



The Scottish Parliament
Pàrlamaid na h-Alba

ECONOMY, ENERGY AND TOURISM COMMITTEE

AGENDA

8th Meeting, 2013 (Session 4)

Wednesday 6 March 2013

The Committee will meet at 9.30 am in Committee Room 4.

1. **Decision on taking business in private:** The Committee will decide whether to take item 6 in private.
2. **Report on proposals and policies 2:** The Committee will take evidence from—

Fergus Ewing, Minister for Energy, Enterprise and Tourism, and David Wilson, Director of Energy, Scottish Government.
3. **Subordinate legislation:** The Committee will take evidence on the Renewables Obligation (Scotland) Amendment Order 2013 [draft] from—

Almuth Ernsting, Co-Director of Biofuelwatch and European Focal Point of the Global Forest Coalition;

John Paterson, Chairman, Wood Panel Industries Federation;

Marcus Whately, Director, Estover Energy;

Fergus Tickell, Managing Director, Northern Energy Developments Ltd.
4. **Budget Strategy Phase:** The Committee will consider its response to the Finance Committee on the Budget Strategy Phase.
5. **Enterprise and Regulatory Reform Bill (UK Parliament legislation):** Subject to Parliamentary Bureau referral, the Committee will consider the legislative consent memorandum lodged by the Minister for Energy, Enterprise and Tourism (LCM(S4)14.3).
6. **Enterprise and Regulatory Reform Bill (UK Parliament legislation):** Subject to Parliamentary Bureau referral, the Committee will consider its report.

7. **Report on proposals and policies 2 (in private):** The Committee will consider the evidence heard.

Jane Williams
Clerk to the Economy, Energy and Tourism Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5207
Email: jane.williams@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda Item 2

PRIVATE PAPER

EET/S4/13/8/1 (P)

Agenda Item 3

Note by the clerk

EET/S4/13/8/2

PRIVATE PAPER

EET/S4/13/8/3 (P)

Submissions pack

EET/S4/13/8/4

Agenda Item 4

Note by the clerk

EET/S4/13/8/5

Agenda Item 5

Note by the clerk

EET/S4/13/8/6

Agenda Item 6

PRIVATE PAPER

EET/S4/13/8/7 (P)

Economy, Energy and Tourism Committee

8th Meeting, 2013 (Session 4), Wednesday, 6 March 2013

The Renewables Obligation (Scotland) Amendment Order 2013 [draft]

SSI title and number:	The Renewables Obligation (Scotland) Amendment Order 2013 [draft]
Type of Instrument:	Affirmative Order
Coming into force:	1 April 2013
Economy, Energy and Tourism Committee deadline to consider SSI:	To report no later than 29 March.
SSI drawn to Parliament's attention by Sub Leg Committee:	Not yet reported
Purpose of instrument:	This Order amends the Renewables Obligation (Scotland) Order 2009 ("the 2009 Order") and makes transitional provision.

Background

1. The Renewables Obligation (Scotland) Amendment Order 2013 [draft] (referred to hereafter as "draft ROS") was laid in the Scottish Parliament on 18 February with the Committee's report due for publication by 28 March 2013.

<http://www.legislation.gov.uk/sdsi/2013/9780111019542/contents>

2. The Renewables Obligation (Scotland) Order, an affirmative order, was first made in 2002 under powers in the Electricity Act 1989. It was identical to the Renewable Obligations Order 2002, covering England and Wales. Since then the Order has been revised and replaced and amended each April from 2004 to 2010.

3. This paper provides a brief description of the draft ROS and also sets out the affirmative procedure that this draft Order will be subject to.

Purpose of the Renewables Obligation (Scotland) Amendment Order 2013 [draft]

4. The Policy Note with the draft ROS explains that the legislation and technology bands were reviewed by the Scottish Government between October 2011 and November 2012 (and consultation responses sought) and as a result the draft Order proposes two changes which will apply to Scotland only:

- a restriction on the support for electricity generated by certain types of wood fuelled biomass station;
- substitutes a new definition of micro generator to exclude enhanced wave and tidal stream generators.

5. Further information on the draft ROS can be found in the Policy Note contained in Annexe A.

6. Upon referral of this draft ROS from the Parliamentary Bureau, the Committee agreed to seek evidence from relevant stakeholders (at the meeting on 6 March) in advance of the Minister for Energy, Enterprise and Tourism giving evidence (anticipated to be 20 March).

7. The Committee will require to publish its report on the draft ROS no later than 28 March (given the office of the clerk is closed on 29 March).

Affirmative procedure

8. Under Rule 10.6.2 of the Standing Orders, any member of the Scottish Government or junior Scottish Minister may by motion propose to the lead committee that the committee recommends that the instrument (or draft instrument) be approved.

9. The first agenda item is to take evidence on the draft ROS. At this point members can ask the Minister or his officials to respond to the questions or to clarify any technical issues.

10. Once this is completed, there is a debate on the motion (lasting no longer than 90 minutes). Only the Minister can respond to questions on the draft ROS at this stage (not his officials). After any discussion the Minister will move the motion and the Committee will be invited to agree whether it agrees to recommend approval of the draft ROS to the Parliament.

11. Where the Committee has considered a motion recommending approval of the instrument, it must report to the Parliament. If the committee recommends approval of the instrument, the Parliamentary Bureau will, by motion, recommend the Parliament to approve the instrument.

12. If the Committee disagrees to the motion recommending approval, it is up to the Scottish Government to either withdraw the instrument or invite the Bureau to schedule time in the Chamber for a debate on a motion to approve the instrument.

POLICY NOTE

DRAFT : THE RENEWABLES OBLIGATION (SCOTLAND) AMENDMENT ORDER 2013

Introduction

1. Scottish Ministers are committed to the promotion of renewable energy in Scotland; as part of this, they have set a target that the equivalent of 100% of the electricity generated in Scotland (as a proportion of gross consumption) should come from renewable sources by 2020, with an interim target of 31% by 2011. This commitment is an important part of a package of initiatives aimed at tackling climate change. The Renewables Obligation (Scotland) Order, or ROS, is a key measure in terms of increasing the amount of renewable electricity generating capacity in Scotland.

Background to the Renewables Obligation

2. The ROS, an affirmative order, was first made in 2002 under powers in the Electricity Act 1989 which were executively devolved (as regards Scotland) to the Scottish Ministers. The Order imposes an obligation on electricity suppliers to provide an increasing percentage of their supply to customers in Scotland from qualifying renewable energy sources.

3. In line with the wishes of the energy sector subject to the Order and those affected by its provisions, the ROS was introduced in almost identical terms to the Renewables Obligation Order 2002 (the ROO), covering England and Wales, which also came into force on April 1 2002. Following reviews of its operation and to accommodate the introduction of a number of changes, the ROS has been revised and replaced or amended each April from 2004 through to 2010. For example, the ROS was amended in 2007 to introduce a system providing higher levels of support to wave and tidal generation located in Scottish waters.

4. The UK Renewables Obligations work by awarding to generators of electricity from eligible renewable sources a number of Renewable Obligation Certificates, or ROCs, for each MWh (megawatt hour) of electricity they generate. “Banding” of support, allowing different technologies to receive different levels of support, was introduced in April 2009 to drive greater and more rapid deployment of renewable electricity generation. This means that support levels vary depending on the way in which the renewable electricity has been generated (wind, solar PV etc) and depending on when the generating station was accredited under the ROS, or when additional generating capacity was added to the station. ROCs are a marketable commodity, and are bought by licensed electricity suppliers.

