

# Supplementary Legislative Consent Memorandum

## Energy Bill

### Background

1. This memorandum has been lodged by Neil Gray, Cabinet Secretary for Wellbeing Economy, Fair Work and Energy, under Rule 9B.3.1(c) of the Parliament's standing orders. The Energy Bill was introduced in the House of Lords on 6 July 2022. An LCM (LCM-S6-26) was then lodged on 28 September 2022, and the Supplementary LCM (LCM-S6-26a) was lodged on 25 January 2023. Further amendments were subsequently lodged, with final amendments lodged on 31 August 2023 and 4 September 2023. The Bill can be found at [Energy Bill \[HL\] - Parliamentary Bills - UK Parliament](#).

### Content of the Energy Bill

2. The stated aim of the Bill is to increase the resilience and reliability of energy systems across the UK, support the delivery of the UK's climate change commitments, and reform the UK's energy system while minimising costs to consumers and protecting them from unfair pricing. The Bill includes:
  - Provisions to support a low carbon energy system including Carbon Capture, Usage and Storage (CCUS) and hydrogen, reduce emissions from industry, transport and heat, and provide low carbon power.
  - Provisions relating to system reform and consumer protection and provisions to ensure market frameworks and governance arrangements are geared towards strengthening energy security and becoming a net zero energy system while minimising costs to consumers, including measures to support low carbon heating, reduce demand for energy by business, and improve the energy performance of buildings.
  - Provisions relating to safety, security and resilience and provisions to guarantee a robust and resilient supply of core fuels for the UK, to ensure that the UK is a responsible nuclear state and take essential action in protecting the UK Continental Shelf while transitioning to net zero.
  - The Offshore Wind HRA amendments include provisions to reform how offshore wind projects are assessed for environmental impacts, and how any subsequent compensatory measures are delivered.
  - Further hydrogen amendments, including in relation to a variety of powers required for the UK Government to make provision for the execution of hydrogen revenue support systems (hydrogen business models) to support the growth of hydrogen production across the UK.

## Provisions which relate to Scotland

3. Energy matters are generally reserved and as such all the general provisions in the Bill extend to Scotland. For most elements of the Bill, the UK Government has chosen not to restrict its territorial extent. However, this is a complex Bill and legislative consent will be required in several areas that touch on devolved competence. While the Bill is still going through 'ping pong', it is at the very end of this process, so it is unlikely that the UK Government would have parliamentary time to remove the amendments negotiated.

## Provisions which require consent

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

## Reasons for recommending consent

5. The Scottish Government previously recommended consent to some of the clauses but not all of them and there are still concerns about this Bill which are detailed further below. However, given the extensive negotiations conducted over several months, the current treatment of the Sewel Convention by the UK Government, and its wider negotiating strategy, giving consent will ensure that the positive amendments which have been negotiated to improve the Bill are secured.
6. In recommending consent, the Scottish Government remains concerned about aspects of the Bill. Detailed information about concerns is provided on a clause-by-clause basis in Addendum. There are however two specific issues the Parliament should note. First, the UK Government has not agreed to include a requirement for statutory consent from Scottish Ministers in all areas where it is taking powers to make secondary legislation in devolved areas, contrary to the strongly expressed views of the Scottish Government and the Parliament. The Scottish Government is disappointed by the UK Government's approach, but, on balance, believes that the advantages of the Bill allow it to recommend consent in this case. Second, there are instances in which the UK Government believes the provisions do not require the legislative consent of the Scottish Parliament, so has not sought consent, but the Scottish Government believes are within devolved competence so these are included in the LCM: clauses 13, 14, 15, 17, 18, 19, 28, 29, 46, 154 and the clause being inserted by amendment NC63.

7. In addition, the Scottish Government is concerned about the UK Government's negotiating approach to this Bill. The UK Government made tabling amendments agreed between the governments conditional on the Scottish Government recommending consent to the whole Bill. This is the reverse of the Sewel Convention, under which the UK Government should amend the Bill to reflect the views of the Scottish Parliament, not threaten to revert to a less acceptable version if consent is not forthcoming. The Scottish Government has made clear to the UK Government that this is an unacceptable approach to negotiations and the Sewel Convention.
8. A number of other amendments were also requested to the Bill, but the UK Government declined to make them. Detailed information about these amendment requests is provided on a clause-by-clause basis in Addendum.

## Reasons for seeking a legislative consent motion

9. The Bill is relevant under Rule 9B.1.1 of the Standing Orders as it makes provisions applying to Scotland for purposes within the legislative competence of the Scottish Parliament, or which alters that legislative competence or the executive competence of the Scottish Ministers. The LCM process is therefore engaged and the Scottish Government recommends the Scottish Parliament consents to the following clauses of the Bills:
  - Part 1, Chapter 1, Clauses 1-19, 26, 28, 29, 31, 33-35 as these 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 2008 (which includes CO<sub>2</sub> storage) for areas within the territorial sea adjacent to Scotland. SSI 2011/24 makes provision for licences granted by the Scottish Ministers. Note that clauses 7 and 8 trigger the requirement for an LCM only in relation to the powers of the Secretary of State during the initial interim period. Further note that the UK Government view clauses 13-15, 17-19, and 28-29 as reserved matters. In the Scottish Government's view, these clauses relate to the functions of a reserved body, but make provision in a devolved area (the licensing of carbon dioxide storage and the conveyance, shipping and supply of gas otherwise than by pipelines).
  - Part 1, Chapter 1, Clause 27, as this gives powers to the Secretary of State to require information by notice in a devolved area.
  - Part 1, Chapter 3, Clause 41, as this requires the Scottish Ministers to lay a copy of the Secretary of State's annual report in the Scottish Parliament under subclause (8).
  - Part 1, Chapter 4, Clause 46, as this provides that the Secretary of State may amend licences, which licence a devolved area.
  - Part 1, Chapter 5, Clauses 50-52 as these legislate for the transfer of property, rights and liabilities of licence holders. These licences are licensing a devolved activity.

- Part 1, Chapter 6, Clause 53, as this places duties on the Scottish Ministers in their capacity as licensing authority under section 18 of the Energy Act 2008 to cooperate with the economic regulator.
- Part 2, Chapter 1, Clauses 57-62, 65-68, 73-79, 81-83, 85, as these give the Secretary of State powers to make regulations about revenue support contracts which will provide financial support, including in devolved areas.
- Part 2, Chapter 1, Clauses 86-87, as these are devolved in relation to transfer schemes under subclause (1)(a) and (d).
- Part 2, Chapter 2, Clauses 92 and 93, as these give the Secretary of State power to make regulations relating to financing the costs of decommissioning which could relate to devolved activities in Scotland, or those licenced by the Scottish Ministers.
- Part 2, Chapter 2, Clause 94, as this relates to the Scottish Ministers' functions under Part 4 of the Petroleum Act 1998 by virtue of section 30 of the Energy Act 2008.
- Part 2, Chapter 2, Clauses 95-97, as these amend the law on carbon capture installations as it applies in Scotland.
- Part 2, Chapter 3, Clauses 98 and 100, as these relate to a policy statement and strategy to which the Secretary of State and the economic regulator must have regard to in carrying out their functions in relation to areas that are devolved. Note, the UK Government views this as a reserved matter.
- Part 2, Chapter 4, Clause 104, as this makes provision for offences in relation to licences granted by the Scottish Ministers.
- Part 2, Chapter 6, Clauses 127, as this relates to acquisition of rights to use relevant infrastructure for a devolved purpose.
- Part 2, Chapter 6, Clauses 128, as this relates to financial assistance in devolved areas.
- Part 4, Chapter 1, Clauses 142-150, as these provide overarching regulation-making powers to establish low carbon heating schemes (and related functions flowing from subsequent clauses 143-150). Regulation of heat is a devolved matter.
- Part 4, Chapter 3, Clause 154, as this includes the power for the Secretary of State to make regulations which provide provisions of the Gas Act 1986 do not apply, or to apply with modifications in relation to the devolved areas of hydrogen production and transportation of hydrogen (otherwise than by pipeline). The clause makes provision in the devolved area of hydrogen production and transportation of hydrogen (otherwise than by pipeline) so triggers the requirement for legislative consent. Note, the UK Government views this clause as a reserved matter.
- Part 4, Chapter 3, Clause 156, as regulations made under this power could relate to the conveyance of gas (in liquid form) otherwise than by pipes which is devolved.

- Part 8, Chapter 1, Clauses 216 and 217, as these contain broad, wide-ranging powers which give the Secretary of State powers to make regulations in the devolved area of heat networks.
- Part 8, Chapter 1, Clause 220, as this amends the powers of the Scottish heat networks licensing authority.
- Part 10, Clauses 246-249, as these relate to the devolved area of energy performance of buildings.
- Part 11, Clauses 250-262, as although the ESOS scheme is a UK scheme, the reference to emissions reductions means that the scheme as a whole engages an area of devolved policy.
- Part 13, Chapter 1, Clause 286, as this defines what projects the other offshore wind clauses apply to. The definition brings matters which are within devolved competence into scope.
- Part 13, Chapter 1, Clause 287, as the Scottish Ministers have devolved competence to agree compensatory measures and discharge compensation conditions attached to consents and licences in relation to offshore wind projects in the Scottish inshore and offshore regions.
- Part 13, Chapter 1, Clause 288, as this applies in Scotland and affects: (a) the legislative competence of the Scottish Parliament, as it applies to the devolved matters of marine licensing and marine planning in the Scottish inshore region (as well as onshore deemed planning); and (b) affects executively devolved functions, including in relation to consenting, licensing (in the Scottish offshore region), planning and decommissioning.
- Part 13, Chapter 1, Clause 289, as this legislates for offshore wind marine licensing and planning purposes within devolved legislative competence within the Scottish inshore region/territorial waters, and both alters and potentially alters devolved legislative and executive competence in offshore wind licensing, consenting, planning, and decommissioning (in both Scottish inshore and offshore regions).
- Part 13, Chapter 2, Clause 292, as this relates to devolved legislative competence for certain aspects of oil and gas pollution response.
- Part 13, Chapter 2, Clause 293 as this relates to the devolved area of certain oil and gas activities, including for carbon dioxide storage and hydrogen production, with the associated habitats regime likewise being devolved.
- Part 15, Clause 325, as this includes a power to amend, repeal, or revoke Acts of the Scottish Parliament, in consequence of (or in connection with) the Bill once enacted.

10. The provisions to which the Scottish Government recommends the Scottish Parliament give consent are summarised below:

## **Part 1: Licensing of carbon dioxide, transport and storage**

### **Chapter 1**

#### **Clause 1**

Clause 1 sets out the principal objectives and general duties of the Secretary of State and the economic regulator with regard to CCUS.

This clause has been updated to include a reference to the interim emissions reduction targets in Scotland, as set out at section 2(1) of the Climate Change (Scotland) Act 2009, in addition to the net zero emissions target in section A1 of that Act.

The Scottish Government recommends consent to this clause, on the basis of this amendment.

#### **Clauses 2 and 3**

Clauses 2 and 3 set out prohibitions on unlicensed activities and consultation on proposals for additional activities to become licensable, with regard to CCUS. Clause 2 provides that it is an offence to carry on activities within the clause (operating carbon storage sites and transporting carbon dioxide by licensable means of transportation) without a licence.

It also includes the power for the Secretary of State to make regulations specifying which means of transportation are licensable. Clause 3 sets out the consultation requirements before such regulations are made.

This clause has been amended to require the UK Government to seek consent from Scottish Ministers for proposed regulations that would amend Scottish legislation.

Two non-legislative elements have also been offered to support with the delivery of this clause. There will be a Memorandum of Understanding (MoU), which will provide an agreement setting out how the Scottish Government and the UK Government will work together on policy relating to the economic regulation of CO<sub>2</sub> transport and storage. This MoU impacts a number of clauses. For further detail please see Addendum.

A ministerial forum on CCUS will also be established, to discuss ongoing concerns relating to powers in Clauses 2, 3, 92 and 127, and to support the effective development and deployment of CCUS in the UK. For further detail on clauses impacted, please see Addendum.

The Scottish Government recommends consent to these clauses, on the basis of these amendments.

## **Clause 4**

Clause 4 defines the territorial scope of the prohibition as follows: activities in, above or below the territorial sea adjacent to the United Kingdom, or waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008), as it applies to activities in the United Kingdom.

This clause is covered by the non-legislative MoU described under Clauses 2 and 3.

The Scottish Government recommends consent to this clause, on the basis that the MoU will provide an agreement setting out the intentions of how Scottish Government and UK Government will work together on matters relating to CCUS.

## **Clauses 5 and 6**

Clause 5 defines the conditions under which the Secretary of State may by regulations grant exemption from the prohibition, while Clause 6 defines the conditions under which the Secretary of State may by regulations revoke regulations by which an exemption was granted. An exemption may be granted— (a) to a specified person, or persons of a specified class; (b) generally or to such extent as may be specified; (c) unconditionally or subject to such conditions as may be specified.

These clauses are covered by the non-legislative MoU and ministerial forum described under Clauses 2 and 3.

The Scottish Government recommends consent to this clause, on the basis that the MoU will provide an agreement setting out the intentions of how Scottish Government and UK Government will work together on matters relating to CCUS.

## **Clause 7**

Clause 7 enables the economic regulator to grant licences permitting CO<sub>2</sub> transport and storage activities.

Previously the Scottish Government recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area, and as a result, the Scottish Government recommends consent to this clause.

## **Clause 8**

Clause 8 gives the Secretary of State power to make regulations providing that different types of licence may be granted for different types of licensable activity.

This clause has been amended to provide for consultation by the Secretary of State with the Devolved Administrations ahead of making regulations, and amended to establish a statutory time period (of not less than 28 days) for consultation.

This clause is also covered by the non-legislative MoU and ministerial forum described under Clauses 2 and 3.

The Scottish Government recommends consent to this clause, on the basis of the amendments made.

## **Clause 9**

Clause 9 gives the Secretary of State power to make regulations in relation to licence applications, including provision for fees. It also makes provision as to what the economic regulator must do before granting a licence.

This clause has been amended such that where a licence is proposed to be granted within a devolved area, that notice of this is given to the Scottish Government. It has also been amended to establish a statutory time period for consultation by the Secretary of State with Devolved Administrations ahead of making regulations, of not less than 28 days.

This clause is also covered by the non-legislative MoU and ministerial forum described under Clauses 2 and 3.

The Scottish Government recommends consent to this clause, on the basis of the amendments made.

## **Clause 10**

Clause 10 allows the Secretary of State to make regulations to facilitate the making of licence determinations on a competitive basis.

This clause has been amended to establish a statutory time period for consultation by the Secretary of State with Devolved Administrations ahead of making regulations, of not less than 28 days.

This clause is also covered by the non-legislative MoU and ministerial forum described under Clauses 2 and 3.

The Scottish Government recommends consent to this clause, on the basis of the amendments made.

## **Clause 11**

Clause 11 sets out the conditions of licences including general ones (requiring payments to the economic regulator, requirements to comply with conditions set by the economic regulator or Secretary of State, provisions about 'allowed revenue' calculations and information sharing requirements).

The Scottish Government recommends consent to this clause on the basis that UK Government officials provided adequate clarification in response to Scottish



Government officials request for an amendment to include more definitions of terms used in the Bill (e.g. “carbon capture”) for clarity.

## **Clause 12**

Clause 12 enables the Secretary of State to determine standard conditions of licences and allow the grantor to exclude or modify any of these (having notified the appropriate devolved authorities, whom the Secretary of State should consult).

This clause is covered by the non-legislative MoU described under Clauses 2 and 3.

The Scottish Government recommends consent to this clause, on the basis that the MoU will provide an agreement setting out the intentions of how the Scottish Government and the UK Government will work together on matters relating to CCUS.

## **Clauses 13-18**

Clause 13 allows the economic regulator to make modifications of conditions of particular licences, and to the standard conditions of licences. This clause has been amended to require Ofgem to notify the relevant devolved authorities of licence modification proposals.

Clause 14 enables the economic regulator to modify standard licence conditions or the conditions of a specific licence (unless directed not to by the Secretary of State) and require the economic regulator to make similar modifications to standard conditions of any other licence of that type.

Clause 15 enables the Secretary of State or Competition and Markets Authority to modify licence conditions to ensure effective competition.

Clause 16 gives the Secretary of State powers to grant licences during an interim period (as per Schedule 1).

Clause 17 gives the economic regulator powers to revoke a licence in certain circumstances (after notifying persons including the Scottish Ministers if relevant).

Clause 18 makes provision to allow the transfer of a licence if the economic regulator consents following a process that includes giving notice of transfer intentions and considering representations.

