This Legislative Consent Memorandum relates to the Energy Independence Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 20 November 2026

Legislative Consent Memorandum

Energy Independence Bill

Background

1. This memorandum has been lodged by Gillian Martin MSP, Cabinet Secretary for Climate Action and Rural Affairs, in accordance with Rule 9B.3.1(a) of the Parliament's Standing Orders.

2. The Energy Independence Bill was introduced by the UK Government in the House of Commons on 4 November 2026. The Bill is available on the UK Parliament website via this link: Energy Independence Bill.

Content of the Bill

3. The Bill is a wide-reaching piece of legislation which aims to underpin action on three overarching and interrelated objectives: deliver a fairer deal for consumers; upgrade homes and empower communities; and deliver homegrown clean energy.

4. The Bill is divided into 14 Parts and 10 Schedules.

5. Part 1 supports the establishment and operation of the Warm Homes Agency and provides for specific energy efficiency and building decarbonisation schemes to be administered by the Warm Homes Agency or another body, together with enforcement, data sharing and other supporting provisions. The provisions enable a reorganisation of schemes currently delivered by Ofgem, the Department for Energy Security and Net Zero (DESNZ) and Salix Finance Ltd. The Bill also provides a financial assistance power, enabling the Secretary of State (via the Warm Homes Agency), with the prior consent of the Scottish Ministers, to administer devolved non-statutory schemes funded by the Scottish Government in Scotland. This relates to the delivery/administration of energy efficiency, emissions reduction and fuel poverty schemes, including schemes currently administered by delivery partners (such as Salix) and any future schemes that may be undertaken under new delivery arrangements, with decisions on whether or not to utilise the Warm Homes Agency for delivery of Scottish Government schemes subject to future Ministerial decisions on the matter, once more detail is known on the proposed governance and operational arrangement of the Agency.

6. Part 2 makes changes to consumer protection and market oversight. It revises and consolidates Ofgem's duties into a clearer and more streamlined framework, intended to support more effective decision-making and greater transparency, and update's Ofgem's enforcement powers. To address new emerging energy-related activities, the Bill enables the introduction of a General Authorisation Regime, enabling certain energy-related

activities to be regulated where existing licensing models are not suitable. The Bill also strengthens the operation of energy redress schemes by enabling schemes to require penalties where determinations are not implemented on time and providing clear enforcement routes in the courts.

7. Part 3 establishes a regulatory framework for specified energy intermediary services, including price comparison websites and energy brokers. It introduces authorisation requirements, rule-making powers, enforcement mechanisms and remedies, bringing these activities within direct regulatory oversight.

8. Part 4 provides powers to support energy affordability, including powers to fund the costs of specific energy schemes and to create and amend energy bill support schemes with broader eligibility than existing fuel poverty provisions.

9. Part 5 provides for community benefit agreements in connection with specified low-carbon electricity generation projects, measures to support community energy schemes, and amendments to the shared ownership framework established under the Infrastructure Act 2015.

10. Part 6 provides powers to support the introduction of reformed national pricing. It enables modification of licences, industry codes and related arrangements relating to network charging and system balancing and introduces new licensable activities for dedicated network services and power exchanges.

11. Part 7 contains measures to support the timely delivery of electricity network infrastructure. It reforms the regime for consents, land access and rights to support the timely delivery of electricity network infrastructure. It also introduces changes to the mechanism by which transmission licence exemptions are granted and amends the starting date of the commissioning period. The Bill also enables the Scottish Ministers to make regulations to set and charge fees in connection with safety zone declarations around renewable energy installations and functions concerning decommissioning of offshore installations, allowing for the recovery of costs associated with these functions.

12. Part 8 introduces measures to improve energy system flexibility and visibility. These include provision for a smart mandate to apply to battery energy storage systems, powers to adjust the treatment of supply-based charges to better accommodate electricity flexibility and powers to require the registration of specified distributed energy assets.

13. Part 9 updates the statutory name, objectives and funding arrangements of the North Sea Transition Authority and strengthens its regulatory and enforcement powers in relation to offshore petroleum activities. It also removes powers to grant new petroleum exploration and production licences and introduces transitional energy certificates.

14. Part 10 renames the Coal Authority as the Mining Remediation Authority and amends the coal licensing regime to prevent the granting of new coal extraction licences.

15. Part 11 introduces a framework for revenue support for hydrogen-fuelled electricity generation.

16. Part 12 makes provision relating to employment protections for workers in the energy sector.

17. Part 13 makes a range of provisions across the energy system. It amends the data sharing gateways in sections 36 and 37 of the Digital Economy Act 2017 to allow information to be shared for the design and delivery of energy support measures for any bill payers who are or may be eligible, beyond those living in fuel poverty. It will allow the Secretary of State to make regulations that relate to the import, export and transit of radioactive waste and spent fuel. Part 13 also provides for the validation of certain fees charged under clean air certification regimes before 1 April 2025. It also extends the period during which existing powers relating to smart metering may be exercised and provides powers to support the resilience of gas and liquefied petroleum gas supply, including information-gathering, direction-making and financial assistance powers.