5. The market for ROCs is created by imposing an annual and increasing obligation on licensed electricity suppliers to provide a number of ROCs. Suppliers can demonstrate compliance with their Obligation by providing Ofgem with either the requisite number of ROCs, or by paying the buyout price, or by a combination of the two methods. The buyout price is a fixed sum payable to Ofgem in lieu of providing ROCs; payments thus made

constitute the buy-out fund. The monies paid into the buyout fund are shared between those suppliers who have provided ROCs, and in proportion to the number of certificates they produce. This means that those suppliers who are unable to produce ROCs effectively reward their competitors, driving the market value of ROCs and thus providing income for renewable generators.

The 2013 Amendment Order

6. A review of the legislation and the technology bands took place between October 2011 and November 2012. As a result of that review, this amendment Order introduces two changes which will apply to Scotland only, i.e. they will not be mirrored as part of the other UK amendment Orders. The first of these is a restriction on the support for electricity generated by certain types of wood fuelled biomass station. Article 7 introduces a new article 22C to the 2009 Order. Its effect is that wood fuelled biomass stations with an installed capacity greater than 15 megawatts will not receive any ROCs for their electricity unless those stations are accredited under the Combined Heat and Power Quality Assurance (CHPQA) scheme.

7. An exception, designed to cover circumstances where a heat customer has been lost due to circumstances beyond a generator's control, allows stations to receive ROCs during no more than five Obligation periods in respect of which CHPQA accreditation has not been obtained.

8. The amendment Order also substitutes a new definition of microgenerator to exclude enhanced wave and tidal stream generators. This will enable such generators, with a capacity of 50 kW or less, to remain eligible for the higher ROC bands for such generation which are introduced by article 18 of the amending Order.

9. The remaining changes are consistent with those being introduced across the UK, and include the following:

- An increase in the ROC levels for certain wave and tidal generators to 5 ROCs, where the capacity of the station is no greater than 30 megawatts. This represents an increase to the existing tidal band in Scotland, set at 3 ROCs, and marks support across the UK for wave generation rising to levels set under the ROS in 2009.
- New bands for “building mounted” and “ground mounted” solar PV generation.
- Changes to support for landfill gas generation, with eligibility restricted to new capacity, microgenerators (50 kilowatts or less) and sites recovering waste heat.
- The introduction of grace periods for certain generating stations, recognising that certain stations may face delays in their commissioning date for reasons which are beyond their control. The ability to register as a grace period generating station is limited to circumstances involving a delay to grid connection or radar works, and specific evidence must be provided.
- New definitions for “pre-2013 capacity”, “2013/14 capacity”, “2014/15 capacity”, “2015/16 capacity” and “post-2016 capacity” because generating capacity accredited, or additional capacity added in each of these periods may be entitled to different levels of support.
- A number of new definitions for stations which co-fire renewable biomass fuel alongside fossil fuel, plus changes to the co-firing banding levels.
- A list of specific energy crop types that will be eligible for support under the ROS.

- An expanded definition of biomass to include all fossil derived bioliquids.
- The removal of the current co-firing caps within the ROS and their replacement by a 4% cap on the proportion of their obligation that suppliers can meet using ROCs issues in respect of electricity generated from bioliquid.

Enabling powers

10. Powers under section 2(2) of the European Communities Act 1972(as read with paragraph 1A of Schedule 2 to that Act) are used to make articles 3(1)(a)(ix) and 23 of the amending Order. The remainder of the amending Order is made using many of the powers conferred by sections 32 to 32K of the Electricity Act 1989, as amended and introduced by the Energy Act 2008.

Consultation

11. Two consultations took place, between October 2011 and January 2012 and between October and November 2012, on the changes contained within the 2013 Amendment Order. The first consultation elicited 139 responses, and the second 39. The Scottish Government's responses to the consultations were published in September 2012¹ and February 2013² respectively.

12. The Scottish Government has also consulted on further changes to the RO concerning the sustainability criteria for solid and gaseous biomass. Subject to the outcome of that consultation, further changes will be proposed in due course.

European Directive

13. The ROS, in tandem with the other UK Obligations, forms an important part of the UK's compliance with the European Directive on the promotion of energy produced from renewable sources ([Directive 2009/28/EC](#)), which amended Directive 2001/77/EC.

State Aid

15. All UK Renewables Obligation Orders require State Aid clearance as the recycling of buy-out funds to compliant suppliers is deemed by the Commission to constitute a State Aid. An application has been submitted to the Commission by the UK Department of Energy and Climate Change for approval relating to the changes contained within the 2013 Orders across the UK.

16. The Commission's response is expected shortly. The amendment Order will not be made, subject to its approval by the Scottish Parliament, until and unless the Commission's approval is received.

Financial Impacts

17. The ROS creates additional costs for electricity suppliers, which they can then pass through to industrial, business and domestic consumers as part of their electricity bills. We

¹ <http://scotland.gov.uk/Resource/0040/00401801.pdf>

² <http://www.scotland.gov.uk/Resource/0041/00414086.pdf>

estimate that the ROS currently adds between £15 – 20 to the average annual household electricity bill. However, the precise extent to which the additional costs incurred by suppliers are actually passed through to each consumer group is a matter for the suppliers themselves.

**Scottish Government Energy and Climate Change Directorate
January 2013**

Economy, Energy and Tourism Committee

8th Meeting, 2013 (Session 4), Wednesday, 6 March 2013

The Renewables Obligation (Scotland) Amendment Order 2013 [draft]

The following submissions have been received from today's witnesses:-

- BiofuelWatch
- Estover Energy
- The Wood Panel Industries Federation

A submission has been received from:-

- Forth Energy

SUBMISSION FROM BIOFUELWATCH

When the Energy Minister announced the Scottish Government's decision over their proposal for ROCs banding last month, he stated:

*"We have made clear our concerns over competition for a finite supply of wood, and our belief that there should be a greater focus on biomass in smaller scale energy projects wherever possible, and the responses to our consultation reflected that."*¹

This is in line with the Scottish Government's position expressed in different policy documents and public statements since at least 2011.

Sadly, the actual provisions put forward in the draft Renewables Obligation (Scotland) Amendment Order 2013 do not reflect this declared objective.

Instead, the proposed ROCs provisions will incentivise unlimited large-scale, low efficiency biomass power stations with little regard for the overall scale of the new demand for wood that is being created and thus for forests both in Scotland and primarily overseas.

Biofuelwatch strongly supports subsidies for truly renewable energy which is sustainable and reduces our greenhouse gas emissions. Yet the carbon impacts of such large-scale biomass electricity is such that it threatens to undo many if not most of the carbon savings which Scotland will be making from wind, tidal and other climate friendly renewables. We therefore hope that the Committee will explore all possible ways to amend the draft Order so as to exclude large-scale inefficient biomass electricity from ROCs.