The Scottish Government recommends consent to clause 13, on the basis of the amendment made.

With regard to clauses 14, 15, 16 and 18, the Scottish Government recommends consent to these clauses. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding these clauses as the action aligns with the Scottish Government’s broad policy goals in this area.

With regard to clause 17, the Scottish Government recommends consent to this clause as the economic regulator is required to notify the Scottish Ministers if the licenced activity is within devolved competence.

## **Clause 19**

Clause 19 makes provision requiring the economic regulator to publish a notice, send notice and consider representations from persons likely to be affected by a decision to transfer a licence under clause 18.

This clause has been amended to require Ofgem to notify the relevant devolved authorities before giving consent to the transfer of a licence which authorises activities that are within devolved competence.

The Scottish Government recommends giving consent to this clause on the basis of the amendment made.

## **Clause 26**

Clause 26 allows the economic regulator to provide information to or request information from bodies including SEPA and Scottish Ministers (and any other appropriate person with powers conferred by primary legislation including Acts of Scottish Parliament), with the above bodies being required to provide the information within the specified time period.

The Scottish Government recommends giving consent to this clause to ensure that information can be passed between the economic regulator and persons representing Scottish Ministers or SEPA. The typo for the spelling of SEPA has been corrected and clarification has been provided on NatureScot's role.

## **Clause 27**

Clause 27 allows the Secretary of State to require information from licence holders as required for functions under Part 1 (with certain exemptions).

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.

## **Clause 28**

Clause 28 requires the economic regulator to keep the state of the market relating to CO2 transport and storage activities under review and gives it powers to collect information for market monitoring (with an obligation to share this with the Secretary of State or Competition and Markets Authority).

The Scottish Government requested clarification on who this information can be requested from and whether there would be a requirement for the Scottish Government to collect and hold information. The UK Government explained that the purpose of this clause is to give the economic regulator a market overview function and noted that clause 28 powers apply to economic licence holders only. The Scottish Government recommends giving consent to this clause, on the basis of this clarification.

## **Clause 29**

Clause 29 gives the economic regulator power to serve a notice under subsection (2) on any licence holder requesting documents or information. Alteration, suppression or destruction of this information requested by the economic regulator in Section 29 is an offence liable to a fine not exceeding the statutory maximum in Scotland.

This clause has been amended relating to where disclosure of information is not required if it would breach other restrictions on data sharing.

The Scottish Government recommends giving consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.

## **Clause 31**

Clause 31 requires the economic regulator and the Secretary of State to publish reasons for their decisions or determinations (mainly relating to licencing). The UK Government made amendments regarding the meaning of 'final order' and 'provisional order'.

The Scottish Government recommends giving consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area. No concerns have been identified with the amendments made.

## **Clause 33**

Clause 33 sets out that it is a statutory offence to make false statements knowingly or recklessly when providing any information under this Part.

As this clause set out the appropriate consent needed for proceedings to be taken in England, Wales or Northern Ireland only, the Scottish Government requested clarification on what would happen with regards to Scotland. The UK Government confirmed that 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). The Scottish Government recommends giving consent to this clause, on the basis of this clarification.

## **Clauses 34 and 35**

In relation to an offence committed under Part 1: clause 34 establishes the circumstances in which action may be taken against company officers within a corporate entity.

In relation to an offence committed under Part 1, clause 35 sets out that this could be taken to have been committed in any place in the UK and specify who can institute proceedings.

In relation to clause 34, the Scottish Government recommends giving consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.

In relation to clause 35, the Scottish Government recommend giving consent to this clause as UK Government officials provided adequate clarification, as detailed in clause 33.

## **Chapter 3 - Clause 41**

Clause 41 requires the economic regulator to provide an annual report (including information on exercise of functions, Competition and Markets Authority-related activities, forward work programme progress and contributions to policy outcomes), which the Secretary of State must lay before the Houses of Parliament and send to the Scottish Ministers who must also lay this before the Scottish Parliament.

Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought. The Scottish Government requested that the annual report should include a requirement to report on progress in Scotland and the UK Government clarified that the annual report will include all licensable activities wherever they take place, which would therefore include reporting on progress in Scotland. The Scottish Government recommends giving consent to this clause, on the basis of this clarification.

## **Chapter 4 - Clause 46**

Clause 46 allows the Secretary of State to make modifications to the conditions and terms of the relevant licence to further the objective of the administration (and recover financial support provided) when an administration order is in force.

This clause has been amended with regards to who should be consulted if licence conditions are modified. This amendment now refers to those who granted a licence under the Energy Act 2008 in place of the Oil and Gas Authority or a devolved administration

The Scottish Government recommends giving consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.

## **Chapter 5 - Clauses 50-52**

Clauses 50-52 allow the Secretary of State 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 Secretary of State, when a termination event has arisen, in order to secure ongoing operation or safety and security of the network. They also create a requirement to consult about the above transfer scheme certain persons including, if relevant, Scottish Ministers.

These clauses are covered by the non-legislative MoU and ministerial forum described under Clauses 2 and 3.

The Scottish Government recommends consent to this clause, on the basis that the MoU will provide an agreement setting out the intentions of how Scottish Government and UK Government will work together on matters relating to CCUS, and the ministerial forum will provide a forum for discussions.

## **Chapter 6 - Clause 53**

Clause 53 modifies the Energy Act 2008 to provide for cooperation and information-sharing between the economic regulator and the relevant CO2 storage licensing authority, which would be Scottish Ministers in areas specified in the Energy Act 2008 and provided for in the Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011.

The Scottish Government recommends giving consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.

# **Part 2: Carbon dioxide capture, storage etc and hydrogen production**

## **Chapter 1**

### **Clauses 57, 73, 74, 76, 77, 78, 79, 85**

Clause 57 details the Secretary of State's power to make regulations on revenue support contracts including the ability to make provisions for different cases or circumstances and to provide for exemptions or exceptions to requirements imposed by the regulations.

Relevant amendments to this clause:

- Subclause (9) has been amended so that where revenue support regulations make provision under specified clauses these will be subject to parliamentary affirmative procedure.
- The definition of revenue support contract has been amended under the bill to include hydrogen transport revenue contracts and hydrogen storage revenue support contracts.
- Includes regulations that make directions to offer contracts to eligible hydrogen transport providers and eligible hydrogen storage providers fall within the remit of regulations that would be subject to affirmative procedure.
- An amendment was tabled in relation to clause 85 in response to the Scottish Government's request for a consent requirement in relation to Clause 57. See clause 85 for further details.

Clause 73 allows the Secretary of State to appoint a person to act as an allocation body for administering the competitive allocation process for hydrogen production and carbon capture revenue support contracts (and gives the Secretary of State powers for making provisions about the appointment cessation process).

Clause 74 gives the Secretary of State power to issue and subsequently revise standard terms for revenue support contracts, allowing for different standard terms to be issued for different categories of contract.

Clause 76 makes further provision in relation to what may be contained in revenue support regulations (see clause 57) in relation to allocation notifications (clause 75).

Clause 77 sets out the duty of counterparties to offer to contract with eligible low carbon hydrogen producer or eligible carbon capture entity following allocation notification in clause 75.

Clause 78 allows counterparties to agree modifications to the standard terms of an offer under clause 77 on a case-by-case basis, in accordance with revenue support regulations.

Clause 79 confers power on the Secretary of State to, when making provision under s.75 to 78, make further provisions enabling the determination of a matter on a competitive basis and calculations or determinations to be made under regulations, including by such persons and in accordance with such procedure as specified.

Clause 85 details the need to consult before making revenue support regulations. An amendment to this clause provides for consultation by the Secretary of State with Devolved Administrations ahead of making regulations and to establish a statutory time period of 28 days for this consultation.

The Scottish Government recommends consent to these clauses on the basis of the amendment set out in clause 85. Clarifications were also provided by the UK Government on a separate amendment request relating to clause 57. See table for

further detail. The Scottish Government recommends consent to clause 85, on the basis of the amendments made and that the MoU will provide an agreement setting out the intentions of how Scottish Government and UK Government will work together on matters relating to CCUS and hydrogen, and that the ministerial forum will provide an opportunity for discussions on CCUS.

## **Clause 58**

Clause 58 provides details of the duties placed on a designated revenue support counterparty.

Relevant amendments to this clause:

- Inclusion of provision requiring revenue support regulations to include provisions that ensure hydrogen transport counterparties and hydrogen storage counterparties can meet their liabilities under their relevant revenue support contracts.
- Inclusion of hydrogen transport and storage counterparties within the definition of “revenue support counterparty”.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought by the Scottish Government regarding this clause as the action aligns with the Scottish Government’s broad policy goals in this area and no concerns have been identified with the amendments made.

## **Clause 59**

Clause 59 allows the Secretary of State to designate a person, by notice and with consent of that person, to be the counterparty for Transport and Storage (T&S) revenue support contracts.

The UK Government tabled an amendment to clarify that this clause relates to Carbon Dioxide transport and storage.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought by the Scottish Government regarding this clause as the action aligns with the Scottish Government’s broad policy goals in this area and no concerns have been identified with the amendments made.

## **Clause 60**

Clause 60 confers power on the Secretary of State to issue a direction to T&S counterparty to offer contract to an eligible person (person holding a license under clause 7). This clause has been amended to clarify that it relates to Carbon Dioxide transport and storage.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought by the Scottish Government regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area and no concerns have been identified with the amendments made.

## **Clause 61**

Clause 61 introduces new powers under which the Secretary of State may designate the person to be a counterparty for hydrogen transport revenue support contracts. Additionally, it provides definition for "hydrogen transport revenue support contract" as a contract to which the hydrogen transport counterparty is a party to and was entered into by the hydrogen transport counterparty in pursuance of a direction given to it under this section. Under the powers provided by the section the Secretary of State may designate more than one designation has effect in circumstances where the Secretary of State deems it necessary to ensure the liabilities under the contract are made, that the arrangements made under the contract can continue to operate, or directions given to a hydrogen transport counterparty continue to have effect.

The Scottish Government recommends consent to this clause as the action aligns with the Scottish Government's broad policy goals in this area.

## **Clause 62**

Clause 62 empowers the Secretary of State to direct a hydrogen transport counterparty to offer to contract with an eligible hydrogen transport provider specified in the direction provided by the Secretary of State. It also allows for revenue support regulations to make further provision about direction in relation to the circumstances in which a direction may be given and the terms that may or must be specified in the direction.

An amendment has been made to this clause to expand and clarify the power of the Secretary of State to make provision in revenue support regulations for determining the meaning of eligible hydrogen transport provider by reference to standards or other published documents.

The Scottish Government recommends consent to this clause as the action aligns with the Scottish Government's broad policy goals in this area.

## **Clause 65**

Clause 65 allows the Secretary of State to designate a counterparty to hydrogen production revenue support contracts. This counterparty will enter into and manage contracts with eligible low carbon hydrogen producers. Revenue support regulation will determine which persons are eligible. More than one counterparty can be designated at one time.

The UK Government made clarifying amendments to this clause in consequence to the addition of further types of counterparties.



The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought by the Scottish Government regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area and no concerns have been identified with the amendments made.

## **Clause 66**

Clause 66 confers power on the Secretary of State to issue direction to a hydrogen production counterparty to offer to contract with eligible low carbon hydrogen producers in accordance with the provisions set out in revenue support regulations and details the circumstances under which direction can be given.

Relevant amendments to this clause:

- Clarification that revenue support regulations may make provision that a direction to offer to contract may be determined on a competitive basis.
- Expansion and clarification of the power of the Secretary of State to make provision in revenue support regulations for determining the meaning of eligible hydrogen production provider by reference to standards or other published documents.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area, and no concerns have been identified with the amendments made.

## **Clause 67**

Clause 67 allows the Secretary of State to designate a counterparty to carbon capture revenue support contracts. This counterparty will enter into and manage contracts with eligible carbon capture entities.

An amendment has been made that widens the definition of "carbon capture entity" to bring within it capturing carbon dioxide from the atmosphere or from sea water.

The Scottish Government recommends consent to this clause as the above requested amendment has been made.

## **Clause 68**

Clause 68 confers a power on the Secretary of State to issue a direction to a carbon capture counterparty to offer a contract to eligible carbon capture entities in accordance with provisions set out in regulations.

The UK Government has made an amendment that expands and clarifies the power of the Secretary of State to make provision in revenue support regulations for determining the meaning of eligible carbon capture entity by reference to standards or other published documents.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area and no concerns have been identified with the amendments made.

## **Clause 75**

Clause 75 details how an allocation body should notify counterparties of allocation decisions.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.

## **Clause 81**

Clause 81 sets out conditions under which the designation of a person as counterparty can be revoked by the Secretary of State or cease to have effect.

An amendment was made to this clause for the inclusion of hydrogen transport and storage counterparties.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area and no concerns have been identified with the amendments made.

## **Clause 82**

Clause 82 enables revenue support regulations to make provision about the allocation of sums in circumstances where a counterparty is unable to meet its liabilities under the revenue support contract.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.

## **Clause 83**

Clause 83 enables revenue support regulations to make provision to ensure that information and advice required for the functioning of schemes is provided to the bodies requiring it at appropriate points.

An amendment was made to this clause to include the introduction of new power for regulations to make provision for a revenue support counterparty to require a person or description of persons to provide information to it.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area, and no concerns have been identified with the amendments made.

## **Clause 86**

Clause 86 sets out the process by which the property, rights and liabilities of a revenue support counterparty, hydrogen levy administrator or allocation body may be transferred if necessary.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.

## **Clause 87**

Clause 87 enables the Secretary of State to modify transfer schemes.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.

## **Chapter 2**

### **Clause 92 and Clause 93: supplementary**

Clause 92 and Clause 93 allow the Secretary of State to make regulations requiring relevant persons to provide security for the performance of obligations relating to future abandonment or decommissioning of carbon dioxide-related sites, pipelines or installations.

Clause 92 has been amended to provide for consultation with Scottish Ministers ahead of making regulations and establish a statutory time period for consultation by the Secretary of State with Devolved Administrations ahead of making regulations, of not less than 28 days.

These clauses are also covered by the non-legislative MoU and ministerial forum described under Clauses 2 and 3.

The Scottish Government recommends giving consent to these clauses on the basis of this amendment.

## **Clause 94**

Clause 94 provides that Part 4 of the Petroleum Act 1998, in its application in relation to carbon storage installations, has effect with modifications. The UK Government made amendments on how Part 4 of the Petroleum Act 1998 applies to Carbon Storage installations.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought by the Scottish Government regarding this clause and no concerns have been identified with the amendments made by the UK Government.

## **Clauses 95, 96 and 97**

Clause 95 makes amendments to Section 30A of the Energy Act 2008, broadening the scope of change of use relief: so that it applies to eligible CCS installations more generally; and amending the trigger point to qualify for such relief.

Clause 96 makes amendments to Section 30B of the Energy Act 2008, broadening the scope of change of use relief.

Clause 97 gives the Secretary of State powers to make regulations regarding the provision of information on change of use relief.

The Scottish Government recommends consent to these clauses. No amendments were sought regarding these clauses as the action aligns with the Scottish Government's broad policy goals in this area.

## **Chapter 3**

### **Clause 98**

Clause 98 provides that the Secretary of State may designate a strategy and policy statement for CCUS that would need to be considered by the Secretary of State and economic regulator when carrying out functions under Part 1 (Licensing of carbon dioxide transport and storage) functions.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.

## **Clause 100**

Clause 100 establishes timeframes and circumstances for reviewing a CCUS strategy and policy statement.

This clause has been amended to establish a statutory time period (of a minimum of 28 days) for consultation by the Secretary of State with Devolved Administrations ahead of withdrawing the CCUS Strategy and Policy Statement or leaving it as it is (requirement to consult when the statement is being amended is covered in clause 101(2)), so far as the decision relates to devolved matters.

The Scottish Government recommends giving consent to this clause on the basis of this amendment.

## **Chapter 4**

### **Clause 104**

Clause 104 amends the Energy Act 2008 to ensure licences do not commit an offence under that legislation in relation to the change of control of a company in circumstances where prior consent from the OGA has not been obtained.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.

## **Chapter 6**

### **Clause 127**

Clause 127 enables the Secretary of State to make regulations regarding access to CO<sub>2</sub> transport and storage infrastructure, and that these regulations may amend, revoke, or replace or make provision similar or corresponding to, the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011.

This clause has been amended to ensure there is a statutory time period for consultation with the Devolved Administrations of not less than 28 days.

This clause is also covered by the non-legislative MoU and ministerial forum described under Clauses 2 and 3.

