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1 February 2023

Dear Edward,

COMMITTEE APPEARANCE 24 JANUARY 2023 - LEGISLATIVE CONSENT MEMORANDUM ON THE UK ENERGY BILL

I welcomed the opportunity to discuss the UK Government's Energy Bill at the Committee on 24 January 2023. During my Committee appearance I agreed to follow up with further information to help the Committee understand any potential relationship between the UK Government's Levelling-up and Regeneration Bill and what might come through the Energy Bill in relation to mitigation and environmental aspects.

UK Government Reforms

The UK Government is pursuing multiple reforms to current environmental consenting arrangements. These reforms are contained in Chapter 1 Part 12 (Offshore Wind Electricity Generation) of the UK Energy Bill and Part 6 (Environmental Outcomes Reports) of the Levelling-up and Regeneration Bill (the LURB).

The reforms contained in the UK Energy Bill relate to habitats regulations assessment (HRA) of offshore wind projects only, whilst the reforms contained in Part 6 of the LURB relate to environmental impact assessments (EIA) across Scotland's environmental consenting regimes; including but not limited to marine licensing, energy, forestry, transport and agriculture.

EIA and HRA are two separate environmental consenting processes. EIA is an assessment of the likely significant environmental effects arising from a proposed development project, whilst HRA is an assessment of the potential impacts of a plan or project on certain European sites that have been designated under the Habitats Directive to protect important habitats and species. Each process has different legislative requirements, but projects which satisfy these requirements will need to undergo both EIA and HRA processes.

EIA and HRA are therefore two interlocking parts of the same overall consenting regime. The interaction between them is critical to ensuring the overall consenting regime is coherent and to reducing complexity. Where these processes are not coordinated, there is a significant risk that delay will be introduced into Scotland's well-understood environmental consenting processes.

Reforms and devolved powers

The Scottish Government has concluded that the UK Government's proposed reforms to HRA processes for offshore wind projects impact both fully and executively devolved powers and functions of Scottish Ministers. This is addressed fully in a supplementary LCM that was lodged with the Scottish Parliament on 25 January 2023. A copy of the LCM is available at the following link: Energy Bill | Scottish Parliament Website

It is the Scottish Government's view that the UK Government's reforms to EIA processes under the LURB would give the UK Government powers to replace existing processes for EIAs regardless of whether they are with devolved legislative or executive competence or reserved. As currently drafted, UK Government Ministers would only be required to consult with Scottish Ministers to replace EIAs with a new system of environmental outcomes reports (known as EORs) across a number of Scottish devolved policy areas, rather than having to secure the consent of Scottish Ministers.[1] The LCM lodged with the Scottish Parliament in relation to the LURB as introduced is available at the following link: splcms0623.pdf (parliament.scot)

[1] An "environmental outcomes report", as defined in the LURB, would be a new form of environmental assessment report specifying the extent to which, amongst other things, a proposed relevant consent or proposed relevant plan would, or is likely to, impact on the delivery of specified environmental outcomes.

Onshore consenting regime

Separately, I would note that the Scottish Government is also seeking reforms to onshore consenting processes under the Electricity Act 1989 which are reserved. The reforms that are being requested of the UK Government would allow us to accelerate determinations for Electricity Act consents, streamline our current environmental consenting processes and support the delivery of grid upgrades for Scotland's offshore wind ambitions. We will continue to press the UK Government to support these reforms.

Finally the Committee also asked me to share with them my correspondence to the UK Government in relation to the Scottish Government's "in principle agreement to the Bill" which sets out the Scottish Government's request for further clarification and amendments. This letter, which was dated 26 August 2022 is attached as an Annex.

I hope the Committee finds this information helpful.

Yours sincerely,

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ANNEX

Rt Hon Greg Hands MP
Minister of State for Energy, Clean Growth and
Climate Change
Department for Business, Energy & Industrial
Strategy

August 2022

UK ENERGY SECURITY BILL

Thank you for your letter of 5 July 2022 providing Mr Brown, Ms McAllan, Mr Harvie and myself with a draft of the UK Energy Security Bill, which was introduced to the House of Lords on 6 July 2022. I am responding on behalf of the Scottish Ministers.

