

Legislative Consent Memorandum

Energy Bill

Background

1. This memorandum has been lodged by Mr Matheson, Cabinet Secretary for Net Zero, Energy and Transport under Rule 9B.3.1(a) of the Parliament's standing orders. The UK Energy Bill ("the Bill") was introduced in the House of Lords on 6 July 2022. The Bill can be found at the UK Parliamentary website:

[Energy Bill \[HL\] - Parliamentary Bills - UK Parliament](#)

Content of the Energy Bill

2. The Explanatory Notes¹ accompanying the Bill set out the UK Government's view of its purpose and main functions. The UK Government describes the principal aim of the Bill as to increase the resilience and reliability of energy systems across the UK, support the delivery of the UK's climate change commitments, and reform the UK's energy system while minimising costs to consumers and protecting them from unfair pricing. Energy matters are generally reserved and as such all the general provisions in the Bill extend to Scotland. However, given the complexity of reserved and devolved powers, legislative consent will be required in several areas that touch on devolved competence.

3. The main provisions of the Bill are under three key themes as follows:

- Leveraging investment in clean technologies;
- Reforming our energy system and protecting consumers; and,
- Maintaining the safety, security and resilience of the energy system across the UK.

4. In terms of leveraging investment in new technologies, Parts 1, 2 and 3 of the Bill include provisions to support a low carbon energy system, reduce emissions from industry, transport and heat, and provide low carbon power.

5. In terms of reforming our energy system and protecting consumers, Parts 4-9 of the Bill include provisions to ensure market frameworks and governance arrangements are geared towards strengthening energy security and delivering a net zero energy system while minimising costs to consumers.

6. Parts 10, 11 and 12 of the Bill relate to safety, security and resilience of the core fuel sector, in the UK, to ensure the UK is a responsible nuclear state and to take essential action in protecting the UK Continental Shelf while transitioning to net zero.

¹ [House of Lords: Energy Bill \[hl\] \(parliament.uk\)](#)

Requirement for LCM

7. The Bill is a relevant Bill under Rule 9B.1.1 of the Standing Orders, as it makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament and alters the executive function of the Scottish Ministers. The provisions of the Bill which apply to Scotland and require the legislative consent of the Scottish Parliament are attached at the Addendum to this LCM.

8. Ministers have already made it clear in writing that the requirement to consult with Scottish Ministers over any secondary regulations to deliver the mechanisms should, in view of the devolved competences and interest in play, be amended to a requirement to secure Scottish Minister's consent. The Scottish Government recommends withholding consent to the relevant clauses and is therefore requesting partial consent on the basis that amendments are sought. The Scottish Government will continue to work with BEIS to secure an approach to those provisions which require amendments. The Scottish Government may therefore lodge a supplementary legislative consent memorandum and motion later in the Bill's passage through the UK Parliament.

9. The provisions which the Scottish Government recommends that the Scottish Parliament consent to are summarised below:

- **Part 3 – Miscellaneous**

- Chapter 3 – clause 110

- Amends the Nuclear Installations Act 1965 (“NIA 1965”) to exclude fusion energy facilities from the requirement to hold a nuclear site licence.

- The Scottish Government recommends consent to Chapter 3 clause 110 as it has an impact on the functions of Scottish Ministers under section 19(1) of Nuclear Installations Act (NIA) 1965, which requires Scottish Ministers to approve that the insurance or other financial security of operators of nuclear site licence holders in Scotland is adequate to meet claims arising under NIA 1965. The Scottish Government is content to recommend consent for these provisions as they reflect proportionate regulation of a future fusion energy facility based on the understanding of the risks and hazards at this time and do not bind Scotland into having fusion energy generation at any point in the future. Decisions on whether a fusion facility could be built in Scotland are devolved to Scottish Ministers and the Scottish Government's acceptance of these provisions does not impact on this.

- **Part 6 – Market Reform and Consumer Protection**

- Clause 163

- This clause grants the Secretary of State (SoS) the power to introduce a buy-out mechanism under the Energy Company Obligation (ECO) scheme. This allows the SoS powers to include provisions in the secondary legislation for the ECO scheme to give suppliers the option to meet their obligations by making a payment to an approved third party, for an approved purpose. The

clause also provides powers that enable the SoS to make provisions on the amount of payment and the determination of the approved third parties and approved purposes. Subsections (2) & (5) of the clause provide similar powers to the Scottish Ministers to define how a buy-out mechanism would operate as part of a separate ECO scheme in Scotland (with the consent of the Secretary of State).

The Scottish Government recommends consent to clause 163 as it makes amendments to section 41BA of the Electricity Act 1989 and section 33DA of the Gas Act 1986 under which the Scottish Ministers have functions. Consenting to this clause does not enable Scottish Ministers to act independently but could enable these powers to be used by them in future. This clause therefore gives Scottish Ministers options that they would not otherwise have.

- **Part 7 – Regulation of Heat Networks**

Clause 166

Defines the regulator ('authorisation authority') in Scotland as the Gas and Electricity Markets Authority (GEMA) and clause 166(2) provides a power for the SoS to appoint an alternative body to GEMA to carry out these regulatory functions.

Although the UK Government considers that clause 166 does not require an LCM, the Scottish Government believes this engages the LCM process as technical standards (devolved) will be a condition of authorisation – thus, the appointment of an authorisation authority will impact on how technical standards are administered. The Scottish Government recommends consent to clause 166 for two reasons: first, powers to confer and remove functions from GEMA are reserved matters; second, Scottish Ministers have set out they are content for enforcement of technical standards to be delivered via UK authorisations on the condition that they are consulted on regulations pertaining to technical standards, as set out in our explanation of why Scottish Government is recommending consent is withheld for clause 168 below.

Clause 171

Provides that the Secretary of State may, by regulations, appoint Ofgem as the 'licensing authority' under the Heat Networks (Scotland) Act 2021 (HNSA21). The mechanism used for this is the amendment of section 4(b) of HNSA21, thus an LCM is required.

The Scottish Government recommends consent to clause 171 as Scottish Ministers have agreed to the appointment of Ofgem as the licensing authority and the mechanism for appointment.

Clause 172

Provides the licensing authority with enforcement powers similar to those which Ofgem currently has through the Gas Act 1986 and Electricity Act 1989. The mechanism to achieve this is amendment of section 5(5) on HNSA21, thus an LCM is required.

The Scottish Government recommends consent to clause 172 as Scottish Ministers have welcomed the provision of additional enforcement powers for the licensing authority. This is on the condition that Scottish Ministers have powers to modify those enforcement provisions in future (as set out in our explanation of why Scottish Government is recommending withholding consent to clause 168 below, in particular see our proposal for an amendment seeking inclusion of part 6 schedule 15 into clause 168(7) provisions).

- **Schedule 15 – Heat Networks Regulation**

Part 3 (paragraphs 12, 13, 14, 15, 16, 17, 18)

Part 3 sets out what regulations may provide for in relation to authorising activities relating to heat networks, including that certain activities (e.g. operating a heat network or supplying heat through a heat network) are prohibited without an authorisation. This part also sets out the subject matter of conditions that may be included in authorisations, for example regarding compliance with technical standards, consumer protections on pricing, standards of service, and payment of fees to the regulator. Regulations may also provide for such authorisations to be modified, reviewed and/or revoked.

The Scottish Government recommends consent to Part 3 of Schedule 15 as Scottish Ministers have agreed that technical standards be a condition of authorisation (whereby Scottish officials will sit on the code governance board).

Part 4 (all paragraphs)

Establishes the parameters of ‘code governance’ by a ‘code manager’ to administer a technical standards regime (as a condition of authorisation).

The Scottish Government recommends consent to Part 4 (i.e. paragraphs 23 – 31) of Schedule 15 as Scottish Ministers have agreed that technical standards be a condition of authorisation and that such technical standards are administered by a ‘code governance’ structure (whereby Scottish officials will sit on the code governance board).

Part 6 (all paragraphs)

Allows regulations about how conditions in both authorisation and Scottish licences are enforced. It thus allows that regulations may provide for the process and circumstances by which the regulator (be it authorisation authority or licensing authority) issues provisional and final enforcement orders, financial penalties, and consumer redress orders.

The Scottish Government recommends consent to Part 6 (all paragraphs) as Scottish Ministers agree that Ofgem should be provided with enforcement powers replicating those at its disposal under the Electricity Act 1989 and Gas Act 1986, to support its role as authorisation authority and licensing authority, on the condition that Scottish Ministers have powers to modify those enforcement provisions in future (as set out in our explanation of why the Scottish Government is recommending withholding consent to clause 168 below; in particular see our proposal for an amendment seeking inclusion of part 6 schedule 15 into clause 168(7) provisions).

Part 8 (all paragraphs)

Concerns step-in arrangements, providing that the Secretary of State can make regulations securing that the holder of a heat network authorisation is able effectively to carry on a regulated activity in relation to a relevant heat network in the place of another person when directed to do so by the Regulator.

The Scottish Government recommends consent to Part 8 (all paragraphs) as Scottish Ministers have agreed to such “step-in” arrangements to protect consumers’ heat supply when their heat network supplier or operator ceases to operate, on the basis that this mechanism will afford extra protection to heat network customers in the event of market exit.

Part 10 Paragraph 54

Provides for regulations specifying the ‘terms of connection’ that a heat network operator has to give to any interested ‘premises’ which wishes to connect.

The Scottish Government recommends consent to Part 10 paragraph 54 as Scottish Ministers have agreed that this provision should apply to all consumers in Scotland (i.e. including the potentially devolved area of protection for non-domestic consumers), as the ability to set provisions in relation to offering ‘terms of connection’ to premises (i.e. heat consumers) would help prevent unfair connection terms.

Part 10 Paragraph 58

Provides for the revocation of the Heat Networks (Metering and Billing) Regulations 2014 (HNMBR) through regulations so that rules under the HNMBR are provided for under the authorisation regime of the Heat Networks Market Framework.