The Scottish Government's response to the Consultation on a cap on electricity-only biomass power stations eligible for ROCs cites as "strong arguments" "*serious concerns about the effect that increased demand for wood to fuel biomass generation might have – ranging from the potential social, economic and environmental impacts in the areas and countries from which the fuel might be*

¹ <http://www.scotland.gov.uk/News/Releases/2013/02/RO7213>

sourced, to the potential for distorting the market within which other, existing users and businesses are competing for the relevant material”².

This suggests that the proposed cap – to be set at 15 MW power station capacity – would indeed limit the scale of the new demand being created for wood-based bioenergy. In fact, we are concerned that it will do no such thing. Most crucially, any company seeking to build larger biomass power stations will be able to circumvent the cap entirely by making use of just a nominal amount of heat.

What does the “Combined Heat and Power” (CHP) exemption from the cap mean?

As the Energy Minister confirmed in a Parliamentary Debate on 16th January, power stations, regardless of their size, will be classed as CHP plants if they capture even small amount of heat and achieve as little as 35% overall efficiencies. This proposal clearly goes against the EU Renewable Energy Directive which states:

*“In the case of biomass, Member States shall promote conversion technologies that achieve a conversion efficiency of at least 85 % for residential and commercial applications and at least 70 % for industrial applications.”*³

It also contradicts the 2012 draft Electricity Generation Policy Statement⁴ which explains the focus for bioenergy on CHP and heat-only schemes by saying:

“Use of available heat in heat-only and CHP schemes achieves 80-90% energy efficiency for the former and 50-70% for the latter, compared to 30% in electricity only schemes. Given the limited resource, we have to ensure that it’s used as efficiently as possible”.

During the Parliamentary Debate on 16^h January, the Energy Minister suggested that 35% would be the minimum level and that *“it is in everyone’s interest that energy stations operate as efficiently as possible”*. We believe that exempting plants with just 35% efficiency from the cap will achieve quite the opposite. ROCs are guaranteed per unit of electricity which means it is in bioenergy companies’ interest to maximise the amount of electricity they generate, subject to meeting the very minimum requirements so that they can receive those ROCs. In this context, we note an application by RWE to increase the electrical capacity of the biomass CHP plant which they are building at Markinch from 49.9 to 65 MW while keeping the forecast amount of feedstock and the design of the plant unchanged.⁵ No information about the implications for the amount of heat and efficiency ratings has been published but we cannot think of any way in which electricity generation could be increased from the same amount of wood with the same plant design other than by cutting back on heat delivery which would likely mean reduced efficiencies. This of course would make a lot of business sense if the current ROCs proposals for biomass were adopted.

² Paragraphs 12 and 1, <http://www.scotland.gov.uk/Resource/0041/00414086.pdf>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=Oj:L:2009:140:0016:0062:en:PDFm>, Article 18(6)

⁴ <http://scotland.gov.uk/Resource/0038/00389294.pdf>

⁵ <http://www.rwe.com/web/cms/en/1546860/rwe-innogy/sites/power-from-biomass/united-kingdom/under-construction/markinch-biomass-chp-home/section-36-consent/>

The most efficient CHP plants are ones which have been designed around one or different heat customers and which maximise the delivery of heat, using excess energy for electricity. In fact, any heat capture results in some loss of electricity generation. Under current ROCs proposals, maximising the efficiency of power plants will lead to companies being able to claim less ROCs, i.e. incur a potentially very significant financial cost.

The Energy Minister further stated that it would be more difficult for biomass than for other CHP plants to achieve efficiency levels above 70%. We have found many examples of biomass CHP plants which are more than 70% efficient. In the UK, we have seen planning applications for CHP plants for supermarkets which the documents show would achieve 88-89% efficiencies. According to the International Energy Agency Bioenergy Taskforce, biomass cogeneration (i.e. CHP) can achieve overall efficiencies of 85-90%.⁶ In Denmark, there are over 300 biomass CHP plants which supply district heating and achieve around 80% efficiency rates.⁷ This model relies on small, decentralised CHP plants which maximise heat delivery and on strong investment support for district heating.

By comparison, the vast majority of existing and, above all, proposed bioenergy capacity in the UK is for large, centralised power stations built to maximise electricity generation, and commonly sited at ports, i.e. at ideal locations for importing large quantities of wood but not for supplying heat. This includes the proposals by Forth Energy in Grangemouth, Dundee and Rosyth. Such power stations will undoubtedly struggle to achieve much more than 35% efficiency.

We would further like to point out that power stations above 15 MW could even be subsidised as 'CHP plants' if they achieve less than 35% efficiency. This will certainly be case for power stations between 15 and 25 MW capacity and, depending on the outcome of a current DECC consultation about CHP accreditation, it may even be the case for larger ones. Furthermore, once accredited as 'CHP', a power station would, under current proposals, receive ROCs for up to five years during which not a single unit of heat is captured.

Behind the complex and technical debate about the definition of CHP plants lies a simple and clear question:

Should ROCs incentivise large-scale biomass power stations such as those proposed by Forth Energy which would achieve half the efficiencies (or less) which the EU legislation states should be the minimum for attracting state support? This, we believe is the model which would be favoured under current ROCs proposals.

Not only is it very different from the model of high-efficiency, small-scale bioenergy primarily for heat and scaled according to local resources which Scottish Government policy officially embraces. It also competes with such a model, or rather it forces anyone investing in a biomass boiler or a small, efficient biomass CHP

⁶ <http://www.iea.org/techno/essentials3.pdf>

⁷ <http://www.ens.dk/en-US/Info/news/Factsheet/Documents/kraftvarme%20170709.pdf> and http://www.videncenter.dk/exportcat/combined_heat_and_power.pdf

scheme to compete with big biomass power stations for wood. We have already heard from people who have invested in wood boilers for heating that they are struggling with rising pellet prices because of the growing demand from power stations and, in one case we have heard of what would have been a highly efficient combined heat and power scheme by a Housing Association in Scotland having been abandoned because the prospective local wood supplier had decided to supply a power station instead. Such anecdotal evidence is in line with one of the key reports commissioned by DECC to inform the UK Bioenergy Strategy.⁸ This states that large-scale biomass users are expected to have a financial advantage over small-scale users and that the market is expected to be biased in favour of those who can afford large, long-term bulk contracts.

Other ways in which provisions in the Draft Order will incentivise large-scale low efficiency biomass electricity:

While the ‘CHP loophole’ described above is likely to have the greatest impacts, we also note with concern that there are various other provisions for subsidising low-efficiency biomass electricity. First, an unlimited number of power stations up to 15 MW capacity would be subsidised regardless of efficiency rates – and many existing biomass plants worldwide achieve as little as 20% efficiencies.

Wood from short rotation coppicing as well as any non-wood biomass will be entirely exempt from the 15 MW cap. According to the latest Defra statistics⁹, less than 15,000 tonnes of Short Rotation Coppicing were available and used across UK power stations in 2010/11, while Scotland has a net shortage of straw, once demand for livestock is taken into account. Yet subsidies are to be offered for burning this extremely limited resource, too, at minimum efficiency levels.

And finally, unlimited amounts of co-firing and the conversion of coal power station units to biomass are to be subsidised regardless of efficiency levels. While we are not aware of any such industry plans in Scotland, in England plans to convert five coal power stations either fully or partially to biomass have received planning consent and between them they would require pellets from nearly 50 million tonnes of green wood every year, five times as much as the UK’s total annual wood production. Offering such incentives thus appears to us incompatible with the Scottish Government’s stated policy intention, confirmed for the example in the 2012 draft Electricity Generation Policy Statement.

