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28 March 2023

**LEGISLATIVE CONSENT MEMORANDUM ON THE UK ENERGY BILL**

Dear Edward,

I am writing in response to the Net Zero, Energy and Transport Committee's report of 17 March 2023, on the Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum for the Energy Bill (UK Parliament Legislation).

I thank the Committee for their careful consideration of the LCM and Supplementary LCM for the Bill, and welcome their recommendations.

As requested by the Committee, I enclose a letter from Minister Stuart MP, sent on 24 January 2023, setting out the UK Government's response to each of the Scottish Government's requested amendments and clarifications, and confirming the introduction of further amendments to the Bill, namely measures covering Offshore Wind, and the Energy Savings Opportunity Scheme.

I share the Committee's view on the importance of reaching agreement on this Bill to enable the Scottish Parliament to give consent, and I continue to urge the UK Government to work with the Scottish Government to reach a resolution on these clauses. There is ongoing discussion on these matters between my officials and their counterparts in the UK Government.

Regarding the potential impacts of the Bill on future offshore wind developments in Scottish waters, I welcome the Committee's recommendation that Scottish and UK Government officials work urgently together to ensure the law in this area is coherent and clear. I confirm

that my officials will continue to engage productively with UK Government officials across relevant areas of UK legislative reform on this basis.

Following the outcome of these discussions, I expect to table a second Supplementary LCM.

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

Department for Business, Energy & Industrial Strategy

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24 January 2023

Dear Michael,

**ENERGY BILL**

Thank you for your letter to my predecessor on 26 August 2022 which outlined the Scottish Government's position on recommending consent in principle to the Scottish Parliament for the Energy Bill and wherein you agreed to begin the legislative consent process in the Scottish Parliament.

I apologise for the delay in responding to you on this matter. This was due to the UK Government prioritising the urgent Energy Prices Act 2022, an incredibly important piece of UK-wide legislation. I would like to express my thanks to the Scottish Government for their constructive engagement during the passage of the Act. I hope that the short pause to the Energy Bill been beneficial to you and Scottish Parliament, providing more time to consider the Bill and the measures in the Legislative Consent Memorandum.

I was pleased to read in your letter that the Scottish Government broadly supports the Energy Bill and is largely content with the measures that touch upon devolved competence. I welcome the fact that the Scottish Government is therefore recommending consent for large parts of the Bill.

I also note that the Scottish Government is currently considering a recommendation to the Scottish Parliament to withhold consent for several provisions in the Bill. While I am disappointed that you are not willing to recommend consent for these clauses at this stage, I have considered these matters, and hope that further engagement will help to resolve your outstanding concerns.

I have included an annex (Annex A) to this letter which responds in full to each of the reasons the Scottish Government gave for withholding consent, as outlined in Attachment 1 of your letter. I have also attached a response (Annex B) to each of your requests for further considerations, as detailed in Attachment 2 of your letter.

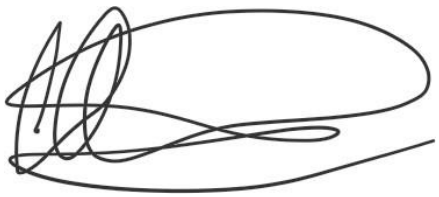
I hope, that having considered the UK Government's response, the Scottish Government is now able to recommend to the Scottish Parliament granting consent for all the remaining provisions for which it has previously recommended withholding consent.

I trust too that these detailed responses and the wider engagement over the Bill provides the assurance you are seeking that the views of the Scottish Government will be taken into account as regulations in secondary legislation are developed, which I recognise is also an issue of concern to you.

Finally, as you know, the UK Government introduced further measures to the Bill covering offshore wind and the Energy Savings Opportunity Scheme. I would welcome further engagement on these provisions, should this be helpful for your consideration of these clauses as part of the LCM process.

I am copying this letter to the Secretary of State for Scotland and the Minister for Intergovernmental Affairs.