18. Part 14 contains general, financial, consequential and supplementary provisions, including provision about extent, commencement and interpretation.

19. Schedule 1 sets out amendments made to the Electricity Act 1989 and other legislation as well as transitional provisions. Schedule 2 makes consequential amendments to existing energy legislation following the introduction of new principal objectives for the regulation of gas and electricity. Schedule 3 makes provision enabling regulatory enforcement action to be taken against interconnected bodies corporate in certain circumstances. Schedule 4 makes consequential amendments in connection with the new statutory framework for strategy and policy statements applying to the energy regulator. Schedule 5 sets out the test to determine if a legal person is performing third-party (TPI) intermediary services and sets out people who can provide TPI services without needing to be authorised by Ofgem. Schedule 6 inserts a new Chapter 4A into Part 2 of the Energy Act 2016, giving the North Sea Transition Authority powers to take action where it considers that a relevant person in relation to an offshore petroleum licensee or an offshore transitional energy certificate holder is not a fit and proper person to be a relevant person. Schedule 7 makes consequential amendments to primary legislation further in respect to oil and gas transition and regulation. Schedule 8 makes consequential amendments to primary legislation, renaming the Coal Authority to the Mining Remediation Authority. Schedule 9 amends the Energy Act 2011 to include measures to strengthen the enforcement framework for minimum energy efficiency standards in the private rented sector in England and Wales. Schedule 10 amends Part 12 of the Energy Act 2023 to strengthen the resilience of the liquified petroleum gas (LPG) supply chain and the midstream gas sector.

Provisions which require the consent of the Scottish Parliament

20. The Bill is a relevant Bill within Rule 9B.1 of the Standing Orders, as it makes provision applying to Scotland for purposes within the legislative competence of the

Scottish Parliament and provisions altering the executive competence of the Scottish Ministers.

21. The Scottish Government considers that legislative consent is engaged for 26 clauses including clauses 1, 8, 9, 10, 11, 12, 13, 14, 69, 104, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 116, 137, 144, 175, 177, 179 and Schedule 1 of the Bill, as they make provision for a devolved purpose and alter the executive competence of the Scottish Ministers. Broadly the UK Government agrees with the Scottish Government's view as regards the relevant clauses. However, there is misalignment between UK Government and Scottish Government in relation to whether consent is required for clause 136 (detailed below).

Clause 1 and Schedule 1 – Warm Homes Agency - Administration etc of the renewables obligation and certificate purchase obligation

22. Clause 1 introduces Schedule 1, which amends the Electricity Act 1989 and other related legislation to provide a more flexible approach to the designation of a body to oversee the administration of The Renewables Obligation (RO) and certificate purchase obligation. The primary change is to replace the fixed references to the "Authority" with the concept of a "designated administrator". This would allow the Secretary of State, or the Scottish Ministers in relation to the Scottish Renewables Obligation, to designate an appropriate person or body to administer the RO via secondary legislation, rather than requiring further primary legislation to amend reference to Gas and Electricity Markets Authority (GEMA) ('the authority') as the sole administrator of the RO.

23. Schedule 1 provides that a renewables obligation order may designate the administrator, and where the order is made by the Secretary of State or the Scottish Minister, they may designate themself or another consenting person as administrator. This provides flexibility for the administrating body to be changed in the future should that be considered appropriate by the Scottish Ministers and/or the Secretary of State. Schedule 1 also provides flexibility for the administration of the certificate purchase obligation. It replaces fixed references to particular bodies with provision for the purchasing body, levy administrator and designated administrator to be specified in certificate purchase orders (a form of statutory instrument). This would allow administrative responsibilities to be reallocated through secondary legislation, avoiding the need for further primary legislation if changes are required in future.

24. In addition, Schedule 1 also deals with enforcement provisions. This is necessary because, if administrative functions are moved from Ofgem to a designated administrator, the legislation also needs to ensure that the relevant body has the appropriate powers to monitor and enforce compliance with the scheme. These powers may need to cover matters such as requiring information, enforcing scheme requirements, enforcing relevant electricity license conditions, and imposing financial penalties where appropriate. The Schedule therefore allows renewables obligation orders and certificate purchase orders to include enforcement provision corresponding to existing enforcement powers under the Electricity Act 1989, including provision for financial penalties. Where financial penalties are provided for, the order must include a right of appeal to a court or tribunal. The Schedule

also allows provision to be made for coordination where enforcement functions are exercised by more than one person.

25. Clause 1 and Schedule 1 therefore are relevant provisions for the purposes of the legislative consent process insofar as they alter the executive competence of Scottish Ministers by altering their function in relation to the designation of the RO administrator, and the administration and enforcement of the Scottish Renewables Obligation.

Clause 8 – Heat Networks Regulations

26. The Energy Act 2023 establishes a regulatory framework for heat networks overseeing operators and technical standards. This framework includes provision for the designation of technical rules (commonly referred to as industry “codes”) and for the appointment of a licensed code manager to maintain and develop these codes under the oversight of the regulator (Ofgem).