The Scottish Government recommends giving consent to this clause as it has been amended to include a statutory time period for the consultation of Scottish Ministers when the Secretary of State is making regulations regarding access to CO2 transport and storage infrastructure that could amend existing regulations. The Scottish Government recommends consent to this clause, on the basis that the MoU will provide an agreement setting out the intentions of how Scottish Government and UK Government will work together on matters relating to CCUS and that the Ministerial Forum will be established.

## **Clause 128**

Clause 128 makes provision for Secretary of State 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.

The Scottish Government recommends consent to this clause. Previously the Scottish Government recommended consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.

## **Part 4: New technology**

### **Chapter 1**

#### **Clauses 142-150**

Clause 142 provides the Secretary of State with powers to set up a scheme through secondary legislation to encourage the sale and installation of low-carbon heating technologies, such as electric heat pumps.

Clause 143 provides for secondary legislation ('the regulations') to define the 'participants' who will be subject to targets under a low-carbon heat scheme, for instance companies involved in the manufacture and supply of a certain type of product. It also provides for the determination of the technologies, within the broader set established, to which those targets will apply. This clause also gives the Secretary of State powers to determine the relevant types of appliances to which the scheme will apply (such as electric heat pumps).

Clause 144 builds on clause 143, making further provision in relation to how targets for a scheme may be set in or under the regulations. In particular, it provides for targets to differ for different low-carbon heating technologies or for different weightings to be given to how different technologies or activities meet the targets. This would allow, for example, for standalone electric heat pumps to be treated differently under the scheme from hybrid heat pumps that incorporate or operate in conjunction with a fossil fuel combustion appliance.

Clause 145 sets out various operational and administrative features of the scheme that the regulations may (and, in the case of determinations about meeting targets, must) provide for.

Clause 146 allows the Secretary of State to appoint a scheme administrator and then to make provision for the manner in which the scheme administrator carries out its functions. Subsection (6) provides for limited circumstances under which scheme regulations could make amendments to primary legislation if appropriate in order to enable a public authority appointed as a scheme's administrator to carry out its functions under the scheme.

Clause 147 provides for the regulations to enable the administrator to conduct a range of enforcement activities. It also provides for the regulations to specify civil penalties for noncompliance with requirements of a scheme and to create offences.

Clause 148 sets out that regulations may make provision about the applications of amounts paid by virtue of clause 145(4)(a) (allowing regulations to require payment where the low-carbon heat target is not met) or clause 147(3) (allowing regulations to provide that a person is liable to penalties on failure to meet requirement of a scheme). Such provision may require the payment of amounts into the Consolidated Fund.

Clause 149 makes provision relating to appeals against any decisions made, or penalties imposed, by the scheme administrator.

Clause 150 establishes procedural requirements for the making of scheme regulations. These depend on the matters covered in the regulations. This clause has been amended by UK Government. These amendments require the Secretary of State to consult the devolved administrations so far as scheme regulations under clause 142(1) apply in relation to Scotland, Wales or Northern Ireland. These amendments will introduce a requirement for the UK Government not only to consult the Scottish Ministers about these regulations, but to do so in advance of making the regulations and, if requested, to make a statement setting out whether the views of Scottish Ministers have been accounted for and why.

The Scottish Government recommends giving consent to these clauses as clause 150, which sets out the procedure to be followed for regulations under these clauses, has been amended to include enhanced consultation requirements. These amendments affect the overall operation of the low carbon heat scheme provisions set out within clauses 142 to 150.

## Chapter 3

### Clause 154

Clause 154 allows the Secretary of State to make regulations to not apply, or apply with modifications, the Gas Act 1986 in relation to production, transportation, storage or use of hydrogen. This power is limited in that it may only be exercised for the purpose of facilitating or promoting the production, transportation, storage or use of hydrogen.

There is ongoing divergence of views on the devolution status of clause 154 in relation to hydrogen. The Scottish Government does not accept the UK Government view that this clause does not trigger an LCM. The clause gives the Secretary of State powers to make regulations in relation to hydrogen production and hydrogen transportation, which are devolved areas (other than transportation by pipes). The Scottish Government therefore has significant outstanding concerns on this clause. Requests for amendments to require the consent of the Scottish Ministers where regulations make provision in areas of devolved competence or to amend the language to remove reference to areas of devolved competence were denied by the UK Government.

However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16) on requiring full consent to the Bill in order to pass agreed amendments, consent is recommended.

## **Clause 156**

This clause (inserted by amendment NC63) gives the Secretary of State powers to make regulations similar to those mentioned in section 124(2) of the Energy Act 2004. This clause was tabled by the UK Government on 31 August 2023, and was not raised with the Scottish Government prior to being tabled. The Scottish Government only became aware of the clause as a result of the Third Reading on 5 September.

The amendment will provide the government with powers to introduce, by regulation, measures that would impose a 'Renewable Liquid Heating Fuel Obligation' which would require suppliers of off-grid heating fuel to provide evidence that specified amount of renewable liquid heating fuels such as biofuel are being supplied during a specified period. This would enable off-grid buildings to modify existing heating systems to run on biofuels as a lower cost alternative to fitting zero emissions systems such as electric heat pumps.

The UK Government "accepts that these powers are capable of being exercised in a way that is not clearly within the scope" of the oil and gas reservation (for example, in relation to LPG). The Scottish Government therefore considers that this touches on devolved competence. However due to the late date that this amendment has been tabled, there was no time for full discussion between the Scottish and UK Governments on how to ensure it could be drafted to either relate only to reserved matters, or contain consent mechanisms, or for the Bill to be amended, as it had passed the final amending stage in the Commons. At 'ping pong' stage, in the House of Lords, on 12 September 2023, Lord Callanan made a commitment to consult specifically with the Scottish Government when consulting on the role of Renewable Liquid Heating Fuels (RLHF) and the implementation of a RLHF Obligation. He also stated that the UK Government will look to legislate when parliamentary time allows to give statutory force to this consultation requirement.



The Scottish Government recommends giving consent to this clause, on the basis of the commitments the UK Government has made to consult the Scottish Government and to legislate to give statutory force to this consultation.

## **Part 8: Heat networks**

### **Chapter 1**

#### **Clause 216**

Clause 216 provides powers for the Secretary of State to make secondary legislation to regulate heat networks in Great Britain and confer powers relating to the development and maintenance of heat networks in Great Britain. Further details on what these regulations may provide for are set out in Schedule 18. Part 5 of Schedule 18 makes provisions for issuing “installation and maintenance licences” in England/Wales.

This clause has been amended to include enhanced terms of consultation for Scottish Ministers, and such consultation will now extend to the exercise of Part 10 (Supply to Premises) of Schedule 18. Before making regulations by virtue of clause 216 (including Parts 3, 4, 5, 7, 8, 10, 11 and 12 of Schedule 18) which are within the devolved competence of the Scottish Ministers, the Secretary of State is to consult the Scottish Ministers, allowing at least 28 days for representations to be made. The Secretary of State must consider these representations, and if so requested by Scottish Ministers, the Secretary of State must set out in writing whether and how these representations have been taken into account in the regulations. The power to repeal Acts of the Scottish Parliament (ASPs) has been removed and the power to amend ASPs limited to the Heat Networks (Scotland) Act 2021.

An amendment has also been made to Part 5 to remove all references to Scotland, as the Heat Networks (Scotland) Act 2021 contains powers for a similar provision in Scotland.

The Scottish Government recommends giving consent to this clause, on the basis of the amendments that have been made.

#### **Clause 217**

Clause 217 sets out the procedure for making regulations under clause 216 i.e. whether they are to be made by negative or affirmative procedure.

No amendments were necessary to clause 217 – consent was previously withheld only by virtue of its linkage to 216.

As such, the Scottish Government recommends giving consent to clause 217, on the basis that consent is recommended to clause 216.

## **Clause 220**

Clause 220 provides that the Secretary of State may, by regulations, give the Scottish heat networks licensing authority the same enforcement powers as those being provided to the heat networks regulator in England/Wales i.e. bestow additional enforcement powers on the Scottish licensing authority.

This clause has been amended such that the exercise of clause 220 only applies as long as GEMA/Ofgem remains the Scottish heat networks licensing authority, albeit without prejudicing legislation already passed by virtue of clause 220. Additionally, the UK Government has agreed to a Memorandum of Understanding (MoU) on the exercise of clause 220. This MoU will set out enhanced terms of consultation of Scottish Ministers before the Secretary of State exercises the power in 220.

The Scottish Government recommends giving consent to this clause, on the basis of the amendments that have been made.

## **Part 10: Energy performance of premises**

### **Clauses 246-249**

Clauses 246-249 gives the Secretary of State the power to make regulations (energy performance regulations) to enable or require the energy usage or the energy efficiency of premises to be assessed, certified, and published and to require that improvements in energy usage or efficiency are identified and recommended. They also give the Secretary of State the power to make regulations to restrict or prohibit the marketing or disposal of premises where their energy performance has not been assessed, certified, or publicised. They also give the Secretary of State the power by regulations make provision with respect to the enforcement of energy performance regulations, including the imposition of civil penalties up to a specified maximum amount and for the creation of criminal offences and associated penalties (subject to the limitation set out in the clause). Regulations made under this clause must provide for a right of appeal against the imposition of a penalty

The Secretary of State may by regulations confer functions on any person and impose requirements or make provision for securing compliance with requirements under the regulations. Regulations made under these clauses may also authorise, restrict or prohibit the supply or keeping of information relating to the energy performance of buildings. Clauses 246-248 enable the Secretary of State to amend, revoke or replace the existing energy performance of premises regime, which derives from EU law.

The Scottish Government negotiated amendments to clauses 246-249 enable energy performance regulations to be made by the Scottish Ministers in relation to Scotland and grant the Scottish Ministers similar powers as those originally given to the Secretary of State. Amendments to these clauses means that the Scottish Ministers have regained regulation-making powers for energy performance of premises which were lost when the UK withdrew from the EU. The Scottish Government recommends giving consent to these clauses, on the basis of the amendments that have been made.

## Part 11: Energy saving opportunity schemes

### Clauses 250-261

Clause 250 provides powers to the Secretary of State to establish an Energy Savings Opportunity Scheme (ESOS) through regulations. It sets out the ESOS purposes which include, amongst other things, enabling or requiring energy consumption and resulting greenhouse gas emissions to be assessed, audited, reported and published; reductions to be identified and recommended; and encouraging or requiring energy savings or emissions reductions. It allows that these regulations may impose requirements on any person and confer functions on any person.

Clause 251 provides for regulations that set out which undertakings (organisations) can be included or excluded from the ESOS scheme and applies the scheme to the whole of the UK.

Clause 252 provides for regulations to set conditions for ESOS assessments, including the frequency, information required, ability to make recommendations and reporting on assessments.

Clause 253 provides for regulations which set out qualifications for assessors.

Clause 254 provides for ESOS action plans, including when they must be produced and the form and content of the plan.

Clause 255 allows ESOS regulations to make provision to impose requirements for organisations to take specified actions towards achieving energy efficiency or emissions reductions and to report on what actions have been taken.

Clause 256 allows ESOS regulations to appoint public authorities to act as scheme administrators or to monitor compliance and enforce requirements imposed by the regulations. The scheme administrator is currently the Environment Agency. In Scotland, the enforcement agency is SEPA. It also allows the regulations to confer a power on a 'national authority' (which includes Scottish Ministers) to request information from the scheme administrator relating to ESOS and the exercise of its functions.

Clause 257 and 258 provides for ESOS regulations which set out enforcement, penalties and offences and also provides for appeals against penalties imposed.

Clause 259 sets out that before making ESOS regulations, the Secretary of State must consult Scottish Ministers to the extent that the regulations contain provision within devolved competence.

Amendments made to Clause 259 are:

- Enhanced provisions requiring UK Ministers to consult Scottish Ministers where they make regulations within a devolved area with at least 28 days' notice, setting out or describing the provisions, and to take account of any

representations made by Scottish Ministers. Regulations putting in place the next phase of ESOS (phase 3) are not subject to this enhanced consultation.

- Remove the ability for ESOS regulations to amend primary legislation, including Acts of the Scottish Parliament.

The Scottish Government recommends giving consent to clause 259 since it ensures that before making ESOS regulations, the Secretary of State must consult Scottish Ministers to the extent that the regulations contain provision within devolved competence, and removes the ability for ESOS regulations to amend primary legislation, including Acts of the Scottish Parliament, thereby respecting devolved legislative competence.

Clauses 260 and 261 allow the Secretary of State to give directions to the scheme administrator and to give or arrange the giving of financial assistance to scheme administrators and participants.

The Scottish Government recommends giving consent to clauses 250-261, as the UK Government has now made amendments to the overall regulation-making powers for ESOS under clauses 250-261 by amendment to clause 259, to ensure that before making ESOS regulations, the Secretary of State must consult Scottish Ministers to the extent that the regulations contain provision within devolved competence.

## **Part 13: Offshore wind electricity generation, oil and gas**

### **Chapter 1**

#### **Clause 286**

Clause 286 defines the offshore wind projects that are subject to clauses 287-291 concerning the Habitats Regulations Appraisal (HRA) regimes associated with the planning, construction, operation or decommissioning of (a) a generating station in the UK marine area, that generates electricity from wind, or (b) infrastructure, in the UK marine area, used or intended for use in connection with a generating station within paragraph (a).

The UK Government amended this clause to better define which activities are captured by the clauses that follow.

The Scottish Government recommends giving consent to this clause as the definition is now clearer.

#### **Clause 287**

Clause 287 makes provision on HRA compensatory measures for alleviation of environmental damage to protected sites and species. It applies to Scotland for purposes within the legislative competence of the Scottish Parliament in relation to offshore wind licensing and planning within the Scottish inshore region (as well as

onshore deemed planning), and affects devolved executive competence on offshore wind HRA licensing, planning (in the Scottish offshore region), and consenting and decommissioning (in both Scottish inshore and offshore regions).

The Scottish Government recommends giving consent to this clause as it helps facilitate a strategic approach to HRA compensatory measures and works in tandem with clauses 288 and 289 which have been the subject of subsequent amendments.

## **Clause 288**

Clause 288 empowers the Secretary of State, by regulations, to establish marine recovery funds within the Scottish inshore and offshore regions to be used in relation to HRA compensatory measures for adverse environmental effects of offshore wind projects.

Relevant amendments to this clause:

- the restriction on the regulations that a determination on discharging a condition attached to a consent following a payment into a Marine Recovery Fund can only be made by the consenting authority (i.e. the Scottish Ministers in Scotland);
- the requirement for the Scottish Ministers' consent prior to functions to operate a Marine Recovery Fund being delegated.
- the requirement to consult the Scottish Ministers prior to making Marine Recovery Fund regulations.
- restricts the delegation of functions to the operation and management of a Marine Recovery Fund.
- consequential amendments on the definitions/interpretation.

The Scottish Government recommends giving consent to this clause as the negotiated amendments have helped address several concerns about the impact on devolved functions.

## **Clause 289**

Clause 289 provides the Secretary of State with a regulation making power for the Scottish offshore region, with the possibility of altering executive devolved Habitats Regulations Appraisal responsibilities in relation to offshore wind. It also provides the Scottish Ministers with a regulation making power in the Scottish inshore region for assessment of environmental effects of relevant offshore wind activities in relation to protected sites and concerning taking or securing compensatory measures.

Relevant amendments to this clause:

- any regulations made under this clause cannot cancel the Scottish Ministers' existing offshore wind habitats functions in the Scottish offshore region;
- the Secretary of State would not be able to make regulations enabling directions to be given to Scottish public authorities; and

- the limitation on the Scottish inshore region regulation making power in relation to Secretary of State functions is removed.
- consequential amendments on the definitions/interpretation.

The Scottish Government recommends giving consent to this clause because the negotiated amendments broadly address previous concerns about the regulation making powers, including limiting the Secretary of State's ability to amend currently devolved functions through regulations made under this clause.

## **Clause 290**

Clause 290 sets out the procedure and consultation requirements in relation to the regulation making powers in Clause 289, and so it also relates to devolved legislative and executive competencies.

The Scottish Government recommends giving consent to this clause as it follows that if recommending consent for the regulation making power then consent should also be recommend for the procedure for making such regulations.

## **Clause 291**

Clause 291 provides interpretation of terms used elsewhere in clauses 286-290.

The Scottish Government recommends giving consent to this clause because that at position is consistent with the preceding offshore wind clauses.

## **Chapter 2**

### **Clause 292**

Clause 292 enables the Secretary of State to make regulations requiring a person responsible for certain specified installations to have emergency plan arrangements for responding to marine oil pollution. The regulations could apply to a wide range of activities within devolved legislative competence, both onshore and within Scottish controlled waters.

An amendment has been made to require enhanced consultation when making regulations under this clause that include provision within devolved legislative competence.