The Scottish Government recommends consent to Part 10 paragraph 58 as Scottish Ministers have agreed that the Energy Bill should provide for regulations to replace the HNMBR provisions with authorisation conditions administered by Ofgem, and subsequently repeal HNMBR, thus streamlining the regulatory process.

Part 11 Paragraph 59

Allows the regulator (i.e. the authorisation authority) to make regulations about performance standards “affecting heat network consumers supplied by the relevant heat networks to which their authorisations relate”. To take a specific example, regulations can be made about requiring authorisation holders to notify customers of their rights.

The Scottish Government recommends consent to Part 11 paragraph 59 as Scottish Ministers have agreed that consumer protection provisions in the Energy Bill apply to all consumers in Scotland (i.e including the potentially devolved area of protection for non-domestic consumers).

Part 11 Paragraph 62

Allows regulations that apply Part 1 of the Consumers, Estate Agents and Redress Act 2007 to heat network customers in the same way they apply to gas and electricity consumers.

The Scottish Government recommends consent to Part 11 paragraph 62 as heat networks consumers (in Scotland and across the UK) should enjoy the same level of protections and advocacy as gas and electricity consumers.

Part 11 Paragraph 63

Concerns complaints handling and redress schemes. Paragraph 63 allows regulations that apply Part 2 of the Consumers, Estate Agents and Redress Act 2007 to heat network customers in the same way they apply to gas and electricity consumers.

The Scottish Government recommends consent to Part 11 paragraph 63 as heat networks consumers (in Scotland and across the UK) should enjoy the same level of protections and redress as gas and electricity consumers.

- **Part 12 – Civil Nuclear Sector – Chapter 1**

Clause 231

Removes an operator’s ability to surrender a nuclear site licence and creates a new test (to be applied by the Office for Nuclear Regulation (ONR)) when varying a site licence to remove part of a site, thereby allowing that part to exit the nuclear third-party liability regime. The changes to the test for variation of a site licence implement the OECD Nuclear Energy Agency’s 2014 “Decision and Recommendation of the Steering Committee Concerning the Application of the Paris Convention to Nuclear Installations in the Process of Being Decommissioned”. The decision maker in relation to sites in Scotland will be the ONR. The ONR must consult the Health and Safety Executive before varying a licence.

Clause 232

Amends the Nuclear Installations Act 1965 (“NIA 1965”) to allow relevant disposal facilities for low level waste of nuclear origin to be excluded from the requirement of nuclear third party liability where the facility satisfies the criteria of the 2016 Decision and Recommendation Concerning the Application of the Paris Convention on Third Party Liability in the Field of Nuclear Energy to Nuclear Installations for the Disposal of Certain Types of Low-level Radioactive Waste. The SoS is responsible for determining whether the criteria for exclusion have been met by the relevant disposal facility. The SoS must notify Scottish Ministers where a site in Scotland is determined to meet the criteria for exclusion.

The Scottish Government recommends consent to clauses 231 and 232 as the Scottish Government is supportive of these proposals on the basis that regulation of nuclear sites should be effective and proportionate to the level of risk involved. The measures proposed within the Bill support international best practice while still providing appropriate protection for people and the environment.

Clause 233

Together with schedule 19, amends the Nuclear Installations Act 1965 (“NIA 1965”) to implement the Convention on Supplementary Compensation for Nuclear Damage 1998 (“CSC”). Schedule 19 amends NIA 1965 to make provision for claims arising from countries that are party to the CSC. The provisions extend the existing liabilities of UK licensees and operators to provide compensation for nuclear damage to claims arising from countries that are party to the CSC. Claims arising from countries party to the CSC are subject to the liability limit of 300 million special drawing rights.

The Scottish Government recommends consent to clause 233 and schedule 19 as this will have an effect on the functions of the Scottish Ministers under section 9 and 19(1) of NIA 1965. This clause extends the duties of the Scottish Ministers under section 9 to claims arising from countries party to the CSC. Section 19(1) requires Scottish Ministers approve that the insurance or other financial security of licensees and operators of sites in Scotland is adequate to meet claims arising under NIA 1965.

Clause 235-236

Inserts a new power for the CNC in the Energy Act 2004, enabling the CNC’s Chief Constable to provide assistance to another police force in England, Wales or Scotland. Amends the Criminal Justice and Public Order Act 1994 so that members of the CNC are able exercise powers in Part X of that Act.

The Scottish Government recommends consent to clauses 235 and 236 as it enables assistance to another police force in England, Wales and Scotland and will allow the CNC to execute a warrant to arrest a person, or to exercise powers of arrest without a warrant where the person is suspected to committing an offence, in England, Wales or Scotland.

10. Therefore the Scottish Government recommends consent to:
- Part 3, Chapter 3, clause 110
 - Part 6, clause 163
 - Part 7 Chapter 1 clauses 166, 171-172
 - Schedule 15: Part 3, Paragraphs 12-18; Part 4, all paragraphs; Part 6, all paragraphs; Part 8, all paragraphs; Part 10, paragraphs 54, 58; Part 11, paragraphs 59, 62, 63
 - Part 12 Chapter 1 clauses 231-233, 235-236

11. The provisions to which the Scottish Government recommends the Scottish Parliament **withhold consent** are summarised as follows:

- **Part 1 – Licensing of Carbon Dioxide Transport and Storage**

Chapter 1 clauses 1-19, 26-27, 29, 31-35

Establishes an economic regulator (Ofgem) and licensing framework for the transport and storage of carbon dioxide (CO₂), to support the deployment of carbon capture and storage across the UK. Also provides for the application of a Special Administration Regime and a statutory transfer scheme to ensure the ongoing operation, safety and security of the transport and storage network. The licensing regime will sit alongside the licensing regime under section 18 of the Energy Act 2008 under which the Scottish Ministers are the licensing authority.

Chapter 3 - Reporting Requirements clause 41

Requires the economic regulator to provide an annual report which the SoS must lay before the Houses of Parliament and the Scottish Ministers must also lay before the Scottish Parliament.

Chapter 4 – Special Administration Regime clause 46

Provides for the application of a Special Administration Regime (SAR) in the event of a CO₂ transport and storage company insolvency. Although the UK Government considers clause 46 does not require an LCM Scottish Government believes this engages the LCM process, whilst chapter 4 relates mainly to insolvency clause 46 provides that the Secretary of State may amend licences. This would be within the devolved competence of the Scottish Parliament therefore Scottish Government believe this engages the LCM process.

Chapter 5 – Transfer Schemes clauses 50-52

Allows the SoS to make a statutory scheme to transfer property, rights or liabilities of a licensee (with consent of both parties) to an appropriate body or the SoS when a termination event arises.

Chapter 6 – Miscellaneous and general clause 53

Modifies the Energy Act 2008 to provide for cooperation and information-sharing between the economic regulator and the relevant CO₂ storage licensing authority, which would be Scottish Ministers in areas specified in the Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011.

- **Part 2 - Carbon Dioxide Capture, Storage Etc. and Hydrogen Production**

Chapter 1 Revenue Support contracts clauses 56-64, 68 – 81

The provisions contained in Chapter 1 provide delegated powers to establish the detailed framework for business models, including the designation and duties of a counterparty to enter into and manage business model contracts with carbon entities, CO₂ transport and storage companies, and low carbon hydrogen producers and an allocation body for future competitive allocation processes.

Chapter 2 Decommissioning of Carbon Storage Installations clauses 82-84

Gives the SoS powers to make and modify regulations to implement a funded offshore CCUS decommissioning regime.

Chapter 3 Strategy and Policy Statement clauses 88-91

Enables the SoS to designate a strategy and policy statement for CCUS that would need to be considered by the SoS and economic regulator when carrying out Part 1 (Licensing of carbon dioxide transport and storage) functions, and set out the process and timeframes for preparing and reviewing this statement. Although the UK Government considers that clauses 88-91 do not require an LCM, the Scottish Government believes this engages the LCM process: whilst the Secretary of State is required to “consult” Scottish Ministers about the draft statement so far as it relates to Scottish devolved matters but can then make revisions as the SoS considers appropriate. As such the Scottish Government have asked for amendments to these clauses to seek “consent” of Scottish Ministers rather than “consult”.

Chapter 5 General clauses 96 and 97

Clause 96 enables the SoS to make regulations regarding access to CO₂ transport and storage infrastructure. Clause 97 makes provision for SoS to incur expenditure and provide financial assistance for the purpose of encouraging, support of facilitating the Transport and Storage of CO₂, carbon capture facilities which operate in association with Transport and Storage, low carbon hydrogen and Transport and Storage of hydrogen.

Subsequent regulations which will provide details of the revenue support contracts, insofar as they fall within the areas of devolved competence, should be subject to the consent, rather than in consultation with the Scottish Government.

The Scottish Government cannot recommend that the Scottish Parliament gives its consent to these clauses listed above in Parts 1 and 2 at this time. Discussions regarding requested amendments are on-going and the Scottish Government will provide an updated recommendation to Parliament at the conclusion of these discussions.

- **Part 3 – New Technology**

Low Carbon Heat Schemes Clauses 98-107

The UK Government is introducing a clean heat market mechanism, designed to accelerate the transition from fossil fuel heating systems to electric heat pumps. The effect of these clauses will be to oblige the manufacturers of fossil fuel boilers to sell an increasing number of heat pumps as a proportion of their sales.

In the Scottish Government's response to BEIS consultation, Scottish Ministers set out that primary powers should include provision for Scottish Ministers to give consent to secondary regulations where devolved competence is touched upon. The Scottish Government cannot recommend that the Scottish Parliament gives its consent to Part 3, clauses 98-107 at this time. Discussions regarding requested amendments are on-going and the Scottish Government will provide an updated recommendation to Parliament at the conclusion of these discussions.

- **Part 7 - Heat Networks**

Chapter 1 Regulation of Heat Networks Clause 168(7)

Refers to a requirement to consult Scottish Ministers before making regulations by virtue of any of Parts 3, 4, 7, 8 and 11 of Schedule 15.

