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Edward Mountain MSP
Convener of Net Zero, Energy and Transport
committee
Scottish Parliament
Edinburgh, EH99 1SP

Copied to UKSIs@parliament.scot

Your ref:
Our ref: A52857080

28th May 2025

Dear Edward,

**THE ELECTRICITY AND GAS (ENERGY COMPANY OBLIGATION) (AMENDMENT)
ORDER 2025 AND EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH
PARLIAMENT**

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

This instrument is made primarily in exercise of the powers conferred by sections 33BD of the Gas Act 1986 and section 41B of the Electricity Act 1989. This reflects limited powers devolved to Scottish Ministers to design and implement a replacement for the Energy Company Obligation (ECO) scheme in Scotland. The relevant legislation providing for these powers is Sections 59-60 of the Scotland Act 2016.

These powers provide for an executive transfer of functions to the Scottish Ministers but not the devolved competence of the Scottish Parliament. These powers can only be exercised by Scottish Ministers with the consent of the Secretary of State. It is and has been the view of Scottish Ministers that they cannot plan, direct and administer a replacement ECO scheme in Scotland upon this basis.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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I am satisfied that the terms by which Scottish devolved matters are referenced by this SI do not require the further consent of Scottish Ministers within other devolved competences (i.e. this instrument relates only to the ECO scheme and other matters reserved to the UK Parliament).

Likewise I am satisfied that the Amendment Order is primarily of a technical nature and does not lower relevant standards.

This means that technically this statutory instrument does not fall within the terms of the protocol. However I am keen to keep Parliament informed of relevant decision-making in the interests of transparency and the broader accountability of Scottish Ministers.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee. I would be grateful if the Committee could note the notification accompanying this letter.

Yours Sincerely,

Alasdair Allan

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SI NOTIFICATION: SUMMARY

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| The Electricity and Gas (Energy Company Obligation) (Amendment) Order 2025 |
| Proposed laying date at Westminster 9 June 2025 |
| Date by which Committee has been asked to respond Not applicable. |
| Power(s) under which SI is to be made The instrument is made primarily in exercise of the powers conferred by sections 33BD of the Gas Act 1986 and section 41B of the Electricity Act 1989. |
| Categorisation under SI Protocol Proposal contains provisions which are clearly technical; <input type="checkbox"/> Proposal does not involve a policy decision (or the implementation of such a decision) made by UK or Scottish Ministers; (Type 2 notification) |
| Purpose <p>This Order extends to Great Britain and makes changes to the regulations underpinning the Energy Company Obligation (ECO) and Great British Insulation Schemes (GBIS). These changes are mainly to update technical references (such as rural/urban definitions for statistical purposes); and enable more flexibility in enabling improvements to be delivered across the two schemes. This includes allowing two measures out of floor, loft and cavity wall insulation to be installed simultaneously as part of a GBIS project; smart thermostats to be installed in the low-income group; and delivery achieved under ECO4 rules to count towards an obligated supplier's GBIS target. More generally the Order:</p> <ul style="list-style-type: none">• amends legislation to clarify the process around Ofgem's rejection of measures for failure to comply with TrustMark's requirements related to guarantees, consumer protection, and installation standards, such as PAS 2035/2030.• amends the purpose of an assessment of loft/cavity wall insulation within legislation so that it more clearly aligns with the role undertaken by the assessor.• amends legislation to specify that shared ground loops (SGLs) can be considered for the ECO 'Innovation Measure' (IM) route. They will therefore be eligible to submit the relevant application to Ofgem for consideration.• provides householders with the opportunity to opt into a voluntary pledge, signed by the householder, encouraging them to arrange a smart meter installation with their energy supplier(s).• updates the rural area definition in the ECO legislation to reflect the Office for National Statistics (ONS) and Scottish Government updated datasets. Transitional arrangements will be required for projects delivered between updates and the transitional arrangements will be based on the date on which a project has been completed and notified to Ofgem |
| Other information The UK Government has requested that Scottish Ministers confirm their consent to these changes to the ECO scheme as applying in Scotland. The Scotland Act (2016) provides for executive competence for relevant regulations to be devolved to the Scottish Ministers, legislative competence has not been devolved to the Scottish Parliament. Scottish Ministers are reporting their consent to the Parliament in line with the principle of Ministerial accountability and transparency in decision-making. |

SG Policy contact:

[REDACTED]