The Scottish Government recommends consent to this clause as amended.

### **Clause 293**

Clause 293 provides the Secretary of State with a broad regulation making power to make provision on the implications for relevant protected habitats sites in relation to offshore oil and gas activities, and the offshore production or storage of gas.

An amendment has been made to insert a consent mechanism into clause 293, meaning the Secretary of State may not make regulations under section 293 containing provision within Scottish devolved legislative competence unless the Scottish Ministers have consented to that provision.

The Scottish Government recommends consent to this clause, as amended.

## Part 15: General

### Clause 325

Clause 325 provides a power to amend primary and secondary legislation in consequence of (or in connection with) the Bill once enacted.

Previously the Scottish Government recommended consent was withheld for clause 325, as this clause includes the power to amend, repeal, or revoke Acts of the Scottish Parliament. Clarification was provided that the clause will 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 such primary legislation). Assurance has been provided that consequential amendments to Scottish Parliament legislation will only be made once there has been prior engagement and discussion with the Scottish Government. Following this clarification, the Scottish Government recommends consent to this clause.

## Consultation

11. As the Bill was drafted and introduced by the UK Department for Business Energy and Industrial Strategy to the House of Lords, and is now being taken forward by the Department for Energy Security and Net Zero, the Scottish Government has not undertaken consultation on the Bill. The UK Government has in the past consulted on several policies in the Bill, and the Scottish Government has responded to some of these consultations:
  - **Heat networks:** negotiations with the UK Government relating to all aspects of heat networks regulation have continued since the publication of the Heat Networks (Scotland) Bill in 2020. The purpose of the Scottish Government's engagement has been regulatory alignment. Whilst the Scottish Government has not submitted formal responses, it has provided substantial policy input through the discussions and negotiations.
  - **Clean Heat Market Mechanisms:** In 2021 and 2023 the UK Government consulted on proposals to create a new Clean Heat Market Mechanism to incentivise growth of the heat pump market within the UK, the powers to do so relate to clauses 142-151. Scottish Ministers formally responded to both consultations broadly welcoming the proposal set out in the consultation paper as it will complement the ambitions within the Scottish Government's Heat in Buildings Strategy.

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

## Financial implications

12. The only financial considerations identified are whether the Scottish Government will be liable for the Marine Recovery Fund, and whether the Scottish Government will be liable for decommissioning activities relating to CCUS.
13. The operation and management of a Marine Recovery Fund, where it is delegated to Scottish Ministers, has the potential for significant financial liabilities as the fund operator would have to take responsibility for managing the payments from developers and delivering the compensatory measures for projects.
14. With regard to decommissioning activities relating to CCUS, the UK Government did not, as requested by Scottish Government, offer either:
  - Assurances that responsibility/liability for carrying out the necessary decommissioning activities (and paying the associated costs) if operators are unable to fulfil their obligations in relation to decommissioning in Scotland does not sit with the Scottish Ministers, or,
  - A mechanism requiring the consent of the Scottish Ministers before regulations are made.
15. However, the UK Government has offered a consultation ahead of making regulations (with a statutory time period for this consultation), a Memorandum of Understanding and a ministerial forum. Therefore, the consent of the Scottish Ministers will not be a pre-requisite to the regulations in this area (to check and ensure that they are fit-for-purpose), and there have been no assurances that the Scottish Ministers are not liable for these costs, should the regulations fail to eliminate risks arising from operators being unable to fulfil their obligations.

## Conclusion

16. The Scottish Government continues to have concerns about this Bill, in particular relating to the UK Government's failure to include statutory



requirements for consent from Scottish Ministers on clauses allowing UK Ministers to act in devolved areas; disagreements between the UK and Scottish Governments on the need for consent to a clause relating to hydrogen (clause 154), and the UK Government's threat to withdraw agreed amendments if Scottish Ministers do not recommend that the Scottish Parliament gives consent to all relevant provisions. However, given the extensive negotiations conducted over several months, the current treatment of the Sewel Convention by the UK Government, and its wider negotiating strategy, giving consent will ensure that the positive amendments which have been negotiated to improve the Bill are secured.

17. Allowing the UK Government to introduce legislation extending to Scotland may in relation to certain Bill clauses, and where policy is generally aligned, be the most efficient way to make these changes. This may particularly be the case where the Scottish Ministers have limited enabling powers to make regulations, following the UK's exit from the EU. Where clauses are consented to it will avoid the need to develop separate primary legislation in Scotland.
18. The Scottish Government recommends consent to:
  - Part 1, Chapter 1, Clauses 1-19, 26 - 29, 31, 33-35.
  - Part 1, Chapter 3, Clause 41.
  - Part 1, Chapter 4, Clause 46.
  - Part 1, Chapter 5, Clauses 50-52.
  - Part 1, Chapter 6, Clause 53.
  - Part 2, Chapter 1, Clauses 57-62, 65-68, 73-79, 81-83, 85-87.
  - Part 2, Chapter 2, Clauses 92 -95, 97.
  - Part 2, Chapter 3, Clauses 98 and 100.
  - Part 2, Chapter 4, Clause 104.
  - Part 2, Chapter 6, Clauses 127 and 128.
  - Part 4, Chapter 1, Clauses 142-150.
  - Part 4, Chapter 3, Clause 154.
  - Part 4, Chapter 3, Clause 156.
  - Part 8, Chapter 1, Clauses 216, 217, 220.
  - Part 10, Clauses 246 – 249.
  - Part 11, Clauses 250-262.
  - Part 13, Chapter 1, Clause 286-289.
  - Part 13, Chapter 2, Clauses 292 and 293.
  - Part 15, Clause 325.

## Draft Legislative Consent Motion

19. The draft motion, which will be lodged by the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy, is:

“That the Parliament agrees that all relevant provisions of the Energy Bill, introduced in the House of Lords on 6 July 2022 and subsequently amended, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government  
September 2023

## Addendum – Amendments relating to this LCM

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
1	<p><b>Principal objectives and general duties of the Secretary of State and the economic regulator. (CCUS)</b></p> <p>Amendment to Clause 1(8) to include a reference to the interim emissions reduction targets in Scotland, as set out at section 2(1) of the Climate Change (Scotland) Act 2009, in addition to the net zero emissions target in section A1 of that Act.</p>	<p>An LCM is required for these provisions as they legislate in the devolved area of carbon dioxide storage, and the conveyance, shipping and supply of gas otherwise than by pipelines. The Scottish Ministers are the licensing authority for activities listed in section 17(2) of the Energy Act 2008 (which includes CO<sub>2</sub> storage) for areas within the territorial sea adjacent to Scotland. SSI 2011/24 makes provision for licences granted by the Scottish Ministers.</p>	<p>The Scottish Government recommends giving consent to this clause as it has been amended to include a reference to the interim emissions reduction targets in Scotland, as set out at section 2(1) of the Climate Change (Scotland) Act 2009, in addition to the net zero emissions target in section A1 of that Act.</p> <p>A further amendment to include contributing to UK and Devolved Administration climate targets as a principal objective of the economic regulator was requested to this clause by the Scottish Government, however they were not accepted by the UK Government.</p> <p>The UK Government have informed Scottish Ministers that, should legislative consent be withheld on this Bill, Scottish Government risk existing amendments being withdrawn. As such, the Scottish Government recommends consent is given to this clause. See also paragraph 16.</p>
2 and 3	<p><b>Prohibition on unlicensed activities (CCUS) and Consultation on proposals for additional activities to become licensable</b></p>	<p>See Clause 1</p>	<p>The Scottish Government recommends giving consent to these clauses as they have been amended to ensure the UK Government seeks consent from Scottish Ministers related to</p>

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	<p>Clause 2 provides that it is an offence to carry out activities within the clause (operating carbon storage sites and transporting carbon dioxide by licensable means of transportation) without a licence.</p> <p>Clause 2 also sets out the power of the Secretary of State to make regulations specifying which means of transportation are licensable. Clause 3 sets out the consultation requirements before such regulations are made.</p> <p>An amendment has been made to seek the consent of Scottish Ministers in respect of any provision in proposed regulations that would amend an Act of the Scottish Parliament or secondary legislation made under such an Act (but not in respect of all devolved matters that may be contained in proposed Regulations).</p> <p>Two non-legislative elements have also been offered to support with the delivery of this clause:</p> <p>(1) A Memorandum of Understanding (MoU) setting out respective roles and responsibilities and ways of working.</p> <p>(2) A Ministerial forum on CCUS to “allay any concerns you may have with the powers in Clauses 2/3, 92 and 127 and will cover the enhancements to consultation you requested”</p>		<p>proposed regulations that would amend Scottish legislation. The original amendment request was for a requirement to obtain the consent of Scottish Ministers if regulations being made under section 2 contain provision that would be within devolved competence and the UK Government offer only partially fulfils the original ask.</p> <p>The MoU will provide an agreement setting out the intentions of how Scottish Government and UK Government will work together on policy relating to the economic regulation of CO2 transport and storage.</p> <p>A ministerial forum on CCUS has been offered to discuss ongoing concerns relating to powers in Clauses 2, 3, 92 and 127, and to support the effective development and deployment of CCUS in the UK.</p> <p>The UK Government have informed Scottish Ministers that, should legislative consent be withheld on this Bill, Scottish Government risk existing amendments being withdrawn. As such, the Scottish Government recommends consent is given to this clause. See also paragraph 16.</p>

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			<p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government agreed to amendments to these clauses which include a consent mechanism for where regulations would amend Scottish legislation.</p>
4	<p><b>Territorial scope of prohibition (CCUS)</b></p> <p>Defines the territorial scope of the prohibition as follows: activities in, above or below the territorial sea adjacent to the United Kingdom, or waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008), as it applies to activities in the United Kingdom.</p> <p>See Clause 2 for detail on MOU.</p>	See Clause 1	The Scottish Government recommends giving consent to this clause as the MoU will provide an agreement setting out the intentions of how Scottish Government and UK Government will work together on policy relating to the economic regulation of CO2 transport and storage.
5	<p><b>Exemption from prohibition (CCUS)</b></p> <p>Defines the conditions under which the Secretary of State may by regulations grant exemption from the prohibition. An exemption may be granted— (a) to a specified person, or persons of a specified</p>	See Clause 1	The Scottish Government recommends giving consent to this clause as the MoU will provide an agreement setting out the intentions of how the Scottish Government and the UK Government will work together on policy relating

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	<p>class; (b) generally or to such extent as may be specified; 30 (c) unconditionally or subject to such conditions as may be specified.</p> <p>See Clause 2 for detail on MOU and Ministerial Forum.</p>		<p>to the economic regulation of CO2 transport and storage.</p> <p>A ministerial forum on CCUS has been offered to discuss ongoing concerns relating to powers in Clauses 2, 3, 92 and 127, and to support the effective development and deployment of CCUS in the UK.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK</p>

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			Government's negotiating position (see paragraph 16), consent is recommended.
6	<p><b>Revocation or withdrawal of exemption (CCUS)</b></p> <p>Defines the conditions under which the Secretary of State may by regulations revoke regulations by which an exemption was granted.</p> <p>See Clause 2 for detail on MOU and Ministerial Forum.</p>	See Clause 1	<p>The Scottish Government recommends giving consent to this clause as the MoU will provide an agreement setting out the intentions of how the Scottish Government and the UK Government will work together on policy relating to the economic regulation of CO2 transport and storage.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is</p>

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			not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.
7	<p><b>Power to grant licences (CCUS)</b></p> <p>To enable the economic regulator to grant licences permitting CO2 transport and storage activities.</p>	<p>See Clause 1.</p> <p>Note that this clause triggers the requirement for an LCM only in relation to the powers of the Secretary of State during the initial interim period.</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
8	<p><b>Power to create licence types (CCUS)</b></p> <p>This clause gives the Secretary of State power to make regulations providing that different types of licence may be granted for different types of licensable activity.</p> <p>An amendment to provide for consultation by the Secretary of State with Devolved Administrations ahead of making regulations, and an amendment to establish a statutory time period (of not less than 28 days) for consultation, has been agreed.</p> <p>See Clause 2 for detail on MOU and Ministerial Forum.</p>	<p>See Clause 1</p> <p>Note that this clause triggers the requirement for an LCM only in relation to the powers of the Secretary of State during the initial interim period.</p>	<p>The Scottish Government recommends giving consent to this clause as it has been amended to provide for consultation by the Secretary of State with Devolved Administrations ahead of making regulations and to establish a statutory time period (of not less than 28 days) for consultation.</p> <p>Additionally, the MoU will provide an agreement setting out intentions on how the Scottish Government and the UK Government will work together on policy relating to the economic regulation of CO2 transport and storage.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause.</p>



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			<p>The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.</p>
9	<p><b>Procedure for licence applications – CCUS</b></p> <p>This clause gives the Secretary of State power to make regulations in relation to licence applications, including provision for fees. It also makes provision as to what the economic regulator must do before granting a licence.</p> <p>The following amendments have been agreed -</p>	See Clause 1	<p>The Scottish Government recommends giving consent to this clause as it has been amended to ensure Scottish Ministers will be notified when a licence is proposed within a devolved area and there would be a statutory time period set out for the consultation of Scottish Ministers on regulations about how economic licences are applied for and the fee.</p>

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	<p>(1) Amendment such that where a licence is proposed to be granted within a devolved area, that notice of this is given to the Scottish Government.</p> <p>(2) Amendment to establish a statutory time period for consultation by the Secretary of State with Devolved Administrations ahead of making regulations, of not less than 28 days.</p> <p>See Clause 2 for detail on MOU and Ministerial Forum.</p>		<p>Additionally, the MoU will provide an agreement setting out the intentions of how the Scottish Government and the UK Government will work together on policy relating to the economic regulation of CO2 transport and storage.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.</p>

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10	<p><b>Competitive tenders for licences (CCUS)</b></p> <p>This clause allows the Secretary of State to make regulations to facilitate the making of licence determinations on a competitive basis.</p> <p>An amendment has been made to establish a statutory time period for consultation by the Secretary of State with Devolved Administrations ahead of making regulations, of not less than 28 days.</p> <p>See Clause 2 for detail on MOU and Ministerial Forum.</p>	See Clause 1	<p>The Scottish Government recommends giving consent to this clause as it has been amended to establish a statutory time period for the consultation of Scottish Ministers on regulations to establish a procedure for granting future economic licences on a competitive basis.</p> <p>Additionally, the MoU will provide an agreement setting out the intentions of how the Scottish Government and the UK Government will work together on policy relating to the economic regulation of CO2 transport and storage.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved</p>

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			competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.
11	<p><b>Conditions of licences: general (CCUS)</b></p> <p>Sets out the conditions of licences including general ones (requiring payments to the economic regulator, requirements to comply with conditions set by the economic regulator or Secretary of State, provisions about 'allowed revenue' calculations and information sharing requirements)</p>	See Clause 1	<p>The Scottish Government recommends giving consent to this clause as UK Government officials provided adequate clarification in response to Scottish Government officials request for an amendment to include more definitions of terms used in the Bill (e.g. "carbon capture") for clarity.</p> <p>No further amendments were sought regarding this clause as the action aligned with the Scottish Government's broad policy goals in this area.</p>
12	<p><b>Standard conditions of licences (CCUS)</b></p> <p>To enable the Secretary of State to determine standard conditions of licences and allow the grantor to exclude or modify any of these (having notified the appropriate devolved authorities, whom the Secretary of State should consult).</p> <p>See Clause 2 for detail on MOU.</p>	See Clause 1	<p>The MoU will also provide an agreement setting out the intentions of how the Scottish Government and the UK Government will work together on policy relating to the economic regulation of CO2 transport and storage.</p> <p>Further amendments were requested to this clause by Scottish Government, however they were not accepted by the UK Government. The UK Government have informed Scottish</p>

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			<p>Ministers that, should legislative consent be withheld on this Bill, Scottish Government risk existing amendments being withdrawn. As such, the Scottish Government recommends consent is given to this clause. See also paragraph 16.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause.</p>
13	<p><b>Modification of conditions of licences (CCUS)</b></p> <p>This clause allows the economic regulator to make modifications of conditions of particular licences, and to the standard conditions of licences.</p> <p>Amendment to require Ofgem to notify the relevant devolved authorities of licence modification proposals.</p>	<p>See Clause 1</p> <p>This clause relates to the functions of a reserved body, but makes provision in a devolved area.</p> <p>The UK Government is of the view that this clause does not trigger the requirement for an LCM as the clause relates to the</p>	<p>The Scottish Government recommends giving consent to this clause as an amendment was offered to require the economic regulator to notify 'appropriate devolved authorities'.</p>