Yours ever,



THE RT HON GRAHAM STUART MP
Minister of State for Energy and Climate

## Annex A – UK Government response to Scottish Government reasons why consent not recommend

| Row | Clause/s | Scottish Government reasons why consent not recommended | UKG Response |
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| **Part 1 - Licensing of carbon dioxide transport and storage** | | | |
| 1 | 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. | The drafting of the statutory duties already ensures that the statutory emissions targets form part of the statutory considerations of the regulator.<br><br>The principal objectives have been designed in line with the UK Government's *Principles for Economic Regulation*[1]*;* which sets out the aim of economic regulation to promote effective competition where this is possible, and to provide a proxy for competition, with protection of consumers' interests at its heart, where it is not meaningful to introduce competition. Given the monopolistic characteristics of carbon dioxide pipeline transport and storage, the principal objectives for the economic regulator are designed to protect the interests of end users of the infrastructure services, consumers, and taxpayers, who ultimately pay for the services.<br><br>The duty at Clause 1(6) to have regard to the statutory emissions targets means the targets referenced must be taken into account in regulatory determinations.<br><br>The statutory targets referenced in Clause 1 do not, in and of themselves, give the economic regulator direction as to policy in respect of the contribution of CCUS deployment to meet these targets. This is a policy position which may need to be periodically reviewed. We consider that a Strategy and Policy Statement, as provided for at Part 2, Chapter 3 of the Bill, is the appropriate vehicle for setting such detailed strategic policy direction for the regulator. Under the provisions at Part 2 Chapter 3 the economic regulator will be statutorily required to have regard to the Strategy and Policy Statement in the conduct of its relevant CCUS functions. The economic regulator will also be required to reflect in its forward work programme how it intends to implement the Strategy and Policy Statement requirements, and report on progress in its annual report to Parliament. |

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31623/11-795-principles-for-economic-regulation.pdf

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| 2 | 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. | The UK Government is open to further discussions on referencing interim targets contained in primary legislation for Scotland.<br><br>The definitions of transport and storage do not use exactly the same definitions as used in the Energy Act 2008 because of the different purpose of the provisions. In addition, there are different definitions in use across Parts 1 and 2 of the Bill including to reflect the fact that the Government may provide assistance for a wider range of activities than those which require an economic licence. Part 2 of the Bill allows for the permanent storage of carbon dioxide through utilisation, but it is not considered necessary or appropriate to either economically regulate or licence usage even where it might result in the permanent storage of carbon dioxide. Definitions in the Bill are aligned where appropriate with the carbon dioxide storage licensing legislation. |
| 3 | 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. | For carbon dioxide storage activities, both a carbon dioxide storage licence and an economic licence will be required. It is the UK Government's expectation that holding a valid carbon dioxide storage licence, and continued compliance with the conditions of the storage licence, will be conditions<br>of the economic licence. |

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| | | | The UK Government recognises the importance of consultation and cooperation between the economic regulator and other designated regulatory authorities and relevant national authorities in order to promote efficient outcomes in areas of common interest. To facilitate this the Bill provides, at Clause 26, for the sharing of relevant information between the economic regulator and other relevant authorities. The Bill also provides for carbon dioxide storage licensing authorities to be statutory consultees to certain economic regulation decisions. |
| 4 | 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. | The rationale for legislating to bring other forms of transportation of carbon dioxide within the economic regulation and licensing framework would be to respond to and mitigate the emergence of anti-competitive behaviours by transport operators which could lead to over-charging of network users, and which in turn could require increases in UK Government subsidies to users. Regulations made under this power would be to protect the interests of UK taxpayers and consumers, as such we consider that the delegated power would be most appropriately exercised on a UK-wide basis by the Secretary of State, following consultation with the devolved administrations in relation to devolved matters.<br><br>It is the UK Government's intention (and provided for under Clause 3) that a thorough process of public consultation would be undertaken ahead of making any Regulations, including statutory consultation with Scottish Ministers in relation to devolved matters to allow opportunity for the Scottish Government to influence policy in this area. The UK Government believes the consultation requirement is<br>appropriate and proportionate. |

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| 5 | 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. | Given the challenges of regulating large-scale transport and storage networks across and between the nations of the UK and the UK Continental Shelf, we consider that delegated powers would be most appropriately exercised on a UK- wide basis by the Secretary of State, following consultation with the devolved administrations in relation to devolved matters, to ensure a consistent approach across the UK and to deliver efficient outcomes for UK taxpayers and consumers.<br><br>It is the UK Government's intention (and provided for under Clauses 5 and 6) that a thorough process of public consultation would be undertaken ahead of making any Regulations regarding exemptions from the requirement to hold an economic licence for carbon dioxide transport and storage. These clauses expressly provide for statutory consultation with Scottish Ministers in relation to devolved matters to allow opportunity for the Scottish Government to influence policy in this area. The UK Government believes<br>the consultation requirement is appropriate and proportionate. |
| 6 | 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. | See row 5. |
| 7 | 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. | The UK Government does not consider it appropriate for consent to be required from Scottish Ministers. Once the economic regulator is appointed (i.e., after the interim period, when Sch. 1 Para. 3 ceases to have effect), the Secretary of State's functions under Clause 8 are 'specifically exercisable in relation to' GEMA (Ofgem), a reserved body under para 3(2)(f) of Part III, Schedule 5 to the Scotland Act 1998. Regulations will then provide for types of licence that may be granted by that reserved body |

