The Committee will meet at 2 pm in the Debating Chamber, Assembly Hall, the Mound, Edinburgh

1. **Energy Bill – UK Legislation:** the Committee will take evidence from:
   - Lewis Macdonald MSP, Deputy Minister for Enterprise and Lifelong Learning;
   - Allan Wilson MSP, Deputy Minister for Environment and Rural Development;

   on the Energy Bill.

2. **Individual Learning Accounts in Scotland:** the Committee will take evidence from Jim Wallace MSP, Deputy First Minister and Minister for Enterprise and Lifelong Learning on the reintroduction of the Individual Learning Accounts scheme in Scotland.

3. **Higher Education Bill – UK Legislation:** the Committee will take evidence from Jim Wallace MSP, Deputy First Minister and Minister for Enterprise and Lifelong Learning on the Higher Education Bill.

4. **Broadband Access in Scotland:** the Committee will consider a draft remit for its proposed inquiry into broadband access in Scotland.

5. **Renewable Energy in Scotland:** the Committee will consider a paper reviewing the progress to date of its inquiry on renewable energy in Scotland.

Judith Evans
Clerk to the Committee (Acting)
Room 2.7, Committee Chambers
Ext. 0131 348 5214
The following meeting papers are enclosed:

**Agenda Item 1**

Cover paper on UK Energy Bill (including Executive Memorandum on Sewel Motion)  
EC/S2/04/02/1

SPICE briefing 04/05  
EC/S2/04/04/2

*Members will also receive hard copy of the UK Energy Bill and associated memorandum. This is available online at: http://www.publications.parliament.uk/pa/ld200304/ldbills/002/2004002.htm*

**Agenda Item 2**

Cover paper on the Individual Learning Accounts scheme  
EC/S2/04/04/3

Submission from the Scottish Executive: Draft Regulations and Guidance *(paper to follow)*  
EC/S2/04/04/4

Audit Committee’s report on ‘Individual Learning Accounts in Scotland, 1st Report 2004 (Session 2) (SP paper 72)’. This report is available online at: http://www.scottish.parliament.uk/audit/reports/aur04-01-01.htm  
EC/S2/04/04/5

EC/S2/04/04/6

**Agenda Item 3**

Cover paper on UK Higher Education Bill (including Executive Memorandum on Sewel Motion)  
EC/S2/04/04/7

*Members will also receive hard copy of the UK Higher Education Bill and associated memorandum. This is available online at: http://www.publications.parliament.uk/pa/cm200304/cmbills/035/2004035.htm*

**Agenda Item 4**

Paper on the remit for the proposed ‘Broadband Access in Scotland’ inquiry  
EC/S2/04/04/8

SPICE Briefing 04/04  
EC/S2/04/04/9

**Agenda Item 5**

Review paper on the progress to date of the ‘Renewable Energy in Scotland’ inquiry  
EC/S2/04/04/10
Introduction

This paper sets out the arrangements for the Committee’s consideration of devolved matters which are contained within a UK Bill – the Energy Bill.

Parliament is due to debate a ‘Sewel Motion’ (S2M-787) in the name of Mr Jim Wallace MSP, Deputy First Minister and Minister for Enterprise and Lifelong Learning: ‘That the Parliament agrees that those provisions in the Energy Bill that relate to devolved matters and those that confer executive powers and functions on the Scottish Ministers should be considered by the UK Parliament.’

Lewis Macdonald MSP, Deputy Minister for Enterprise and Lifelong Learning, and Allan Wilson MSP, Acting Minister for Environment and Rural Development, will appear before the Committee at this meeting to answer any queries members may have on the Motion, in advance of the debate in the Parliament. A date for the debate has not yet been agreed but it is provisionally expected to take place in the week commencing 2 February 2004.

This Bill has elements which relate to the remit of the Environment and Rural Development Committee. The Environment and Rural Development Committee agreed at its meeting on 14 January 2004 to appoint Rob Gibson MSP as a reporter to the Committee. Issues raised by the Reporter may include environmental responsibilities, SEPA, Dounreay and nuclear power stations.

Sewel Motions

A Sewel Motion is a device by which the Executive invites the Scottish Parliament to agree to allow the UK Parliament to legislate on relevant devolved matters. The motion is a matter of convention rather than law, and the decision of the Scottish Parliament therefore has no legal effect. Instead, in agreeing or disagreeing to the motion, the Scottish Parliament will be expressing a view on the matters referred to in the motion.