27. Clause 8 amends Schedule 18 of the Energy Act 2023 to enable the creation of regulations for the Secretary of State to undertake the functions of a code manager in relation to designated documents across Great Britain, including Scotland. The clause also amends section 222(2) of the Energy Act 2023 to allow for the recovery of costs incurred by the Secretary of State when acting as a code manager. In practice the code manager function could be undertaken by DESNZ, the Warm Homes Agency (once established) or another part of the UK Government.

28. The clause further provides for regulations to establish governance arrangements between the Secretary of State and heat network authorisation holders, including provision relating to modification of designated documents, monitoring and enforcement of compliance, and the development of guidance. It also enables provision to be made regarding the role of the Regulator in relation to modification of codes and sharing of information between the Secretary of State and the Regulator. The intention of these amendments is to enable the Secretary of State to fulfil all of the same functions that a code manager licensed by Ofgem would have under the 2023 Act as drafted.

29. Technical standards are devolved but at the time of the Energy Act 2023 Scottish Government Ministers agreed they should be standardised cross-border. The Scottish Government is collaborating with the UK Government and Ofgem to design the scheme. The proposed approach of UK Government delivering the code manager function is believed to offer best value for money compared to alternatives (e.g. establishing a new body). The LCM to the Energy Act (LCM-S6-26) stipulates that the Scottish Government will have a place on the code governance board, and officials are exploring the need for a Memorandum of Understanding and other safeguards given this is a devolved area. Providing legislative consent to clause 8 will enable the Secretary of State to undertake code manager functions, including maintaining and modifying designated documents, while ensuring that associated costs can be recovered on a cost-recovery basis.

30. Clause 8 is therefore a relevant provision for which the legislative consent of the Scottish Parliament is engaged because it enables the Secretary of State to exercise code

manager functions in Scotland in relation to heat network technical standards, which are within the legislative competence of the Scottish Parliament.

Clause 9 - Financial assistance for Scottish measures

31. Clause 9 creates a new spending power for the Secretary of State to arrange financial assistance for any person for schemes or activities in Scotland which are designed for the following reasons:

- “to improve the energy efficiency of buildings in Scotland”
- “to reduce emissions of greenhouse gases” resulting from the heating or cooling of buildings or activities carried on in buildings
- “to reduce fuel poverty in Scotland or to support persons” in or at risk of fuel poverty.

32. This reflects the proposed model under which the Warm Homes Agency would be established as an executive agency of the Department for Energy Security and Net Zero (DESNZ). Clause 9 would provide the Secretary of State with an express spending power to provide or arrange financial assistance for devolved Scottish measures, with the consent of the Scottish Ministers. This could enable delivery to be undertaken through the Warm Homes Agency, subject to the limits of the power and the Scottish Ministers’ consent. Financial assistance may be provided in a range of forms (including grants, loans and guarantees) and may be subject to conditions such as repayment with interest, or reimbursement in respect of guarantees or indemnities. In practice, this could enable the Warm Homes Agency to be utilised as a delivery mechanism for Scottish Government schemes should the Scottish Ministers decide on a case-by-case basis that such an approach represented the best option.

33. Subsections (5) to (7) define fuel poverty by reference to Scottish legislation. They capture situations where spending is made to support reductions in the number of households in fuel poverty, reductions in the extent to which fuel poverty affects a household, and situations where the fuel poverty gap of a household is reduced – as well as general support for persons living in, or at risk of, fuel poverty.

34. The clause confers a new function on the Secretary of State to provide or arrange financial assistance for devolved purposes in Scotland and legislative consent is therefore required. The inclusion of a requirement for the consent of the Scottish Ministers ensures that the power cannot be exercised unilaterally, ensuring that the Scottish Ministers retain an appropriate role in agreeing the use of these powers.

35. Providing legislative consent to this clause would enable the Secretary of State, and operationally the Warm Homes Agency, to support delivery of energy efficiency, clean heat and fuel poverty measures in Scotland where the Scottish Ministers consent. Use of the Agency to deliver schemes in Scotland would remain subject to future decisions by the Scottish Ministers.

36. Clause 9 is therefore a relevant provision for which the legislative consent of the Scottish Parliament is engaged because it confers a new function on the Secretary of State to, with the prior permission of the Scottish Ministers, provide or arrange financial assistance for energy efficiency, emissions reduction and fuel poverty purposes. These are issues that are within the legislative competence of the Scottish Parliament.

Clauses 10-12 – Transfer Schemes

37. Clauses 10 to 12 are provisions which enable the Secretary of State to establish transfer schemes to transfer property, rights and liabilities between bodies for the purpose of delivering energy schemes. Clause 10 sets out that property, rights and liabilities may be transferred from specified transferors (such as the Secretary of State, the Gas and Electricity Markets Authority (GEMA), or organisations involved in scheme delivery) to transferees, including the Secretary of State (in practical terms, the Warm Homes Agency) or specified persons. This includes companies owned by the Secretary of State and bodies that the UK or devolved governments have made arrangements with for the delivery of energy schemes.