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| | | | and, as a result, that content will be a reserved matter by virtue of Paragraph 3(1).<br><br>Given the challenges of regulating large-scale transport and storage networks across and between the nations of the UK and the UK Continental Shelf, we consider that delegated power would be most appropriately exercised on a UK-wide basis by the Secretary of State to ensure a consistent approach across the UK and to deliver efficient outcomes for UK taxpayers and consumers.<br><br>The UK Government is open to exploring options for consultation with Scottish Ministers in relation to devolved matters ahead of making any regulations under Clause 8 in line with Clauses 9 and 10. |
| 8 | 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. | The UK Government does not consider it appropriate for consent to be required from Scottish Ministers. Once the economic regulator is appointed (i.e., after the interim period, when Sch. 1 Para. 3 ceases to have effect), the Secretary of State's functions under Clause 9 are 'specifically exercisable in relation to' GEMA (Ofgem), a reserved body under Para. 3(2)(f) of Part III, Schedule 5 to the Scotland Act 1998.<br><br>The clause provides for statutory consultation with Scottish Ministers in relation to devolved matters ahead of making any regulations. |
| 9 | 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. | The UK Government does not consider it appropriate for consent to be required from Scottish Ministers. Once the economic regulator is appointed (i.e., after the interim period, when Sch. 1 Para. 3 ceases to have effect), the Secretary of State's functions under Clause 10 are |

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| | | | 'specifically exercisable in relation to' Ofgem, a reserved body under Para. 3(2)(f) of Part III, Schedule 5 to the Scotland Act 1998.<br><br>The clause provides for statutory consultation with Scottish Ministers in relation to devolved matters ahead of making any regulations. |
| 10 | 11 | An amendment to include more definitions of terms used in the Bill (e.g. “carbon capture”) for clarity. | The UK Government does not consider this amendment to be necessary. The provisions in Clause 11 are intended to ensure that carbon dioxide transport and storage network operators are required to provide prospective users of the network with information they may require. We consider that a broader definition is more appropriate to ensure that all types of future user are covered. A narrower definition may have the unintended consequence of excluding potential future users, for example, certain Greenhouse Gas Removal technologies that may not be covered by the definition. We will provide further detail in the explanatory material to the Bill on this intention. |
| 11 | 12 | An amendment so that the requirement to consult Scottish Ministers is changed to a requirement for consent of Scottish Ministers. | The UK Government does not consider it appropriate for consent to be required from Scottish Ministers. Once the economic regulator is appointed (i.e., after the interim period, when Sch. 1 Para. 3 ceases to have effect), the Secretary of State’s functions under Clause 12 are 'specifically exercisable in relation to' Ofgem, a reserved body under para 3(2)(f) of Part III, Schedule 5 to the Scotland Act 1998.<br><br>Once the economic regulator is appointed, the Secretary of State has the power to direct the regulator not to proceed with proposals to exclude or modify any standard condition. This power is deliberately narrowed to ensure independence of regulatory decision-making. The clause provides for |

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| | | | statutory consultation with Scottish Ministers in relation to devolved matters ahead of giving any such direction. |
| 12 | 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). | The UK Government does not consider this amendment would be appropriate, noting that the Secretary of State does not have any powers in respect of licence termination decisions. This is to ensure the independence of the economic regulator's decision-making.<br><br>Notification by the economic regulator of any actual or likely termination event allows the relevant authorities to consider the potential implications for them at the earliest opportunity and to make any representations to the economic regulator so they can take these into account where time permits. It also allows the Secretary of State to consider whether a statutory transfer scheme pursuant to clause 50 of the Bill is appropriate. There is a consultation process at clause 51(2) where a transfer scheme is proposed; this includes provision for statutory consultation with Scottish Ministers in recognition of the fact that a carbon dioxide storage licence<br>issued by Scottish Ministers may be in place. |
| 13 | 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". | The bodies specifically named in Clause 26 are included given they have a clear role in CCUS regulation. The UK Government would welcome further information on NatureScot's current or intended role in CCUS regulation to consider inclusion in this list.<br><br>The UK Government notes that NatureScot would already be covered by the description at clause 26(2)(m) as a body which "has powers or duties conferred by or by virtue of primary legislation which the economic regulator considers relevant to the exercise of the economic regulator's functions relating to the regulation of licensable activities."<br>NatureScot does not need to be explicitly included in this |

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| | | | list, therefore, to be able to share information relevant to its functions under this provision.<br><br>The UK Government accepted an amendment to the Bill during Committee Stage in the House of Lords to correct the typo in relation to the Scottish Environment Protection<br>Agency. |
| 14 | 26 | The information sharing requirement is broad so specific details on when this would apply are needed. | The UK Government intends for this clause to remove barriers to information sharing between relevant regulatory bodies and national authorities. Information sharing is intended to be reciprocal (information shared both to and from the economic regulator) to ensure efficient outcomes in areas of common interest. The power has been narrowed as<br>far as possible to be information shared only in relation to "functions relating to the regulation of licensable activities". |
| 15 | 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. | The UK Government's amendments brought forward at House of Lords Committee stage (amendments 33, 34 & 36 in the 1 September mashalled list[2]) set out on the face of the Bill the necessary powers for Ofgem to enforce obligations on carbon dioxide transport and storage licence holders.<br>The UK Government considers that the LCM process is no longer engaged by this clause as a result; clause 32 as amended and the new Schedule solely concern the enforcement functions of the economic regulator (GEMA/Ofgem). These provisions are now reserved since they relate to the conferring of functions on a reserved body under para 3 of Part III, Schedule 5 to the Scotland Act 1998. |