Executive Memorandum

The Executive has prepared a memorandum – attached at Annex A – which outlines the terms of the UK Energy Bill and highlights the provisions which relate to devolved matters.

The Bill is enclosed, together with the UK government’s Explanatory Note, and a SPICe research briefing is also attached for members’ information.
The Bill was introduced in the House of Lords on 27 November 2003, had its second reading on 10 December and went to Grand Committee stage on 15 January. When the Grand Committee has completed its consideration of the Bill, it will have a third reading in the House of Lords. If the House of Lords passes the Bill it will then go to the House of Commons for consideration.

**Procedure**

As there are no formal procedures for the consideration of Sewel Motions set out in Standing Orders, there is no formal requirement for the Committee to report to the Parliament.

Judith Evans  
Clerk to the Committee (Acting)
MEMORANDUM

ENERGY BILL

Motion

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

**Energy Bill**: "That the Parliament agrees that those provisions in the Energy Bill that relate to devolved matters and those that confer executive powers and functions on the Scottish Ministers should be considered by the UK Parliament."

Background

2. The Energy Bill, introduced in the House of Lords on 27 November incorporates proposals affecting the nuclear industry, renewable energy and the regulation of the electricity and gas markets. The provisions on the nuclear industry emerged from the consultation following the White Paper “Managing the Nuclear Legacy – A Strategy for Action” (Cm. 5552, July 2002) and the proposal to establish the Nuclear Decommissioning Authority were included in the draft Nuclear Sites and Radioactive Substances Bill, published for consultation in June 2003 and in the memorandum submitted to the Environment and Rural Affairs Committee at that time. The proposals on renewable energy emerged from the consultation which took place through the White Paper “Our energy future: creating a low carbon economy” (Cm. 5761, February 2003).

3. The purpose of this memorandum is to outline the terms of those provisions in the Bill that require the consent of the Scottish Parliament, by virtue of the Sewel Convention, because they apply to Scotland and are for devolved purposes, or alter the legislative competence of the Parliament or the executive competence of the Scottish Ministers.

Content of the Bill

4. The Bill deals with a range of issues related to the energy and nuclear industry, some of which are reserved and some of which are devolved. Primarily,

- The establishment of the Nuclear Decommissioning Authority (NDA), a UK-wide Non-Departmental Public Body with a specific remit to ensure the nuclear legacy is cleaned up safely, securely, cost effectively and in ways which protect the environment for the benefit of current and future generations.
- Amendments to the Radioactive Substance Act 1993, (RSA 93). The main amendment allows for "fast-track" transfers of authorisations, issued by SEPA to nuclear site operators, for the disposal of radioactive waste.
- Provisions to separate the UK Atomic Energy Authority (UKAEA) Constabulary from UKAEA and reconstitute it as the Civil Nuclear Constabulary (CNC) under a statutory Police Authority (the Civil Nuclear Police Authority).
- The creation of a Renewable Energy Zone (REZ), which will permit HM Government to extend regulation of offshore renewable energy activities beyond territorial waters. The regulatory proposals associated with the creation of the REZ mean that police powers, and the jurisdiction of criminal and civil law will be extended into the REZ.
• The designation of safety zones around offshore wind farms. A safety zone would allow the Secretary of State to regulate shipping movements and activity in the immediate area. The Bill also provides for the Secretary of State and the Scottish Ministers to approve an application to extinguish the public right of navigation around a wind farm.
• Provision that all offshore renewable energy facilities should be subject to a requirement that ministerial approval will be required for decommissioning proposals.
• Provision to amend the Electricity Act 1989 so that the renewable energy obligations can be met from electricity generated in Northern Ireland.
• Allowing the Scottish Ministers to direct Ofgem to pay surplus Fossil Fuel monies into the Scottish consolidated fund. The Bill also provides that Scottish Ministers will make provision in budget proposals to the Scottish Parliament that these sums are used to promote renewable energy in Scotland.

Proposals

5. Nuclear Decommissioning Authority (Part 1: Chapter1)

Chapter 1 sets out the arrangements for the establishment of the Nuclear Decommissioning Authority (NDA) as a Non Departmental Public Body (NDPB) with responsibility for civil public sector nuclear liabilities. The primary functions of the NDA will be the decommissioning and clean up of sites, primarily those currently owned by BNFL and the UKAEA, across the UK. Schedules 1, 2 and 3 of the Bill provide further detail on the setting up of, and procedural arrangements for, the NDA.