38. Clause 11 covers the scope and operation of transfer schemes. It enables a range of assets and obligations to be transferred, including those that could not otherwise be transferred (for example, where contracts or legal restrictions would otherwise prevent this) and those arising after the scheme is made. Clause 11 also disapplies the restriction in section 105(1) of the Utilities Act 2000 in relation to information transferred under these schemes so that necessary data can be shared to support scheme administration. In addition, transfer schemes are time-limited and may only be made within five years of the relevant provisions coming into force, with a requirement for the Secretary of State to consult affected parties prior to creating a scheme.

39. Clause 12 provides that the Secretary of State may modify a transfer scheme, subject to consultation with transferors, transferees and other appropriate persons. This allows transfer arrangements to be adjusted over time as operational or policy requirements develop. Together, these provisions establish a flexible framework to support the efficient moving of functions and resources between delivery bodies, including those operating in or on behalf of devolved governments.

40. Legislative consent is engaged because these transfer scheme powers may be exercised in relation to property, rights, liabilities and information associated with schemes delivered on behalf of the devolved governments. This includes schemes currently delivered by Salix (a UK Government Non-Departmental Public Body) on behalf of the Scottish Ministers, such as the Scottish Public Sector Decarbonisation Scheme. As delivery functions are expected to transfer from existing delivery bodies, including Salix, to the Warm Homes Agency, the associated assets, rights, liabilities and information relating to devolved schemes may need to be transferred under these provisions. The clauses allow transfers between UK Government bodies, GEMA/Ofgem, the Warm Homes Agency and bodies acting for devolved governments, and may therefore affect the administration and operation of devolved fuel poverty and energy efficiency programmes.

Clauses 13 and 14 – Disclosure of information

41. Clause 13 introduces new powers which enable the Secretary of State to require the Gas and Electricity Markets Authority (GEMA) and designated administrators to disclose specific information held in connection to their functions or relevant schemes. These powers are limited to situations where the Secretary of State has reasonable grounds to consider the information necessary and expedient for use in relation to a "relevant scheme", which includes existing schemes under the Electricity Act 1989 and Energy Act 2008, as well as new schemes established under this Bill (such as guarantee of origin certificate). The clause also establishes an information-sharing gateway between the Secretary of State, GEMA, and designated administrators, allowing information to be shared between these bodies to support scheme administration and delivery. Disclosure of information via these provisions will not breach obligations of confidence or other statutory restrictions so that legal barriers to data sharing do not frustrate effective scheme delivery.

42. Clause 14 amends section 104 of the Utilities Act 2000 to ensure that these new information-sharing powers operate effectively within the existing legal framework. Section 105 currently restricts disclosure of information which is obtained in exercising regulatory functions unless specifically exempted. The amendment inserts additional exemptions to allow disclosures which are required or authorised under clause 13, and to allow for the sharing of information where it is necessary to facilitate the exercise of functions under key energy legislation, including the Electricity Act 1989, the Energy Act 2008, and this Bill. Without such changes, disclosures required under clause 13 could be frustrated or encounter legal ambiguity due to the overarching restrictions in section 105. The approach taken here is consistent with established legislative practice, whereby section 105 is periodically updated to accommodate new schemes and ensure that proportionate and purpose-specific information sharing can take place.

43. In creating these powers, the UK Government is seeking to establish a more flexible, integrated data-sharing framework across energy schemes, reflecting the intended role of the Warm Homes Agency as a central coordinating body.

44. Legislative consent is engaged because these clauses establish powers for the disclosure and sharing of information that may be exercised in relation to schemes operating in devolved policy areas, including fuel poverty and energy efficiency programmes delivered on behalf of the Scottish Ministers. The powers also extend to information connected with the Domestic Renewable Heat Incentive and the Renewables Obligation, including areas in which the Scottish Ministers' exercise functions under the Electricity Act 1989.

Clause 69 - Consumer advocacy bodies

45. Clause 69 amends existing legislation to allow Consumer Scotland to provide consumer advocacy functions to consumers in relation to third-party intermediaries (e.g. price comparison websites, etc) in the energy sector. It is drafted in such a way as to replicate their existing consumer advocacy powers relating to heat networks.

46. Legislative consent is engaged for this clause, as consumer advocacy is devolved to the Scottish Parliament and the UK Government are in agreement with this position.

Clauses 104, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115 and 116 - Schemes for providing support for household energy costs

47. Clause 104 gives the Secretary of State power to, by regulations, make provision for or in connection with one or more schemes with the purpose of providing support for meeting costs related to the use of energy. It provides that any such scheme must make provision requiring benefits to be provided by “scheme suppliers”, which are licensed gas suppliers and licensed electricity suppliers.

48. Clause 105 enables support schemes to specify the form and value of assistance provided to households, including direct payments, energy bill discounts, or goods and services.