[2] https://bills.parliament.uk/publications/47641/documents/2216

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| 16 | 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. | Scotland is not covered here to reflect the position of the Lord Advocate as head of the system of prosecutions in Scotland, meaning that it is not usually considered necessary to make express provision of this kind in relation to Scotland (see, e.g., s.43 Gas Act 1986). |
| 17 | 41 | The annual report should include a requirement to report on progress in Scotland (if not already included). | The annual report will report on all licensable activities, wherever they take place. |
| 18 | 51 | Request that the requirement to consult Scottish Ministers is changed to a requirement to get consent of Scottish Ministers. | The intent of a CCUS transfer scheme is to facilitate a transfer of licences in the circumstance where the regulator is contemplating terminating a licence, to enable the Secretary of State to transfer operation of the transport and storage network to a competent body, to ensure the continued safe operation of the network. As any such transfer scheme is likely to need to be effected within an extremely short timeframe the UK Government considers that a requirement to seek active consent could limit the effectiveness of the power to respond effectively in such circumstances. |
| **Part 2 - Carbon dioxide capture storage etc. and hydrogen production** | | | |
| 19 | 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. | The intention of this definition is to ensure that support under hydrogen production revenue support contracts may only be provided in respect of low carbon hydrogen production which contributes to our decarbonisation ambitions. Clause 61(3) places a duty on the Secretary of State to make provision in regulations for determining the meaning of 'eligible' in relation to a low carbon hydrogen producer. It is not practical to define an 'eligible low carbon hydrogen producer' on the face of the Bill as eligibility may change over time as the industry and technologies evolve. The UK Government's current approach gives a significant degree of certainty about eligibility which will provide prospective investors and developers the clarity and transparency that they need to bring projects forward. |

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| 20 | 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). | The functions in subsection (7) would be limited to those about revenue support contracts. This does not provide the Secretary of State with a general power to confer any function on any person, outside of the scope of revenue support regulations. The UK Government does not, therefore, consider it appropriate or necessary to narrow the scope. |
| 21 | 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. | Revenue support regulations are intended to bring forward a UK-wide business model regime, supporting UK-wide decarbonisation targets and to provide a consistent regulatory framework, as far as is possible, across the UK. We believe that a UK-wide approach would provide efficiency, help mitigate risks and drive cost savings over time. It is expected that carbon capture revenue support contracts and, for an initial period, hydrogen production revenue support contracts are funded by the Exchequer.<br>Given these regulations are likely to have direct impacts on UK taxpayers (and UK consumers once the hydrogen levy is in place), we do not consider a requirement to seek the consent of Scottish Ministers to be appropriate in this instance.<br><br>It is the UK Government’s intention (and provided for under Clause 78) that a thorough process of public consultation would be undertaken ahead of making any Regulations, including statutory consultation with Scottish Ministers on devolved matters to allow opportunity for the Scottish Government to influence policy in this area. The UK Government believes the consultation requirement is appropriate and proportionate. |
| 22 | 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. | In July 2022, the UK Government launched a consultation on potential business models to unlock private investment and enable greenhouse gas removal technologies to deploy |

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| | | | at scale over the next decade. The consultation closed on 27 September 2022, and we intend to provide a response to the consultation and set out the UK Government's detailed policy proposals on the design and implementation of the business model in due course.<br><br>How Direct Air Carbon Capture and Storage might be supported by any such business model is still subject to ongoing policy development. Once we have further developed the policy thinking on this, we can then consider what the appropriate mechanics might be and whether there are any available. Decisions as to which carbon capture<br>entities are eligible for support through the Bill provisions are to be made on a case-by-case basis. |
| 23 | 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. | This power is equivalent to section 10(5)(a) of the Energy Act 2013. The regulation making powers in 62(2) and 64(2) are necessary as the precise circumstances in which a direction to offer to contract may or must be given and the terms which may or must be specified in a direction may<br>change over time, given the nascent, first-of-a-kind nature of the contracts. |
| 24 | 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. | UK Government's intention is for an allocation body to be responsible for administering the future, more competitive allocation process on a UK-wide basis. It may also be necessary to quickly appoint an allocation body to the role in order to maintain continuity of the role, for example if an incumbent can no longer continue. As such, the UK Government does not consider it appropriate for consent to be required from Scottish Ministers.<br><br>The UK Government intends to engage with the Scottish Government as competitive allocation policy develops, including on the selection of an allocation body. |