Scottish Ministers have been clear that the Energy Bill must include a requirement for Scottish Ministers' consent to heat network regulations which cut across devolved areas. Accordingly, the development of regulations that relate to devolved areas must be collaborative in manner. Furthermore, the Scottish Government believes that Part 6 (Enforcement of Conditions) and Part 10 (Supply to Premises) of Schedule 15 also straddle devolved areas and thus should be similarly quoted in clause 168(7). Finally, the Scottish Government notes that 168(9) would have to be amended as a consequence of amendments to 168(7).

The Scottish Government cannot recommend that the Scottish Parliament gives its consent to Part 7 clause 168(7) at this time. Discussions regarding requested amendments are on-going and the Scottish Government will provide an updated recommendation to Parliament at the conclusion of these discussions.

Chapter 1 Regulation of Heat Networks Clause 169

Clause 169 sets out the procedure for making regulations under clause 168 i.e. whether they are to be made by negative or affirmative procedure.

Affirmative procedure is required where a regulation is the first to be made under a specific power or if it amends primary legislation. As the Scottish Government is recommending withholding consent to 168, it follows that it must recommend withholding consent to 169. However it should be noted that there is nothing in clause 169 per se which the Scottish Government objects to. The sole ground for recommending withholding consent to 169 is its linkage to 168.

Part 5 (paragraph 33) of Schedule 15 (Heat Networks Regulation)

Part 5 makes provisions for issuing “installation and maintenance licences”. Holders of these licences will have additional powers which will facilitate the installation and maintenance of heat network equipment in England, Wales and Northern Ireland (as per paragraph 32(1)). These provisions do not apply in Scotland as the Heat Networks (Scotland) Act 2021 makes provisions for similar additional powers to be conferred to holders of Scottish licences. Paragraph 33(4) allows regulations that set out which rights an “installation and maintenance” licence can confer, and in so doing defines the meaning of “road” in Scotland. This reference to Scotland should be removed.

Part 5 purports to make provisions which extend to Scotland and the Scottish Government has requested that paragraph 33(4) remove any reference to Scotland as Scottish roads will not be affected by installation and maintenance licences. The Scottish Government cannot recommend that the Scottish Parliament gives its consent to Part 5 paragraph 33 at this time. Discussion regarding requested amendments are on-going and the Scottish Government will provide an updated recommendation to Parliament at the conclusion of these discussions.

- **Part 11 - Oil and Gas**

Environmental Protection clause 225

This clause enables the SoS to make regulations requiring a person responsible for certain specified oil infrastructure, harbours and a facility, that is not offshore, for handling or storing oil or gas, to have emergency plan arrangements for responding to marine oil pollution.

The UK Government has determined that the LCM process is engaged for Scotland given that in the territorial seas adjacent to Scotland, there is a mixed picture on legislative competence depending on the activity in question. The LCM process will be engaged for oil pollution in terms of the Scotland Act 1998, Schedule 5, D2(f) reservation on pollution not applying within controlled waters, as well as activities such as pollution from storage of CO₂ and the production of hydrogen.

In view of the mixed picture on legislative consent in this area this clause should therefore require the consent of Scottish Ministers so far as it relates to an area of devolved competence. The Scottish Government cannot recommend that the Scottish Parliament gives its consent to Part 11 clause 225 at this time. Discussions regarding requested amendments are on-going

and the Scottish Government will provide an updated recommendation to Parliament at the conclusion of these discussion.

Clause 226 (Sub clause, 2, 3 and 4)

This clause enables regulations that provide for a habitats assessment decision to be made prior to the commencement of certain offshore energy activities relating to oil and gas. It enables the SoS to make regulations prohibiting a specified description of activities from being carried out unless consent of the SoS has been obtained.

Part 11 clause 226 would make a change to a devolved area of competence in the case of the inshore region. It also includes a provision that would require Scottish Ministers to carry out a specified description of assessment before granting a specified licence. This would modify the devolved marine licensing assessment regime and alter the executive competence of Scottish Ministers under the 2008 Act. There is also a broad regulation making power for the SoS to issue directions. This could affect the executive competence of Scottish Ministers. The Scottish Government cannot recommend that the Scottish Parliament gives its consent to Part 11 clause 226 at this time. Discussion are on-going and the Scottish Government will provide an updated recommendation to Parliament at the conclusion of these discussions.

Clause 227

Creates powers to establish a charging scheme for the recovery of costs related to regulatory functions related to the decommissioning of offshore oil and gas and carbon storage infrastructure.

Offshore installations and pipelines are reserved (D2) in relation to oil and gas, but not in relation to carbon dioxide storage. Section 44 of the Petroleum Act defines "offshore installation" and the definition includes installations for the storage of gas. The Scottish Ministers are responsible for carbon storage installation and established or maintained under a licence granted by the Scottish which would be an installation on land or within the territorial waters. Clause 227 is amended the functions in Part 4 of the Petroleum Act 1998 which are exercisable by the Scottish Ministers (s30 Energy Act 2008). The Scottish Government cannot recommend that the Scottish Parliament gives its consent to Part 11 clause 227 at this time. Discussion are on-going and the Scottish Government will provide an updated recommendation to Parliament at the conclusion of these discussions.

- **Part 13 - General**

Clause 238

Gives the SoS powers to make regulations in connection with the Act, or in connection with any provisions made under the Act. This is very wide, and does not just relate to implementation.

Although the UK Government considers this clause does not require an LCM, the Scottish Government believes this engages the LCM process as the clause includes a power to amend, repeal or revoke Acts of the Scottish Parliament. There is no requirement for the SoS to consult the Scottish Ministers. The Scottish Government cannot recommend that the Scottish Parliament gives its consent to Part 13 clause 238 at this time. Discussion are on-going and the Scottish Government will provide an updated recommendation to Parliament at the conclusion of these discussions

12. To summarise, the Scottish Government recommends withholding consent to:
- Part 1, Chapter 1 clauses 1-19, 26-27, 29, 31-35, Chapter 3 clause 41, Chapter 4 clause 46, Chapter 5 clause 50-52, Chapter 6 clause 53
 - Part 2, Chapter 1 clauses 56-64, 68-81, Chapter 2 clauses 82-84, Chapter 3 clauses 88-91, Chapter 5 clauses 96-97,
 - Part 3, Chapter 1 clauses 98-107
 - Part 7, Chapter 1 clause 168-169
 - Schedule 15: Part 5, paragraph 33
 - Part 11, clauses 225-227
 - Part 13, clause 238

Reasons for seeking a legislative consent motion

13. The Bill is relevant under Rule 9B.1.1 of the Standing Orders as it makes provisions applying to Scotland for purposes within the legislative competence of the Scottish Parliament, or which alters that legislative competence or the executive competence of the Scottish Ministers. The LCM process is therefore engaged the Scottish Government recommends the Scottish Parliament consents to the following clauses of the Bills:

- Part 3 clause 110 as this has an impact on the functions of the Scottish Ministers under section 19(1) of NIA 1965.
- Part 6 clause 163 as this makes amendments to Section 41BA of the Electricity Act 1989, and section 33BDA of the Gas Act 1986 under which the Scottish Ministers have functions.
- Part 7 clause 166, as technical standards (devolved) will be a condition of authorisation, thus, when the SoS initially appoints an 'authorisation authority', or subsequently appoints an alternative 'authorisation authority', this will impact the regulation of devolved technical standards. Part 7 clauses 171 and 172 as it provides powers to amend HNSA21.
- Schedule 15:
 - part 3 paragraphs 12, 13, 14 – 16, 17-18 as they impact devolved areas of technical standards (and arguably non-domestic consumer protection if such consumers are deemed to be beyond the extent of the C7 reservation of Schedule 5 of the Scotland Act 1998);
 - part 4 all paragraphs as they establish the parameters of a technical standards 'code governance' administration regime, but technical standards are devolved;

- part 6 all paragraphs as the powers in part 6 will be used to make provisions for enforcement in both reserved and devolved areas (such as technical standards), thus a case can be made that an LCM may be required;
- part 8 all paragraphs, given that step-in – which is essentially consumer protection – may apply beyond the C7 reservation of Schedule 5 in the Scotland Act 1998 (arguably, non-domestic consumer protection is devolved);
- part 10 paragraph 54 as its provisions could stray into a potentially devolved area of non-domestic consumer protection;
- part 10 paragraph 58 as Scottish Ministers have functions under the Heat Network Metering and Billing Regulations 2014;
- part 11 paragraph 59 as its provisions would likely include non-domestic consumers which could potentially be beyond the extent of the C7 reservation;
- part 11 paragraph 62 as it pertains to consumer advocacy which is a devolved area carried out by a public body (i.e. Consumer Scotland);
- part 11 paragraph 63 as its provision could impact consumers beyond the extent of the C7 reservation (i.e. arguably, non-domestic consumers);
- Part 12 chapter 1 clauses 231 and 232 will have an effect on the functions of the Scottish Ministers under section 19(1) of NIA 1965; Part 12 Chapter 1 clause 233 and schedule 19 will have an effect on the functions of the Scottish Ministers under section 9 and 19(1) of NIA 1965; Part 12, clauses 235 and 236 as Law and Order (including policing) is a devolved matter to the Scottish Government.

14. The Bill includes matters which are within the legislative competence of the Scottish Parliament and require primary legislation to effect. These are listed at the Addendum. Given that several of the Parts of the Bill touch, to varying extent, upon devolved areas of responsibility, Ministers and Parliament are likely to wish to ensure that competence is fully respected or extended, and that powers, where within devolved areas, fall to the Scottish Ministers.

Consultation

15. As the Bill has been drafted and introduced by BEIS to the House of Lords, the Scottish Government has not undertaken consultation on the Bill. BEIS have in the past consulted on several policies in the Bill, and the Scottish Government has responded to some of these consultations:

- Heat networks: negotiations with BEIS relating to all aspects of heat networks regulation have continued since the publication of the Heat Networks (Scotland) Bill in 2020. The purpose of the Scottish Government's engagement has been regulatory alignment. Whilst the Scottish Government has not submitted formal responses we have provided substantial policy input through our discussions and negotiations.