It is important that the Scottish Parliament is afforded the appropriate time to fully consider and scrutinise the measures in the Legislative Consent Memorandum (LCM) through its Committee process. The decision on whether to provide consent is for the Scottish Parliament.

Scottish Ministers are considering a recommendation to the Scottish Parliament that consent in principle is given for the following:

- **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.

- **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).

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

  Clauses 166

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

  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. We note 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. We are disappointed at its removal.

  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.

- **Schedule 15 – Heat Neatworks Regulation**

  Part 3 – 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.

  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.

  Paragraph 14 - 16

  Pertain to the content of authorisations including in relation to technical standards.

  Paragraph 17 and 18

  Whilst relating to consumer protection, also relate to the supply of heat.

  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.

  Part 8 (all paragraphs)

  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.

Part 10 Paragraph 54
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*".

Part 10 paragraph 59
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.

Part 11 Paragraph 60
Allows the regulator (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.

Part 11 Paragraph 63
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.

Part 11 Paragraph 64
Concerns complaints handling and redress schemes:
"*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 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 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.

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.

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 to 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.

Scottish Ministers are also considering a recommendation to the Scottish Parliament that consent is **withheld** at this stage for a number of provisions until amendments or further clarification is identified. These are attached at Attachment 1 and summarised below for ease:

- **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 (CO_2), 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 CO_2 transport and storage company insolvency.

  Chapter 5 – Transfer Schemes clauses 50-52
  Allows the SoS to make a statutory scheme to transfer property, rights or liabilities of a licencee (with consent of both parties) to an appropriate body or the SoS when a termination event arises.

Chapter 6 – Miscelleaneous and general clause 53
Modifies the Energy Act 2008 to provide for cooperation and information-sharing between the economic regulator and the relevant CO_2 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, CO_2 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.

  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 CO_2, carbon capture facilities which operate in association with Transport and Storage, low carbon hydrogen and Transport and Storage of hydrogen.

- **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.

- **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.

  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 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.

  We note that your officials have 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 CO_2 and the production of hydrogen.

  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.

  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.

- **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. The power includes the power to amend, repeal or revoke Acts of the Scottish Parliament. There is no requirement for the SoS to consult the Scottish Ministers.

Subject to the points outlined above and contained at Attachment 1, I can confirm, in principle, I am content to begin the legislative consent process in the Scottish Parliament. However until provisions set out at Attachment 1 are addressed I am unable to recommend that the Scottish Parliament consents to those parts of the Bill. Any further recommendation to the Scottish Parliament will be subject to the final provisions of the Bill including

amendments and agreement of the Scottish Government Cabinet Sub-Committee on Legislation.

While we consider the UK-wide Energy Security Bill, it will be important to ensure that the regulations being developed take account of the views of the Scottish Government and other devolved administrations, given their impact across the UK.

While we are broadly content in relation to those measures that touch upon devolved competence, aside from those outlined above and attached at Attachment 1, there are a number of other areas which I would like to draw your attention to at Attachment 2, which seeks further consideration and discussion.

I am grateful to you and your officials for considering the above matters and seek your assurance that they can be pursued and resolved.

It would be helpful if BEIS could continue to keep my officials up to date on the progress of the Bill.

Yours sincerely,

Michael Matheson MSP
Cabinet Secretary for Net Zero, Energy and Transport

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ATTACHMENT 1

Provisions Where Consent is Withheld

Clauses – Key Points	Why an LCM is required	Reasons for Recommending Withholding Consent
Part 1: Licensing of carbon dioxide transport and storage		
Chapter 1 – Licensing of activities Chapter 1 relates to the licensing of activities including the operation of carbon dioxide storage and transportation of CO_2. It establishes Ofgem as the economic regulator for CO2 transport and storage, prohibits transportation of CO_2 by pipeline or operating a site for the geological storage of CO_2 without a licence and enables the SoS to regulate other means of CO_2 transport in the future.	**LCM required for clauses 1-19, 26-27, 29, 31-35.** 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 CO_2 storage) for areas within the territorial sea adjacent to Scotland. SSI 2011/24 makes provision for licences granted by the Scottish Ministers.	We are requesting amendments as follows: • 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. • 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.