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| 25 | 69 | Request that consent from Scottish Ministers should be a requirement. | This is not a regulation making power and instead allows the Secretary of State to issue standard terms (i.e., the business model contracts), therefore a consent requirement would not be appropriate. Contract development is owned by the Department for Business, Energy and Industrial Strategy (BEIS). The Scottish Government has been engaged throughout the policy development process and this engagement will of course continue in the future. |
| 26 | 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. | This consideration forms part of an indicative, non- exhaustive list that could be included in an allocation framework. This list is similar to that of section 13(4)(iii) of the Energy Act 2013, which included "the geographical location of electricity generating stations". Competitive allocation policy is still being developed and no decisions on the content of future allocation frameworks have been made. The UK Government will engage with the Scottish Government during the course of this policy development. |
| 27 | 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. | The UK Government does not consider that it would be appropriate for there to be a Scottish Government consent requirement for the regulations made under Clause 82 because it is necessary for the decommissioning fund regulations to be UK-wide due to the close interaction these will have with the UK-wide funding arrangements established by Part 1 of this Bill. The UK Government believes the consultation requirement is appropriate and proportionate. |
| 28 | 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 | The UK Government does not consider that it would be appropriate for there to be a SG consent requirement for the regulations made under Clause 82-83 because it is necessary for the decommissioning fund regulations to be UK-wide due to the close interaction these will have with the |

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| | | Scottish Ministers should be requirement if the regulations contain provision that would be within devolved competence. | UK-wide funding arrangements established by Part 1 of this Bill. The UK Government believes the consultation requirement is appropriate and proportionate.<br>Although Clause 84(2) includes a power to amend Scottish legislation, this power is conferred on Scottish Ministers, not the Secretary of State. Its inclusion ensures that the existing power conferred on Scottish Ministers by section<br>30(2)(b) Energy Act 2008 will be no less flexible than the corresponding power conferred on Secretary of State by section 30(4) Energy Act 2008. |
| 29 | 90 | Request that the requirement to consult Scottish Ministers is changed to a requirement to get consent of Scottish Ministers. | The UK Government considers that, of the provisions in Chapter 3 of Part 2,only Clause 89 engages the LCM process, and then only as regards Secretary of State functions under Parts 1 and 2 of the Bill and not those of the economic regulator, since provisions conferring functions on GEMA/Ofgem (a reserved body under Part III of Schedule 5 of the Scotland Act), are outside devolved competence.<br>Clauses 88, 90 and 91 are outside devolved competence as they concern the UK Government's CCUS policy only, not the CCUS policy of the Scottish Government. The UK Government considers the consultation provisions to be appropriate and proportionate to allow Scottish Ministers opportunity to influence the content of the Strategy and<br>Policy Statement. |
| 30 | 91 | Request that the requirement to consult Scottish Ministers be changed to a requirement for consent of Scottish Ministers. | See row 29 |
| 31 | 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? | The drafting deliberately mirrors that in Energy Act 2013 for an Energy Strategy and Policy Statement; to ensure that, procedurally, a joint Energy/CCUS Strategy and Policy Statement could be prepared and consulted on if this was considered appropriate to ensure coherence across the two<br>Strategy and Policy Statements. The provisions enable Secretary of State to consult whomever they consider to be |

| Row | Clause/s | Scottish Government reasons why consent not recommended | UKG Response |
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| | | | 'appropriate'. This is the same drafting as in the Energy Act 2013. We additionally note that following initial consultation with Ofgem and the devolved administrations, it is the UK Government's intention for the Energy Strategy and Policy Statement to be publicly consulted on. |
| 32 | 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. | Given the challenges of regulating large-scale transport and storage networks across and between the nations of the UK and the UK Continental Shelf, we consider that the delegated power would be most appropriately exercised on a UK-wide basis by the Secretary of State, following consultation with the devolved administrations in relation to devolved matters, to ensure a consistent approach across the UK. |
| **Part 3 – New Technology** | | | |
| 33 | 98 - 107 | A requirement for Scottish Ministers to consent to any secondary regulations relating to matters within the devolved legislative competence of the Scottish Parliament. | Given the UK-market-wide nature of the planned scheme, with a single set of rules for appliance manufacturers needing to operate across the UK heating market to guard against risks such as arbitrage or other forms of scheme gaming, we believe that the planned approach to consultation between the UK Government and the Scottish Government on the development and evolution of the Low- Carbon Heat Scheme, as statutorily provided for at s106, is most appropriate. The UK Government is of course committed to continuing to work closely with, and informed by, all the devolved administrations in the design of the scheme, preparations for its launch, and on any future adjustments once in operation. |
| 34 | 98 - 107 | 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. | The UK Government understands from more recent engagements with the Scottish Government that it now shares the view that this adjustment, providing for differences in the functioning of the scheme in different parts of the UK market, is not fitting or required when it is intended that there be a uniform set of scheme rules and |

