

LEGISLATIVE CONSENT MEMORANDUM

CLIMATE CHANGE BILL

Legislative Consent Motion

1. The motion to be put to the Parliament is:

“That the Parliament endorses the principle of introducing for the UK as a whole statutory targets and a related framework for action to mitigate climate change by reducing carbon dioxide emissions as set out in the Climate Change Bill, introduced to the House of Lords on 14 November 2007, and agrees that the provisions in the Bill which fall within the legislative competence of the Scottish Parliament should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by John Swinney, Cabinet Secretary for Finance and Sustainable Growth, under rule 9B.3.1(a) of the Parliament's standing orders. The UK Climate Change Bill was introduced in the UK Parliament in the House of Lords on 14 November. The Bill can be found at:

<http://services.parliament.uk/bills/2007-08/climatechange1.html>

3. The main purpose of the Climate Change Bill is to provide a statutory framework for actions to mitigate climate change by reducing emissions. The key elements of the Bill are:

- to set a statutory target to reduce net UK carbon dioxide emissions by 60% by 2050 (this already exists as a non statutory target) and to set an interim target of 26-32% reduction by 2020;
- to introduce 5-year carbon budgets as milestones towards the targets and to provide for units purchased on the international market to reduce the UK carbon account and to contribute towards meeting the target;
- to establish a Committee on Climate Change with a UK remit to advise the UK Government and Devolved Administrations on reduction of emissions;
- to create enabling powers to put in place new trading schemes relating to greenhouse gas emissions; and
- to improve monitoring arrangements and reporting to UK Parliament with the intention that the Scottish Ministers would lay the same reports before the Scottish Parliament.

Provisions which relate to Scotland

4. The main provisions, and how they relate to Scotland, are outlined in paragraphs 9-12 below. Further details are attached at **Annex A** of this Memorandum. The Bill also contains provisions related to the English waste strategy. As they do not affect Scottish devolved interests, they are not discussed further in this Memorandum.

5. In summary, the UK Climate Change Bill will:

- ensure that Scottish Ministers are consulted on amending the 2020 and 2050 UK carbon emissions targets and on the setting and amending of the five-year carbon budgets which will set the path to reaching these targets;
- give the Scottish Ministers powers (within devolved competence) to set up trading schemes relating to greenhouse gas emissions;
- ensure that the Committee on Climate Change advises all UK administrations on the UK emissions reduction target;
- give the Scottish Ministers the power to request advice from the Committee on Climate Change in relation to Scottish emissions targets;
- give the Scottish Parliament the power to call members of the Committee on Climate Change as witnesses; and
- ensure that the Committee on Climate Change submits reports to the Scottish Parliament or to the Scottish Ministers at the same time as to the UK Parliament or to the Secretary of State.

6. The key elements of the framework listed above (introduction of targets and carbon budgets, establishment of an advisory committee, creation of enabling powers and reporting duties) are all capable of being exercised within the legislative competence of the Scottish Parliament so far as they apply to Scotland. The purpose of the Bill is, however, to introduce targets and a framework for action in the UK as a whole which is, of course, not within Scottish competence. Because much of the content of the UK Bill, so far as it relates to Scotland, is within our legislative competence, an LCM is required for almost the entire Bill.

Proposal

7. Given the global challenge of climate change, the Scottish Ministers believe that the Scottish Government and Parliament should work in partnership with the rest of the UK to show international leadership. The Bill provides a framework for shared action and has been drafted in terms which recognise the role of the Scottish Government as a partner in the pursuit of the UK emissions reduction target. It does not specify the measures to be used in Scotland to achieve the targets. In June 2007 the Scottish Government announced its intention to consult on proposals for a Scottish Climate Change Bill. The Scottish Bill will offer an opportunity to put in place a similar framework to the UK one for a distinctive Scottish target and to introduce any relevant devolved policy measures which require primary legislation.

8. Agreeing to the UK Parliament legislating in this way ensures a co-ordinated approach across the UK. As well as obtaining clear recognition in the Bill of their position in relation to the UK effort, the Scottish Ministers and the Scottish Parliament will retain the ability to legislate in devolved areas as we intend to do in the proposed Scottish Climate Change Bill.

Targets and Carbon Budgets

9. The UK Bill places a duty on the Secretary of State to ensure that net UK carbon dioxide emissions in the year 2020 are 26-32% lower, and in 2050 are at least 60% lower, than in 1990; and to set carbon budgets for successive five-year periods. The

Secretary of State would be accountable to Westminster for achieving the UK-wide targets and carbon budgets. In setting any separate Scottish emissions targets, which would contribute towards achieving the UK targets, the Scottish Ministers would be accountable to the Scottish Parliament. The UK Bill specifies that the powers to amend targets and to set and amend carbon budgets may be exercised by the Secretary of State only after consulting the Devolved Administrations and requires the Secretary of State to publish a statement setting out how he has taken their views into account.