What do the proposals mean for climate change, forests and communities:

The Scottish Government has stated that there will be a further announcement and Order related to biomass sustainability standards. While the final details of such sustainability standards have not yet been announced, we would like to point to four of the different reasons why those could not possibly prevent serious negative impacts on climate, forests and communities caused by an unsustainably high demand for wood for bioenergy.

⁸ UK and Global Bioenergy Resource: Final Report, AEA, 2011, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48059/1464-aea-2010-uk-and-global-bioenergy-report.pdf

⁹ <http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-landuselivestock-nonfoodcrops-latestrelease-130125.pdf>

1) As members of the Global Forest Coalition, an international coalition of NGOs and Indigenous Peoples Organisations, we are well aware that existing excessive global demand for wood is one of the main underlying causes of deforestation and forest degradation worldwide.¹⁰ The UK as a whole plays a crucial role because, even at this very early stage of bioenergy expansion, net imports account for 80% of all wood used in the UK (translating into a net cost of around £5 billion in 2012 for the UK).¹¹ Evidence that Scottish wood production could be increased by 0.7-1 million green tonnes a year within a decade¹² needs to be viewed in this context. And 1 million green tonnes would supply a mere two-thirds of the wood which Forth Energy is planning to burn at Grangemouth every year. Even if we had solid and well-enforced biomass sustainability standards – something quite different from what is proposed – this would simply result in most sustainable source of wood being diverted from other markets towards biomass electricity, and in more clearcutting of biodiverse forests elsewhere to supply existing demands. It is therefore essential to consider these indirect impacts which arise from the scale of the demand for wood.

2) The Scottish Government has stated that they intend to adopt the same biomass sustainability standards as DECC and, having already dropped previously proposed land use criteria following consultation with industry, DECC has made it clear that it has no intention of taking account of the carbon emissions that arise as a result of the long time-delay between combustion and wood re-growth, nor of the indirect carbon impacts of taking wood out of existing supply chains. An analysis of data contained in the UK Bioenergy Strategy by Princeton academic Professor Searchinger shows that burning wood from whole trees for electricity will increase greenhouse gas emissions compared to coal by 49% over 40 years.¹³ This is in line with a growing number of scientific studies which show that burning wood from whole trees results for electricity in a carbon debt that will last for several decades if not centuries.¹⁴

Yet the use of whole trees and thus this very significant carbon debt is inevitable beyond a limited scale of wood-based bioenergy.

3) The horsemeat and other food scandals illustrate how open to fraud ‘standards’ which rely entirely on chains of paperwork, without any verification are. The UK’s Secretary of State for the Environment has complained “*The whole problem we have is that the system of [food standards] which is laid down from above, trusts the paperwork...It trusts that the pallet confirms to the piece of paper. Nobody checks what is on the pallet often enough, nobody checks what is in production often enough, nobody checks the finished product often enough*”.¹⁵ Biomass sustainability standards will equally rely entirely on unverified chains of paperwork but, contrary to food standards, no agency will even be empowered to check exactly where the wood

¹⁰ Getting to the Roots, Global Forest Coalition, December 2010,

<http://globalforestcoalition.org/resources/underlying-causes-of-forest-loss>

¹¹ <http://www.forestry.gov.uk/website/forstats2012.nsf/0/35053FAF3CAE1BB5802573550054ABD7> and

[http://www.forestry.gov.uk/pdf/FCFS212.pdf/\\$FILE/FCFS212.pdf](http://www.forestry.gov.uk/pdf/FCFS212.pdf/$FILE/FCFS212.pdf)

¹² <http://www.scotland.gov.uk/Resource/0041/00414086.pdf>, paragraph 8

¹³ http://www.rspb.org.uk/Images/Searchinger_comments_on_bioenergy_strategy_SEPT_2012_tcm9-329780.pdf

¹⁴ For a list of those articles, see <http://www.biofuelwatch.org.uk/resources-on-biomass/>.

¹⁵ http://www.telegraph.co.uk/foodanddrink/foodanddrinknews/9875987/Nobody-checking-meat-labelling-says-Owen-Paterson.html#disqus_thread

comes from. And as food scandals show, fraud and mislabelling can happen at any link of the supply chain.

4) We believe that incentivising large-scale import-reliant biomass electricity is incompatible with the Scottish Government's commitment to Climate Justice. Although so far most of the UK's wood imports for bioenergy come from North America, industry analysts as well as a European Parliament report¹⁶ agree that in future, much of the growing demand will be met from wood from the global South, especially from South America, West and Central Africa. According to the European Parliament report: "*The rising demand for woody biomass energy is likely to raise the global price for wood, thus adding pressure on forests and other ecosystems and driving land use conflicts. More specific risks include deforestation when natural forests are replaced by monoculture plantations and long term impacts on local food and energy security...some of the potential exporting countries are characterized by food insecurity, vulnerable land rights and governance structures that often cannot ensure compliance to regulations, e.g. with regard to sustainability requirements.*"

For all of those reasons, we hope that even at this late stage it will not be too late to revise the ROCs proposals for biomass electricity.

[The content of this submission is also endorsed by Friends of the Earth Scotland and Grangemouth Community Council.]

¹⁶ http://www.ecologic.eu/files/attachments/Publications/2012/2610_21_bioenergy_lot_21.pdf

SUBMISSION FROM ESTOVER ENERGY

Estover Energy response to the Scottish Government's Renewables Obligations Banding Review – Supplementary Consultation- October 2012

Estover Energy is a specialist developer of local-scale biomass CHP plants, co-located with Industrial heat users.

Estover is developing two projects in Scotland, one with The Macallan in Moray and one with Arjowiggins close to Aberdeen.

These plants would have important local benefits:

- **Supporting existing employers.** Supporting & securing the 430 jobs at Arjowiggins and the 70 at Macallan.
- **Creating new jobs.** The two plants would create up to 80 new jobs- 40 at the plants and 40 in the local forest industry. About 100 jobs would be created at each site during the two-year construction phase.
- **Local investment.** An initial capital investment of £120m, leading to an ongoing investment of £8m/year in local forestry and logistics.
- **Investment in forests and foresters.** The local forestry industry has suffered from a lack of investment due to a lack of markets. These mean new markets, which will encourage planting and the employment of foresters to manage production.

Estover believes there is a significant local oversupply of low-grade wood in Northern Scotland, and intends to use this to fuel these plants.

According to the Forestry Commission data this is about one quarter of what is currently going unused every year in Northern Scotland.

Indeed the wood that is already “overdue” and that should have been harvested is over 11m tonnes and would alone be sufficient for 25 years fuel for both plants. Again, this is Forestry Commission data.

Views on capacity ceiling – strong disagreement

Estover strongly disagrees with the proposed capacity ceiling and CHP exemption. The result will be no further biomass CHP plants in Scotland, and the loss of the associated benefits.

- The capacity ceiling is set at such a low level that electricity-only plant will not be economic and will not be built.