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| | | | functions across the UK. The UK Government would therefore be grateful for confirmation from the Scottish Government that this is the case. |
| 35 | 98 - 107 | 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]. | Similar to the above, the UK Government understands that the Scottish Government now share the view that UK-wide administration of the Scheme – potentially with partnership arrangements with regulatory bodies in the devolved nations for enforcement activities if necessary – is likely to be most appropriate. The UK Government would therefore be grateful for confirmation from the Scottish Government that this is the case. |
| **Part 7 – Heat Networks** | | | |
| 36 | 168 & S15 | 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).<br><br>The Scottish Government note that 168(9) would have to be amended as a consequence of amendments to 168(7). | As regards Part 6 and Part 10 of Schedule 15, the UK Government is open to a further discussion with the Scottish Government on the inclusion of Part 6 and Part 10 in Clause 168(7). In any case, the Secretary of State will consult with Scottish Ministers before making regulations relating to enforcement or supply to premises that are within the devolved competence of the Scottish Government. |
| 37 | 168, S15, 169 | 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. | As regards the proposed consent requirement in Clause 168, it is the view of the UK Government that the Scottish Government request is unnecessary. The Secretary of State will consult with Scottish Ministers before making regulations that are within the devolved competence of the Scottish Government. The UK Government is committed to involving the Scottish Government in the development of its public consultation on these policy areas in secondary legislation, which will be published later this year. Legislating in Scotland on these areas will help ensure coherent regulatory frameworks and that Scottish heat network consumers receive equivalent protections to consumers in other parts of GB. |

| Row | Clause/s | Scottish Government reasons why consent not recommended | UKG Response |
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| 38 | 172 | Following advice which went up to Scottish Ministers, working-level officials in the Scottish Government recently informed us that they are now recommending withholding consent to Clause 172 unless a consent requirement is included . Athough Scottish Ministers have welcomed the provision of additional enforcement powers for the licensing authority, they are concerned that the Secretary of State would use this power more than once. We have added this update here for ease. Scottish Ministers also want powers to modify those enforcement provisions in future. | The UK Government understands that the Scottish Government recommends withholding consent to Clause 172 given concerns that the Secretary of State would use this power more than once. It is the view of the UK Government that the Scottish Government request is unnecessary. The power as drafted in Clause 172 meets a request from Scottish Government to allow for monitoring and enforcement powers for GEMA as licensing authority in Scotland, given the Heat Networks (Scotland) Act 2021 does not provide for these powers. There is no current intention for the Secretary of State to use this power under Clause 172 more than once and beyond this express purpose. The UK Government will consult with the Scottish Government over any exercise of the power. |
| 39 | S15 | Scottish Government are recommending withholding consent to paragraph 33of Part 5 pending an amendment to 33(4).<br><br>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). | The UK government passed an amendment at the Committee Stage in the House of Lords removing the definition of "road" at paragraph 33(4) of Schedule 15 of the Bill. The Scottish Government's request has therefore been met. |
| **Part 11 – Oil and Gas** | | | |
| 40 | 225 | 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. | The UK Government requests further information for the reasons the Scottish Government has recommended to withhold consent for this provision. |

| Row | Clause/s | Scottish Government reasons why consent not recommended | UKG Response |
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| 41 | 226 | The power in subsection (2) changes the law in a devolved area of competence and an LCM would be required.<br><br>Subsection (3) would modify the 2010 Act and alter the executive competence of Scottish Ministers under the 2009 Act. An LCM would be required.<br><br>Subsection (4) is also a broad power and could affect the executive competence of Scottish Ministers. | The UK Government requests further information for the reasons the Scottish Government has recommended to withhold consent for this provision. |
| 42 | 227 | The Scottish Government recommends withholding consent for clause 227 as further amendments or clarifications have been requested.<br><br>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).<br><br>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. | The UK Government requests further information for the reasons the Scottish Government has recommended to withhold consent for this provision. Clause 227 does the following: a) clarify that where Scottish Ministers have functions for decommissioning, Part 4 is to be read with a gloss that substitutes Scottish Ministers for Secretary of State; and b) it confers powers on Scottish Ministers to make a charging scheme to recover costs of this. |
| **Part 13 - General** | | | |
| 43 | 238 | 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. | Clause 238 provides for a power to amend primary and secondary legislation *in consequence* of (or in connection with) the Bill once enacted. It can therefore only be used in the context of substantive provisions of the Act (or secondary legislation made under the Act) which would either be reserved matters or already subject to scrutiny through the LCM process. This power can only be used to amend primary legislation passed before or in the same session as the proposed Energy Act (or in the case of secondary legislation, legislation made under powers in |

| Row | Clause/s | Scottish Government reasons why consent not recommended | UKG Response |
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| | | | such primary legislation). This is not an open-ended power to amend any legislation whenever passed or made.<br><br>The UK Government considers it appropriate to take powers to make consequential amendments to legislation passed by the Scottish Parliament where that is necessary to give full effect to substantive provisions within the Energy Bill once enacted.<br><br>Any amendment to primary legislation which is proposed using this power would be subject to a vote in both Houses of Parliament. Any consequential amendments to Scottish Parliament legislation will only be made once there has been prior engagement and discussion with the Scottish Government. |