49. Clause 106 allows schemes to require intermediaries to pass support on to the end users.

50. Clause 107 allows any support scheme brought into place by the Secretary of State to make provision for who administers the scheme. This includes one or more local authorities which, in relation to Scotland, are defined as councils constituted under section 2 of the Local Government etc (Scotland) At 1994.

51. Clause 108 enables schemes to determine how costs are funded and distributed across the energy sector. This includes cost recovery from suppliers and network companies, creation of funding mechanisms, and payments to meet administrative and delivery costs.

52. Clause 109 provides additional powers relating to scheme administration, including identifying eligible customers, publicising support, preventing discrimination, gathering information and allowing the Secretary of State to modify or disapply scheme requirements in specified circumstances.

53. Clause 111 allows support schemes to extend assistance to households that do not have a direct domestic energy supply contract, such as those who do not have a domestic contract with an energy supplier.

54. Clause 112 gives the Secretary of State power to, through regulations, establish reconciliation arrangements between suppliers so that the overall costs of providing support are shared fairly across participating suppliers.

55. Clause 113 gives the Secretary of State power to, for the purpose of enabling or facilitating the establishment or operation of a reconciliation mechanism, modify the conditions of gas and electricity licenses.

56. Clause 114 sets out general powers available when making regulations under Chapter 2, including powers to confer functions, provide for discretion in decision-making and incorporate external documents by reference. Regulations are subject to the negative procedure.

57. Clause 115 makes consequential amendments to existing legislation to ensure the new household energy support scheme framework can be enforced and that information can be disclosed and used for scheme purposes.

58. Clause 116 defines key terms used throughout Chapter 2.

59. Section D2 of Schedule 5 to the Scotland Act 1998 sets out that the 'supply of gas through pipes' is reserved while there is an exception for the 'supply of gas other than through pipes'. The supply of gas by licensed gas suppliers and shippers through the gas network is therefore reserved. A scheme as described in the clauses in chapter 2 could require licenced gas suppliers (those who convey gas through pipes), and licenced electricity suppliers to provide benefits for customers. Should the scheme extend further, for example to the supply of Liquefied Petroleum Gas (LPG), it would extend beyond reserved matters. This means that the powers could be exercised in a way that is not clearly limited to be only within the scope of the D2 oil and gas reservation. The UK Government are in agreement with this position and, as such, legislative consent is engaged for clauses 104, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 116.

Clause 136 - Consent for overhead lines

60. Clause 136 amends Schedule 8 of the Electricity Act 1989, which governs the exercise of consenting functions under sections 36 and 37 by the Secretary of State and the Scottish Ministers.

61. The UK Government's devolution analysis stated that they expected this clause to engage legislative consent. However, the amendments made by (3) to (7) in the clause apply only to applications to the Secretary of State. The changes made by (2) change which overhead lines require consent, removing the exemption for lines under 20kV/supplying one consumer, but the power of the Scottish Ministers to make regulations under section 37(2)(c) to prescribe cases where consent is not required remains.

62. Legislative consent is only engaged where the executive competence of the Scottish Ministers is altered, legislative competence is altered, or the provisions are for devolved purposes. Therefore, it is the view of the Scottish Government that as introduced this clause does not engage the legislative consent of the Scottish Parliament. Discussions are ongoing with the UK Government to determine why in its view the provision engages consent.

Clause 137 - Acquisition of wayleaves

63. Clause 137 amends Schedule 4 of the Electricity Act 1989 to strengthen and modernise the statutory wayleave regime by creating a new mechanism through which

electricity licence holders may seek compulsory rights to retain existing electricity lines, clarifying decision-making responsibilities, and introducing procedural reforms intended to improve the efficiency and transparency of wayleave applications.

64. This amendment is intended to address a gap in the current wayleave regime, which provides a mechanism for obtaining compulsory rights to install electricity infrastructure but offers less certainty where infrastructure has already been lawfully installed and requires ongoing retention. As electricity networks are expanded and upgraded to support increasing demand, transmission and distribution owners require a clear and efficient process for securing continued rights over existing assets. The clause is therefore designed to reduce uncertainty, avoid unnecessary removal of infrastructure that remains operationally necessary and provide a more streamlined framework for resolving disputes while maintaining protections for affected landowners.

65. Legislative consent is engaged as this clause would make substantive changes to the wayleave regime as it operates in Scotland and directly modifies the functions of the Scottish Ministers under Schedule 4 to the Electricity Act 1989.

Clause 144 - Offshore renewable energy installations: charging of fees by the Scottish Ministers

66. The Scottish Ministers hold devolved powers under sections 95 and 96 of the Energy Act 2004 in relation to the declaration of safety zones around renewable energy installations, and the functions under Part 2, Chapter 3 of the 2004 Act concerning decommissioning of offshore installations. However, the Scottish Ministers do not currently have the ability to charge fees for carrying out these functions and the associated administrative requirements.