Clauses – Key Points	Why an LCM is required	Reasons for Recommending Withholding Consent
		• 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". • Clause 32 – Request that when the Secretary of State is making regulations for the enforcement of licence conditions, consent from Scottish Ministers should be required if the regulations contain provision that would be within devolved competence. We will also request clarifications as follows: • 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. We are therefore recommending withholding consent for all of the above clauses for which amendments or clarifications are recommended. We are also recommending withholding consent for all of the remaining clauses in case further amendments or clarifications are identified following further review. Therefore, we are recommending withholding consent for: clauses 1-19, 26-27, 29, 31-35.
Chapter 3 – Reporting requirements Requires the economic regulator to provide an annual report which the SoS must lay	**LCM required for clause 41**. The Scottish Ministers must lay a copy of the SoS' annual report in the Scottish Parliament.	We request amendments as follows: • Clause 41 – The annual report should include a requirement to report on progress in Scotland (if not already included). We will therefore recommend withholding consent for clause 41 as an amendment is requested.

Clauses – Key Points	Why an LCM is required	Reasons for Recommending Withholding Consent
before the Houses of Parliament and the Scottish Ministers must also lay before the Scottish Parliament.		
Chapter 4 – Special administration regime Provides for the application of a Special Administration Regime (SAR) in the event of a CO_2 transport and storage company insolvency	**LCM required for clause 46.** 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.	We are therefore recommending withholding consent for clause 46 in case further amendments or clarifications are identified following further review.
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.	**LCM required for clauses 50 to 52** as they legislate in a devolved area.	We request amendments as follows: • Clause 51 – Request that the requirement to consult Scottish Ministers is changes to a requirement to get consent of Scottish Ministers. We therefore recommend withholding consent for clause 51 as an amendment is requested. We are also recommending withholding consent for clauses 50 and 52 in case further amendments or clarifications are identified following further review. Therefore, we will recommend withholding consent for: clauses 50-52.
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	**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	We are recommending withholding consent for clause 53 in case further amendments or clarifications are identified following further review.

Clauses – Key Points	Why an LCM is required	Reasons for Recommending Withholding Consent
Scottish Ministers in areas specified in the Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011.	requirements apply to Scottish Ministers.	
Part 2: Carbon dioxide capture storage etc. and hydrogen production		
Chapter 1 - Revenue Support Contracts 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.	**LCM required for clauses 56-64, 68-81.** 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.	We request amendments as follows: • 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. • 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. We also request clarifications or further information as follows: • 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.

Clauses – Key Points	Why an LCM is required	Reasons for Recommending Withholding Consent
		• 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. We are therefore recommending withholding consent for all of the above clauses for which amendments or clarifications are needed. We are also recommending withholding consent for all of the remaining clauses in case further amendments or clarifications are identified following further review. Therefore, we are recommending withholding consent for: clauses 56-64, 68-81.
Chapter 2 – Decommissioning of carbon storage installations Gives the SoS powers to make and modify regulations to implement a funded offshore CCUS decommissioning regime.	**LCM required for clauses 82-84** 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.	We request amendments as follows: • 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. We are therefore recommending withholding consent for all of the above clauses for which amendments or clarifications are sought. We will also recommend withholding consent for clause 84 in case further amendments or clarifications are identified following further review. Therefore, we will recommend withholding consent for: clauses 82-84.

Clauses – Key Points	Why an LCM is required	Reasons for Recommending Withholding Consent
Chapter 3 – Strategy and Policy Statement 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.	**LCM required for clauses 88-91** This statement on policy is for the whole of the UK, i.e. including Scotland.	We request amendments as follows: • 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. We also request amendments as follows: • 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? We are therefore recommending withholding consent for all of the above clauses for which amendments or clarifications are recommended. We are also recommending withholding consent for clause 88 in case further amendments or clarifications are identified following further review. Therefore, we will recommend withholding consent for: clauses 88-91.