Annex B – UK Government response to Scottish Government's requests for consideration

| Scottish Government Key Area | SG request for UKG Consideration | UKG Response |
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| **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.***<br><br>*This is because:*<br>• *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.*<br>• *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.*<br><br>In order to protect the policy integrity of LBTT, and the devolution settlement more generally, we wish to defend<br>against UK legislation being used | The Independent System Operator and Planner (ISOP) will be created through this legislation. Various functions currently carried out by National Grid and its subsidiaries will be transferred to the ISOP. As such, sub-paragraph 9(4) of schedule 6 includes numerous types of taxes including two devolved taxes.<br><br>Since publication of the Energy Bill, the UK Government has been able to obtain some information regarding the property which will be transferred under Schedule 6 transfer schemes. So far, this has confirmed that there is unlikely to be any property located in Wales or Scotland which is subject to a transfer scheme and so we are considering removing the Land and Building Transaction Tax and the Land Transaction Tax. |

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| | 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)**<br>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.*** | The hydrogen levy is a reserved matter. It is therefore not appropriate to include statutory consultation requirements within the Energy Bill for the levy provisions. UK Government officials engaged their counterparts in Scottish Government in the course of developing the delegated powers for the hydrogen levy. We are committed to continuing to work closely with Scottish Government, to help ensure that the detailed design of the levy, which will be introduced through regulations, also has regard to the views of Scottish Ministers. |
| **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**<br>• 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<br>• 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 | ***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.*** | A carbon dioxide transport and storage licence is expected to include provisions regarding the specific circumstances in which a licence can be terminated by the economic regulator. That is, the circumstances in which a licence can be terminated will be clear on the face of the licence.<br><br>This is distinct and different from a proposed modification which could alter the licence conditions and in turn the basis on which investors made their investment decisions.<br><br>The circumstances in which a licence may be terminated may include where a licensed operator wishes to cease to carry on its business |

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| 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). | | as a carbon dioxide transport and storage operator or has become affected by an insolvency event. Licence termination circumstances may also include the most serious breaches of, or failures to comply with, licence conditions.<br><br>Licence holders who wish to challenge a termination decision, if they considered such a decision to be irrational or lack proper process, can do so through the Judicial Review process.<br><br>Moreover, it is our expectation that terminating a licence on the ground of breach of conditions would be a last resort action by the economic regulator. Amendments to clause 32 of the Bill (enforcement of obligations of licence holders) tabled at House of Lords Committee Stage set out, in a Schedule to the Bill, the detailed provision for the enforcement of carbon dioxide transport and storage licences and relevant requirements. This includes detailed procedural requirements for provisional and final orders and the imposition of financial penalties by the economic regulator and provides for a process for appealing enforcement action decisions via the Courts. Where the economic regulator decides that it would be more appropriate to proceed to take enforcement action under the Competition Act 1998, the appeals process as set out in that Act is relevant.<br><br>Given the recourse to bring Judicial Review proceedings and also the detail now included in the Bill on the enforcement action which the<br><br>- |

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| | | economic regulator can take in respect of licensees, and the procedural requirements relating to such action, including in respect of appeals, we do not consider a further appeals process for licence terminations to be necessary or appropriate. The circumstances in which a licence can be terminated will be clear to all parties as part of the licence agreement, and if a termination is a result of non-compliance with enforcement action this would already have followed a clear and thorough process which<br>provides for appeals. |
| **CCUS Part 1 –Licensing of carbon dioxide transport and storage, Chapter 1 –Licensing of activities Clause 30 – Duty to carry out Impact Assessment**<br>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 reason 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.*** | The requirement upon the economic regulator to undertake impact assessments in advance of implementing new proposals would not replace or remove existing legislative requirements relating to environmental impact assessments e.g. any environmental impact assessment required to support an application for a storage licence pursuant to the Energy Act 2008.<br><br>Clause 30 (duty to carry out impact assessments) closely aligns with the duty to carry an impact assessment as at clause 5A of the Utilities Act 2000 that applies to Ofgem's functions in gas and electricity, where Ofgem's approach to impacts assessments is set out in published guidance.<br>While Ofgem may choose to develop separate guidance for impact assessments relating to its CCUS functions, given different statutory duties and objectives will apply, such guidance is not expected to diverge significantly from this existing guidance. |