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		<p>functions of a reserved body. The clause however does make provision in the devolved areas of licensing of storage of carbon dioxide and the conveyance, shipping and supply of gas other than by pipes, and the Scottish Government therefore considers that an LCM is required.</p>	
14	<p><b>Modification of conditions under section 13: supplementary (CCUS)</b></p> <p>This clause makes further provision as to what the economic regulator must do in relation to their functions under clause 13.</p>	<p>See Clause 1</p> <p>This clause relates to the functions of a reserved body, but makes provision in a devolved area.</p> <p>The UK Government is of the view that this clause does not trigger the requirement for an LCM as the clause relates to the functions of a reserved body. The clause however does make provision in the devolved areas of licensing of storage of carbon dioxide and the conveyance,</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>Scottish Government initially recommended that consent be withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>

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		shipping and supply of gas other than by pipes, and the Scottish Government therefore considers that an LCM is required.	
15	<p><b>Modification by order under other enactments (CCUS)</b></p> <p>This clause enables the Secretary of State or the Competition and Markets Authority to modify licence conditions to ensure effective competition</p>	<p>See Clause 1</p> <p>This clause relates to the functions of a reserved body, but makes provision in a devolved area.</p> <p>The UK Government is of the view that this clause does not trigger the requirement for an LCM as the clause relates to the functions of a reserved body. The clause however does make provision in the devolved areas of licensing of storage of carbon dioxide and the conveyance, shipping and supply of gas other than by pipes, and the Scottish Government therefore considers that an LCM is required.</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent be withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>

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16	<p><b>Interim power of Secretary of State to grant licences (CCUS)</b></p> <p>This clause gives the Secretary of State powers to grant licences during an interim period (as per Schedule 1).</p>	See Clause 1	<p>The Scottish Government recommends giving consent to this clause</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
17	<p><b>Termination of licences (CCUS)</b></p> <p>This clause gives the economic regulator powers to revoke a licence in certain circumstances (after notifying persons including the Scottish Ministers if relevant).</p>	<p>See Clause 1</p> <p>This clause relates to the functions of a reserved body, but makes provision in a devolved area.</p> <p>The UK Government is of the view that this clause does not trigger the requirement for an LCM as the clause relates to the functions of a reserved body. The clause however does make provision in the devolved areas of licensing of storage of carbon dioxide and the conveyance, shipping and supply of gas other than by pipes, and the</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The economic regulator is required to notify the Scottish Ministers if the licenced activity is within devolved competence.</p> <p>The UK Government did not agree to Scottish Government's request for a potential amendment to give Scottish Ministers further input into licence termination decisions could be beneficial (as the current requirement is for notification only).</p> <p>The UK Government have informed Scottish Ministers that, should legislative consent be withheld on this Bill, Scottish Government risk existing amendments being withdrawn. As such, the Scottish Government recommends</p>



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		<p>Scottish Government therefore considers that an LCM is required.</p>	<p>consent is given to this clause. See also paragraph 16.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause.</p>
18	<p><b>Transfer of licences (CCUS)</b></p> <p>This clause makes provision to allow the transfer of a licence if the economic regulator consents following a process that includes giving notice of transfer intentions and considering representations.</p>	<p>See Clause 1</p> <p>This clause relates to the functions of a reserved body, but makes provision in a devolved area.</p> <p>The UK Government is of the view that this clause does not trigger the requirement for an LCM as the clause relates to the functions of a reserved body. The clause however does make provision in the devolved areas of licensing</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>

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		<p>of storage of carbon dioxide and the conveyance, shipping and supply of gas other than by pipes, and the Scottish Government therefore considers that an LCM is required.</p>	
19	<p><b>Consenting to transfer (CCUS)</b></p> <p>This clause makes provision requiring the economic regulator to publish a notice, send notice and consider representations from persons likely to be affected by a decision to transfer a licence under clause 18.</p> <p>An amendment has been made to require Ofgem to notify the relevant devolved authorities before giving consent to the transfer of a licence which authorises activities that are within devolved competence.</p>	<p>See Clause 1</p> <p>This clause relates to the functions of a reserved body, but makes provision in a devolved area.</p> <p>The UK Government is of the view that this clause does not trigger the requirement for an LCM as the clause relates to the functions of a reserved body. The clause however does make provision in the devolved areas of licensing of storage of carbon dioxide and the conveyance, shipping and supply of gas other than by pipes, and the Scottish Government</p>	<p>The Scottish Government recommends giving consent to this clause as it has been amended to ensure there will be specific requirement for the Scottish Government to be notified before the economic regulator gives consent to the transfer of a licence which authorises activities that are within devolved competence.</p>

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		therefore considers that an LCM is required.	
26	<p><b>Provision of information to or by the economic regulator (CCUS)</b></p> <p>This clause allows the economic regulator to provide information to or request information from bodies including SEPA and Scottish Ministers (and any other appropriate person with powers conferred by primary legislation including Acts of Scottish Parliament), with the above bodies being required to provide the information within the specified time period</p>	<p>See Clause 1</p> <p>Note this clause triggers the requirement for an LCM given the provisions of 26(4).</p>	<p>The Scottish Government recommends giving consent to this clause to ensure that information can be passed between the economic regulator and persons representing Scottish Ministers or SEPA. The typo for the spelling of SEPA has been corrected and clarification has been provided on NatureScot's role.</p> <p>Further amendments were requested by Scottish Government which would require that the economic regulator must provide information requested by Scottish Ministers or SEPA, however they were not accepted by the UK Government on the basis that it would not be appropriate as the economic regulator holds a broad range on information, including commercially sensitive information to facilitate a broad range of functions.</p> <p>The UK Government have informed Scottish Ministers that, should legislative consent be withheld on this Bill, Scottish Government risk existing amendments being withdrawn. As such, the Scottish Government recommends consent is given to this clause. See also paragraph 16.</p>

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27	<p><b>Power of Secretary of State to require information (CCUS)</b></p> <p>This clause allows the Secretary of State to require information from licence holders as required for functions under Part 1 (with certain exemptions)</p>	<p>This clause gives powers to the Secretary of State to require information by notice in a devolved area.</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
28	<p><b>Monitoring, information gathering etc. (CCUS)</b></p> <p>This clause requires the economic regulator to keep the state of the market relating to CO2 transport and storage activities under review and to give it powers to collect information for market monitoring (with an obligation to share this with the Secretary of State or Competition and Markets Authority).</p>	<p>This clause relates to the functions of a reserved body, but makes provision in a devolved area.</p> <p>The UK Government is of the view that this clause does not trigger the requirement for an LCM as the clause relates to the functions of a reserved body. The clause however does make provision regarding information collecting in the devolved areas of storage of carbon dioxide and the conveyance, shipping and supply of gas other than by pipes, and the Scottish Government</p>	<p>The Scottish Government requested clarification on who this information can be requested from and whether there would be a requirement for the Scottish Government to collect and hold information. The UK Government explained that the purpose of this clause is to give the economic regulator a market overview function and noted that clause 28 powers apply to economic licence holders only. As a result of this clarification, the Scottish Government recommends giving consent to this clause.</p> <p>To note, the Scottish Government requested this clarification was included in an amendment, however the UK Government did not provide an amendment for this.</p> <p>The UK Government have informed Scottish Ministers that, should legislative consent be</p>

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		therefore considers that an LCM is required	withheld on this Bill, Scottish Government risk existing amendments being withdrawn. As such, the Scottish Government recommends consent is given to this clause. See also paragraph 16.
29	<p><b>Power to require information for purposes of monitoring (CCUS)</b></p> <p>This clause gives the economic regulator power to serve a notice under subsection (2) on any licence holder requesting documents or information. Alteration, suppression or destruction of this information requested by the economic regulator in Section 29 is an offence liable to a fine not exceeding the statutory maximum in Scotland.</p> <p>The UK Government has made amendments relating to where disclosure of information is not required if it would breach other restrictions on data sharing.</p>	<p>See Clause 1</p> <p>This clause relates to the functions of a reserved body, but makes provision in a devolved area.</p> <p>The UK Government is of the view that this clause does not trigger the requirement for an LCM as the clause relates to the functions of a reserved body. The clause however does make provision regarding information collecting in the devolved areas of storage of carbon dioxide and the conveyance, shipping and supply of gas other than by pipes, and the Scottish Government therefore considers that an LCM is required</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>

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31	<p><b>Reasons for decisions (CCUS)</b></p> <p>This clause requires the economic regulator and Secretary of State to publish reasons for their decisions or determinations (mainly relating to licencing)</p> <p>UK Government made amendments regarding the meaning of 'final order' and 'provisional order'</p>	<p>See Clause 1</p> <p>This clause relates to the functions of a reserved body and the Secretary of State, but makes provision in a devolved area.</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p> <p>No concerns have been identified with the amendments made.</p>
33	<p><b>Making of false statements etc. (CCUS)</b></p> <p>This clause sets out that it is a statutory offence to make false statements knowingly or recklessly when providing any information under this Part.</p>	<p>See Clause 1.</p> <p>This clause creates an offence in relation to the licensing of a devolved area.</p>	<p>The Scottish Government recommends giving consent to this clause as the UK Government provided adequate clarification.</p> <p>As this clause set out the appropriate consent needed for proceedings to be taken in England, Wales or Northern Ireland only, clarification was requested on what would happen with regards to Scotland. The UK Government confirmed that 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).</p>

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34	<p><b>Liability of officers of entities (CCUS)</b></p> <p>In relation to an offence committed under Part 1: This clause establishes the circumstances in which action may be taken against company officers within a corporate entity.</p>	See Clause 1 and Clause 33.	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
35	<p><b>Criminal proceedings (CCUS)</b></p> <p>In relation to an offence committed under Part 1: This clause sets out that this could be taken to have been committed in any place in the UK and specifies who can institute proceedings.</p>	See Clause 1 and Clause 33.	In relation to clause 35, the Scottish Government recommend giving consent to this clause as UK Government officials provided adequate clarification, as detailed in clause 33.
41	<p><b>Annual report on transport and storage licensing functions (CCUS)</b></p> <p>To require the economic regulator to provide an annual report (including information on exercise of functions, Competition and Markets Authority - related activities, forward work programme progress and contributions to policy outcomes), which the Secretary of State must lay before the Houses of Parliament and send to the Scottish Ministers who must also lay this before the Scottish Parliament</p>	LCM required for Clause 41 given the requirement for the Scottish Ministers to lay a copy of the Secretary of State's annual report in the Scottish Parliament under subclause (8).	<p>The Scottish Government recommends giving consent to this clause, as the UK Government clarified that the annual report will include all licensable activities wherever they take place.</p> <p>Following further consideration, no amendments were sought. The Scottish Government requested that the annual report should include a requirement to report on progress in Scotland and the UK Government clarified that the annual report will include all licensable activities wherever they take place,</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
			which would therefore include reporting on progress in Scotland.
46	<p><b>Modification of conditions of licences (CCUS)</b></p> <p>This clause allows the Secretary of State to make modifications to the conditions and terms of the relevant licence to further the objective of the administration (and recover financial support provided) when an administration order is in force.</p> <p>This clause has been amended with regards to who should be consulted if licence conditions are modified. This amendment now refers to those who granted a licence under the Energy Act 2008 in place of the Oil and Gas Authority or a devolved administration</p> <p>The UK Government has made amendments to this clause on who should be consulted if licence conditions are modified.</p>	<p>Whilst Chapter 4 relates mainly to insolvency, Clause 46 provides that the Secretary of State may amend licences, which licence a devolved area.</p> <p>The UK Government is of the view that this clause does not trigger the requirement for an LCM as the clause relates to the functions of a reserved body. The clause however does make provision regarding information collecting in the devolved areas of storage of carbon dioxide and the conveyance, shipping and supply of gas other than by pipes, and the Scottish Government therefore considers that an LCM is required.</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
50	<b>Transfer schemes (CCUS)</b>	LCM required for Clauses 50 to 52 as they legislate for the transfer of property,	The Scottish Government recommends giving consent to this clause.



Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>This clause allows the Secretary of State 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 Secretary of State, when a termination event has arisen, in order to secure ongoing operation or safety and security of the network.</p>	<p>rights and liabilities of the licence holder. These licences are licensing a devolved activity.</p>	<p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
51	<p><b>Consent and consultation in relation to transfers (CCUS)</b></p> <p>This clause creates a requirement to consult about the above transfer scheme certain persons including, if relevant, Scottish Ministers.</p> <p>See clause 2 for detail on MOU and Ministerial Forum.</p>	See Clause 50	<p>The Scottish Government recommends consent to this clause as the MoU will provide an agreement setting out the intentions of how the Scottish Government and the UK Government will work together on policy relating to the Special Administration Regime (SAR) in the event of a CO2 transport and storage company insolvency.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account,</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
			if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.
52	<p><b>Conduct of transfer schemes (CCUS)</b></p> <p>This clause sets out (in Schedule 4) the scope and process of the Clause 50 transfer schemes.</p>	See Clause 50	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
53	<p><b>Cooperation of storage licensing authority with economic regulator (CCUS)</b></p> <p>This clause modifies the Energy Act 2008 to provide for cooperation and information-sharing between the economic regulator and the relevant CO2 storage licensing authority, which would be Scottish Ministers in areas specified in the Energy Act 2008 and provided for in the Storage of Carbon</p>	This makes reserved provision in an area which is executively devolved. It places duties on the Scottish Ministers in their capacity as licensing authority under section 18 of the Energy Act 2008 to cooperate with the economic regulator.	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	Dioxide (Licensing etc) (Scotland) Regulations 2011.		
57	<p><b>Revenue support contracts (CCUS and Hydrogen)</b></p> <p>Details Secretary of State power to make regulations on revenue support contracts including the ability to make provisions for different cases or circumstances and to provide for exemptions or exceptions to requirements imposed by the regulations.</p> <p>The UK Government has amended subclause (9) so that where revenue support regulations make provision under specified clauses these will be subject to parliamentary affirmative procedure.</p> <p>The UK Government has amended the definition of revenue support contract under the bill to include hydrogen transport revenue contracts and hydrogen storage revenue support contracts.</p> <p>This includes regulations that make directions to offer contracts to eligible hydrogen transport providers and eligible hydrogen storage providers which fall within the remit of regulations that would be subject to affirmative procedure.</p>	<p>This clause gives the Secretary of State powers to make regulations about revenue support contracts which will provide financial support, including in devolved areas. (Reserved insofar as it relates to the conveyance of gas through pipes).</p>	<p>The Scottish Government recommends giving consent to this clause given the amendment set out in clause 85. Clarifications were also provided by the UK Government on a separate amendment request.</p> <p>Additionally, the MoU will provide an agreement setting out how the Scottish Government and the UK Government will work together.</p> <p>Satisfactory clarifications were also provided by the UK Government on a separate amendment request. Scottish Government's request was to narrow the scope of the part of subsection (7) that states that revenue support regulations may confer any function on any person. The UK Government clarified that the functions in subsection (7) would be limited to those about revenue support contracts and 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 did not, therefore, consider it appropriate or necessary to narrow the scope.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>An amendment has been made in relation to clause 85 in response to the Scottish Government's request for a consent requirement in relation to this clause. See clause 85 for further details.</p> <p>Clarifications were also provided by the UK Government as requested on a separate amendment request.</p> <p>See Clause 2 for detail on MOU and Ministerial Forum.</p>		<p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.</p>
58	<p><b>Duties of a revenue support counterparty (CCUS and Hydrogen)</b></p> <p>Provides details of the duties placed on a designated revenue support counterparty.</p>	See Clause 57. Sets out the duties of revenue support counterparties to comply with directions of the Secretary of State and	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>The UK Government has made an amendment to include provision requiring revenue support regulations to include provisions that ensure hydrogen transport counterparties and hydrogen storage counterparties can meet their liabilities under their relevant revenue support contracts.</p> <p>An amendment has also been made so that hydrogen transport and storage counterparties are within the definition of “revenue support counterparty”.</p>	<p>revenue support regulations, which could make provision in devolved areas. (Reserved insofar as it relates to the conveyance of gas through pipes).</p>	<p>amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
59	<p><b>Designation of transport and storage counterparty (CCUS)</b></p> <p>This clause allows the Secretary of State to designate a person, by notice and with consent of that person, to be the counterparty for Transport and Storage revenue support contracts. UK Government added an amendment to clarify that this clause relates to Carbon Dioxide transport and storage.</p>	<p>See Clause 57. Gives the Secretary of State power to designate transport and storage counterparties in relation to revenue support contracts. (Reserved insofar as it relates to the conveyance of gas through pipes).</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
60	<p><b>Direction to offer contract (CCUS)</b></p> <p>This clause confers power on Secretary of State to issue a direction to a transport and storage counterparty to offer a contract to an eligible person (person holding a license under clause 7).</p>	<p>See Clause 57. Relates to revenue support contracts.</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>The UK Government made an amendment to clarify that this clause relates to Carbon Dioxide transport and storage.</p>		<p>Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
61	<p><b>Designation of hydrogen transport counterparty (Hydrogen)</b></p> <p>Introduces new powers under which the Secretary of State may designate the person to be a counterparty for hydrogen transport revenue support contracts.</p> <p>Provides a definition for “hydrogen transport revenue support contract” as a contract to which the hydrogen transport counterparty is a party to and was entered into by the hydrogen transport counterparty in pursuance of a direction given to it under this section.</p> <p>Under the powers provided by this clause the Secretary of State may designate more than one counterparty where the Secretary of State deems it necessary to ensure the liabilities under the contract are made, that the arrangements made under the contract can continue to operate, or directions given to a hydrogen transport counterparty continue to have effect.</p>	<p>See Clause 57. Relates to revenue support contracts.</p>	<p>The Scottish Government recommends giving consent to this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
62	<p><b>Direction to offer to contract with eligible hydrogen transport provider (Hydrogen)</b></p>	<p>See Clause 57. Relates to revenue support contracts.</p>	<p>The Scottish Government recommends giving consent to this clause as the action aligns with</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>Empowers the Secretary of State to direct a hydrogen transport counterparty to offer to contract with an eligible hydrogen transport provider specified in the direction provided by the Secretary of State.</p> <p>Allows for revenue support regulations to make further provision about direction in relation to the circumstances in which a direction may be given and the terms that may or must be specified in the direction.</p> <p>The UK Government made an amendment to expand and clarify the power of the Secretary of State to make provision in revenue support regulations for determining the meaning of eligible hydrogen transport provider by reference to standards or other published documents.</p>		<p>the Scottish Government's broad policy goals in this area.</p>
65	<p><b>Designation of hydrogen production counterparty (Hydrogen)</b></p> <p>Allows Secretary of State to designate a counterparty to hydrogen production revenue support contracts. This counterparty will enter into and manage contracts with eligible low carbon hydrogen producers. Revenue support regulations will determine which persons are eligible. More than one counterparty can be designated at one time.</p>	<p>See clause 57. Relates to revenue support contracts.</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>The UK Government made clarifying amendments in consequence to the addition of further types of counterparties.</p>		
66	<p><b>Direction to offer to contract (Hydrogen)</b></p> <p>Confers power on Secretary of State to issue direction to a hydrogen production counterparty to offer to contract with eligible low carbon hydrogen producers in accordance with the provisions set out in revenue support regulations – details the circumstances under which direction can be given.</p> <p>The UK Government made an amendment to clarify that revenue support regulations may make provision that a direction to offer to contract may be determined on a competitive basis.</p> <p>UK Government amendment expands and clarifies the power of the Secretary of State to make provision in revenue support regulations for determining the meaning of eligible hydrogen production provider by reference to standards or other published documents.</p>	<p>See clause 57. Relates to revenue support contracts.</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
67	<p><b>Designation of carbon capture counterparty (CCUS)</b></p> <p>This clause allows Secretary of State to designate a counterparty to carbon capture revenue support contracts. This counterparty will enter into and</p>	<p>See clause 57. Relates to revenue support contracts.</p>	<p>The Scottish Government recommends giving consent to this clause as a requested amendment has been tabled and added to the bill since the original LCM motion.</p> <p>The amendment widens the definition of “carbon capture entity” to bring within it</p>



Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>manage contracts with eligible carbon capture entities.</p> <p>An amendment has been made that widens the definition of “carbon capture entity” to bring within it capturing carbon dioxide from the atmosphere or from sea water.</p>		<p>capturing carbon dioxide from the atmosphere or from sea water.</p>
68	<p><b>Direction to offer to contract (CCUS)</b></p> <p>This clause confers a power on the Secretary of State to issue a direction to a carbon capture counterparty to offer a contract to eligible carbon capture entities in accordance with provisions set out in regulations.</p> <p>The UK Government has made an amendment that expands and clarifies the power of the Secretary of State to make provision in revenue support regulations for determining the meaning of eligible carbon capture entity by reference to standards or other published documents.</p>	<p>See Clause 57. Relates to revenue support contracts.</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
73	<p><b>Power to appoint allocation bodies (CCUS and Hydrogen)</b></p> <p>Allows Secretary of State to appoint a person to act as an allocation body for administering the competitive allocation process for hydrogen production and carbon capture revenue support contracts (and gives the Secretary of State powers</p>	<p>See Clause 57. Relates to revenue support contracts and the power of the Secretary of State to appoint a person to carry out functions in relation to the allocation of revenue support contracts.</p>	<p>The Scottish Government recommends giving consent to this clause given the amendment set out in clause 85.</p> <p>Additionally, the MoU will provide an agreement setting out how the Scottish Government and the UK Government will work together.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>for making provisions about the appointment cessation process).</p> <p>An amendment has been made in relation to clause 85 in response to the Scottish Government's request for a consent requirement in relation to this clause. See clause 85 for further details.</p> <p>See Clause 2 for detail on MOU and Ministerial Forum.</p>		<p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.</p>
74	<p><b>Standard terms of revenue support contracts (CCUS and Hydrogen)</b></p> <p>Gives Secretary of State power to issue and subsequently revise standard terms for revenue support contracts, allowing for different standard</p>	See Clause 57. Relates to revenue support contracts.	The Scottish Government recommends giving consent to this clause given the amendment set out in clause 85.

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>terms to be issued for different categories of contract</p> <p>An amendment was offered in relation to clause 85 in response to the Scottish Government's request for a consent requirement in relation to this clause. See clause 85 for further details.</p> <p>See Clause 2 for detail on MOU and Ministerial Forum.</p>		<p>Additionally, the MoU will provide an agreement setting out how the Scottish Government and the UK Government will work together.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
75	<p><b>Allocation notifications (CCUS and Hydrogen)</b></p> <p>Details how an allocation body should notify counterparties of allocation decisions.</p>	<p>See Clause 57 and 73. Relates to power of allocation bodies to give allocation notifications in relation to revenue support contracts.</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
76	<p><b>Allocation of contracts (CCUS and Hydrogen)</b></p> <p>Makes further provision in relation to what may be contained in revenue support regulations (see clause 57) in relation to allocation notifications (clause 75).</p> <p>An amendment has been made in relation to clause 85 in response to the Scottish Government's request for a consent requirement in relation to this clause. See clause 85 for further details.</p> <p>See Clause 2 for detail on MOU and Ministerial Forum.</p>	<p>See Clause 57</p>	<p>The Scottish Government recommends giving consent to this clause given the amendment set out in clause 85.</p> <p>Additionally, the MoU will provide an agreement setting out how the Scottish Government and the UK Government will work together.</p> <p>A ministerial forum on CCUS has been offered to discuss ongoing concerns relating to powers in Clauses 2, 3, 92 and 127, and to support the effective development and deployment of CCUS in the UK.</p> <p>Regarding clarity on allocation framework targets the UK Government were unable to provide further details at this stage.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
			<p>for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.</p>
77	<p><b>Duty to offer to contract following allocation (CCUS and Hydrogen)</b></p> <p>Sets out the duty of counterparties to offer to contract with eligible low carbon hydrogen producer / eligible carbon capture entity following allocation notification in clause 75.</p>	See Clauses 57 and 75.	<p>The Scottish Government recommends giving consent to this clause given the amendment set out in clause 85.</p> <p>Additionally, the MoU will provide an agreement setting out how the Scottish Government and the UK Government will work together.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>An amendment has been made in relation to clause 85 in response to the Scottish Government's request for a consent requirement in relation to this clause. See clause 85 for further details.</p> <p>See Clause 2 for detail on MOU.</p>		<p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.</p>
78	<p><b>Modification of standard terms (CCUS and Hydrogen)</b></p> <p>This clause allows counterparties to agree modifications to the standard terms of an offer</p>	See Clause 57 and 75.	The Scottish Government recommends giving consent to this clause given the amendment set out in clause 85.

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>under clause 77 on a case-by-case basis, in accordance with revenue support regulations.</p> <p>An amendment was offered in relation to clause 85 in response to the Scottish Government's request for a consent requirement in relation to this clause. See clause 85 for further details.</p> <p>See Clause 2 for detail on MOU.</p>		<p>Additionally, the MoU will provide an agreement setting out how the Scottish Government and the UK Government will work together.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
79	<p><b>Sections 75 to 78: Supplementary (CCUS and Hydrogen)</b></p> <p>Confers power on the Secretary of State to, when making provision under clauses 75 to 78, make further provisions enabling the determination of a matter on a competitive basis and calculations or determinations to be made under regulations, including by such persons and in accordance with such procedure as specified.</p> <p>An amendment has been made in relation to clause 85 in response to the Scottish Government's request for a consent requirement in relation to this clause. See clause 85 for further details.</p> <p>See Clause 2 for detail on MOU and Ministerial Forum.</p>	See Clauses 57 and 75-78.	<p>The Scottish Government recommends giving consent to this clause given the amendment set out in clause 85.</p> <p>Additionally, the MoU will provide an agreement setting out how the Scottish Government and the UK Government will work together.</p> <p>A ministerial forum on CCUS has been offered to discuss ongoing concerns relating to powers in Clauses 2, 3, 92 and 127, and to support the effective development and deployment of CCUS in the UK.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can</p>



Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
			make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.
81	<p><b>Further provision about designations (CCUS and Hydrogen).</b></p> <p>Sets out conditions under which the designation of a person as counterparty can be revoked by the Secretary of State or cease to have effect.</p> <p>The UK Government amended to include hydrogen transport and storage counterparties.</p>	See Clauses 57, 59, 61, 63, 65, and 67.	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
82	<p><b>Application of sums held by a revenue support counterparty (CCUS and Hydrogen).</b></p> <p>Enables revenue support regulations to make provision about the allocation of sums in circumstances where a counterparty is unable to meet its liabilities under the revenue support contract.</p>	This is devolved insofar as regulations would relate to sums received by revenue support counterparty under revenue support contract	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
83	<p><b>Information and advice (CCUS and Hydrogen).</b></p> <p>Enables revenue support regulations to make provision to ensure that information and advice required for the functioning of schemes is provided to the bodies requiring it at appropriate points.</p> <p>UK Government amended to introduce new power for regulations to make provision for a revenue support counterparty to require a person or description of persons to provide information to it.</p>	See Clause 57.	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
85	<p><b>Consultation (CCUS and Hydrogen)</b></p> <p>Details the need to consult before making revenue support regulations.</p> <p>An amendment has been made to provide for consultation by the Secretary of State with Devolved Administrations ahead of making regulations and to establish a statutory time period of 28 days for this consultation.</p> <p>See Clause 2 for detail on MOU and ministerial forum.</p>	See Clause 57.	<p>The Scottish Government recommends giving consent to this clause as it has been amended to include a set statutory time period for consultation with Scottish Ministers on the issue of terms and conditions for the revenue support contracts.</p> <p>Additionally, the MoU will provide an agreement setting out how the Scottish Government and the UK Government will work together.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
			Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause nor a compromise request for an enhanced consultation requirement that includes a requirement for the Secretary of State to inform Scottish Ministers how their representations have been taken into account, if requested by Scottish Ministers. Not securing consent means that the UK Government can make provision in areas of devolved competence without obtaining the consent of the Scottish Ministers. However on balance, and given the risks to the wider Bill if consent is not given to this clause due to the UK Government's negotiating position (see paragraph 16), consent is recommended.
86	<p><b>Transfer schemes (CCUS and Hydrogen)</b></p> <p>Sets out the process by which the property, rights and liabilities of a revenue support counterparty, hydrogen levy administrator or allocation body may be transferred if necessary.</p>	Devolved in relation to transfer schemes under subclause (1)(a) and (d).	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
87	<p><b>Modification of transfer schemes (CCUS and Hydrogen)</b></p>	See Clause 86.	The Scottish Government recommends giving consent to this clause.

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	Enables Secretary of State to modify transfer schemes.		The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.
92	<p><b>Financing of costs of decommissioning etc. (CCUS)</b></p> <p>This clause allows the Secretary of State to make regulations requiring relevant persons to provide security for the performance of obligations relating to future abandonment or decommissioning of carbon dioxide-related sites, pipelines or installations.</p> <p>An amendment has been made to provide for consultation with Scottish Ministers ahead of making regulations and establish a statutory time period for consultation by the Secretary of State with Devolved Administrations ahead of making regulations, of not less than 28 days.</p> <p>See Clause 2 for detail on MOU and ministerial forum.</p>	Power of the Secretary of State to make regulations relating to the costs of decommissioning which could relate to devolved activities in Scotland, or those licenced by the Scottish Ministers.	<p>The Scottish Government recommends giving consent to this clause as it has been amended to provide for consultation with Scottish Ministers ahead of making regulations and establish a statutory time period for consultation by the Secretary of State with Devolved Administrations ahead of making regulations, of not less than 28 days.</p> <p>Additionally, the MoU will provide an agreement setting out the intentions of how the Scottish Government and the UK Government will work together on policy relating to financing of the decommissioning of CCUS transport and storage networks.</p> <p>The Scottish Government requested clarity on whether the responsibility for carrying out the necessary decommissioning activities (and paying the associated costs) would not sit with Scottish Ministers in the event operators are unable to fulfil their obligations in relation to decommissioning. This has not been provided.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
			<p>Further amendments were requested to this clause by Scottish Government, however they were not accepted by the UK Government. The UK Government have informed Scottish Ministers that, should legislative consent be withheld on this Bill, Scottish Government risk existing amendments being withdrawn. As such, the Scottish Government recommends consent is given to this clause. See also paragraph 16.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause.</p>
93	<p><b>Section 92: supplementary</b></p> <p>Please see amendments to clause 92.</p>	See Clause 92.	The Scottish Government recommends giving consent to this clause as it relates to the amendment set out in clause 92.
94	<p><b>Provisions relating to Part 4 of the Petroleum Act 1998 (1) Section (CCUS)</b></p> <p>This clause provides that Part 4 of the Petroleum Act 1998, in its application in relation to carbon</p>	Relates to the Scottish Ministers' functions under Part 4 of the Petroleum Act 1998 by virtue of section 30 of the Energy Act 2008.	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	storage installations, has effect with modifications. UK Government made amendments on how Part 4 of the Petroleum Act 1998 applies to Carbon Storage installations.		amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.
95	<p><b>Change of use relief: installations (CCUS)</b></p> <p>This clause makes amendments to Section 30A of the Energy Act 2008, broadening the scope of change of use relief: so that it applies to eligible CCS installations more generally; and amending the trigger point to qualify for such relief.</p>	This clause amends the law on carbon capture installations as it applies in Scotland.	<p>The Scottish Government recommends giving consent to this clause.</p> <p>No amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
96	<p><b>Change of use relief: carbon storage network pipelines (CCUS)</b></p> <p>This clause makes amendments to Section 30B of the Energy Act 2008, broadening the scope of change of use relief.</p>	This clause amends the law on carbon capture installations as it applies in Scotland.	<p>The Scottish Government recommends giving consent to this clause.</p> <p>No amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
97	<p><b>Change of use relief: supplementary (CCUS)</b></p> <p>To give the Secretary of State powers to make regulations regarding the provision of information on change of use relief.</p>	This clause amends the law on carbon capture installations as it applies in Scotland.	<p>The Scottish Government recommends giving consent to this clause.</p> <p>No amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
98	<p><b>Designation of strategy and policy statement (CCUS)</b></p>	Relates to a policy statement and strategy to which the Secretary of State and the economic regulator	The Scottish Government recommends giving consent to this clause.