- Fusion Energy: The UK Government consulted in late 2021 on its plans for the regulation of Fusion Energy including proposals relating to Clause 110. Although the Scottish Government did not respond to this consultation, Scottish Government officials were engaged with the UK Government on its contents. <https://www.gov.uk/government/consultations/towards-fusion-energy-proposals-for-a-regulatory-framework>
- Nuclear Sites: In 2018 the UK Government consulted on plans for proportionate regulatory control of nuclear sites including proposals relating to clauses 231 and 232. This consultation was developed in consultation with the Scottish Government therefore, Scottish Ministers did not formally respond. [The regulation of nuclear sites in the final stages of decommissioning and clean-up - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Financial implications

16. There may be some financial implications for the Scottish Government which may need to be considered, including any potential costs associated with administering the proposed low carbon heat market mechanism (clauses 98-107). There may also be significant administrative costs arising from this Bill if the environmental protection package introduces a marine recovery fund to be administered by government. Were the Bill to introduce any new powers that were to be administered by the Scottish Ministers, assurances would need to be sought from the UK Government of corresponding resource being made available.

Conclusion

17. Allowing the UK Government to introduce legislation extending to Scotland may in relation to certain Bill clauses, and where policy is generally aligned, be the most efficient way to make these changes. This may particularly be the case where the Scottish Ministers have limited enabling powers to make regulations, following the UK's exit from the EU. Where clauses are consented to it will avoid the need to develop separate primary legislation in Scotland.

18. The Scottish Government does not recommend consent to:

- Part 1, Chapter 1 clauses 1-19, 26-27, 29, 31-35, Chapter 3 clause 41, Chapter 4 clause 46, Chapter 5 clause 50-52, Chapter 6 clause 53
- Part 2, Chapter 1 clauses 56-64, 68-81, Chapter 2 clauses 82-84, Chapter 3 clauses 88-91, Chapter 5 clauses 96-97,
- Part 3, Chapter 1 clauses 98-107
- Part 7, Chapter 1 clause 168-169
- Schedule 15: Part 5, paragraph 33
- Part 11, clauses 225-227
- Part 13, clause 238

19. The Scottish Government recommends consent to:

- Part 3, Chapter 3, clause 110
- Part 6, clause 163
- Part 7 Chapter 1 clauses 166, 171-172
- Schedule 15: Part 3, Paragraphs 12-18; Part 4, Paragraphs 23-31; Part 6, all paragraphs; Part 8, all paragraphs; Part 10, paragraphs 54, 58; Part 11, paragraphs 59, 62, 63.
- Part 12 Chapter 1 clauses 231-233, 235-236

Draft Legislative Consent Motion

20. The draft motion, which will be lodged by the Cabinet Secretary for Net Zero, Energy and Transport, is:

“That the Parliament agrees that the following relevant provisions contained within the UK Energy Bill, introduced in the House of Lords on 6 July 2022, which falls within the legislative competence of the Scottish Parliament/alters the executive competence of Scottish Ministers should be considered by the UK Parliament:

- Part 3, Chapter 3, clause 110
- Part 6, clause 163
- Part 7 Chapter 1 clauses 166, 171-172
- Schedule 15: Part 3, Paragraphs 12-18; Part 4, Paragraphs 23-31; Part 6, all paragraphs; Part 8, all paragraphs; Part 10, paragraphs 54, 58; Part 11, paragraphs 59, 62, 63.
- Part 12 Chapter 1 clauses 231-233, 235-236”

Scottish Government
September 2022

Addendum

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
Part 1: Licensing of carbon dioxide transport and storage		
<p>Chapter 1 – Licensing of activities</p> <p>Chapter 1 relates to the licensing of activities including the operation of carbon dioxide storage and transportation of CO₂.</p> <p>It establishes Ofgem as the economic regulator for CO₂ transport and storage, prohibits transportation of CO₂ by pipeline or operating a site for the geological storage of CO₂ without a licence and enables the Secretary of State (SoS) to regulate other means of CO₂ transport in the future.</p>	<p>LCM required for clauses 1-19, 26-27, 29, 31-35.</p> <p>An LCM is required for these provisions as they legislate in the devolved area of carbon dioxide storage, and the conveyance, shipping and supply of gas otherwise than by pipelines. The Scottish Ministers are the licensing authority for activities listed in section 17(2) of the Energy Act (which includes CO₂ storage) for areas within the territorial sea adjacent to Scotland. SSI 2011/24 makes provision for licences granted by the Scottish Ministers.</p>	<p>The Scottish Government recommends withholding consent for clauses 1-19, 26-27, 29, 31-35 as amendments or clarifications are recommended.</p> <p>The Scottish Government are requesting amendments as follows:</p> <ul style="list-style-type: none"> • Clause 1 – An amendment to ensure that Scottish statutory emissions targets (including interim targets if possible) and future targets (beyond the 2045 net zero target) will be considered by Ofgem and the Secretary of State in the exercise of functions related to Part 1 of the Bill. An amendment to include contributing to UK and DA climate targets as a principal objective of the economic regulator. • Clauses 2 and 3 – As clause 2(3)(b) gives the Secretary of State powers to make regulations specifying other means of transportation of gas which are to be a “licensable means of transportation”, request that the requirement in clause 3 for the Secretary of State to give notice to the Scottish Ministers if the regulations contain provision that would be within devolved competence be strengthened to a requirement to obtain the consent of Scottish Ministers. • Clause 5 – Request that when the Secretary of State is granting exemptions from the prohibition on carrying out activity in 2(1) without a licence, the requirement to notify Scottish Ministers be changed to a requirement for consent of Scottish Ministers.

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
		<ul style="list-style-type: none"> • Clause 6 – Request that when the Secretary of State is revoking an exemption, the requirement to notify Scottish Ministers be changed to a requirement for consent of Scottish Ministers. • Clause 8 – Request that when the Secretary of State is making regulations providing for different types of licence in respect of the different activities set out in 2(1), consent from Scottish Ministers should be requirement if the regulations contain provision that would be within devolved competence. • Clause 9 – Request that when the Secretary of State (or the economic regulator with the approval of the SoS) make regulations about how licences are applied for and the fee, the requirement to consult Scottish Ministers be changed to a requirement for consent of Scottish Ministers • Clause 10 – Request that when the Secretary of State is making regulations for determinations on competitive basis for awarding licences, the requirement to consult Scottish Ministers be changed to a requirement for consent of Scottish Ministers. • Clause 11 – An amendment to include more definitions of terms used in the Bill (e.g. “carbon capture”) for clarity. • Clause 12 – An amendment so that the requirement to consult Scottish Ministers is changed to a requirement for consent of Scottish Ministers. • Clause 17 – A potential amendment to give Scottish Ministers further input into licence termination decisions could be beneficial (as the current requirement is for notification only). • Clause 26 – Request clarity on why NatureScot is not included in the list of persons in subsection (2) and propose its inclusion. Also note a minor typo in 2(c) which needs correcting to “Scottish Environment Protection Agency”.

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
		<ul style="list-style-type: none"> • Clause 32 – Request that when the Secretary of State is making regulations for the enforcement of licence conditions, consent from Scottish Ministers should be requirement if the regulations contain provision that would be within devolved competence. <p>The Scottish Government also request clarifications as follows:</p> <ul style="list-style-type: none"> • Clause 1 – Clarification needed on why 1(8)(a) references only net zero targets for Scotland but includes interim targets for Wales and NI. Clarification needed on why the definitions of transport and storage etc. do not reference the CO2 storage acts. • Clause 2 – Further clarity is needed on how the new economic licensing regime will sit alongside and interact with the licensing regime under section 18 of the Energy Act 2008 under which the Scottish Ministers are the licensing authority. • Clause 26 – The information sharing requirement is broad so specific details on when this would apply are needed. • Clauses 33 and 35 – Set out the appropriate consent needed for proceedings to be taken in England, Wales or Northern Ireland only, so clarification is needed on what would happen in Scotland.
<p>Chapter 3 – Reporting requirements</p> <p>Requires the economic regulator to provide an annual report which the SoS must lay before the Houses of Parliament and the Scottish Ministers must also lay before the Scottish Parliament.</p>	<p>LCM required for clause 41.</p> <p>Clause 41 imposes functions on the Scottish Ministers. The Scottish Ministers must lay a copy of the SoS’ annual report in the Scottish Parliament.</p>	<p>The Scottish Government recommends withholding consent for clause 41 as an amendment is requested.</p> <p>The Scottish Government are requesting amendments as follows:</p> <ul style="list-style-type: none"> • Clause 41 – The annual report should include a requirement to report on progress in Scotland (if not already included).