67. Clause 144 amends section 188(12) of the Energy Act 2004 to expand the definition of "relevant energy functions" for which fees may be imposed by the Scottish Ministers, meaning that sections 95 and 96 of the 2004 Act, which relate to Safety Zone provisions, and Chapter 3 of Part 2, which relates to the Scottish Ministers' functions in respect of decommissioning of offshore installations, are now formally included within that definition, enabling the Scottish Minsters to introduce regulations to charge fees for the carrying out of these functions.

68. Charges for the administration of decommissioning programmes have not previously been introduced, either by the Scottish Ministers or by the UK Government. However, obtaining the power to charge a fee now, before the majority of currently anticipated offshore wind projects submit programmes, would provide flexibility should a decision be taken in future to introduce fees and would allow the Scottish Ministers to maintain parity with any approach taken by the UK Government, should it choose to introduce similar charges. Giving legislative consent to clause 144 will enable the Scottish Ministers to charge fees for functions that are already devolved.

69. Legislative consent is engaged because this clause will alter the executive competence of the Scottish Ministers by conferring a new power to make regulations for

setting fees in relation to devolved functions. These functions are the declaration of safety zones around renewable energy installations under sections 95 and 96 of the Energy Act 2004, and the functions under Part 2, Chapter 3 of the 2004 Act concerning decommissioning of offshore installations.

Clause 175 - Disclosure of information for the purposes of energy support measures

70. The data sharing provisions in Part 5 of the UK Digital Economy Act 2017 provide a number of different legal gateways for public authorities listed in the relevant schedules of the Act to share information, including personal data, to support the more effective delivery of public services and to better manage debt and combat fraud against the public sector.

71. Part 5 also sets out powers to develop secondary legislation (regulations) to support the sharing of personal data between listed public authorities. The Scottish Ministers currently have a number of regulation-making powers under Part 5.

72. Clause 175 amends section 36 and section 37 of the Digital Economy Act 2017 to extend the disclosure of information by specified public authorities to and by gas or electricity licence holders. This will enable further sharing of personal and energy information to improve the development, quality, availability, delivery and uptake of energy affordability and energy efficiency schemes.

73. The Digital Economy Act 2017 allows the “appropriate national authority” (which is defined so as to include the Scottish Ministers) to make regulations to add to, remove or modify “specified persons” in Schedule 5.

74. Legislative consent is engaged because the amendments alter the Scottish Ministers’ executive competence by extending their regulation making powers under section 36. While section 37 does not contain regulation making powers, the amendments made to section 37 will alter the effect of regulations made under section 36.

75. The amendments affect the purposes for which data related to devolved matters and functions could be shared, namely, for the purpose of assisting eligible people with energy support rather than the current limitation of those in fuel poverty. As such, the amendments make provisions applying to Scotland, which are for devolved purposes, and which alter the executive competence of the Scottish Ministers. The UK Government agrees that clause 175 requires legislative consent.

Clause 177 – Import and export of radioactive waste and spent fuel

76. Clause 177 provides UK Ministers with the power to make regulations relating to the import, export and transit of radioactive waste and spent nuclear fuel into, from or through the UK.

77. Current regulations (The Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2019) were made under powers in the European Union (Withdrawal) Act 2018 which have now expired. There are no other powers under which the regulations can be amended and updates are required to ensure the regulations remain in line with international standards.

78. The power would allow regulations to prohibit the import, export or transit of radioactive waste or spent fuel except when authorised by a designated public authority or to impose requirements that such material must comply with.

79. Legislative consent is engaged as these provisions will impact on executive competence of the Scottish Ministers. Import and export control of radioactive waste is generally a reserved matter, but the question of how radioactive waste is dealt with within Scotland is devolved. In addition, oversight and enforcement is the responsibility of the relevant environment agency, which in Scotland is the Scottish Environment Protection Agency (SEPA).

80. The clauses at introduction include a requirement to consult the Scottish Ministers if the regulations confer a function on, or modify or remove a function of, a public authority whose functions are exercisable only in or as regards Scotland, so this would cover any regulations conferring functions on SEPA or the Scottish Ministers.

Clause 179 – Validation of fees charged in relation to certification of fuels and fireplaces

81. Clause 179 provides for the retrospective validation of historic fees charged in relation to the certification of fuels and fireplaces (and other solid fuel appliances) under the Clean Air Act 1993 and The Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020). It provides that a fee charged before the passing of the Energy Independence Bill is to be taken to have been charged lawfully if certain conditions are met.

