LEGISLATIVE CONSENT MEMORANDUM

ENERGY BILL

Draft Legislative Consent Motion

1. The draft motion, which is being lodged by the Cabinet Secretary for Finance, Employment and Sustainable Growth, is:

"That the Parliament agrees that the relevant provisions of the UK Energy Bill introduced in the House of Commons on 29 November 2012 relating to a duty on fossil fuel plant not to exceed annual CO\textsubscript{2} emissions limits and the regulation making powers for monitoring compliance with, and enforcement of, the emissions limit duty, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament."

Background

2. This memorandum has been lodged by John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth under Rule 9.B.3.1(a) of the Parliament’s standing orders. The UK Energy Bill was introduced in the UK Parliament on 29 November 2012. The Bill can be found at:

http://services.parliament.uk/bills/2012-13/energy.html

3. The draft Energy Bill was published on 22 May 2012 for pre-legislative scrutiny by the House of Commons Energy and Climate Change Committee. Their report was published on 23 July and can be viewed at:


Content of the Energy Bill

4. The main purpose of the Energy Bill is to implement the legislative proposals of the Electricity Market Reform (EMR) White Paper 2011. The main policy objective is to drive the necessary investment needed in the electricity sector by 2020, to ensure reliable, diverse and low-carbon power. The White Paper (and subsequent Technical Update published in December 2011) can be found at:


Further information was published by the Department for Energy & Climate Change on 29 November 2012 alongside introduction of the UK Energy Bill and can be found at:

http://www.decc.gov.uk/en/content/cms/meeting_energy/markets/electricity/electricity.aspx#

Key Elements of the Bill

5. The core of the Bill will provide for the Electricity Market Reform. These provisions include:

**Part 1: Electricity market Reform** -
- *Contracts for Difference (CfD)* - long-term contracts to provide revenue certainty to investors in low carbon generation.
- *Investment Contracts* - long-term instruments to enable early investment in advance of the CfD regime coming into force.
- *Capacity agreements within a Capacity Market* - payments for reliable capacity to be available when needed, helping to ensure security of electricity supply.
- *Contingency arrangements* - to ensure the institutions which deliver these schemes are fit for purpose.
- *Liquidity* - powers to enable Government to intervene to improve liquidity if it proves necessary.
- *The Renewables Obligation: Transitional Arrangements* - to ensure smooth transition from existing instruments to EMR mechanisms.
- *Emissions Performance Standard* - a regulatory measure which provides a back-stop to limit emissions from unabated power stations.

**Additional Measures Contained in the Bill**

6. The Bill will also contain a number of additional measures, detailed below.

**Part 2: Creation of the Office for Nuclear Regulation (ONR)** - an independent statutory body to regulate the nuclear power industry.

**Part 3 - Government Pipe-Line and Storage System** - measures to allow the sale of the GPSS, an MOD owned asset which supplies aviation fuel in the UK to major commercial airports and RAF and US airbases.

**Part 4 - Strategy and Policy Statement** - setting out the Government’s strategic priorities for the energy sector and roles and responsibilities of Government, Ofgem and other relevant bodies.

**Part 5: Miscellaneous and General:**
- *Offshore transmission* - technical change to the Electricity Act 1989 to ensure UK offshore grid constructors can build and test infrastructure to export power without committing a criminal offence.
• **Consumer redress orders** - proposals to give Ofgem powers to compel energy businesses to give redress to consumers which have suffered as a result of a regulatory breach.

• **Nuclear decommissioning costs** - these measures will extend only to England, Wales and Northern Ireland.

7. Scottish Government officials have liaised closely with DECC colleagues on the content of the Bill clauses and will continue to be closely involved in the development of related policy.

**Provisions Which Relate to Scotland**

8. Energy matters are generally reserved under Head D of the Scotland Act 1998. As such, all of the policies within the Energy Bill, which in general relate to energy, generation and supply, extend to Scotland.

9. However, given the complex interface between reserved and devolved areas of competence in relation to the promotion of renewable energy and environmental protection, Scottish Ministers have a statutory consultation role in relation to the following aspects:

- Design and delivery of the Contracts for Difference and underlying Institutional Framework.
- Move to the operation of a fixed Renewables Obligation Certificate from 2027.
- Interpretation of the Emissions Performance Standard, how it will apply in additional cases and following modifications, and where the Secretary of State may temporarily suspend the EPS.