As made clear in the Xero Energy report commissioned by the Scottish Government, a low threshold:

“may mean missed opportunities for local economic development ... and risks that Scottish woodfuel supply chains will not quickly develop any further, in which case deployment of renewable heat may be impacted.”¹

- In theory there is an exemption for CHP plant. However, this is not workable in practice, as annual re-accreditation will prevent bank finance being available. We believe the Scottish Government should not voice support for biomass CHP plant while implementing regulations that are clearly blocking the development of the industry.

¹ “Supporting Biomass Electricity in the Renewables Obligation (Scotland)”, Xero Energy, 12 Dec 2011, p25

SUBMISSION FROM THE WOOD PANEL INDUSTRIES FEDERATION

- The Wood Panel Industries Federation (WPIF) represents all UK manufacturers of wood-based panels; the industry is the second largest processor of UK-sourced wood, annually consuming some 4.5m tonnes.
- There are six manufacturing sites across the UK, including three in Scotland which are based in Inverness, Cowie and Barony.
- The industry has a combined annual turnover of over £550m, directly employing approximately 2200 people. Taking account of related businesses upstream and downstream, there are approximately 7900 FTE jobs dependent upon the wood panel industry. These are mostly based in rural areas, therefore providing a vital source of employment in areas where job provision is often limited.
- The wood panel industry has evolved to process wood that has historically had no viable alternative use, and has effectively constituted waste material. The principle wood inputs are small roundwood, sawmill residues, recycled wood and sawdust. The industry has evolved the technology to reengineer these previously “unusable” sources into its products. There has been no meaningful international trade in these wood types because the cost of transport rapidly outweighs the cost of the wood itself. Typically a wood panel plant will not seek wood from outside a 150-200 mile radius.
- The wood panel industry is also Scotland’s largest industrial generator of renewable heat. This is generated almost entirely from process-derived residues, wood that is produced during panel processing but is unsuitable for use in the panels themselves.

Biomass

- The WPIF has consistently raised concerns about the impact subsidies for large-scale biomass electricity generation would have on existing wood users like the wood panel industry.
- The WPIF is concerned about the impact on the wood panel industry, and the wider forestry sector, of rising wood prices caused by the entrance into the wood market of energy generators who are subsidised to purchase wood to burn for large-scale electricity generation.
- Continuation of these subsidies not only poses a threat to a vibrant industry but is also environmentally unsound. Wood should only be burnt at the end of its useable life; processing wood locks carbon into wood products for the lifetime of the product. These products can then be recycled, further extending the wood’s life and keeping the carbon sequestered. Burning virgin wood immediately releases carbon into the atmosphere; wood product production

produces only 378kg of CO₂ per tonne of wood whereas burning wood for electricity generation produces 1,905kg of CO₂.

- Wood is also a finite resource and the domestic wood harvest cannot meet the demands of large-scale biomass electricity generation. At a UK level, DECC has stated that energy companies will import 90% of their wood feedstocks, however even sourcing 10% of the required wood domestically would consume the entire UK wood harvest.
- The Scottish Government has recognised the finite nature of woody biomass feedstocks and the significant emissions reductions benefits of processing wood into products. Energy Minister Fergus Ewing has noted the importance of the wood panel industry and other wood processors on several occasions.

15MW Dedicated Biomass Cap

- In its submission to the Scottish Government's supplementary consultation on the ROS Banding Review the WPIF supported the proposed 10MW dedicated biomass cap and cautioned against raising it. Although the cap has been raised to 15MW the WPIF remains supportive of this change to the banding levels for dedicated biomass and urges that the cap not be raised again.
- The WPIF also supports the Scottish Government's emphasis on the use of woody biomass for heat-only and smaller scale CHP installations. This is a far more sustainable use of Scotland's limited wood resource.
- The 15MW cap and the decision to focus on heat-only and small-scale CHP installations is a good starting point, however there is still more that needs to be done to ensure that existing wood users are not forced out of the market.
- The Scottish Government said in its response to the ROS Banding Review that it would look at 'using planning restrictions to limit the amount of large-scale biomass conversions and co-firing'. Biomass conversions and co-firing remain a significant threat to existing wood users given their large woody feedstock demand and the speed in which they will be able to come on stream. The action previously outlined by the Scottish Government needs to be undertaken quickly.
- The WPIF also believe that in order to ensure only the most efficient forms of biomass are used, the Scottish Government should enhance the qualification criteria for CHP plants to a minimum efficiency level of 70%. The current definition of Good Quality CHP under the ROS includes those plants which are only 35% efficient. The WPIF supports those calls for the ROS to be brought in line with Article 13(6) of the EU Renewable Energy Directive which states that "In the case of biomass, Member States shall promote conversion technologies that achieve a conversion efficiency of at least 85% for residential and commercial applications and at least 70% for industrial applications".

SUBMISSION FROM FORTH ENERGY

Background

Forth Energy, a joint venture between Forth Ports Limited and SSE plc, has submitted applications under the Electricity Act to develop three high-efficiency, wood-fuelled Combined Heat and Power (CHP) plants in Scotland. The output of the three plants together can deliver around 30% of the Scottish Government's 2020 renewable heat target and approximately 6% of the renewable electricity target. Forth Energy stands alongside the Scottish Government in the belief that when used at a larger scale, sustainably-sourced biomass fuel is best suited to the production of both heat and electricity and can play an important part in Scotland's future energy mix. The Government's recent announcement that RO(S) support should be focused on CHP plants and that there should be no support for electricity-only biomass plants over 15MW is therefore welcomed. Forth Energy is also confident in the additional benefits CHP plants can bring to their local areas, including major economic investment and jobs.

The plants are proposed to be situated at the Ports of Grangemouth, Dundee and Rosyth, which are suited to the handling of wood fuel. Together they will have the capability to deliver 300 MW of reliable, controllable, renewable electricity to the national grid and up to 260 MW of renewable heat to neighbouring industrial and commercial users, and to new district heating networks. The delivery of both heat and electricity has been an important part of Forth Energy's proposals from the outset.

The Need for Large and Small Scale CHP

Forth Energy believes that a mix of heat technologies and scales are required to meet the challenging 2020 heat targets and grow these beyond 2020. **Small-scale CHP** can, with an adequate support mechanism, make a contribution to renewable heat provision in rural or low density areas. **Larger-scale CHP** plants represent a viable source of renewable heat in energy intensive urban and industrial areas where demand is high.

Combined Heat and Power Plants

Increased deployment of CHP technology in Scotland can deliver a sustained reduction in final energy demand and hence emissions. The key points in favour of CHP plants are:

- Use of biomass for generating heat or electricity will diversify the fuel mix in Scotland, and therefore increase the security of supply.
- Combined heat and power plants can achieve significant primary energy savings compared with the separate generation of heat and electricity.
- Biomass plants provide a controllable source of energy through their ability to vary output and generate continuously. Low-carbon, wood fuelled CHP plants are flexible and efficient and also reduce the need for back-up fossil-fuelled, carbon-intensive energy generation.
- Businesses are increasingly aware of the escalating cost of carbon, making the supply of low-carbon heat and electricity an attractive proposition.

- The development of a sustainable renewable heat industry can bring carbon reductions, inward investment and long-term employment to Scotland.
- Plants are subject to strict Europe-wide air quality standards and monitored by SEPA in operation.
- It is recognised that the supply of biomass within Scotland itself is limited, but there are opportunities, particularly for plants located at ports, to import sustainably sourced fuel to meet the need for renewable CHP.