Clauses – Key Points	Why an LCM is required	Reasons for Recommending Withholding Consent
Chapter 5 – General 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, 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.	**LCM required for: clauses 96-97** 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 devolved areas. There is the duty to consult the Scottish Ministers, but this should be the need for consent.	We request amendments as follows: • 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. We are therefore recommending withholding consent for clause 96 as an amendment is requested. We are also recommending withholding consent for clause 97 in case further amendments or clarifications are identified following further review. Therefore, we will recommend withholding consent for: clauses 96-97.
Part 3 – New Technology		
Chapter 1 – Low Carbon Heat Schemes Clauses 98-107 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.	**LCM is required for clauses 98-107.** 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.	The Minister for Zero Carbon Buildings, Active Travel, and Tenants' Rights has written indicating in-principle support for these clauses to have effect in Scotland, subject to further discussion and agreement on the role of Scottish Ministers in agreeing subsequent secondary regulations. 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. In light of this, we propose requesting changes to the clauses to reflect the following: • A requirement for Scottish Ministers to consent to any secondary regulations relating to matters within the devolved legislative competence of the Scottish Parliament.

Clauses – Key Points	Why an LCM is required	Reasons for Recommending Withholding Consent
		• 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]. We are therefore recommending withholding consent for clauses 98-107 as amendments are requested.
Part 7 – Heat Networks		
Part 7 Chapter 1 – Regulation of Heat Networks **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. **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*".	**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). **LCM required for 168(3 & 4)**. As 168(3 & 4) could amend or repeal HNSA21 an LCM is necessary	We are recommending 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) we believe 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. (iii) We note that 168(9) would have to be amended as a consequence of amendments to 168(7).

Clauses – Key Points	Why an LCM is required	Reasons for Recommending Withholding Consent
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. **Clause 168(9)** specifies the consultation which is set out in 168(7).	**LCM required for 168(9)** as its provision is in connection to 168(7), to which we request two amendments.	
Schedule 15 – Heat Networks Regulation		
Part 5 – Installation and maintenance licences 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)). 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.	LCM required as it is within the devolved competence of Scottish minsters to set out additional powers granted to Scottish licensees.	We are recommending withholding consent to paragraph 33 of Part 5 pending an amendment to 33(4). We request 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). As we are requesting an amendment to 33(4), we are recommending withholding consent to all of paragraph 33.

Clauses – Key Points	Why an LCM is required	Reasons for Recommending Withholding Consent
Part 11 – Oil and Gas		
Environmental Protection 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. 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.	**LCM required for clause 225** **LCM required for clause 226 Subsections (2), (3) (4)**	Given the conflict with the Marine (Scotland) Act 2010 and the executive functions of Scottish Ministers under the Marine and Coastal Access Act 2009,we are recommending withholding consent. By virtue of clause 241 contained in Part 11, clause 226 would also apply to Scotland. The power in subsection (2) changes the law in a devolved area of competence and an LCM would be required. Subsection (3) would modify the 2010 Act and alter the executive competence of Scottish Ministers under the 2009 Act. An LCM would be required. Subsection (4) is also a broad power and could affect the executive competence of Scottish Ministers.
Decommissioning: charging scheme Creates powers to establish a charging scheme for the recovery of costs related to	**LCM required for clause 227** Offshore installations and pipelines are reserved (D2) in relation to oil and gas, but	

Clauses – Key Points	Why an LCM is required	Reasons for Recommending Withholding Consent
regulatory functions related to the decommissioning of offshore oil and gas and carbon storage infrastructure	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. 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). BEIS officials have 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.	We are recommending withholding consent for clause 227 in case further amendments or clarifications are identified following further review.

Clauses – Key Points	Why an LCM is required	Reasons for Recommending Withholding Consent
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. The power includes the power to amend, repeal or revoke Acts of the Scottish Parliament. There is no requirement for the SoS to consult the Scottish Ministers.	**LCM required for clause 238** as includes the power to amend, repeal or revoke Acts of the Scottish Parliament.	We are recommending withholding consent on the basis that clause 238 includes the power to amend, repeal, or revoke Acts of the Scottish Parliament.