Committee on Climate Change

10. The UK Bill contains provisions to establish an independent, expert advisory Committee on Climate Change and for it to advise the Government on climate change and, in particular, on carbon budgets and targets and on the contribution that can be made by sectors involved in trading schemes and by other sectors of the economy. Devolved Administrations may also request advice in connection with any targets of their own. This allows – but does not oblige – the Scottish Ministers to use the Committee on Climate Change as a source of advice, analysis etc. in support of any separate Scottish emissions reduction target they might set. The Bill also provides for the Scottish Parliament to call the Committee to give evidence and for the Scottish Public Services Ombudsman to investigate complaints about it.

Enabling powers for emissions trading schemes

11. The UK Bill provides enabling powers to allow future trading schemes relating to greenhouse gas emissions to be set up without the need for further primary legislation. The powers are expressed in such terms as to allow flexibility to accommodate a range of possible schemes over many years. The Bill allows both for Scottish Ministers to use their powers individually and for schemes to be set up involving other UK countries.

Requirement to report on impact of climate change

12. The UK Bill requires the Secretary of State to provide to the Westminster Parliament an assessment of the risks of climate change as they apply to the whole of the UK. The Secretary of State would be required to send a copy of the report to the Scottish Ministers. It would be the intention of the Scottish Ministers to lay a copy of the report before the Scottish Parliament.

Consultation

13. The Department for Environment, Food and Rural Affairs (Defra) has consulted publicly on the draft UK Climate Change Bill and organisations from the Scottish public and private sectors were amongst the consultees. The Bill was also subject to pre-legislative scrutiny by three committees at Westminster. In addition, Ministers and officials from the Scottish Government have worked closely with Defra and the other Devolved Administrations to ensure that the UK Bill adequately reflects the role of the Devolved Administrations.

Financial Implications

14. The direct cost of measures contained in the Bill is relatively small. The Bill sets a framework in place. The costs relate mainly to the Committee on Climate Change,

estimated at around £3 million a year to which the Scottish Government would contribute.

15. The indirect cost of the Bill is substantial. The Bill does not specify the measures which are to be used to reduce emissions. The Stern Review forecast annual costs to the economy of about 1% of global GDP by 2050 if all countries took action. The Regulatory Impact Assessment for the Bill indicates that the long run costs to the UK of achieving a 60% reduction in carbon emissions are likely to be in the range 0.3-1.5% of GDP, depending on the price of fossil fuel and the availability of low-carbon technologies. There could be additional shorter term transition costs between now and 2020. Although the cost of action is high, Stern forecasts the cost of inaction to be significantly higher (5-20% of global GDP a year), which underlines the need for action.

SCOTTISH GOVERNMENT
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ANNEX A

UK CLIMATE CHANGE BILL: LEGISLATIVE CONSENT MEMORANDUM DETAILS OF PROVISIONS IN UK BILL AND RELATIONSHIP WITH SCOTLAND

Background

1. This Annex summarises the main features of the UK Climate Change Bill – the targets and supporting framework – and highlights the provisions which have been made to reflect the roles of the Devolved Administrations. Most provisions would apply in the same way to Scotland, Wales and Northern Ireland, but there are some variations because of differences in the devolution settlements.

Targets and carbon budgets

Main Duties:

- ***to ensure that net UK carbon dioxide emissions in the year 2020 are 26-32% lower, and in 2050 are at least 60% lower, than in 1990; and***
- ***to set carbon budgets for successive five-year periods.***

Powers:

- ***to amend the 2020 and 2050 targets;***
- ***to set a new post 2050 target;***
- ***to set and amend carbon budgets; to alter the carbon budget period;***
- ***to “bank” and “borrow” (i.e. to carry forward extra emissions savings to the following budget period or to bring back up to 1% of the carbon budget from the following period); and***
- ***to make regulations specifying the circumstances in which carbon units may reduce or increase the net UK carbon account (i.e. to allow a limited amount of emissions reduction achieved by the UK overseas to be counted towards net emissions by subtracting them from total emissions).***

2. The Secretary of State would be accountable to Westminster for achieving the UK-wide targets and carbon budgets. The Scottish Ministers would be accountable to the Scottish Parliament for the proposed Scottish emissions target, which would overlap with and exceed the UK target. This maintains the existing lines of accountability between Ministers and their appropriate Parliament.

3. The Bill specifies that the powers listed above may be exercised by the Secretary of State only after consulting the Devolved Administrations. The detailed arrangements will be set out in a strong concordat to ensure an effective consultation process and to safeguard the interests of all the Devolved Administrations.