Reducing Carbon Emissions

Biomass CHP plants can help reduce Scotland's CO₂ emissions by using sustainably sourced wood fuel rather than carbon intensive fossil fuels.

Biomass has a short carbon cycle, whereas that for fossil fuels is measured in millions of years. Research carried out by SIStech concluded that when comparing carbon emissions from biomass energy generation and fossil fuel alternatives over the lifetime of the plant, there will be significantly less carbon in the atmosphere than if fossil fuels were used to generate the heat and electricity.

Economy, Energy and Tourism Committee

8th meeting, 2013 (Session 4), Wednesday 6 March 2013

Response to the Finance Committee on the Budget Strategy Phase

Background

1. The Convener of the Finance Committee has written to each of the subject committees and a number of the mandatory committees in relation to the Budget Strategy Phase (BSP), inviting them to identify any specific areas on which they would welcome an update from the Scottish Government on its progress in delivering its priorities as set out in the 2011 Spending review. A copy of this letter is attached at Annexe A.
2. The BSP takes place at least once during a parliamentary term. The purpose of the BSP is to allow the Parliament to scrutinise the progress that the Scottish Government has made in delivering its own targets through its spending priorities, and to take a strategic overview of the public finances.
3. Once it has the responses from committees, the Finance Committee will write to the Scottish Government in May 2013 requesting an evaluation of performance in the specific areas identified by the committees with the aim of producing a more focused process.
4. The Scottish Government will then publish a performance evaluation document alongside the Spending Review in September. Individual committees will scrutinise the relevant parts of this document alongside the Spending Review 2013.

Committee consideration

5. The Economy, Energy and Tourism Committee, given the breadth of its remit, has considered Scottish Government priorities in the following three areas—
 - The Scottish Government's priorities for economic recovery as set out in the Spending Review 2011 and Draft budget 2012-13.
 - The Spending Review proposals to drive sustainable economic growth in line with the Scottish Government's Economic Strategy
 - Individual portfolios (principally the Finance, Employment and Sustainable Growth portfolio, but also other relevant portfolios).
6. Annexe B includes a summary of the Scottish Government's priorities that Committee has scrutinised in the context of the Spending Review 2011 and the subsequent draft budgets.

Committee decision

7. **In order to respond to the Finance Committee, the Committee is invited to consider and agree which of the priorities contained in Annexe B it would**

welcome an update on from the Scottish Government regarding the latter's progress in delivering its priorities as set out in the 2011 Spending Review. These will then be communicated to the Finance Committee.

**Katy Orr
Senior Assistant Clerk**

Annexe A – Letter from the Finance Committee on the Budget Strategy Phase



The Scottish Parliament
Pàrlamaid na h-Alba

Finance Committee

Room T3.60
The Scottish Parliament
EDINBURGH
EH99 1SP

Direct Tel: (0131) 348 5215
(RNID Typetalk calls welcome)
(Central) Textphone: (0131) 348 5600
finance.committee@scottish.parliament.uk

29 January 2013

Dear Convener,

Following a review of the budget process ([Finance Committee, 5th Report, 2009, Report on the Review of the Budget Process](#)) in Session 3 the previous Finance Committee agreed to introduce a strategic phase to the process which replaces the previous Stage 1 which had not been carried out since 2004. The aim of the Budget Strategy Phase (BSP) is to allow the Parliament to scrutinise the progress which the Scottish Government (SG) is making in delivering its own targets through its spending priorities and to take a strategic overview of the public finances around the mid-point of the current Parliament.

At its meeting on 16 January the Committee considered its approach to the BSP and agreed in the first instance to write to each of the subject committees, the Welfare Reform Committee, the Equal Opportunities Committee and the European and External Relations Committee inviting them to identify any specific areas on which they would welcome an update from the SG regarding its progress in delivering its priorities as set out in the 2011 Spending Review.

The Committee would then consider the responses before writing to the SG requesting an evaluation of performance in specific areas with the aim of producing a more focused process. The SG would publish a performance evaluation document alongside Spending Review 2013 and the committees would then have the

opportunity to scrutinise this document as part of the budget process in the Autumn. This suggested approach was of course, dependent on the agreement of the SG.

I wrote to the Cabinet Secretary for Finance, Employment and Sustainable Growth on 17 January setting out the Committee's suggested approach to the BSP. He responded on 28 January confirming that he was content with our proposals. Both letters are attached overleaf for information.

I would therefore be grateful if you would provide me with details of the specific areas on which you would welcome an update from the SG regarding its progress in delivering its priorities as set out in the 2011 Spending Review. Each portfolio chapter within the [Spending Review document](#) sets out the SG's priorities in that area.

As detailed above, the Finance Committee will then consider responses before requesting an evaluation of performance in these specific areas. The Committee has also already stated in its [report on the Draft Budget 2013-14](#) that the SG needs to provide some linkage between spending and outcomes when evaluating its performance. The SG will then be invited to publish a performance evaluation document alongside Spending Review 2013.

The proposed timetable is as follows:

Jan-April: Committee consults with subject committees on performance information;

May: Committee writes to SG requesting specific performance information;

September: SG publishes performance evaluation document alongside Spending Review 2013.

Sep-Nov Committees scrutinise performance as part of budget process.

The Committee would welcome a response by **Friday 26 April 2013**.

Yours sincerely

Kenneth Gibson MSP
Convener

ANNEXE B - Spending priorities in the 2011 Spending Review of interest to the Economy, Energy and Tourism Committee

The [Scottish Spending Review 2011 and Draft Budget 2012-13](#) was published in September 2011. It contained priorities in relation to:

1. Economic recovery
2. The Government Economic Strategy
3. Individual portfolios

Priorities in each category, which are likely to be of interest to the Committee, are highlighted in the following three sections.

1. Priorities in relation to economic recovery

Within the Scottish Spending Review 2011 and Draft Budget 2012-13, the Scottish Government stated: “Our top priority in this spending review is therefore accelerating the recovery, boosting jobs and promoting economic security”. The Government stated that it had a particular focus on three key priorities:

1. **Capital investment:** The Government proposed to boost the level of funding available for capital investment, including switching money from the resource budget to fund new capital projects, tapping into new, innovative sources of finance wherever possible and utilising new forms of borrowing when they become available.
2. **Access to finance:** The Government said that it would maintain pressure on the UK Government and banks to ensure that lending targets are met, particularly for SMEs. It also highlighted proposed support for businesses through the Scottish Investment Bank and the National Renewables Infrastructure Fund.
3. **Enhanced economic confidence:** The Government highlighted that its pay restraint policy would support thousands of public sector jobs, while the Scottish Living Wage and pay awards protect the incomes of those earning the lowest in the public sector in Scotland. The Government also proposed to continue to implement core economic and social commitments through the Social Wage, including the abolition of prescription charges and promises on free higher education and free personal care. It also highlighted the contribution of its tax policies in this area, including retaining the Small Business Bonus Scheme and freezing council tax, and direct action to tackle unemployment and ensure that people who are out of work or underemployed – particularly our young people – have access to the right training, skills or education opportunities to meet their needs.