ATTACHMENT 2

FURTHER AREAS FOR CONSIDERATION

Key Area	Consideration
Land and Building Transaction Tax Sub-paragraph 9(4) of Schedule 6 to the current draft Bill includes in the definition of "relevant taxes" a reference to "land and buildings transaction tax". This is a devolved tax that is collected by Revenue Scotland. The effect of this provision is that, if the entity were to acquire an interest in land in Scotland as part of transfer arrangements, LBTT would be disapplied.	***The Scottish Government requests that the reference to land and buildings transaction tax is deleted from the draft Bill.*** This is because: • LBTT is a devolved tax and receipts are paid directly to the Scottish Budget. Therefore, this exception would represent a hypothetical cost to the Scottish Budget, rather than being merely an accounting simplification as for the UK taxes collected by HMRC. • We understand from the ESO and Elexon that there will never be a transaction that is caught by this measure as there will not be an acquisition of a chargeable interest in land in Scotland. We hope, therefore, that the deletion will be uncontroversial from UKG's perspective. In order to protect the policy integrity of LBTT, and the devolution settlement more generally, we wish to defend against UK legislation being used to legislate in this area. We do not think that it would be appropriate to give an LCM in this instance. If any exemption were to be granted to the entity, we would expect this to be considered by and legislated for in the Scottish Parliament
Hydrogen Levy (65 – 67) We are broadly supportive of the provisions relating to establishment of a hydrogen levy. It is crucial that Scottish Ministers are given the opportunity to actively participate in shaping the scope and application of the hydrogen levy, given its likely impact on energy consumers in Scotland.	***We would therefore ask that an amendment be put in place to require consultation with Scottish Ministers on development of the Hydrogen Levy.***
CCUS Part 1 – Licensing of carbon dioxide transport and storage, Chapter 1 – Licensing of activities Clauses 20-25 – Appeal from decisions of the economic regulator	***We would like to request further clarity on why there is no appeals procedure for termination decisions and would propose the addition of one if possible.***

Key Area	Consideration
• Allows a licence holder or T&S network user to appeal a Section 13 licence modification decision to the CMA and sets out the conditions under which the CMA may refuse to allow an appeal • Sets out the process by which an appeal application may be made (in Schedule 2), the circumstances in which an appeal may be brought, the matters the CMA must consider in determining an appeal, the time limits for determining appeals, the remedies available to the CMA where it has allowed an appeal (e.g. quashing or requiring reconsideration by economic regulator or substitution of decision, depending on subject) and how CMA determinations must be set out and published (i.e. in an order which the economic regulator must comply with within a specified time period).	
CCUS Part 1 – Licensing of carbon dioxide transport and storage, Chapter 1 – Licensing of activities Clause 30 – Duty to carry out Impact Assessment • Requires the economic regulator, if pursuing a proposal that could significantly impact licence holders or those doing associated activities, the general public or the environment, to conduct, publish and allow for representations on an impact assessment (or provide reasons why this is unnecessary). • Requires the economic regulator to include a summary of the impact assessments and associated decisions in the annual report specified in clause 41	***We would like to request an amendment specifying that environmental related assessments should be carried out in line with the requirements of the EIA/SEA legislation (if not appropriate would like clarification on why). In subsection (9) it would be beneficial if reports under section 41 (annual reports on transport and storage licensing functions) also included a report of decisions/actions which were deemed too urgent or otherwise to require an impact assessment. We would also like to request further clarification on how the economic regulator would determine whether an impact assessment was unnecessary and/or impractical.***
Community benefit and shared ownership • Community benefit from, and shared ownership of, local renewable energy developments can help engage communities in Scotland's net zero transition and deliver lasting economic and social benefits to local communities. The Scottish Government has longstanding Good Practice Principles (GPPs) for onshore and offshore renewable energy developments which we encourage renewables developers and communities to utilise.	***I would welcome the opportunity to discuss this, alongside other matters.***