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
<p>Chapter 4 – Special administration regime</p> <p>Provides for the application of a Special Administration Regime (SAR) in the event of a CO₂ transport and storage company insolvency</p>	<p>LCM required for clause 46.</p> <p>Whilst chapter 4 relates mainly to insolvency, clause 46 provides that the Secretary of State may amend licences. This could be within the devolved competence of the Scottish Parliament.</p>	<p>The Scottish Government recommends withholding consent for clause 46 in case further amendments or clarifications are identified following further review.</p> <p>Clause 46 itself recognises that the powers used could be within the legislative competence of the Scottish Parliament. Subsections (3) and (6) provide that if provision making the modification would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament then there is a requirement for consultation</p> <p>Chapters 4-6 provides for a transfer scheme for licence holders. Given this scheme relates to licences which are within devolved competency as such an LCM is required.</p>
<p>Chapter 5 – Transfer schemes (Clauses 50-52)</p> <p>Allows the SoS to make a statutory scheme to transfer property, rights or liabilities of a licensee (with consent of both parties) to an appropriate body or the SoS when a termination event arises.</p>	<p>LCM required for clauses 50 to 52 as they legislate in the devolved area of carbon dioxide storage, and the conveyance, shipping and supply of gas otherwise than by pipelines. There is the duty to consult the Scottish Ministers, but this should be the need for consent.</p>	<p>The Scottish Government recommends withholding consent for clause 51.</p> <p>The Scottish Government is requesting amendments as follows:</p> <ul style="list-style-type: none"> • Clause 51 – Request that the requirement to consult Scottish Ministers is changed to a requirement to get consent of Scottish Ministers. <p>The Scottish Government also recommends withholding consent for clauses 50 and 52 in case further amendments or clarifications are identified following further review.</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
<p>Chapter 6 – Miscellaneous and general Clause 53</p> <p>Modifies the Energy Act 2008 to provide for cooperation and information-sharing between the economic regulator and the relevant CO2 storage licensing authority, which would be Scottish Ministers in areas specified in the Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011.</p>	<p>LCM required for clause 53. As the Scottish Ministers are the relevant CO2 storage licensing authority in areas specified in the Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011, these cooperation and information-sharing requirements apply to Scottish Ministers.</p>	<p>The Scottish Government recommends withholding consent for clause 53 in case further amendments or clarifications are identified following further review.</p> <p>The Scottish Government has not yet fully assessed the implications of the clauses as drafted and is not as yet in a position to make a final recommendation on consent.</p>
Part 2: Carbon dioxide capture storage etc. and hydrogen production		
<p>Chapter 1 - Revenue Support Contracts</p> <p>The provisions contained in Chapter 1 provide delegated powers to establish the detailed framework for business models, including the designation and duties of a counterparty to enter into and manage business model contracts with carbon entities, CO2 transport and storage companies, and low carbon hydrogen producers and an allocation body for future competitive allocation processes.</p>	<p>LCM required for clauses 56-64, 68-81.</p> <p>Chapter 1 relates to revenue support control in relation to revenue support for hydrogen production, carbon capture and transport and storage. The provision of financial support in relation to these areas insofar as they relate to matters within devolved competence (e.g. CCS and hydrogen production), is devolved.</p>	<p>The Scottish Government recommends withholding consent for clauses 56-64 and 68-81 until amendments or clarifications are identified following further review.</p> <p>The Scottish Government is requesting amendments as follows:</p> <ul style="list-style-type: none"> • Clause 57 – According to subsection (7), revenue support regulations may confer any function on any person. Amend language to narrow the scope of this (potentially by including the word “relevant” as appropriate). • Clauses 57, 71, 72, 73, 74 and 78 – As these clauses give power to the Secretary of State to make regulations about revenue support contracts, request that the requirement to consult Scottish Ministers (including in clause 78) be amended to require the consent of Scottish Ministers.

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
		<ul style="list-style-type: none"> • Clause 68 – Request that when the Secretary of State is making regulations under this section (e.g. to appoint a person to carry out functions in connection with the allocation of hydrogen production revenue support contracts, and a person to carry out functions in connection with the allocation of carbon capture revenue support contracts), consent from Scottish Ministers should be required if the regulations contain provision that would be within devolved competence. • Clause 69 – Request that consent from Scottish Ministers should be a requirement. <p>The Scottish Government is also requesting clarifications or further information as follows:</p> <ul style="list-style-type: none"> • Clause 56 – Further clarity needed on how key terms will be defined - some definitions provided are vague, for instance, the definition applied to ‘low carbon hydrogen producer’ is defined in s.61(8) as ‘a person who carries on (or is to carry on) activities of producing hydrogen which in the opinion of the SoS will contribute to a reduction in emissions of greenhouse gases’ – it is unclear what would fall within this definition. • Clause 63 – The definition of “carbon capture entity” is ambiguous. Does this include Direct Air Capture (DAC)? If not, proposed expansion so that it does include DAC. • Clause 64 – Further information on the provisions for the determination of a matter on a competitive basis would be beneficial to fully consider the policy implications. • Clause 71 – Further clarity on what the allocation framework targets on geographic location could contain, including whether they may include consideration of Scotland and its statutory emissions reduction targets, is needed. If not included, we recommend inclusion.