82. Legislative consent is engaged for clause 179 through the condition (within the third condition at sub-clause (4)(a)), that the fee was charged by a person in connection with assessing or certifying a fuel or fireplace for purposes relating to a function of the Scottish Ministers under the Clean Air Act 1993. The relevant functions of the Scottish Ministers to which the sub-clause applies are those functions set out in sections 20 and 21 of the Clean Air Act 1993. Section 20 provides for the prohibition on emission of smoke in smoke control areas, subject to certain exemptions. This prohibition does not apply to emissions caused by the burning of authorised fuels. Section 20(5A) and 20(5B) provides that “authorised fuel” means a fuel included in a list of authorised fuels kept by the Scottish Ministers which must be published by the Scottish Ministers. Section 21 provides the Scottish Ministers with the power to exempt certain fireplaces from the prohibition of smoke emissions in smoke control areas under section 20 if they are satisfied that such fireplaces can be used for burning fuel other than authorised fuels without producing a smoke or a substantial quantity of smoke. A commercial organisation is contracted to provide a service on behalf of all UK nations to carry out the necessary testing of fireplaces and fuels to ensure certain standards are met before they are authorised or exempted by Scottish Ministers (with

equivalent arrangements in the other UK nations) under these functions in the Clean Air Act 1993. That organisation charges fees to appliance manufacturers, fuel manufacturers, and suppliers for the testing of fuels and fireplaces. As there is currently no charging power in sections 20 and 21 of the Clean Air Act 1993, this clause will ensure that any fees charged until the passing of this Bill will have been lawfully charged.

Reasons for recommending legislative consent

83. The Scottish Government recommends that the Scottish Parliament consents to all of the clauses below:

Clause 1 and Schedule 1 – Warm Homes Agency - Administration etc of the renewables obligation and certificate purchase obligation – Consent recommended

84. Legislative consent is recommended because the provisions provide flexibility in the administrative framework for the Renewables Obligation, enabling a change to scheme administrator without further primary legislation. The changes do not change the policy intent of the scheme and protect the role of the Scottish Ministers in relation to the Scottish Renewables Obligation.

Clause 8 Heat Networks Regulations – consent recommended

85. Legislative consent is recommended because the provision supports delivery of a consistent Great Britain-wide heat network technical standards framework, enabling the Secretary of State to perform code manager functions and recover associated costs on a cost-recovery basis. This supports the intended delivery model where the Secretary of State acts initially as code manager, while providing flexibility for the function to be undertaken in future by another body, such as Ofgem or the Warm Homes Agency. The Scottish Ministers previously agreed the technical standards framework should apply cross-border, meaning it would not be efficient or cost-effective to appoint a separate code manager for Scotland.

Clause 9 Financial assistance for Scottish measures – consent recommended

86. Legislative consent is recommended because the provision enables the Secretary of State to provide or arrange financial assistance for energy efficiency, clean heat and fuel poverty programmes in Scotland, where the prior consent of the Scottish Ministers has been provided. The power provides scope for the Warm Homes Agency, as an executive agency of DESNZ, to deliver such activity in Scotland, with future decisions on whether and how the Agency might be utilised remaining for the Scottish Ministers to make once more details of the proposed delivery model, associated costs, and governance arrangements are made available.

Clause 10-12 Transfer Schemes – consent recommended

87. Legislative consent is recommended as the provisions establish a framework for transferring property, rights, liabilities and information between bodies that are involved in the administration of energy schemes. This provides flexibility to delivery arrangements, such as the potential transfer of functions from existing delivery bodies to the Warm Homes Agency where appropriate, helping to provide continuity of delivery where responsibility for administration of devolved schemes transfers between delivery bodies.

Clause 13-14 Disclosure of information – consent recommended

88. Legislative consent is recommended because the clauses in question provide information-sharing powers between the Secretary of State, Ofgem and energy scheme administrators, enabling information to be shared where required for administering and delivering energy schemes. The powers provide scope for the Warm Homes Agency to utilise relevant information in support of its role in delivering energy efficiency, clean heat and fuel poverty programmes, including where any future decision might be taken to utilise the Agency in Scotland.

Clause 69 Consumer advocacy bodies – consent recommended

89. Stronger regulation of energy intermediaries will help Scottish domestic and non-domestic consumers get a fair deal for their energy. Therefore, the Scottish Government is supportive of this measure and recommends consent.

Clauses 104, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 116 Schemes for providing support for household energy costs – consent recommended.

90. The Scottish Government has repeatedly called for the UK Government to implement financial support schemes aimed at helping consumers with the cost of energy. The Scottish Government is therefore supportive of this measure and recommends that consent be granted to these clauses.

Clause 137 Acquisition of wayleaves – consent recommended

91. Consent is recommended as the clause improves the efficiency and clarity of the wayleave process while preserving the role of the Scottish Ministers and appropriate safeguards for affected parties.

Clause 144 Offshore renewable energy installations: charging of fees by the Scottish Ministers – consent recommended

92. Consent is recommended as this provision would enable the Scottish Ministers to introduce secondary legislation for the purposes of charging fees for devolved functions, namely the declaration of safety zones around renewable energy installations under

sections 95 and 96 of the Energy Act 2004, and the functions under Part 2, Chapter 3 of the 2004 Act concerning decommissioning of offshore installations. Although these functions are already devolved under the Energy Act 2004, the Scottish Ministers currently cannot recover the associated costs. Providing this power would enable cost recovery.