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| | | We do are not of the view therefore that this requires an amendment to the legislative drafting. |
| **<u>Community benefit and shared ownership</u>**<br>• 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.<br>• 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. | ***I would welcome the opportunity to discuss this, alongside other matters.*** | Within the British Energy Security Strategy, we committed to consult on community benefits for communities hosting network infrastructure. We are keen to engage with the Scottish Government as this work develops.<br><br>The British Energy Security Strategy also committed to consult on 'local partnerships' for onshore wind in England. In December DLUHC launched a technical consultation on limited changes to national planning policy. To support this, BEIS intends to consult later this year on community engagement and benefits from onshore wind. Taken together these two consultations fulfil the BESS commitment, and we would welcome engagement from the Scottish Government as we continue to develop this work. |
| **<u>Offshore Wind Environmental Improvement Package (OWEIP)</u>**<br>• 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 | ***I have written to the Secretary of State (28 June 2022) to request a meeting to discuss these matters and looks forward to doing so before the legislative process becomes too far advanced. Correspondence relating to this is attached at Annex A.*** | The UK Government recognises the key role that Scottish offshore wind projects play in delivering our joint ambition for this sector, as well as Scottish Ministers existing role in the consenting process. UK Government's view is that the primary purpose of the Offshore Wind Environmental Improvement Package (OWEIP) provisions is electricity generation, which is a reserved matter. We therefore intend to legislate |

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| 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.<br><br>• 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 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.<br><br>• 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 | | across the UK to avoid a gap in legislative provision or an inconsistent regulatory regime.<br><br>UK Government officials have engaged closely with Scottish Government officials as the OWEIP has developed to ensure that the proposals will allow both Governments to support increased offshore wind capacity whilst protecting the marine environment. The Defra Marine Minister has met Scottish counterparts and I am also aware that the First Minister has discussed this with the Secretary of State for Levelling Up, Housing and Communities, in his role as Minister for Intergovernmental Relations, and that he has asked Sue Gray, Second Permanent Secretary, to help identify possible solutions to Scottish Government's concerns.<br><br>The provisions as drafted are intended to respect current roles in the consenting process.<br>• For strategic compensatory measures, Scottish Ministers will retain their existing duties to agree and secure compensatory measures for Scottish inshore developments over 1 megawatt and offshore developments over 50 megawatts.<br>• For the Marine Recovery Fund, our intention is to delegate operational delivery functions to Scottish Ministers to retain a role in delivering measures for projects they consent. We will work collaboratively on this approach as policy develops to avoid creating additional regulatory burdens and to provide consistency for developers. |

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| 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. | | • On environmental assessments, Scottish Ministers will have regulation-making powers in relation to offshore wind projects in the Scottish inshore marine area. The Secretary of State will have regulation-making powers in relation to offshore wind projects in the offshore area, in line with the current devolution settlement.<br><br>I also acknowledge that you have raised issues with the current position regarding consenting for electricity generation and would like to reassure you that UK Government is exploring these issues in detail. I will respond separately on that in due course. |
| **<u>Heat Networks</u>**<br>• 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 | ***I would welcome your thoughts on how this can be achieved within the confines of the Scotland Acts.*** | The UK government welcomes the Scottish Government's preference for GEMA (Ofgem) being appointed as the licensing authority under the Heat Networks (Scotland) Act 2021. Given the Energy Bill will appoint Ofgem as the heat networks regulator for Great Britain, having a single body performing both roles will ensure coherence across the two regulatory frameworks.<br><br>Under Schedule 5 to the Scotland Act 1998, conferring functions on or removing functions from GEMA is reserved to the UK government. That is why the Energy Bill provides for |

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| customers as regulation of this remains reserved under the Scotland Acts.<br>• 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.<br>• 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. | | regulations appointing GEMA as the Scottish licensing authority.<br><br>We recognise Scottish Ministers' desire to retain the power to appoint an alternative body to the licensing authority role should this become necessary. As this would involve removing functions from GEMA, which is a reserved matter, the UK government would need to remove GEMA from the role of Scottish licensing authority before Scottish Ministers could appoint an alternative body.<br><br>We understand from discussions with the Scottish Government that it is unlikely that there would ever be a rationale for GEMA no longer having the Scottish licensing authority role. However, to ensure that this is an available option in future, we propose a Memorandum of Understanding between UK Government and Scottish Ministers stating that the UK Government will take steps to remove the Scottish licensing authority function from GEMA should Scottish Ministers wish to confer the function on an alternative body. |

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| **<u>Energy Performance of Premises</u>**<br>• 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.*** | The UK Government is content to continue to explore extending these powers as part of the Energy Bill. |