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
		<p>The Scottish Government recommends withholding consent for all of the above clauses for which amendments or clarifications are needed. The Scottish Government also recommends withholding consent for all of the remaining clauses in case further amendments or clarifications are identified following further review.</p>
<p>Chapter 2 – Decommissioning of carbon storage installations</p> <p>Gives the SoS powers to make and modify regulations to implement a funded offshore CCUS decommissioning regime.</p>	<p>LCM required for clauses 82-84</p> <p>Chapter 2 relates to decommissioning of carbon storage installations, including the power to make regulations about financial support for the costs of decommissioning. The clauses are therefore legislating in a devolved area. The powers include the express power to amend Scottish secondary legislation.</p>	<p>The Scottish Government recommends withholding consent for clauses 82-84 for which amendments or clarifications are recommended.</p> <p>The Scottish Government is requesting amendments as follows:</p> <ul style="list-style-type: none"> • Clause 82 – There should be a requirement to require consent from Scottish Ministers on any secondary regulations arising from this Bill and in any instances in this Part where consultation of Scottish Ministers is the current proposal. • Clauses 82 and 83 – Request that when the Secretary of State is making regulations under this section (e.g. about the financing of and provision of security in relation to decommissioning and legacy costs that have been or are likely to be incurred in relation to a carbon storage installation), consent from Scottish Ministers should be requirement if the regulations contain provision that would be within devolved competence. <p>The Scottish Government recommends withholding consent for all of the above clauses for which amendments or clarifications are sought.</p> <p>The Scottish Government also recommends withholding consent for clause 84 in case further amendments or clarifications are identified following further review.</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
<p>Chapter 3 – Strategy and Policy Statement</p> <p>Enables the SoS to designate a strategy and policy statement for CCUS that would need to be considered by the SoS and economic regulator when carrying out Part 1 (Licensing of carbon dioxide transport and storage) functions, and set out the process and timeframes for preparing and reviewing this statement.</p>	<p>LCM required for clauses 88-91</p> <p>This statement on policy is for the whole of the UK. Chapter 3 relates to the requirement of the SoS to publish a CCUS strategy and policy statement. This statement on policy is for the whole of the UK, i.e. including Scotland. There is a requirement to consult the Scottish Ministers, but Scottish Government recommend that this should be the need for consent of the Scottish Ministers insofar as the policy relates to Scotland. As such this requires an LCM.</p>	<p>The Scottish Government recommends withholding consent for clauses 88-91 for which amendments or clarifications are recommended.</p> <p>The Scottish Government is requesting amendments as follows:</p> <ul style="list-style-type: none"> • Clause 90 – Request that the requirement to consult Scottish Ministers is changes to a requirement to get consent of Scottish Ministers. • Clause 91 – Request that the requirement to consult Scottish Ministers be changed to a requirement for consent of Scottish Ministers. <p>The Scottish Government also request amendments as follows:</p> <ul style="list-style-type: none"> • Clause 91 – In the development of the CCUS strategy and policy statement by the Secretary of State, why is there no requirement for public/stakeholder consultation? <p>The Scottish Government recommends withholding consent for all of the above clauses for which amendments or clarifications are recommended. The Scottish Government also recommends withholding consent for clause 88 in case further amendments or clarifications are identified following further review. Therefore, the Scottish Government recommends withholding consent for clauses 88-91.</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
<p>Chapter 5 – General</p> <p>Clause 96 enables the SoS to make regulations regarding access to CO2 transport and storage infrastructure.</p> <p>Clause 97 makes provision for SoS to incur expenditure and provide financial assistance for the purpose of encouraging, supporting or facilitating the T&S of CO2, carbon capture facilities which operate in association with T&S, low carbon hydrogen production and T&S of hydrogen.</p>	<p>LCM required for: clauses 96-97</p> <p>Chapter 5 gives the SoS power to make regulation about the acquisition of rights to use storage facilities and pipes. This is likely to impact on the devolved area of carbon dioxide storage, and the conveyance, shipping and supply of gas otherwise than by pipelines. There is the duty to consult the Scottish Ministers, but this should be the need for consent.</p>	<p>The Scottish Government recommends withholding consent for clause 96 as an amendment is requested. The Scottish Government also recommends withholding consent for clause 97 in case further amendments or clarifications are identified following further review.</p> <p>The Scottish Government are requesting amendments as follows:</p> <ul style="list-style-type: none"> • Clause 96 – Request that when the Secretary of State is making regulations under this section (e.g. about the acquisition of rights for infrastructure), consent from Scottish Ministers should be requirement if the regulations contain provision that would be within devolved competence.
Part 3 – New Technology		
<p>Chapter 1 – Low Carbon Heat Schemes</p> <p>Clauses 98-107</p> <p>The clauses enable an obligation on, for example, gas and oil heating appliance manufacturers to increase sales of low-carbon appliances such as heat pumps.</p>	<p>LCM is required for clauses 98-107.</p> <p>The proposed measures – relating to the installation or supply of heating appliances in buildings for the purposes of reducing carbon emissions – are within the devolved competence of the Scottish Parliament.</p>	<p>The Scottish Government recommends withholding consent to clauses 98-107 as amendments have been requested.</p> <p>In the Scottish Government’s response to BEIS’ consultation, the Minister set out that the primary powers should include provision for Scottish Ministers to give consent to secondary regulations where devolved competence is touched upon.</p> <p>In light of this, the Scottish Government propose requesting changes to the clauses to reflect the following:</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
		<ul style="list-style-type: none"> • A requirement for Scottish Ministers to consent to any secondary regulations relating to matters within the devolved legislative competence of the Scottish Parliament. • That the Scottish Ministers are provided powers to alter and/or revoke aspects, or proposed aspects, of the functioning of the scheme in Scotland on a case by case basis, where this is within devolved competence. • A requirement that the Secretary of State must appoint the Scottish Ministers as scheme administrators following receipt of a request from the Scottish Ministers, within the timeframe requested by the Scottish Ministers. Until a request is made, the Secretary of State would retain the power to appoint the administrator on a UK-wide basis. [Noting that 5(4) as currently drafted would provide the Secretary of State with powers to appoint the Scottish Ministers as administrators].
<p>Chapter 3 – Miscellaneous</p> <p>Clause 110 amends the Nuclear Installations Act 1965 (“NIA 1965”) to exclude fusion energy facilities from the requirement to hold a nuclear site licence.</p>	<p>LCM is required for clause 110.</p> <p>This clause will have an effect on the functions of the Scottish Ministers under section 19(1) of NIA 1965.</p>	<p>The Scottish Government recommends consent</p> <p>Section 19(1) requires Scottish Ministers approve that the insurance or other financial security of operators of nuclear site licence holders in Scotland is adequate to meet claims arising under NIA 1965. To the extent that a fusion energy facility in Scotland may have been required to hold a nuclear site licence, the functions under section 19(1) will no longer apply to such facilities.</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
Part 6 - Market Reform and Consumer Protection		
<p>This clause grants the SoS the power to introduce a buy-out mechanism under the Energy Company Obligation (ECO) scheme. This allows the SoS powers to include provisions in the secondary legislation for the ECO scheme that gives suppliers the option to meet their obligations by making a payment to an approved third party, for an approved purpose. The clause also provides powers that enable the SoS to make provisions on the amount of payment and the determination of the approved third parties and approved purposes.</p> <p>Subsections (2) & (5) of the clause provides similar powers to the Scottish Ministers to define how a buy-out mechanism would operate as part of a separate ECO scheme in Scotland (with the consent of the Secretary of State).</p>	<p>LCM required for clause 163</p> <p>The clause makes amendments to section 41BA of the Electricity Act 1989, and section 33BDA of the Gas Act 1986 under which the Scottish Ministers have functions.</p>	<p>The Scottish Government recommends consent.</p> <p>This clause provides similar powers to Scottish Ministers to design a buyout mechanism as part of an ECO scheme in Scotland. However, the consent of the SoS will continue to be required. The Scotland Act (2016) already enables the SoS to provide for an ECO scheme without the agreement of the Scottish Ministers.</p> <p>Consenting to this clause does not enable Scottish Ministers to act independently but could enable these powers to be used by them in future. This gives Scottish Ministers options that they would not otherwise have.</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
Part 7 – Heat Networks		
<p>Part 7 Chapter 1 – Regulation of Heat Networks Clause 166(1) defines the regulator ('authorisation authority') in Scotland as GEMA and 166(2) provides a power for the Secretary of State (SoS) to appoint an alternative body to GEMA to carry out these regulatory functions.</p> <p>Clause 168(1) provides for the Secretary of State (SoS) to make regulations relating to heat networks regulation and in relation to "the development or maintenance of relevant heat networks". This could arguably constitute making provisions on technical standards regarding the design and build of heat networks.</p> <p>Clause 168(4) states that: "Regulations made by the Secretary of State by virtue of subsection 168(3)(a) may include provisions amending or repealing primary legislation".</p>	<p>LCM required for 166(1-2) This clause engages the LCM process as technical standards (devolved) will be a condition of authorisation. Thus, when the SoS initially appoints an 'authorisation authority', or subsequently appoints an alternative 'authorisation authority', this will impact the regulation of devolved technical standards. It follows therefore that 166(2) requires an LCM, and somewhat more tenuously, that 166(1) requires an LCM (but Scottish Government would be erring on an abundance of caution here).</p> <p>LCM required for 168(1) As technical standards are devolved, this clause requires an LCM. Moreover, the mere fact that SoS may make broad, unspecified regulations under this clause relating to heat networks could potentially encroach upon Scottish Ministers' regulatory powers under the Heat Networks Scotland Act 2021 (HNSA21).</p> <p>LCM required for 168(3 & 4). As 168(3 & 4) could amend or repeal HNSA21 an LCM is necessary.</p>	<p>The Scottish Government recommends consent to clause 166 for two reasons: firstly, powers to confer and remove functions from GEMA are reserved matters; secondly, Scottish Ministers have set out they are content for enforcement of technical standards to be delivered via authorisations on the condition that they are consulted.</p> <p>The Scottish Government recommends withholding consent to all of clause 168 (and schedule 15) pending two amendments to sub-clause 168(7) and one amendment to 168(9): (i) Scottish Government believes that Part 6 (Enforcement of Conditions) and Part 10 (Supply to Premises) of Schedule 15 also straddle devolved areas and thus should be similarly quoted in clause 168(7). (ii) 168(7) is amended with regard to 'consult' vs 'consent'. The phrase in 168(7) "... is to consult Scottish Ministers..." should be replaced by "...must obtain the consent of Scottish Ministers...". The rationale is that the UK Government may be legislating in devolved areas (via Parts 3, 4, 7, 8, 11, 6 and 10) thus Scottish Ministers should be able to effectively influence such legislation as it relates to Scotland.</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
<p>Clause 168(7) refers to a requirement to consult Scottish Ministers before making regulations by virtue of any of Parts 3, 4, 7, 8 and 11 of Schedule 15.</p> <p>Clause 168(9) specifies the consultation which is set out in 168(7).</p> <p>Clause 169 sets out the procedures for making regulations under clause 168.</p> <p>Clause 171 – Following agreement between BEIS and Scottish Ministers, clause 171 provides that the Secretary of State may, by regulations, appoint Ofgem as the ‘licensing authority’ under the Heat Networks (Scotland) Act 2021 (HNSA21). The mechanism used for this is the amendment of Section 4(b) of HNSA21.</p>	<p>LCM required for 168(9) as its provision is in connection to 168(7), to which Scottish Government have requested two amendments.</p> <p>LCM required for 169 as its provision is in connection with clause 168 to which Scottish Government have requested amendments.</p> <p>LCM required for 171(1-3) As clauses 171(1) to (3) amend HNSA21.</p>	<p>The Scottish Government note that 168(9) would have to be amended as a consequence of amendments to 168(7).</p> <p>Clause 169 sets out the procedure for making regulations under clause 168 i.e. whether they are to be made by negative or affirmative procedure. Affirmative procedure is required where a regulation is the first to be made under a specific power or if it amends primary legislation. As the Scottish Government is recommending withholding consent to 168, it follows that it must recommend withholding consent to 169. However it should be noted that there is nothing in clause 169 per se which the Scottish Government objects to. The sole ground for recommending withholding consent to 169 is its linkage to 168.</p> <p>The Scottish Government recommends consent to clause 171 as Scottish Ministers have agreed to the appointment of Ofgem as licensing authority and the mechanism for appointment.</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
<p>The Scottish Government notes that a previous draft iteration of clause 171 included a sub-clause 171(4) which gave Scottish Ministers the power to unappoint GEMA as licensing authority. This sub-clause 171(4) has been removed from the Energy Bill as introduced. The Scottish Government is disappointed at its removal.</p> <p>However, BEIS have clarified that the removal of 171(4) does not reflect a change in policy position, but rather is due to advice from the Office of the Advocate General for Scotland (OAGS) that the powers to confer and remove functions from GEMA are wholly reserved matters.</p> <p>Clause 172 provides the licensing authority with enforcement powers similar to those which Ofgem currently has through the Gas Act 1986 and Electricity Act 1989. The Scottish Government welcomes this provision.</p>	<p>LCM required for 172(1) Clause 172(1) creates a power for the SoS to amend the Heat Networks Scotland Act 2021 (HNSA21) for the purpose of making provision about monitoring compliance with, or enforcement of, conditions of heat networks licences issued under section 5(5) of that Act (i.e. licences issued by a licensing authority). As HNSA21 could be amended, an LCM is required.</p>	<p>The Scottish Government recommends consent to clause 172 as Scottish Ministers have welcomed the provision of additional enforcement powers for the licensing authority. This is on the condition that Scottish Ministers have powers to modify those enforcement provisions in future (see clause 168, above).</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
Schedule 15 – Heat Networks Regulation		
<p>Part 3 - Heat network authorisations</p> <p>Paragraph 12: allows the SoS to make regulations that prevent anyone from carrying out a “regulated activity” without authorisation. This means Scottish operators will need an authorisation to carry out a regulated activity. Additionally, Scottish heat suppliers will likewise need authorisation, as regulated activities include “installing/maintaining meters, the charges consumers pay and their bills, service standards and the communication of information about the heat network” (paragraph 14(5)).</p> <p>Paragraph 13 provides that the Regulator may make regulations in relation to authorisations, such as defining requirements to receive authorisation, outlining the process for applying for authorisation, and allowing regulations to be made about this process.</p> <p>Paragraphs 14 to 16 pertain to the content of authorisations including in relation to technical standards.</p>	<p>LCM required for Paragraph 12 of Part 3 The provisions of paragraph 12 mean that the definition of a regulated activity could be wide, and relate to devolved areas such as the supply of heat. Additionally, devolved areas such as technical standards (and protection of heat network consumers that are yet to be defined and so may stray past the C7 reservation) will be attached to authorisations.</p> <p>LCM required for Paragraph 13 of Part 3 As devolved areas such as technical standards (and protection of heat network consumers that are yet to be defined and so may stray past the C7 reservation) will be attached to authorisations.</p> <p>LCM required for Paragraphs 14, 15 & 16 of Part 3 As technical standards are devolved.</p>	<p>The Scottish Government recommends consent to Paragraph 12 of Part 3 as Scottish Ministers have agreed that technical standards be a condition of authorisation (whereby Scottish officials will sit on the Code Governance Board). Moreover, legal advice has indicated that the ambiguity around the extent of the Section C7 reservation (of Schedule 5 of the Scotland Act 1998) is not sufficient to merit recommending withholding consent.</p> <p>The Scottish Government recommends consent to Paragraph 13 of Part 3 as Scottish Ministers have agreed that technical standards be a condition of authorisation (whereby Scottish officials will sit on the Code Governance Board). Moreover, legal advice has indicated that the ambiguity around the extent of the Section C7 reservation (of Schedule 5 of the Scotland Act 1998) is not sufficient to merit recommending withholding consent.</p> <p>The Scottish Government recommends consent to Paragraphs 14-16 of Part 3 as Scottish Ministers have agreed that technical standards be a condition of authorisation (whereby Scottish</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
<p>Paragraphs 17 and 18 whilst relating to consumer protection, also relate to the supply of heat.</p>	<p>LCM required for Paragraphs 17 & 18 of Part 3 As supply of heat (and potentially the protection of non-domestic consumers beyond the C7 reservation) are devolved areas.</p>	<p>officials will sit on the Code Governance Board). Moreover, legal advice has indicated that the ambiguity around the extent of the Section C7 reservation (of Schedule 5 of the Scotland Act 1998) is not sufficient to merit recommending withholding consent.</p> <p>The Scottish Government recommends consent to Paragraphs 17 & 18 of Part 3. Supply of heat here relates to the implementation contractual agreements between suppliers to ensure the continued supply of heat in the event of a network failure so that the regulator doesn't have to step in and incur costs on the taxpayer through supplier of last resort, transfer schemes or special administration. The Scottish Government wants customers to enjoy the same protections for their heat network regardless of where they are in the UK. Additionally, provisions here will help give confidence to the potential customers of heat networks, which should help the market develop. Hence the Scottish Government recommends consenting to these powers.</p>
<p>Part 4 - Code governance (i.e. technical standards)</p> <p>This part establishes the parameters of code governance by a code manager to administer a technical standards regime (as a condition of authorisation).</p>	<p>LCM required for all paragraphs of Part 4 (paragraphs 23-31). That is: para 23 (designated documents) para 24 (prohibition on performing the function of a code manager) para 25-29 (licensed code managers) para 30-31 (review and revocation of code manager licences). Reason: technical standards are devolved</p>	<p>The Scottish Government recommends consent to Part 4 (paragraphs 23 – 31) of Schedule 15 as Scottish Ministers have agreed that technical standards be a condition of authorisation and that such technical standards are administered by a 'code governance' structure (whereby Scottish officials will sit on the Code Governance Board).</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
<p>Part 5 – Installation and maintenance licences</p> <p>Part 5 makes provisions for issuing “installation and maintenance licences”. Holders of these licences will have additional powers which will facilitate the installation and maintenance of heat network equipment in England, Wales and Northern Ireland (as per paragraph 32(1)).</p> <p>Paragraph 33(4) allows regulations that set out which rights an “installation and maintenance” licence can confer. Specifically, in relation to road works, paragraph 33(4) defines the meaning of “road” in Scotland.</p>	<p>LCM is required for paragraph 33 as it is within the devolved competence of Scottish ministers to set out additional powers granted to Scottish licensees.</p>	<p>The Scottish Government recommends withholding consent to paragraph 33 of Part 5 pending an amendment to 33(4).</p> <p>The Scottish Government are requesting an amendment to paragraph 33(4) to remove any reference to Scotland. If the sole purpose of installation and maintenance licences is to confer additional powers for the purposes of maintenance and installation in England, Wales and Northern Ireland only (as per para 32(1) of schedule 15 of the Bill), then there should be no need to define “road” in Scotland at all, as Scottish roads will not be affected by installation and maintenance licences (but rather, by Scottish licences under the HNSA21). Therefore, it is unclear why the meaning of “road” in Scotland is defined in paragraph 33(4).</p>
<p>Part 6 - Enforcement of Conditions</p> <p>Part 6 allows regulations about how conditions in both authorisation and Scottish licences are enforced. It thus allows that regulations may provide for the process and circumstances by which the regulator (be it authorisation authority or licensing authority) issues provisional and final enforcement orders, financial</p>	<p>LCM required for all paragraphs of Part 6</p> <p>BEIS have confirmed that they intend to use powers in Part 6 to make provisions for enforcement in both reserved and devolved areas (such as technical standards), thus a case can be made that an LCM may be required for all of Part 6.</p>	<p>The Scottish Government recommends consent to Part 6 (all paragraphs) as Scottish Ministers have agreed that Ofgem should be provided with enforcement powers replicating those at its disposal under the Electricity Act 1989 and the Gas Act 1986, in order to support its roles as authorisation authority and licensing authority.</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
<p>penalties, and consumer redress orders, via the following paragraphs:</p> <ul style="list-style-type: none"> • para 38 (methods of enforcement) • para 39 (final and provisional orders) • para 40 (penalties) • para 41 (consumer redress orders) – it is unclear whether ‘consumer’ pertains to domestic heat network consumers (which would entail reserved powers) or all heat network consumers (which may fall outside of the C7 reservation). • para 42 (functions under Part 1 of the Competition Act 1998 and Part 4 of the Enterprise Act 2002). 	<p>Furthermore, Scottish Government note that the meanings of ‘heat network consumer’ and ‘domestic heat network consumer’ are not specified in the Bill, but rather, their meanings will be determined by regulations (see paragraph 1 of Part 1 of Schedule 15). As such, it is unclear whether enforcement relates to all heat network consumers (which may stray into a devolved area) or domestic consumers only (wholly reserved).</p>	
<p>Part 8 – Step-in arrangements Part 8 of Schedule 15 provides for the Secretary of State to make regulations securing that the holder of a heat network authorisation is able effectively to carry on a regulated activity in relation to a relevant heat network in the place of another person when directed to do so by the Regulator. Making such provision as to property, rights and liabilities as is necessary.</p>	<p>LCM required for all paragraphs of Part 8</p> <p>given that step-in – which is essentially consumer protection – may apply beyond the C7 reservation in the Scotland Act 1998 (i.e. as written in the Bill, GB step-in applies to SMEs and microbusinesses in Scotland and protection of such consumers may be devolved).</p>	<p>The Scottish Government recommends consent to Part 8 (all paragraphs). Scottish Ministers have agreed to such “step-in” arrangements to protect consumers’ heat supply when their heat network supplier or operator ceases to operate, on the basis that this mechanism will afford extra protection to heat network customers in the event of market exit. This “step-in” mechanism would apply to all domestic and non-domestic customers. Although there are arguments suggesting that non-domestic consumer protection is a devolved matter, legal advice has indicated that the ambiguity around the extent of the C7 reservation (of Schedule 5 of the Scotland Act 1998) is not sufficient to merit recommending withholding consent to “step-in” arrangements applying to non-domestic consumers.</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
<p>Part 10 – Supply to premises</p> <p>Part 10 provides for regulations about the supply of heat to premises, such as regulations about metering and other equipment (including installation and operation) and powers of entry related to metering.</p> <p>Paragraph 54, Part 10 of the Bill states that: “The regulations may— (a) impose duties, in circumstances specified by the regulations, to make and maintain a connection between a relevant heat network and any premises”. This paragraphs provides for regulations specifying the ‘terms of connection’ that a heat network operator has to give to any interested ‘premises’ which wishes to connect.</p> <p>Paragraph 58, Part 10 of the Bill provides for the revocation of the Heat Networks (Metering and Billing) Regulations 2014 (HNMBR) through regulations so that rules under the HNMBR are provided for under the authorisation regime of the Heat Networks Market Framework.</p>	<p>An LCM is required for paragraph 54 of part 10. The context and purpose of Paragraph 54 of Part 10 –as stated in paragraph 53, is to provide regulations such that the heat network operator has to give terms of connection to any interested party who wishes to connect. It is not a provision regarding mandatory connection. However, as “any premises” could include non-domestic premises (arguably, all non-domestic premises), paragraph 54 could stray into a potentially devolved area (non-domestic consumers such as SMEs) and so require an LCM.</p> <p>LCM required for Paragraph 58 of Part 10 as Scottish Ministers have powers under the Heat Network Metering and Billing Regulations 2014.</p>	<p>The Scottish Government recommends consent to para 54 of Part 10. Scottish Minsters have agreed that this provision should apply to all consumers in Scotland (i.e. including non-domestic consumers) as the ability to set provisions in relation to offering ‘terms of connection’ to premises (i.e. heat consumers) would help prevent unfair connection terms. Furthermore, legal advice has indicated that the ambiguity around the extent of the C7 reservation (whether it extends to non-domestic consumer protection) is not sufficient to merit recommending withholding consent.</p> <p>The Scottish Government recommends consent to paragraph 58 of Part 10 as Scottish Ministers have agreed that the Energy Bill should provide for regulations to replace the HNMBR provisions with authorisation conditions administered by Ofgem, and subsequently repeal HNMBR, thus streamlining the regulatory process.</p> <p>However, upon ministerial advice, the Scottish Government has requested that the Energy Bill must include a requirement for Scottish Ministers’ consent to heat network regulations which stray into devolved areas, and that drafting must be collaborative in manner (see clause 168(7) above).</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
<p>is the provision of consumer advocacy and advice by a public body). Hitherto, consumer advocacy was undertaken by Consumer Advice Scotland (CAS) - but CAS are not a public body.</p> <p>However, ahead of Consumer Scotland vesting on 1 April 2022, a Scotland Act Order was passed in the UK Parliament transferring most of the functions previously held by CAS within the Consumers, Estate Agents and Redress Act 2007 to Consumer Scotland. Thus most functions now sit with Consumer Scotland who are a public body.</p> <p>Paragraph 63 concerns complaints handling and redress schemes and allows regulations that apply Part 2 of the Consumers, Estate Agents and Redress Act 2007 to heat network customers in the same way they apply to gas and electricity consumers</p> <p>“The regulations may, in relation to England and Wales and Scotland, provide for Part 2 of the Consumers, Estate Agents and Redress Act 2007 (complaints handling and redress schemes) to apply in relation to heat</p>	<p>LCM required for Paragraph 63 of Part 11</p> <p>If “heat network consumers” (underlined in the adjacent citation) pertains to non-domestic consumers such as SMEs, and their protection as consumers is devolved (dependent on extent of the C7 reservation), then paragraph 63 may require an LCM.</p>	<p>The Scottish Government recommends consent to paragraph 63 of Part 11 as heat networks consumers (in Scotland and across the UK) should enjoy the same level of protections and redress as gas and electricity consumers.</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
network consumers as it applies in relation to gas or electricity consumers, with such modifications as appear to the Secretary of State to be appropriate”.		
Part 11 – Oil and Gas		
<p>Environmental Protection</p> <p>This is placing into domestic law powers that were previously derived through EU Law and the 1972 Act which were used to enable the making of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention Regulations 1998 (OPRC)). The powers are wider and allow coverage of carbon dioxide storage and gas unloading and storage as well as hydrogen production and storage.</p> <p>To enable primary powers which would ensure that the offshore oil and gas environmental regulatory regime remains fit for purpose by allowing the future introduction of changes through secondary legislation.</p>	<p>LCM required for clause 225</p> <p>This clause enables the Secretary of State to make regulations requiring a person responsible for certain specified oil infrastructure, harbours and a facility, that is not offshore for handling or storing oil or gas, to have emergency plan arrangements for responding to marine oil pollution.</p> <p>LCM required for clause 226 Subsections (2), (3) (4)</p> <p>By virtue of clause 241 contained in Part 11, clause 226 would also apply to Scotland.</p> <p>The power in subsection (2) changes the law in a devolved area of competence and an LCM would be required.</p> <p>Subsection (3) would modify the 2010 Act and alter the executive competence of Scottish Ministers under the 2009 Act. An LCM would be required.</p>	<p>The Scottish Government recommends withholding consent for clause 225</p> <p>Given the conflict with the Marine (Scotland) Act 2010 and the executive functions of Scottish Ministers under the Marine and Coastal Access Act 2009, Scottish Government recommends withholding consent.</p> <p>By virtue of clause 241 contained in Part 11, clause 226 would also apply to Scotland.</p> <p>The Scottish Government recommends withholding consent for clause 226.</p> <p>The power in subsection (2) changes the law in a devolved area of competence and an LCM would be required.</p> <p>Subsection (3) would modify the 2010 Act and alter the executive competence of Scottish Ministers under the 2009 Act. An LCM would be required.</p> <p>Subsection (4) is also a broad power and could affect the executive competence of Scottish Ministers.</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
	Subsection (4) is also a broad power and could affect the executive competence of Scottish Ministers.	
<p>Decommissioning: charging scheme</p> <p>Creates powers to establish a charging scheme for the recovery of costs related to regulatory functions related to the decommissioning of offshore oil and gas and carbon storage infrastructure</p>	<p>LCM required for clause 227</p> <p>Offshore installations and pipelines are reserved (D2) in relation to oil and gas, but not in relation to carbon dioxide storage. Section 44 of the Petroleum Act defines “offshore installation” and the definition includes installations for the storage of gas. The Scottish Ministers are responsible for carbon storage installations established or maintained under a licence granted by the Scottish Ministers which would be an installation on land or within the territorial waters.</p>	<p>The Scottish Government recommends withholding consent for clause 227 as further amendments or clarifications have been requested.</p> <p>Clause 227 is amending the functions in Part 4 of the Petroleum Act 1998 which are exercisable by the Scottish Ministers (s30 Energy Act 2008).</p> <p>BEIS has noted that Scottish Ministers exercise executive functions for decommissioning of carbon dioxide storage installations in the territorial seas adjacent to Scotland. The relevant power in the Bill will be exercisable by Scottish Ministers in those circumstances.</p>
Part 12 – Civil Nuclear Sector		
<p>Chapter 1 Civil Nuclear Sites, Decommissioning of nuclear sites</p> <p>Clause 231 removes an operator’s ability to surrender a nuclear site licence and creates a new test (to be applied by the Office for Nuclear Regulation (ONR)) when varying a site licence to remove part of a site, thereby allowing that part to exit the nuclear third-party liability regime.</p>	<p>LCM Required for clauses 231-233.</p> <p>Clauses 231 and 232 will have an effect on the functions of the Scottish Ministers under section 19(1) of NIA 1965. Section 19(1) requires Scottish Ministers approve that the insurance or other financial security of operators of nuclear site licence holders in Scotland is adequate to meet claims arising under NIA 1965. The functions under section 19(1) will no</p>	<p>The Scottish Government recommends consent to clauses 231 – 233.</p> <p>Clauses 231 and 232 seek to implement decisions from international conventions relating to proportionate regulatory control of nuclear sites and follow on from a UK Government consultation in 2018.</p>