4. In relation to the setting and amending of carbon budgets and the amending of targets set for 2020 and 2050, there will be an enhanced consultation arrangement. The Bill requires the Secretary of State to consult the Devolved Administrations and specifies that the Devolved Administrations should normally have 3 months to give their views. Where the carbon budget period had already started, the response time would be one month as we would be responding to circumstances and are likely to need relatively speedy action. The Bill requires the Secretary of State to publish a statement setting out how he has taken account of the views of the Devolved Administrations.

5. The UK Bill also requires that the Secretary of State make regular reports to the UK Parliament with regard to the measures being taken to tackle climate change, including details of proposals and policies for meeting carbon budgets, and an annual statement on emissions levels. The Bill does not place a duty on the Devolved Administrations to contribute to the report, but requires the Secretary of State to consult them so far as the report relates to proposals and policies of the Devolved Administrations. In practice the Devolved Administrations would contribute to the reports so that they are of UK-wide coverage and would submit copies to the appropriate Parliament or Assembly.

Committee on Climate Change

6. The Bill contains provisions to establish an independent, expert advisory Committee on Climate Change and for it to advise the UK Government and Devolved Administrations on climate change and, in particular, on carbon budgets and targets and on the contribution that can be made by sectors involved in trading schemes and by other sectors of the economy. An early task for the Committee will be to report on whether the 60% target is the appropriate level.

7. Devolved Administrations may also request advice in connection with any targets of their own. This allows – but does not oblige – the Scottish Ministers to use the Committee on Climate Change as a source of advice, analysis etc in support of the 80% emissions reduction target proposed to be included in a Scottish Climate Change Bill.

8. The Committee will be a jointly sponsored body and the four administrations will take decisions jointly on appointments etc. The Committee is currently being established in a shadow form to allow it to begin work before the Bill is enacted. These early appointments will be made jointly as they would be for the statutory committee. A specification for recruitment is that the Committee's membership must include an understanding of the capacities of the different administrations to take action and the relationship between reserved and devolved functions.

9. The Bill requires the Committee to submit reports on progress towards carbon budgets and targets to the UK Parliament and the devolved legislatures. It requires the Committee to provide its advice on carbon budgets to the devolved administrations at the same time as to the Secretary of State. The Committee must submit its annual report and statement of accounts to Ministers of all administrations for onward transmission to all legislatures.

10. The UK Bill also provides for the Scottish Parliament to call the Committee to give evidence and for the Scottish Public Services Ombudsman to investigate complaints about the Committee's exercise of its functions within devolved competence.

Enabling powers for emissions trading schemes

11. The Bill provides enabling powers to allow future trading schemes relating to greenhouse gas emissions to be set up without the need for further primary legislation. The powers provide a framework for establishing such schemes and are expressed in such terms as to allow flexibility to accommodate a range of possible schemes over many years. Schemes would be introduced by secondary legislation and would be subject to consultation on the detail. An early use of the Bill's powers will be to establish the Carbon Reduction Commitment, a trading scheme involving large, non energy

intensive users such as local authorities, hospitals and retail. The opportunity of this Bill is taken to amend the Energy Act 2004 to introduce similar features into the framework contained in that Act for the imposition of Renewable Transport Fuel Obligations.

12. The powers to set up schemes might be exercised in a variety of ways.

- The Secretary of State would have the power in relation to England-only schemes or to schemes involving reserved matters.
- The Devolved Administrations would be able to establish schemes covering devolved aspects in their own territories. The Bill gives the Scottish Ministers the power to establish devolved, Scotland-only schemes. These powers may be complementary or in addition to any powers that may be included in any future Scottish Bill.
- Schemes could be established involving more than one administration. This might be done by parallel regulations in the countries concerned. Alternatively it might be done by means of a single instrument which would be considered by the legislatures of the participating countries. Where Scotland is a party to the scheme it will be made in an Order in Council.

Other provisions about climate change

13. The Bill requires the Secretary of State to provide to the UK Parliament:

- an assessment of the risks of climate change;
- a programme of action to adapt to the risks; and
- an assessment of progress towards adaptation.

The first risk assessment must be produced within 3 years and subsequent assessments at intervals of no more than 5 years. The programme of action and assessment of progress would follow a similar timetable.

14. At the request of the Devolved Administrations the risk assessment will provide analysis of the situation in the UK as a whole. The duty to produce the risk assessment will be placed on the Secretary of State as the risks apply to the whole of the UK and most of the relevant research is commissioned by the Secretary of State. The Secretary of State will also be required to send a copy of the report to each Devolved Administration who would lay it before their respective Parliament or Assemblies.

15. The programme of action and assessment of progress are, however, to be for England and reserved matters only. At the request of Wales and Northern Ireland the Bill places a duty on those administrations to lay programmes of action to adapt to climate change before the Welsh and Northern Ireland Assemblies. The Scottish Government intends to consult on the inclusion of a reporting requirement on adaptation in the proposed Scottish Climate Change Bill.