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	To provide that the Secretary of State may designate a strategy and policy statement for CCUS that would need to be considered by the Secretary of State and economic regulator when carrying out functions under Part 1 (Licensing of carbon dioxide transport and storage) functions	<p>must have regard to in carrying out their functions in relation to areas that are devolved, so triggers the requirement for an LCM.</p> <p><b>The UK Government's view is that an LCM is not required for this clause.</b></p>	The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.
100	<p><b>Review (CCUS)</b></p> <p>This clause establishes timeframes and circumstances for reviewing a CCUS strategy and policy statement.</p> <p>An amendment has been made to establish a statutory time period (of a minimum of 28 days) for consultation by the Secretary of State with Devolved Administrations ahead of withdrawing the CCUS Strategy and Policy Statement or leaving it as it is (requirement to consult when the statement is being amended is covered in clause 101(2)), so far as the decision relates to devolved matters.</p>	Relates to a policy and strategy statement (which the economic regulator and the Secretary of State must have regard to in the exercise of the Part 1 functions) in relation to a devolved area.	<p>The Scottish Government recommends giving consent to this clause as it has been amended to include a statutory time period for the consultation of Scottish Ministers on withdrawing the CCUS Strategy and Policy Statement (SPS) or leaving it as it is.</p> <p>Further amendments were requested to this clause by Scottish Government, however they were not accepted by the UK Government. The UK Government have informed Scottish Ministers that, should legislative consent be withheld on this Bill, Scottish Government risk existing amendments being withdrawn. As such, the Scottish Government recommends consent is given to this clause. See also paragraph 16.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
			competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause.
104	<p><b>Offences relating to carbon dioxide storage licences (CCUS)</b></p> <p>To amend the Energy Act 2008 to ensure licencees do not commit an offence under that legislation in relation to the change of control of a company in circumstances where prior consent from the OGA has not been obtained.</p>	Makes provision for offences in relation to licences granted by the Scottish Ministers.	<p>The Scottish Government recommends giving consent to this clause.</p> <p>Consent was initially withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause as the action aligns with the Scottish Government's broad policy goals in this area.</p>
127	<p><b>Access to infrastructure (CCUS)</b></p> <p>This clause enables the Secretary of State to make regulations regarding access to CO2 transport and storage infrastructure, and that these regulations may amend, revoke, or replace or make provision similar or corresponding to, the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011.</p> <p>An amendment has been made to ensure there is a statutory time period for consultation with the Devolved Administrations of not less than 28 days.</p>	Relates to acquisition of rights to use relevant infrastructure for a devolved purpose.	<p>The Scottish Government recommends giving consent to this clause as it has been amended to include a statutory time period for the consultation of Scottish Ministers when the Secretary of State is making regulations regarding access to CO2 transport and storage infrastructure that could amend existing regulations.</p> <p>Additionally, the MoU will provide an agreement setting out how the UK Government will have regard to Scottish Ministers' existing functions when updating or amending related regulations.</p>



Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	See Clause 2 for detail on MOU and ministerial forum.		<p>Further amendments were requested to this clause by Scottish Government, however they were not accepted by the UK Government. The UK Government have informed Scottish Ministers that, should legislative consent be withheld on this Bill, Scottish Government risk existing amendments being withdrawn. As such, the Scottish Government recommends consent is given to this clause. See also paragraph 16.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause.</p>
128	<p><b>Financial assistance (CCUS and Hydrogen)</b></p> <p>Makes provision for Secretary of State to incur expenditure and provide financial assistance for the purpose of encouraging, supporting or facilitating the transport and storage of CO<sub>2</sub>, carbon capture facilities which operate in association with transport and storage, low carbon</p>	Relates to financial assistance in devolved areas.	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The Scottish Government initially recommended that consent was withheld in case further amendments or clarifications were identified. Following further consideration, no amendments were sought regarding this clause</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	hydrogen production and Transport and Storage of hydrogen.		as the action aligns with the Scottish Government's broad policy goals in this area.
142	<p><b>Low Carbon Heat Schemes</b></p> <p>This clause provides the Secretary of State with powers to set up a scheme through secondary legislation to encourage the sale and installation of low-carbon heating technologies, such as electric heat pumps.</p> <p>Clause 150 (which sets out the procedure to be followed for regulations under these sections) has been amended by government amendment 218. This amendment requires the Secretary of State to consult the devolved administrations so far as scheme regulations under clause 142(1) apply in relation to Scotland, Wales or Northern Ireland. The amendment will introduce a requirement for the UK Government not only to consult the Scottish Ministers about these regulations, but to do so in advance of making the regulations and, if requested, make a statement setting out whether the views of Scottish Ministers have been accounted for and why.</p>	<p>This clause provides overarching regulation-making powers to establish low carbon heating schemes (and related functions flowing from subsequent clauses 143-150). Regulation of heat is a devolved matter.</p>	<p>The Scottish Government recommends giving consent to this clause on the basis of amendments that have been made to clause 150. This amendment affects the overall operation of the low carbon heat scheme provisions set out within subsequent clauses 143 to 150.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of these clauses. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause. Ultimately, the UK Government could proceed without legislative consent from the Scottish Ministers (or carve Scotland out of the scope of the regulations, risking that we do not benefit from the Market Mechanism scheme). The consultation process provides the Scottish Ministers a further role in the delivery of these regulations and obligate the UK Government to be transparent in</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
			decision-making in this area. The Scottish Government are content with this amendment.
143	<p><b>Application of scheme</b></p> <p>This clause provides for secondary legislation ('the regulations') to define the 'participants' who will be subject to targets under a low-carbon heat scheme, for instance companies involved in the manufacture and supply of a certain type of product. It also provides for the determination of the technologies, within the broader set established, to which those targets will apply. This clause also gives the Secretary of State powers to determine the relevant types of appliances to which the scheme will apply (such as electric heat pumps).</p>	See Clause 142	The Scottish Government recommends giving consent to this clause as clause 150 (regulating procedure for clauses 142 to 149) has been amended to include enhanced consultation requirements.
144	<p><b>Setting of targets etc</b></p> <p>Building on clause 143, this clause makes further provision in relation to how targets for a scheme may be set in or under the regulations. In particular, it provides for targets to differ for different low-carbon heating technologies or for different weightings to be given to how different technologies or activities meet the targets. This would allow, for example, for standalone electric heat pumps to be treated differently under the scheme from hybrid heat pumps that incorporate or</p>	See Clause 142	The Scottish Government recommends giving consent to this clause as clause 150 (regulating procedure for clauses 142 to 149) has been amended to include enhanced consultation requirements.

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	operate in conjunction with a fossil fuel combustion appliance.		
145	<p><b>Further provision about scheme regulations</b></p> <p>This clause sets out various operational and administrative features of the scheme that the regulations may (and, in the case of determinations about meeting targets, must) provide for.</p>	See Clause 142	The Scottish Government recommends giving consent to this clause as clause 150 (regulating procedure for clauses 142 to 149) has been amended to include enhanced consultation requirements.
146	<p><b>Administration of scheme</b></p> <p>This clause allows the Secretary of State to appoint a scheme administrator and then to make provision for the manner in which the scheme administrator carries out its functions. Subsection (6) provides for limited circumstances under which scheme regulations could make amendments to primary legislation if appropriate in order to enable a public authority appointed as a scheme's administrator to carry out its functions under the scheme.</p>	See Clause 142	The Scottish Government recommends giving consent to this clause as clause 150 (regulating procedure for clauses 142 to 149) has been amended to include enhanced consultation requirements.
147	<p><b>Enforcement, penalties and offences</b></p> <p>This clause provides for the regulations to enable the administrator to conduct a range of enforcement activities. It also provides for the regulations to specify civil penalties for noncompliance with requirements of a scheme and to create offences.</p>	See Clause 142	The Scottish Government recommends giving consent to this clause as clause 150 (regulating procedure for clauses 142 to 149) has been amended to include enhanced consultation requirements.

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
148	<p><b>Application of sums paid by virtue of section 145(4)( or 147(3)</b></p> <p>This clause sets out that regulations may make provision about the applications of amounts paid by virtue of 145(4)(a) (allowing regulations to require payment where the low-carbon heat target is not met) or 147(3) (allowing regulations to provide that a person is liable to penalties on failure to meet requirement of a scheme). Such provision may require the payment of amounts into the Consolidated Fund.</p>	See Clause 142	The Scottish Government recommends giving consent to this clause as clause 150 (regulating procedure for clauses 142 to 149) has been amended to include enhanced consultation requirements.
149	<p><b>Appeals</b></p> <p>This clause makes provision relating to appeals against any decisions made, or penalties imposed, by the scheme administrator.</p>	See Clause 142	The Scottish Government recommends giving consent to this clause as clause 150 (regulating procedure for clauses 142 to 149) has been amended to include enhanced consultation requirements.
150	<p><b>Scheme regulations: procedure etc</b></p> <p>This clause establishes procedural requirements for the making of scheme regulations. These depend on the matters covered in the regulations.</p> <p>This clause has been amended by Government Amendments 217 and 218. These amendments require the Secretary of State to consult the devolved administrations so far as scheme regulations under clause 142(1) apply in relation to Scotland, Wales or Northern Ireland.</p>	See Clause 142	The Scottish Government recommends giving consent to this clause as it has been amended to include enhanced consultation requirements that include a statutory time period for the consultation (at least 28 days) of Scottish Ministers when the Secretary of State is making regulations as well as a requirement, if requested, for the Secretary of State to provide evidence of how Scottish Ministers views have been accounted for.

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>The amendment will introduce a requirement for the UK Government not only to consult the Scottish Ministers about these regulations, but to do so in advance of making the regulations and, if requested, make a statement setting out whether the views of Scottish Ministers have been accounted for and why.</p>		<p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause. Ultimately, the UK Government could proceed without legislative consent from the Scottish Ministers (or carve Scotland out of the scope of the regulations, risking that we do not benefit from the Market Mechanism scheme). The consultation process provides the Scottish Ministers a further role in the delivery of these regulations and obligate the UK Government to be transparent in decision-making in this area. The Scottish Government are content with this amendment.</p>
154	<p><b>Power to modify Gas Act 1986 in relation to hydrogen</b></p> <p>Clause 154 allows the Secretary of State to make regulations to not apply, or apply with modifications, the Gas Act 1986 in relation to production, transportation, storage or use of hydrogen.</p>	<p>The power includes the power of the Secretary of State to make regulations which provide provisions of the Gas Act 1986 do not apply, or to apply with modifications in relation to the devolved areas of hydrogen production and transportation of hydrogen</p>	<p>There is ongoing divergence of views on the devolution status of clause 154 in relation to hydrogen. The Scottish Government does not accept the UK Government's view that this clause is reserved, so has significant outstanding concerns on this clause.</p> <p>Requests for amendments to require the consent of the Scottish Ministers where regulations make provision in areas of devolved</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>This power is limited in that it may only be exercised for the purpose of facilitating or promoting the production, transportation, storage or use of hydrogen.</p>	<p>(otherwise than by pipeline).</p> <p>The clause makes provision in the devolved area of hydrogen production and transportation of hydrogen (otherwise than by pipeline) so triggers the requirement for legislative consent.</p> <p><b>The UK Government's view is that an LCM is not required for this clause.</b></p>	<p>competence or to amend the language to remove reference to areas of devolved competence were denied by the UK Government.</p> <p>The Scottish Government continues to have concerns about the potential delivery risk in respect of some aspects of hydrogen policy posed by this clause. However on balance, and given the risks to the wider Bill if consent is not given to this clause, consent is recommended.</p>
<p>156 addition al clause (NC 63)</p>	<p><b>Renewable Liquid Heating Fuel Obligation</b></p> <p>This clause (inserted by amendment NC63) gives the Secretary of State powers to make regulations similar to those mentioned in section 124(2) of the Energy Act 2004. The 'Renewable Liquid Heating Fuel Obligation' would require suppliers of off-grid heating fuel to provide evidence that specified amount of renewable liquid heating fuels such as biofuel are being supplied during a specified period. This would enable off-grid buildings to modify existing heating systems to run on biofuels as a lower cost alternative to fitting zero emissions systems such as electric heat pumps.</p>	<p>Regulations made under this power could relate to the conveyance of gas (in liquid form) otherwise than by pipes which is devolved.</p>	<p>The UK Government "accepts that these powers are capable of being exercised in a way that is not clearly within the scope" of the oil and gas reservation (for example, in relation to LPG). The Scottish Government therefore considers that this touches on devolved competence. This amendment was tabled with no time for full discussion between the Scottish and UK Governments on how to ensure it could be drafted to either relate only to reserved matters, or contain consent mechanisms.</p> <p>At the dispatch box on 12 September, Lord Callanan stated that: "The (UK) Government also commits to consult specifically with the Scottish Government when consulting on the</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
			<p>role of Renewable Liquid Heating Fuels in heating buildings off the gas grid and the implementation of a Renewable Liquid Heating Fuels Obligation. The (UK) Government will look to legislate when parliamentary time allows to give statutory force to this consultation requirement.” As such, the Scottish Government recommends consent is given to this clause.</p>
216	<p><b>Heat networks regulations</b></p> <p>This clause provides powers for the Secretary of State to make secondary legislation to regulate heat networks in Great Britain and confer powers relating to the development and maintenance of heat networks in Great Britain.</p> <p>Further details on what these regulations may provide for are set out in Schedule 18.</p> <p>The clause requires the Secretary of State to consult with relevant parties before making regulations. The clause commits the Secretary of State to consult with Scottish Ministers before making regulations on consumer protection that are within the devolved competence of Scottish Ministers.</p> <p>An amendment has been made to insert enhanced terms of consultation with Scottish Ministers, and</p>	<p>The provision contains broad, wide-ranging powers which give the Secretary of State powers to make regulations in the devolved area of heat networks.</p>	<p>It is recommended to give consent to clause 216, as amended, on the grounds that there will now be enhanced terms of consultation for Scottish Ministers, and such consultation will now extend to the exercise of Part 10 (Supply to Premises) of Schedule 18. Moreover, the power to repeal Acts of the Scottish Parliament (ASPs) will be removed and the power to amend ASPs limited to the Heat Networks (Scotland) Act 2021.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism</p>



Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>such consultation will now extend to regulations making provision specified in Part 10 (Supply to Premises) of Schedule 18. Moreover, the power to repeal Acts of the Scottish Parliament (ASPs) will be removed and the power to amend ASPs limited to the Heat Networks (Scotland) Act 2021.</p> <p>Part 5 of schedule 18 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). 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.</p> <p>Paragraph 33 of schedule 18 erroneously made reference to Scotland – however the powers should not apply in Scotland. Consent was previously withheld in this basis. UK Government agreed that this was a drafting error, and all references to Scotland in this regard have now been removed.</p>		<p>for this clause. See paragraph 16 for further context.</p>
217	<p><b>Heat networks regulations: procedure</b>  This clause sets out the procedure for making regulations under clause 216 i.e. whether they are to be made by negative or affirmative procedure. Affirmative procedure is required where a</p>	See Clause 216	<p>As the Scottish Government now recommends giving consent to 216, it follows that the Scottish Government recommends giving consent to 217. (Consent was previously withheld from 217 as a consequence of its linkage to 216).</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	regulation is the first to be made under a specific power or if it amends primary legislation.		
220	<p><b>Heat Networks: Enforcement in Scotland</b></p> <p>This clause provides that the Secretary of State may (by regulations) give the Scottish heat networks licensing authority the same enforcement powers as those being provided to the heat networks regulator (in England/Wales) through regulations.</p> <p>An amendment to this clause means that the Secretary of State may only make regulations under this clause if Ofgem have been designated as the heat networks licensing authority in Scotland.</p>	LCM required as Clause 220 gives the Secretary of State power to amend the powers of the Scottish heat networks licensing authority.	It is recommended to give consent to clause 220 on the basis that (i) it will deliver the additional enforcement powers to the Scottish licensing authority which GEMA/Ofgem considers to be operationally necessary; and (ii) there are now checks and balances on clause 220's exercise (an MoU and an amendment meaning regulations can only be made if Ofgem are the licensing authority in Scotland).
246	<p><b>Power to make energy performance regulations</b></p> <p>This clause gives the Secretary of State the power to make regulations (energy performance regulations) to enable or require the energy usage or the energy efficiency of premises to be assessed, certified, and published and to require that improvements in energy usage or efficiency are identified and recommended. The clause also gives the Secretary of State the power to make regulations to restrict or prohibit the marketing or disposal of premises where their energy performance has not been assessed, certified, or publicised. Under this clause, the Secretary of</p>	The energy performance of buildings is a devolved area.	The Scottish Government recommends giving consent to this clause given the amendments that have been made which extend powers to the Scottish Ministers to make energy performance regulations to enable or require the energy usage or the energy efficiency of premises to be assessed, certified, and published and to require that improvements in energy usage or efficiency are identified and recommended.