Clauses – Key Points	Why an LCM is required	Consent recommended / not recommended and reasons why
<p>The changes to the test for variation of a site licence implement the OECD Nuclear Energy Agency's 2014 "Decision and Recommendation of the Steering Committee Concerning the Application of the Paris Convention to Nuclear Installations in the Process of Being Decommissioned". The decision maker in relation to sites in Scotland will be the ONR. The ONR must consult the Health and Safety Executive before varying a licence.</p> <p>Clause 232 amends the Nuclear Installations Act 1965 ("NIA 1965") to allow relevant disposal facilities for low level waste of nuclear origin to be excluded from the requirement of nuclear third party liability where the facility satisfies the criteria of the 2016 Decision and Recommendation Concerning the Application of the Paris Convention on Third Party Liability in the Field of Nuclear Energy to Nuclear Installations for the Disposal of Certain Types of Low-level Radioactive Waste. The SoS is responsible for determining whether the criteria for exclusion have been met by the relevant disposal facility. The SoS must notify Scottish Ministers where a site in</p>	<p>longer be applicable to: (a) sites or parts of sites in Scotland that have been removed from nuclear site licences under clause 231; or (b) facilities that have been determined to satisfy the criteria for exclusion requirement of nuclear third party liability under clause 232.</p> <p>Clause 233 and schedule 19 will have an effect on the functions of the Scottish Ministers under section 9 and 19(1) of NIA 1965. Currently, under section 9, Scottish Ministers have a duty not to cause injury or damage where part of the Scottish Government operates a nuclear installation or a relevant disposal site and are liable to compensate claims for breaches of those duties. At present, no part of the Scottish Government operates such a site. This clause and schedule will extend the duties of the Scottish Ministers under section 9 to claims arising from countries party to the CSC. Section 19(1) requires Scottish Ministers approve that the insurance or other financial security of licensees and operators of sites in Scotland is adequate to meet claims arising under NIA 1965. Scottish Ministers will need to assess whether the cover of licensees and operators of sites in Scotland is adequate to cover claims arising from countries party to the CSC.</p>	<p>The Scottish Government has historically been broadly supportive of these proposals on the basis that regulation of nuclear sites should be effective and proportionate to the level of risk involved. The measures proposed in the Bill support international best practice while still providing appropriate protection for people and the environment. The Scottish Government are content to recommend consent for these provisions.</p> <p>Clause 233 enables UK accession to an international Nuclear Third Party Liability (NTPL) treaty, the Convention on Supplementary Compensation (CSC). The UK is already Party to another NTPL treaty, the Paris Convention and Brussels Supplementary Convention. NTPL regimes aim to ensure that victims of a nuclear incident have access to adequate compensation, as well as supporting investor confidence by channelling liabilities to the nuclear operator and placing limits on their liability. CSC accession would expand the number of countries the UK has NTPL treaty relations with providing further clarity to any victims of a nuclear incident while it is also anticipated that contractors and suppliers from CSC countries will likely have increased confidence to participate in decommissioning projects (including those in Scotland).</p>

