taken into account in any shared ownership offer. Regulations will need to set out the pricing parameters including how administrative costs are to be treated in the terms of the offer and how fair market value is reflected in the eventual pricing of the stakes (Sch 5 para 9).
53. The Government will wish to gather evidence from the voluntary approach before determining how these pricing parameters should be set down in secondary legislation.

- ***Size of stakes***

54. It is important that developers understand **the maximum size of stake** that they may be required to offer to community investors.
55. This would be set in any secondary legislation, but the power specifies that this cannot be greater than 5% of total capital costs of the development (Sch 5, para 10(2) and (3)). Developers could offer more than this if they wished but could not be mandated to do so. By prescribing this upper limit in primary legislation our intention is to provide certainty to developers on the maximum size of offer that could be required.

56. The provisions have been designed to offer flexibility for different technologies. As such a 5% mandatory offer to communities might be appropriate for smaller schemes with a lower project capital cost, but for larger schemes with a higher capital cost (eg. for offshore wind) it might be more appropriate to set a lower limit, for example at 1% of total capital costs.
57. It is important when setting the cap on the size of stake that the amount of investment that a community can realistically raise is taken into consideration. Table 1 below provides indicative levels of investment by communities if they purchase a 5% stake in an onshore renewable development. There are precedents for communities raising these levels of finance, and we feel they are realistic. But the Government would wish to collect further evidence of the levels of investment being made by communities through the voluntary approach to shared ownership before setting this cap in regulations.

Table 1: Indicative levels of community investment

2012 prices for projects commissioning in 2020 (pre-development and construction costs)	Onshore >5MW	Onshore >5MW	Onshore >5MW
MW	5	20	50
£/kW[2]	1,500	1,500	1,500
£/MW	1,500,000	1,500,000	1,500,000
Estimated total capital costs £	7,500,000	30,000,000	75,000,000
5% stake (£)	375,000	1,500,000	3,750,000

- ***Disposal of stakes***

58. It is important that communities are given clear guidance on **what they can do with a stake** once they own it. Regulations may provide further detail on the restrictions that would apply when owners of community stakes wish to transfer or dispose of their stake including on any minimum time period for which stakes should be owned, onward sale to other eligible persons and pricing in relation to any secondary market (Sch 5, para 13). They may also provide further detail on the duties to dispose of a stake in cases where the owner no longer resides in the local area.
59. Limiting transferability of a stake, for example by only allowing it to be transferred to another local resident or to an heir residing in the same geographical location, ensures that the community connection is maintained, and prevents the stake from being immediately sold on or transferred to unconnected persons. However placing such restrictions on the transfer and

[2]DECC (2013) Electricity Generation Costs report (Page 54): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269888/131217_Electricity_Generation_costs_report_December_2013_Final.pdf

disposal of stakes reduces their liquidity and therefore their onward sale value. Regulations will need to consider how to balance these issues, and avoid unreasonably restricting the investor's ability to dispose of their assets.

60. The Government would wish to take into account the practices and experiences of the voluntary approach on these matters before prescribing the detail of secondary legislation.

Lack of community interest/ uptake:

61. It is important that the legislation makes provision in circumstances where there is insufficient take-up from the community. This is so that developers are clear **when they have discharged their obligation**.
62. Where there is evidence to suggest there has been little interest from the community to invest, the primary powers specify that the offer can either be modified or cease to apply (Sch 5, para 12(2)(a)).
63. To maximise the chances of the community stake being taken up, there is also provision for a 'secondary period' during which it may be possible to offer stakes to a wider community than during the application period (Sch 5, para 12(2)(b) and (3)). This could involve broadening the offer to include other types of individuals or groups eligible to invest or by expanding the geographical area within which the community resides.
64. The Government would wish to consult on whether there should be a secondary period to boost community take up and if so the criteria that should apply before specifying these details in secondary legislation.

Enforcement:

65. It is important that developers understand **how the powers would be enforced** including the conditions under which penalties might apply and the level of those penalties. This is so that they can take the necessary steps to comply with the legislation and avoid sanctions.
66. Two possible enforcement options are set out on the face of the Bill including via the licensing regime or through imposition of financial penalties (Clause 26(4)). The enforcement regime remains to be determined in secondary legislation, and will depend on views expressed through a formal consultation, including those of Ofgem as the body responsible for enforcing the electricity licencing regime.
67. The primary powers do not attempt to define the threshold at which any penalties would apply or the level at which penalties would be set. This would be a matter to be determined in regulations following full and formal consultation.