Clause 175 Disclosure of information for the purposes of energy support measures – consent recommended

93. While the data sharing powers are permissive and dependent on secondary legislation being taken forward, the Scottish Government is of the view that the proposed amendments could potentially assist eligible people with energy support and recommends consenting to clause 175.

Clause 177 Import and export of radioactive waste and spent fuel – consent recommended.

94. The Scottish Government is broadly supportive of the proposals given that there is currently no other power available to the UK Government to make regulations relating to the import and export of radioactive waste and spent fuel. The clause contains a requirement to consult the Scottish Ministers before making regulations that would confer functions on a public authority with functions in Scotland, such as SEPA. While import and export of such materials is a reserved matter, the conferral of functions on SEPA could be significant; also the Scottish Ministers could be given direction-making powers. Therefore it is necessary for the Scottish Ministers to be consulted in advance of such regulations being made. The Scottish Government is content with a consult requirement given that the content of the regulations will primarily relate to reserved matters.

Clause 179 Validation of fees charged in relation to certification of fuels and fireplaces – consent recommended

95. Legislative consent is recommended as it relates to the Scottish Ministers' functions under sections 20 and 21 of the Clean Air Act 1993. This clause provides the retrospective validation of any fees charged up until the passing of the Energy Independence Bill. Any fees charged prior to the Energy Independence Bill becoming an Act will be taken to have been lawful. This clause is required as appliance and fuel manufacturers and suppliers have been charged a fee by a non-profit making organisation which is contracted to provide a service on behalf of all UK nations to carry out the necessary testing of fireplaces and fuels before they are authorised or exempted by the Scottish Ministers under their functions in the Clean Air Act 1993; the 1993 Act did not provide a charging power and this clause therefore is necessary to ensure retrospectively that any previous charges were lawful.

Consultation

96. As the Bill has been drafted and introduced by the UK Government, the Scottish Government has not undertaken consultation on the Bill itself.

97. The UK Government consulted between 8 July and 2 September 2025 on reforms to electricity network consenting, land access and land rights. Clauses 136 to 141 in Part 7, Chapter 1 of the Bill are the measures brought forward as a result of this engagement.

98. No formal consultation has been undertaken by the UK Government in respect of the Warm Homes Agency. However, the UK Government engaged constructively with the Scottish Government as they developed high-level proposals around governance and operational arrangements. This included refining the spending power for the Agency in Scotland (clause 9) to address the request by the previous Cabinet Secretary for Housing that any such power should only be exercisable with the consent of the Scottish Ministers, therefore protecting devolved competence.

99. The UK Government did not formally consult on clause 144 but consultation is expected to take place before secondary legislation on fees for safety zone and decommissioning functions is introduced.

Financial implications

Warm Homes Agency Clause (Part 1, Clause 1 – 14, Schedule 1)

100. No direct financial and resource impacts are currently identified in relation to these provisions. Any implications stemming from these provisions will therefore depend on future decisions by the Scottish Ministers regarding the Agency's role in Scotland, and the governance of the RO and heat network code manager regimes. These decisions will require further assessment of operational arrangements, accountability structures and value for money.

Offshore renewable energy installations: charging of fees by Scottish Ministers (Clause 144)

101. At this time, no direct financial and resource impacts are identified in relation to these provisions. These will depend on future secondary legislation, using the enabling power provided under clause 144, read together with section 188 of the Energy Act 2004, which would be required to set out fee charging by the Scottish Ministers in relation to safety zone and decommissioning functions under sections 95 and 96, and Part 2 Chapter 3 of the Energy Act 2004.

Other relevant considerations

102. There are concerns over the current wording of clause 118 (Community Regulations), which provides a definition of community energy. The definition is broad and there is a risk that the current wording would capture organisations and projects that would not currently be considered as community energy. The clauses do not engage legislative consent but do extend and apply to Scotland. The Scottish Government has engaged with the UK Government to request amendments to the wording.

Post EU scrutiny

103. No issues regarding post EU scrutiny have been identified.

Conclusion

104. The Scottish Government recommends that the Scottish Parliament consent to clauses 1, 8, 9, 10, 11, 12, 13, 14, 69, 104, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 116, 137, 144, 175, 177, 179 and Schedule 1 for the reasons outlined in this LCM.

105. The Scottish Government will continue to engage with the UK Government during the Bill's passage and will lodge a supplementary LCM should this be required.

Draft motion on legislative consent

106. The draft motion, which will be lodged by the Cabinet Secretary for Climate Action and Rural Affairs, is:

> "That the Parliament noting that the Energy Independence Bill, introduced in the House of Commons on 4 November 2026, makes provision that fall within the legislative competence of the Scottish Parliament and alters the executive competence of the Scottish Ministers, agrees to give consent to such provisions as is made by clauses 1, 8, 9, 10, 11, 12, 13, 14, 69, 104, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 116, 137, 144, 175, 177, 179 and Schedule 1."

Scottish Government
November 2026

This Legislative Consent Memorandum relates to the Energy Independence Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 20 November 2026

Energy Independence Bill – Legislative Consent Memorandum

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