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<p>Scotland is determined to meet the criteria for exclusion.</p> <p>Clause 233 together with schedule 19 amend the Nuclear Installations Act 1965 (“NIA 1965”) to implement the Convention on Supplementary Compensation for Nuclear Damage 1998 (“CSC”). Schedule 19 amends NIA 1965 to make provision for claims arising from countries that are party to the CSC. The provisions extend the existing liabilities of UK licensees and operators to provide compensation for nuclear damage to claims arising from countries that are party to the CSC. Claims arising from countries party to the CSC are subject to the liability limit of 300 million special drawing rights. In certain circumstances, a claim may be brought against the SoS, or the Scottish Ministers where a government department that is part of the Scottish Government is responsible for operating the relevant site. However, this clause does not create any new liability for Scottish Ministers at this time as nuclear sites, including disposal sites, in Scotland are operated by either the Nuclear Decommissioning Authority or EDF Energy.</p>		

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<p>Civil Nuclear Constabulary (clauses 235-236)</p> <p>Inserts a new power for the CNC in the Energy Act 2004, enabling the CNC's Chief Constable to provide assistance to another police force in England, Wales or Scotland.</p> <p>Amends the Criminal Justice and Public Order Act 1994 so that members of the CNC are able exercise powers in Part X of that Act. The amendments will allow the CNC to execute a warrant to arrest a person, or to exercise powers of arrest without a warrant where the person is suspected to committing an offence, in England, Wales or Scotland.</p>	<p>LCM required for clause 235 and 236.</p> <p>Law and order (including policing) is a devolved matter to the Scottish Parliament. As such, a legislative consent motion is required for Scotland.</p>	<p>The Scottish Government recommends consent to clause 235 and 236.</p> <p>This policy will expand the CNC's services and clarify support mechanisms and cross-border enforcement powers to provide more effective arrest and warrant powers.</p>
<p>Part 13 – General</p>		
<p>Clause 238 gives the SoS powers to make regulations in connection with the Act, or in connection with any provisions made under the Act. This is very wide, and does not just relate to implementation. The power includes the power to amend, repeal or revoke Acts of the Scottish Parliament.</p>	<p>LCM required for clause 238 This is a broad regulation making power exercisable consequence of or in connection with any provision made under the Bill and to the extent that provisions of the Bill relate to devolved matters this power necessarily also relates to devolved matters.</p>	<p>The Scottish Government recommends withholding consent for clause 238, as this clause includes the power to amend, repeal, or revoke Acts of the Scottish Parliament. There is no requirement for the Secretary of State to consult the Scottish Ministers.</p>

This Legislative Consent Memorandum relates to the Energy Bill (UK legislation) and was lodged with the Scottish Parliament on 28 September 2022

Energy Bill – Legislative Consent Memorandum

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