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>State may by regulations confer functions on any person and impose requirements or make provision for securing compliance with requirements under the regulations. Regulations made under this clause may also authorise, restrict or prohibit the supply or keeping of information relating to the energy performance of buildings. This clause, and the two which follow, will enable the Secretary of State to amend, revoke or replace the existing energy performance of premises regime, which derives from EU law.</p> <p>Amendments negotiated (Gov 182-193) to clauses 246-249 enables energy performance regulations to be made by the Scottish Ministers in relation to Scotland and to grant the Scottish Ministers similar powers as those originally given to the Secretary of State. Amendments to these clauses means that the Scottish Ministers have regained regulation-making powers for energy performance of premises which were lost at the UK's withdrawal from the EU.</p>		
247	<p><b>Energy performance regulations relating to new premises</b></p> <p>This clause provides that the Secretary of State may make energy performance regulations in relation to new premises.</p>	<p>The energy performance of buildings is a devolved area. This relates to Clause 246.</p>	<p>The Scottish Government recommends giving consent to this clause as it relates to the overall power to make regulations which will be conferred upon the Scottish Ministers via the amendment to clause 246.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>Amendments negotiated relate to clause 246 and enable energy performance regulations to be made by the Scottish Ministers in relation to Scotland and to grant the Scottish Ministers similar powers as those originally given to the Secretary of State.</p>		
248	<p><b>Sanctions</b></p> <p>This clause provides that the Secretary of State may by regulations make provision with respect to the enforcement of energy performance regulations, including the imposition of civil penalties up to a specified maximum amount and for the creation of criminal offences and associated penalties (subject to the limitation set out in the clause). Regulations made under this clause must provide for a right of appeal against the imposition of a penalty.</p> <p>Amendments negotiated relate to clause 246 and enable energy performance regulations to be made by the Scottish Ministers in relation to Scotland and to grant the Scottish Ministers similar sanction-making powers as those originally given to the Secretary of State.</p>	<p>The energy performance of buildings is a devolved area. This relates to Clause 246.</p>	<p>The Scottish Government recommends giving consent to this clause as it relates to the overall power to make regulations which will be conferred upon the Scottish Ministers via the amendment to clause 246.</p>
249	<p><b>Regulations under Part 10</b></p> <p>This Clause relates to devolution, the application to Crown and Parliament and the Territorial extent relevant Clauses.</p>	<p>The energy performance of buildings is a devolved area. This relates to Clause 246.</p>	<p>The Scottish Government recommends giving consent to this clause as it relates to the overall power to make regulations which will be conferred upon the Scottish Ministers via the amendment to clause 246.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	Amendments negotiated relate to clause 246 and enable energy performance regulations to be made by the Scottish Ministers in relation to Scotland and to grant the Scottish Ministers similar powers as those originally given to the Secretary of State.		
250	<p><b>Energy savings opportunity schemes</b></p> <p>Provides powers to the Secretary of State to establish an ESOS scheme through regulations. It sets out the ESOS purposes which includes, amongst other things, enabling or requiring energy consumption and resulting greenhouse gas emissions to be assessed, audited, reported and published; reductions to be identified and recommended; and encouraging or requiring energy savings or emissions reductions.</p> <p>It allows that these regulations may impose requirements on any person and confer functions on any person.</p>	Although the ESOS scheme is a UK scheme, the reference to emissions reductions means that the scheme as a whole does engage an area of devolved policy.	The Scottish Government recommends giving consent to this clause since the UK Government has now made amendments to the overall regulation-making powers for ESOS under clauses 250-262 by amendment to clause 259, to ensure that before making ESOS regulations, the Secretary of State must consult Scottish Ministers to the extent that the regulations contain provision within devolved competence.
251	<p><b>Applications for energy savings opportunity schemes</b></p> <p>Provides for regulations that set out which undertakings (organisations) can be included or excluded from the ESOS scheme and applies the scheme to the whole of the UK.</p>	Although the ESOS scheme is a UK scheme, the reference to emissions reductions means that the scheme as a whole does engage an area of devolved policy.	The Scottish Government recommends giving consent to this clause, given the amendment to clause 259.
252	<p><b>Requirement for assessment of energy consumption</b></p>	Although the ESOS scheme is a UK scheme, the reference to emissions	The Scottish Government recommends giving consent to this clause, given the amendment to clause 259.

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	Provides for regulations to set conditions for ESOS assessments, including the frequency, information required, ability to make recommendations and reporting on assessments.	reductions means that the scheme as a whole does engage an area of devolved policy.	
253	<p><b>Assessors</b></p> <p>Provides for regulations which set out qualifications for assessors.</p>	Although the ESOS scheme is a UK scheme, the reference to emissions reductions means that the scheme as a whole does engage an area of devolved policy.	The Scottish Government recommends giving consent to this clause, given the amendment to clause 259.
254	<p><b>ESOS action plans</b></p> <p>Provides for ESOS action plans, including when they must be produced and the form and content of the plan.</p>	Although the ESOS scheme is a UK scheme, the reference to emissions reductions means that the scheme as a whole does engage an area of devolved policy.	The Scottish Government recommends giving consent to this clause, given the amendment to clause 259.
255	<p><b>Action to achieve energy savings or emissions reductions</b></p> <p>Allows ESOS regulations to make provision to impose requirements for organisations to take specified actions towards achieving energy efficiency or emissions reductions and to report on what actions have been taken.</p>	Although the ESOS scheme is a UK scheme, the reference to emissions reductions means that the scheme as a whole does engage an area of devolved policy.	The Scottish Government recommends giving consent to this clause, given the amendment to clause 259.
256	<p><b>Scheme administrators</b></p>	Although the ESOS scheme is a UK scheme, the reference to emissions	The Scottish Government recommends giving consent to this clause, given the amendment to clause 259.

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>Allows ESOS regulations to appoint public authorities to act as scheme administrators or to monitor compliance and enforce requirements imposed by the regulations. The scheme administrator is currently the Environment Agency. In Scotland, the enforcement agency is SEPA.</p> <p>Also allows the regulations to confer a power on a 'national authority' (which includes Scottish Ministers) to request information from the scheme administrator relating to ESOS and the exercise of its functions.</p>	<p>reductions means that the scheme as a whole does engage an area of devolved policy.</p>	<p>The clause properly reflects the devolved responsibilities of different enforcement authorities such as SEPA, and the competence of the Scottish Ministers as a 'national authority'.</p>
257	<p><b>Enforcement, penalties and offences</b></p> <p>Provides for ESOS regulations which set out enforcement, penalties and offences</p>	<p>Although the ESOS scheme is a UK scheme, the reference to emissions reductions means that the scheme as a whole does engage an area of devolved policy.</p>	<p>The Scottish Government recommends giving consent to this clause, given the amendment to clause 259.</p>
258	<p><b>Appeals</b></p> <p>Provides for appeals against penalties imposed</p>	<p>Although the ESOS scheme is a UK scheme, the reference to emissions reductions means that the scheme as a whole does engage an area of devolved policy.</p>	<p>The Scottish Government recommends giving consent to this clause, given the amendment to clause 259.</p>
259 ESOS	<p><b>ESOS regulations: procedure etc</b></p> <p>Sets out that before making ESOS regulations, the Secretary of State must consult Scottish Ministers</p>	<p>Although the ESOS scheme is a UK scheme, the reference to emissions reductions means that the</p>	<p>The Scottish Government recommends giving consent to this clause since amendments now ensures that before making ESOS regulations, the Secretary of State must consult Scottish</p>

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	<p>to the extent that the regulations contain provision within devolved competence.</p> <p>An amendment has been made to require UK Ministers to consult Scottish ministers where they make regulations within a devolved area with at least 28 days' notice, setting out or describing the provisions, and to take account of any representations made by Scottish Ministers. Regulations putting in place the next phase of ESOS (phase 3) are not subject to this enhanced consultation.</p> <p>Another amendment has been made to remove the ability for ESOS regulations to amend primary legislation, including Acts of the Scottish Parliament</p>	<p>scheme as a whole does engage an area of devolved policy.</p>	<p>Ministers to the extent that the regulations contain provision within devolved competence, and removes the ability for ESOS regulations to amend Acts of the Scottish Parliament.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause. See paragraph 16 for context.</p>
260	<p><b>Directions to scheme administrators</b></p> <p>Allows the Secretary of State to give directions to the scheme administrator.</p>	<p>Although the ESOS scheme is a UK scheme, the reference to emissions reductions means that the scheme as a whole does engage an area of devolved policy.</p>	<p>The Scottish Government recommends giving consent to this clause, given its connection to clauses 250 to 259, and the amendment to clause 259.</p>
261	<p><b>Financial assistance to scheme administrators and participants</b></p> <p>Allows the Secretary of State to give or arrange the giving of financial assistance to scheme administrators and participants.</p>	<p>Although the ESOS scheme is a UK scheme, the reference to emissions reductions means that the scheme as a whole does engage an area of devolved policy.</p>	<p>The Scottish Government recommends giving consent to this clause, given its connection to clauses 250 to 259, and the amendment to clause 259.</p>



Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
286	<p><b>Meaning of relevant wind activity</b></p> <p>This defines the offshore wind projects that are subject to the OWEIP clauses, and it includes projects that involve the planning, construction, operation or decommissioning of (a) a generating station in the UK marine area, that generates electricity from wind, or (b) infrastructure, in the UK marine area, used or intended for use in connection with a generating station within paragraph (a).</p> <p>The UK Government amended this clause to better define which activities are captured by the clauses that follow.</p>	<p>This clause defines what projects the other offshore wind clauses apply to. The definition brings matters which are within devolved competence into scope.</p>	<p>The Scottish Government recommends giving consent to this clause as the definition is now clearer.</p>
287	<p><b>Strategic Compensation</b></p> <p>Makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament in relation to marine licensing and marine planning within the Scottish inshore region (as well as onshore deemed planning) and the associated Habitats Regulations Appraisal (HRA) compensation obligations for alleviation of environmental damage to protected sites and species.</p>	<p>Scottish Ministers have devolved competence to agree compensatory measures and discharge compensation conditions attached to consents and licences in relation to offshore wind projects in the Scottish inshore and offshore regions.</p>	<p>The Scottish Government recommends giving consent to this clause as it works in tandem with clauses 288 and 289 which have been the subject of subsequent amendments.</p>
288	<p><b>Marine Recovery Fund</b></p> <p>This clause empowers the Secretary of State, by regulations, to establish marine recovery funds</p>	<p>The clause applies in Scotland and affects: (a) the legislative competence of the Scottish Parliament, as it</p>	<p>The Scottish Government recommends giving consent to this clause as the negotiated amendments have helped address several of</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>within the Scottish inshore and offshore regions to be used in relation to compensatory measures for adverse environmental effects of offshore wind projects</p> <p>Negotiated amendments cover:</p> <p>(i) the restriction on the regulations that a determination on discharging a condition attached to a consent following a payment into a Marine Recovery Fund can only be made by the consenting authority (i.e. the Scottish Ministers in Scotland);</p> <p>(ii) the requirement for the Scottish Ministers' consent prior to functions to operate a Marine Recovery Fund being delegated.</p> <p>(iii) the requirement to consult the Scottish Ministers prior to making Marine Recovery Fund regulations.</p>	<p>applies to the devolved matters of marine licensing and marine planning in the Scottish inshore region (as well as onshore deemed planning); and (b) affects executively devolved functions, including in relation to consenting, licensing (in the Scottish offshore region), planning and decommissioning.</p>	<p>the Scottish Government's concerns relating to the impact on devolved functions.</p> <p>Further amendments were requested to this clause by Scottish Government, however they were not accepted by the UK Government.</p> <p>The following proposals have not been accepted by the UK Government.</p> <p>a) Consent to regulations that govern the discharge of a compensation condition attached to a consent granted by the Scottish Ministers (a devolved function).</p> <p>b) Consent to the Secretary of State cancelling a Marine Recovery Fund function delegated to the Scottish Ministers (noting that the latest amendments require the Scottish Ministers' consent prior to a function being delegated).</p> <p>c) Consent to the Secretary of State concurrently carrying out a Marine Recovery Fund function delegated to the Scottish Ministers.</p> <p>The UK Government's rejection of the Scottish Government's proposed consent mechanisms on the OWEIP provisions means that the UK Government could cancel and/or concurrently carry out delegated functions related to a Marine Recovery Fund governing</p>

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			environmental compensation for offshore wind developments, as well as make regulations on the devolved matter of discharging compensation conditions. This could potentially lead to confusing and inefficient duplicatory regulation (the current UK Government administration are clear that is not their intention but a future administration may take a different approach.)
289	<p><b>Assessment of environmental effects</b></p> <p>This clause provides the Secretary of State with a regulation making power for the Scottish offshore region, with the possibility of altering executively devolved Habitats Regulations Appraisal responsibilities in relation to offshore wind, as well as providing the Scottish Ministers with a regulation making power in the Scottish inshore region for assessment of environmental effects of relevant offshore wind projects in relation to protected sites and concerning taking or securing compensatory measures.</p> <p>The negotiated amendments mean that:</p> <p>(i) any regulations made under this clause cannot cancel the Scottish Ministers' existing offshore wind habitats functions in the Scottish offshore region;</p>	Legislates for offshore wind marine licensing and planning purposes within devolved legislative competence within the Scottish inshore region/territorial waters, and both alters and potentially alters devolved legislative and executive competence in offshore wind licensing, consenting, planning, and decommissioning (in both Scottish inshore and offshore regions).	<p>The Scottish Government recommends giving consent to this clause because the negotiated amendments broadly address previous concerns about the regulation making powers being able to amend currently devolved functions.</p> <p>Further amendments were requested to this clause by the Scottish Government, however they were not accepted by the UK Government. Overall assessment provided in paragraph 16.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
	<p>(ii) the Secretary of State would not be able to make regulations enabling directions to be given to Scottish public authorities; and</p> <p>(iii) the limitation on the Scottish inshore region regulation making power in relation to Secretary of State functions would be removed.</p>		
290	<p><b>OWIEP procedural</b></p> <p>This clause sets out the procedure and consultation requirements in relation to the regulation making powers in Clause 289, and so it also relates to legislative and executive competencies</p>	<p>This sets out the procedure for making regulations under Clause 289, and as set out above this regulation making power impacts on areas of devolved competence.</p>	<p>The Scottish Government recommends giving consent to this clause as it follows that if recommending consent for the regulation making power then the Scottish Government should also recommend consent for the procedure for making such regulations.</p>
291	<p><b>Interpretation</b></p> <p>This clause provides interpretation of terms used elsewhere in clauses 286-290</p>	<p>It relates to the relevant preceding clauses and how they are to be interpreted and apply where the Scottish Ministers have devolved legislative and executive competence.</p>	<p>The Scottish Government recommends giving consent to this clause because the issues with the preceding clauses have been largely resolved through amendments.</p>
292	<p><b>Arrangements for responding to marine oil pollution</b></p> <p>Negotiated amendments mean that enhanced consultation is required when making regulations including provision within devolved legislative competence under this clause.</p>	<p>The Scottish Ministers have devolved legislative competence for certain aspects of oil and gas pollution response.</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p>The UK Government has amended this clause to provide for enhanced consultation when making any Regulations that are within devolved legislative competence, but falls short of providing a consent requirement. Overall assessment provided in paragraph 16.</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
293	<p><b>Habitats: reducing effects of offshore oil or gas activities</b></p> <p>Negotiated amendments mean that a consent mechanism would be inserted into clause 293, meaning the Secretary of State may not make regulations under section 293 containing provision within Scottish devolved legislative competence unless the Scottish Ministers have consented to that provision.</p>	<p>The Scottish Ministers have devolved legislative competence for certain oil and gas activities, including for carbon dioxide storage and hydrogen production, with the associated habitats regime likewise being devolved.</p>	<p>The Scottish Government recommends giving consent to this clause.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has amended this clause to include a consent mechanism for legislative, but not executive, competence. This consent mechanism suffices for present purposes (although the Scottish Government's preference was for consent to cover executively devolved matters in order to afford a degree of future proofing on oil and gas habitats in the event that the legislative position of different functions evolves).</p>
325	<p><b>Power to make consequential provision</b></p> <p>This clause provides for a power to amend primary and secondary legislation in consequence of (or in connection with) the Bill once enacted.</p>	<p>This clause includes a power to amend, repeal, or revoke Acts of the Scottish Parliament, in consequence of (or in connection with) the Bill once enacted, touching on devolved competence.</p>	<p>The Scottish Government recommends consent to this clause.</p> <p>Clarification was provided that the clause will 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 such primary legislation). Assurance</p>

Clause Number	Description of Clause	Why is LCM required	Consent recommended and reasons why
			<p>has been provided that consequential amendments to Scottish Parliament legislation will only be made once there has been prior engagement and discussion with the Scottish Government.</p> <p><b>Note:</b> It is the view of Scottish Ministers that the consent of Scottish Ministers should be sought for all matters which touch on devolved competence, including elements of this clause. The importance of consent mechanisms has also been emphasised by the Scottish Parliament on a number of occasions. The UK Government has indicated that it is not willing to amend the Bill to include a consent mechanism for this clause. See paragraph 16 for context.</p>



This Supplementary Legislative Consent Memorandum relates to the Energy Bill (UK legislation) and was lodged with the Scottish Parliament on 21 September 2023

# Energy Bill – Supplementary Legislative Consent Memorandum

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