2. Priorities in relation to the Government Economic Strategy

Alongside the plans for economic recovery, the Spending Review included proposals to drive sustainable economic growth in line with the Government Economic Strategy, which focuses on six strategic priorities:

1. Maintaining and investing in a Supportive Business Environment
2. Transition to a Low Carbon Economy
3. Learning, Skills and Wellbeing
4. Infrastructure Development and Place
5. Effective Government
6. Equity

Across these Strategic Priorities, key initiatives which the Government proposed and which may be of interest to the Committee include:

Introducing four Enterprise Areas in Scotland, including sites with a particular focus on low carbon manufacturing opportunities, so as to maximise their economic impact and attractiveness to investment.
Providing advice and support to help SMEs grow, hire staff and take on apprentices.
Continuing to deliver the Small Business Bonus Scheme and match the business rates poundage set in England.
Promoting Scottish exports to capitalise on the significant opportunities in growth markets; with an ambitious target to deliver a 50 per cent increase in exports by 2017; as part of this we will look to strengthen trade support particularly in Scottish Development International's (SDI) Overseas Trade and Investment Centres.
Streamlining investment in innovation and commercialisation to boost productivity and translate great business ideas into great business practice.
Establishing a Next Generation Digital Fund to accelerate the delivery of superfast broadband across Scotland with a particular focus on rural areas.
Working with our cities and city regions and recognising the critical contribution they make to the whole of Scotland as drivers of economic growth, we will develop a Cities Strategy to support more effective collaboration to optimise that growth.
Maximising the public sector's direct contribution to the economy through smart use of public procurement, in order to promote jobs and growth, boost training and apprenticeship opportunities and help SMEs compete effectively for contracts.
Taking a strategic approach to our international engagement, including the deepening of trading links, to promote sustainable economic growth. This engagement will take place across a range of areas where Scotland has expertise, from energy and climate change to education, culture and tourism.

3. Priorities in relation to individual portfolios

The Finance, employment and sustainable growth portfolio has overarching priorities for 2012-13 in the following areas:

Maintaining and further developing a supporting business environment	Transition to a Low Carbon Economy
<ul style="list-style-type: none"> • Support growth companies, growth sectors and growth markets through maintaining the budgets of our three key support bodies – SE, HIE and VisitScotland. • Provide support to increase international trade and exports and attract visitors to Scotland. • Better integrate our support for innovation and commercialisation. • Better align our resources with European Funds to support our growth agenda across the whole of Scotland. 	<ul style="list-style-type: none"> • Increase the priority given to securing the opportunities provided by renewable energy. • Implement our 2020 <i>Routemap for Renewable Energy</i>. • Implement our <i>Energy Efficiency Action Plan</i>. • Invest in action to meet our world leading climate change targets.
Focusing on infrastructure development and place	Effective Government
<ul style="list-style-type: none"> • Develop a coherent approach to assisting our cities and city regions in being the engines of growth for the Scottish economy. • Continue to implement the modernisation of the planning system. 	<ul style="list-style-type: none"> • Continue to progress our public sector reforms. • Encourage greater use of shared services between public bodies. • Promote the use of skills held by Agencies and NDPBs for the benefit of the wider public sector. • Implement our response to the John McClelland's <i>Review of ICT Infrastructure in the Public Sector in Scotland</i>

Priorities are also listed in relation to the detailed spending plans. Those of most interest to the Committee from across the portfolios are shown in the table below:

Portfolio	Priorities for 2012-13
Finance, Employment and Sustainable Growth	Support more companies to trade overseas and look to attract new inward investment.
	Support businesses and social enterprises to shape and realise their growth aspirations.
	Capitalise on existing competitive advantage in renewables to attract investment and establish a strong supply chain. We published an updated and expanded Routemap on 30 June 2011, built around the challenge of our new targets; in particular to meet an equivalent of 100 per cent demand for electricity from renewable energy by 2020, as well as our target of 11 per cent renewable heat.
	Create the conditions for a competitive and low carbon economy. We will continue to pursue efficiencies (e.g. through

	<p>the creation of a single Scottish Energy and Resource Efficiency Service) and explore alternative sources of funding such as EU, private finance and local authority funding.</p> <p>Develop growth sectors and look to maximise distinctive regional opportunities.</p> <p>Streamline investment in innovation and commercialisation to boost productivity and translate great business ideas into great business practice.</p> <p>Consider how best to introduce four Enterprise Areas in Scotland, including exploring the creation of sites with a particular focus on low carbon manufacturing opportunities so as to maximise their economic impact and attractiveness to investment.</p> <p>Provide core grant to VisitScotland to allow it to:</p> <ul style="list-style-type: none"> • Deliver high yield marketing campaigns overseas and in the UK and harness the potential for tourism over the next three years by maximising the opportunities presented by major events taking place in the run up to, and during, 2014 • Deliver major conferences via the VisitScotland Bid Fund • Grow Scotland's reputation as a quality destination through VisitScotland's Quality Assurance advisory services • Deliver the Themed Years and Homecoming 2014 • Strengthen and promote Scotland's events industry and help deliver the National Events Strategy.
Education and Lifelong Learning	Deliver 25,000 Modern Apprenticeship opportunities.
	Implement Opportunities for All an initiative which will offer an education or training place to every young person under 19 who is not already in a modern apprenticeship, job or learning.
Rural Affairs and the Environment	Establish a Next Generation Digital Fund, as part of the Scottish Futures Fund, to accelerate the roll out of superfast broadband across Scotland, with a particular focus on rural areas. The fund will seek to optimise public sector investment in broadband infrastructure and leverage maximum levels of private sector investment to improve broadband coverage in Scotland. We will develop a roll-out strategy with funding proposals by the end of March 2012.
Infrastructure and Capital Investment	Maintain our successful Energy Assistance Package and Home Insulation Scheme.
	Provide support to business to up-skill and encourage better use of the internet through a programme delivered by Scottish Enterprise, Highlands and Islands Enterprise and Business Gateway.
Local	We will continue with the Small Business Bonus Scheme, which

Government	is helping tens of thousands of businesses across Scotland.
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Scherie Nicol
SPICe
26 February 2013

Economy, Energy and Tourism Committee

8th Meeting, 2013 (Session 4), Wednesday, 6 March 2013

**SECOND SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM –
ENTERPRISE AND REGULATORY REFORM BILL**

Note by the Clerk

Background

1. The Legislative Consent Motion (LCM) was laid in Parliament on 28 February 2013. The Parliamentary Bureau will decide which Committee to refer it to on 5 March. This paper has been prepared for the Committee subject to the referral of the LCM to the Committee. The Subordinate Legislation Committee will not be considering this LCM.

2. The Enterprise and Regulatory Reform Bill was introduced in the House of Commons on 23 May 2012. This is the second supplementary LCM for the Enterprise and Regulatory Reform Bill (“the Bill”). A previous LCM was passed for the Green Investment Bank provisions of the Bill on 18 September 2012 and a supplementary LCM was passed for the midata provisions on 19 February 2013.¹

Content of the Enterprise and Regulatory Reform Bill

3. The Bill makes provision in a number of areas, including:

- Establishing the UK Green Investment Bank;
- employment law;
- establishment of and provision for the Competition and Markets Authority;
- abolition of the Competition Commission and the Office of Fair Trading;
- amendment of the Competition Act 1998 and the Enterprise Act 2002;
- for the reduction of legislative burdens;
- copyright and rights in performances; and
- payments to company directors; and
- for connected purposes.