Key Area	Consideration
• However, given that electricity is reserved to the UK Government, the Scottish Government currently has no powers to introduce legislation to mandate the provision of community benefits or offers of shared ownership from renewable energy developments. The continuing engagement on the Energy Security Bill presents a potential opportunity to explore this further.	
<u>Offshore Wind Environmental Improvement Package (OWEIP)</u> • With regard to the consent of offshore wind developments, I am aware that proposals are being developed for an Offshore Wind Environmental Improvement Package (OWEIP) to be incorporated into the Bill via amendments later this year. As you know, we have shared ambitions to advance and support the development of offshore wind energy projects that will be so vital in achieving net zero objectives and we are therefore keen to ensure that the OWEIP amendments work for Scotland. Indeed, it is vital that these reforms can effectively enable Scottish developments if the British Energy Security Strategy's target of 50GW of offshore wind generation by 2030 is to be realised, given the contribution to that ambition to be made from the ScotWind, INTOG and other projects in Scottish Waters over the next decade. As you know, although planning for offshore and onshore wind is devolved, the legislation governing consenting for electricity generation is reserved and in part executively devolved (although as outlined in the letter from the Cabinet Secretary for Net Zero, Energy and Transport to your Secretary of State of 23 May 2022 we see the Energy Security Bill as an appropriate opportunity to effect overdue devolution of this area of legislation), meaning that Scotland lacks the powers to enact statutory reforms responsive to the distinct Scottish consenting context. I would also note for your information (while acknowledging that it lies outwith your Ministerial portfolio) that we do not believe we can create a	***I have written to the Secretary of State (28 June 2022) to request a meeting to discuss these matters and look forward to doing so before the legislative process becomes too far advanced.*** Correspondence relating to this is attached at Annex A.

Key Area	Consideration
regulatory regime fit for the purpose of delivering on our very ambitious offshore wind development plans without also correcting the current anomaly whereby certain legislation and regulation making powers for marine environmental protection remains reserved or executively devolved. In short, unless we take a whole systems approach which provides Scottish Ministers with the powers to regulate as appropriate for Scottish circumstances across both relevant consenting and environmental protection regimes, we do not believe we can deliver the level of offshore renewables energy generation so vital to all UK jurisdictions in order to tackle the climate emergency, achieve energy security as swiftly as possible, and benefit the UK economy.	
Heat Networks • The Scottish Government is supportive of heat networks as a means to decarbonise the supply of heat to homes and buildings. Last year the Scottish Parliament passed the Heat Networks (Scotland) Act 2021 creating a new regulatory framework to support and guide the development of heat networks in Scotland, as well as creating a new Licensing Authority. The Act sets new statutory targets requiring at least 2.6 and 6TWh of heat to be supplied by heat networks by 2027 and 2030, respectively. As you will be aware the provisions included in the Heat Networks (Scotland) Act do not provide consumer protection for heat networks customers as regulation of this remains reserved under the Scotland Acts. • The Scottish Government is broadly supportive of measures set out in the Energy Bill in relation to heat networks as this will help provide the necessary protections for heat network consumers across Great Britain. Full consideration of the clauses is now underway.	***I would welcome your thoughts on how this can be achieved within the confines of the Scotland Acts.***

Key Area	Consideration
• The Scottish Government welcomes the appointment of GEMA (Ofgem) as the licensing authority under the Heat Networks (Scotland) Act 2021 as well as the amendments that this Bill will make to that Act to create additional enforcement powers. As these provisions are implemented it will be imperative that they are done so in a way that creates a single unified system under the Scottish and UK regulatory frameworks so not to disadvantage heat network development in Scotland. Whilst it is the preferred route for the Scottish Ministers to see GEMA (Ofgem) appointed as the Licensing Authority, it is important that the Scottish Ministers retain the power to appoint an alternative body should this become necessary**.**	
Energy Performance of Premises • In particular, provisions in Part 9 of the Bill relating to the energy performance of premises, currently extend to England and Wales only. Energy performance of buildings is devolved in Scotland. The Scottish Government has consulted upon reforms to the metrics and information contained within Energy Performance Certificates and seeks to retain alignment where possible with future changes to the EU Energy Performance of Buildings Directive.	***We would request that the UK Government amend the Bill to make those powers under Part 9 exercisable by the Scottish Ministers in respect of Scotland.***