**Provisions which require the consent of the Scottish Parliament**

10. As outlined above, Energy is generally a reserved area. However, in addition to the statutory consultation role described above, the Bill will enable the UK wide-application of an Emissions Performance Standard (EPS) and extend the executive competence of Scottish Ministers by conferring regulation making powers on them. Scottish Ministers will have a duty to design and implement an appropriate Emissions Performance Standard enforcement regime for Scotland. These changes to their functions will require the consent of the Scottish Parliament.

11. An EPS, limiting CO₂ emissions from fossil fuel power stations, is one of the mechanisms proposed in Electricity Market Reform (EMR) with the aim of providing a regulatory backstop on the amount of emissions that a new fossil fuel power station can emit.

12. The UK-wide EPS will apply to new fossil fuel plant over 50 MWe and be set at a level equivalent to 450g/kWh for all new fossil fuel plant. Power stations consented under the 450g/kWh-based level will be subject to the level until 2045. This ‘grandfathering’ will provide long-term certainty to investors, particularly in relation to new gas generation that is needed to ensure security of supply. Effectively, the EPS will prevent new coal power stations being built without Carbon
Capture and Storage (CCS), but will not affect gas-fired plant. The EPS on its own will not deliver Scottish Government’s commitment to a largely decarbonised electricity generation sector by 2030 and should be seen in the context of wider powers including Scottish Government’s policy on CCS and existing decision making powers relating to applications under Section 36 of the Electricity Act 1989.

13. The Scottish Environment Protection Agency (SEPA) will administer the monitoring and enforcement scheme for Scotland. Monitoring compliance will be based on the annual CO₂ emissions data reported for the purposes of the EU Emissions Trading System (EU ETS) which is already collected by SEPA. For most operators, there should be no more additional steps and in the process, and they will not be required to undertake any reporting in addition to their annual ETS emissions reporting.

Consultation

14. Scottish Government has had discussions with SEPA who welcome the development of an EPS and support a complimentary methodology across the UK to ensure as much continuity as possible for electricity producers. They have also indicated support for proposals for SEPA to monitor and enforce the scheme using EU ETS data which they already collect, avoiding any additional burden on industry.

15. As part of the draft Electricity Policy Statement published in March 2012, Scottish Government informally consulted on the possibility of a distinct Scottish Emissions Performance Standard. Responses indicated a range of views; industry being supportive of a UK-wide level to ensure a consistent regulatory approach and promote investor confidence in a UK-wide electricity market while NGO’s, including RSPB Scotland and WWF Scotland, favoured a Scottish specific EPS at a lower level gradually reducing over time and with a limited ‘grandfathering’ provision.

Financial Implications

16. An Impact Assessment undertaken by the Department of Energy and Climate Change (published November 2012) identifies the following administrative costs (UK figures). These are estimates for England and Wales and administering the EPS in Scotland may increase this cost. If so this will be taken into account in the final stage IA:

- An initial regulatory exchange to establish the EPS value for each new fossil fuel-fired plant - estimated to be approximately £5,000 in current prices.
- Operating costs of the EPS estimated to be approximately £50,000 per annum, based on staff costs, IT costs and enforcement costs.

The full impact assessment can be found at the following link: http://www.decc.gov.uk/en/content/cms/legislation/energybill2012/energybill2012.asp

17. Based on the same principles as the EU Emissions Trading Scheme Regulations we would expect operators to pay a registry fee to the Environment Agency to meet the costs of maintaining a central registry and an application fee to
the enforcing authority (SEPA in Scotland) for an appropriate permit. Fees and charges payable under the scheme are therefore anticipated to be sufficient to cover the expenditure of the enforcing authority i.e. SEPA.

Conclusion

18. The provisions within the Energy Bill which relate to the EPS complement other powers to limit CO₂ emissions from fossil fuel power stations. The Scottish Government therefore, in recognition of the objective to provide a consistent regulatory approach, believes that it is in the best interests of the people of Scotland that the relevant provisions, as far as those matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.

SCOTTISH GOVERNMENT
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