4. The provisions which relate to this memorandum were tabled as an amendment to the Bill in the House of Lords on 25 February 2013. The amendment relates to the continuity of supply and service of IT services to insolvent companies; so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

5. The amendment will give the Secretary of State the power to make an Order that amends sections 233 and 372 of the Insolvency Act 1986 to extend the list of suppliers to which the sections apply to include the supply of goods and services relating to electronic means. In effect, this means that suppliers of goods and

¹ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/52619.aspx>

services relating to electronic means can seek a personal guarantee from an insolvency practitioner before continuing to supply an insolvent business and prevent such suppliers from demanding that pre-insolvency arrears are cleared as a condition of continuing supply, which can hamper the operation of a business in insolvency.

6. This amendment requires a Legislative Consent Memorandum (LCM) as although the UK Parliament has powers to make changes to insolvency proceedings, the reservation does not extend to receiverships, which fall within the legislative competence of the Scottish Parliament. Therefore, the legislative consent of the Scottish Parliament is required to allow the provision which the changes to section 233 will make for receiverships to extend to Scotland. Further detail can be found in the LCM attached at Annexe A.

Procedure for dealing with legislative consent memorandums

7. Chapter 9B of the Standing Orders sets out the procedures for consideration of an LCM. An LCM must (a) summarise the UK Bill and its policy intentions; (b) specify the extent to which the Bill makes provision to alter the competence of the Scottish Ministers, and (c) outline whether the Scottish Government intends to lodge a motion recommending that the Scottish Parliament gives its consent to the provision, along with the reasons behind this decision.

8. Once lodged, the Parliamentary Bureau refers the LCM to the relevant lead committee; that committee is required to consider the LCM and report its views to the Parliament. A motion is then taken by the Parliament

9. It is usual practice for the Parliament to have expressed a view on an LCM in time for the final amending stage in the House in which the Bill was introduced, i.e. report stage in the Commons or third reading in the Lords. The Bill is currently at report stage in the House of Lords.

Recommendation

10. While the Committee is required under Standing Orders to report on an LCM, there is no requirement to take any evidence. The Committee has indicated that it does not wish to take evidence on this LCM.

11. **The Committee is invited to agree:**

- **whether to recommend that the Parliament approve the motion on the Enterprise and Regulatory Reform Bill; or**
- **to note the motion on the Enterprise and Regulatory Reform Bill.**

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

UK GOVERNMENT AMENDMENT TO THE ENTERPRISE AND REGULATORY REFORM BILL

1. The draft motion, which will be lodged by the Minister for Energy, Enterprise and Tourism, is:

“That the Parliament agrees that the relevant provisions of the amendment to the UK Enterprise and Regulatory Reform Bill, tabled in the House of Lords on 25 February 2013, relating to the power to add to supplies protected under the Insolvency Act 1986, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

2. This is the second supplementary LCM for the Enterprise and Regulatory Reform Bill (“the Bill”). A previous LCM was passed for the Green Investment Bank provisions of the Bill on 18 September 2012 and a supplementary LCM was passed for the midata provisions on 19 February 2013.

Background

3. This memorandum has been lodged by Fergus Ewing MSP, Minister for Energy, Enterprise and Tourism, under Rule 9.B.3.1(c)(i) of the Parliament’s standing orders. The amendment was tabled in the House of Lords on Monday, 25 February 2013. The amendment can be found at:

<http://www.publications.parliament.uk/pa/bills/lbill/2012-2013/0083/amend/su083-ib.htm>

The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2012-13/enterpriseandregulatoryreform.html>

4. The Bill will make provision on various issues including: the UK Green Investment Bank (GIB); employment law; establishment of the Competition and Markets Authority and abolition of the Competition Commission and the Office of Fair Trading; amendment of the Competition Act 1998 and the Enterprise Act 2002; the reduction of legislative burdens; copyright and rights in performances; to make provision about payments to company directors; and for connected purposes.

5. The amendment will give the Secretary of State the power to make an Order that:

(1) amends sections 233 and (2) section 372 of the Insolvency Act 1986 - by extending the list of suppliers to which the sections apply (to all suppliers of the utilities listed in s.233(3) and s.372(4)) and to include the supply of goods and services relating to electronic means (“IT supplies”) on the list. These sections

currently allow for certain providers of services, such as gas or electricity, to seek a personal guarantee from an insolvency practitioner before continuing to supply an insolvent business and prevent such suppliers from demanding that pre-insolvency arrears are cleared as a condition of continuing supply. The demand for clearing debts before continuing supply can hamper the operation of a business in insolvency; and

Provisions which relate to Scotland

6. Point (1) concerns section 233 which extends to the whole of Great Britain. Any change to section 233 affects all insolvency proceedings, including receiverships - which are devolved. If the power (or the ancillary power to make incidental, supplementary, consequential, transitional or saving provision) is exercised, then companies entering receivership in Scotland would have their IT services protected under the 1986 Act, along with their gas, electricity and other supplies – provision that, ordinarily, would fall within the legislative competence of the Scottish Parliament.

7. Point (2) concerns Section 372 which does not extend to Scotland and the amendment to this section will have the same extent. The other insolvency proceedings - administration and company voluntary arrangements are reserved and the changes to liquidation fall within the partial reservation on liquidation because the changes only affect the legal effect of winding up (which is reserved) rather than the process itself (which is devolved).

9. Changes already introduced by the Enterprise Act 2002 contain provisions to appoint administrators rather than receivers, with limited exceptions, the effect of this being that receiverships are being phased out and continue to reduce year on year. In practice, the effect of the change is likely to be narrow.

10. It may be helpful for Parliament to know that during the financial year 2011/12, there were only 35 receiverships in Scotland, for the three quarters reported for financial year 2012/13 there have been 24 receiverships.

Reasons for seeking a Legislative Consent Motion

11. Westminster's reserved powers, to make changes in insolvency proceedings, do not extend to receiverships which fall within the legislative competence of the Scottish Parliament. However, any change to section 233 of the Insolvency Act 1986 affects all insolvency proceedings, including receivership which is devolved. Therefore, the legislative consent of the Scottish Parliament is required to allow the provision, which these changes to section 233 will make for receiverships, to extend to Scotland.

12. The Scottish Government has considered the UK Government's proposed change, and has concluded that in this case the change sits in the law of corporate insolvency better as a single consistent change introduced as part of the UK provision. The Scottish Government is also of the view that it is in the interest of stakeholders to make this change by way of UK legislation.

Financial/Resource Implications

13. There are no financial or resource implications.

Consultation

14. The UK Government has not consulted on this provision because of the short time frame within which the decision to take the policy forward was made, although the Scottish Government understands that the matter has been discussed with the main insolvency practitioners' body, R3, and that a full consultation and impact assessment will be carried out before the power is used.

Conclusion

15. Extending the amendment to apply in Scotland will ensure that companies entering receivership in Scotland would be able to have the same rights of continuity of supply and service of IT services as those in the rest of the UK.

16. It is the view of the Scottish Government that it is in the interests of the Scottish people and good governance that the relevant provisions, as outlined above, which fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

SCOTTISH GOVERNMENT
February 2013