(a) Consultation

The NDA provisions of the Energy Bill were published in draft for public consultation as the Nuclear Sites and Radioactive Substances Bill. That draft was the subject of the memorandum of 24 June 2003, by the Scottish Executive, to the Environment and Rural Affairs Committee but it did not reflect the roles of the Scottish Ministers and the Scottish Parliament in the NDA.

(b) Background

In November 2001, the UK Government announced its intention to reform the arrangements for cleaning up the UK’s civil public sector nuclear liabilities. The Scottish Executive was fully involved in the preparation of the White Paper, Managing the Nuclear Legacy - a strategy for action (Cm 5552), published in July 2002, which set out detailed proposals to improve the way that clean up is managed. Proposals related to both reserved and devolved matters. Management of civil nuclear sites is a reserved matter, whereas policy on radioactive waste, as administered under the Radioactive Substances Act 1993 (RSA93), the subject matter of which is an exception to the reservation under Schedule 5 of the Scotland Act 1998, is devolved. The White Paper proposed the establishment of a new body, the Liabilities Management Authority, now known as the NDA. The NDA will have strategic responsibility for the management of the legacy sites and wastes.
Content

(i) Chapter 1, and Schedules 1, 2 and 3 of the Bill will give effect to the White Paper proposals with provisions to establish the NDA, its constitution, staffing, core functions, duties and powers, reporting requirements, financial and accounting arrangements. The NDA will have functions that relate to both reserved and devolved matters and so will be similar to cross-border authorities designated under section 88 of the Scotland Act 1998. The Bill provides for the Secretary of State to act jointly or in consultation with the Scottish Ministers subject to circumstances described. It also provides for reporting arrangements to the Scottish Parliament. It is proposed that the NDA will be obliged to have particular regard to relevant Government policy including that of the Scottish Executive and the other devolved administrations.

(ii) The Scottish Ministers will be involved in the approval processes for appointments to the NDA and for its strategy and annual plans. NDA reports and accounts and directions made jointly by the Secretary of State and the Scottish Ministers will be laid before the Scottish Parliament. The NDA will have the function of providing advice in or as regards Scotland to the Scottish Ministers either on request or on its own initiative.

(iii) The Secretary of State will act in consultation with the Scottish Ministers when making the appointment of the Chairperson and non-executive members or approving the appointment of the chief executive of the NDA and will also consult the Scottish Ministers before removing any appointees from office. The Secretary of State and the Scottish Ministers will jointly make directions which confer responsibilities on the NDA in relation to the disposal of hazardous materials (including radioactive waste) and the operation of disposal facilities on any nuclear site in Scotland. Directions will also be made jointly concerning the cleaning-up, decommissioning, treatment and storage of hazardous materials on certain principle nuclear sites in Scotland. The Secretary of State will consult the Scottish Ministers for directions which give the NDA responsibility for the operation of treatment and storage facilities on licensed, Crown or nuclear research sites before such a direction is made. Consultation will not apply where the facility to be operated is for the processing or reprocessing of spent (or irradiated) nuclear fuel.

(iv) Chapter 1 also provides that, before making an order to modify certain provisions the Secretary of State will consult the Scottish Ministers and seek their consent, should the order modify any of their functions in particular. Schedule 1 transposes sections 23(2)(b), 70(6) and 91(3)(d) of the Scotland Act 1998, to have effect as if the NDA were a cross-border public authority.

6. Civil Nuclear Constabulary (Part 1: Chapter 3)

Chapter 3 of Part 1 of the Bill seeks to modernise and strengthen the independence of the policing arrangements for civil licensed nuclear sites by the removal of the UK Atomic Energy Authority (UKAEA) Constabulary from UKAEA and for its reconstitution as the Civil Nuclear Constabulary (CNC), under a statutory Police Authority (the Civil Nuclear Police Authority). Once established, the CNC’s primary function will be to protect civil
licensed nuclear sites and nuclear material. This will replace the current system under which special constables are nominated by UKAEA for this purpose. The provisions seek largely to replicate the existing jurisdiction of the UKAEAC but they do not seek to change the way in which the present Constabulary works in co-operation with the Scottish Police Service. This is broadly in line with what has already been done in relation to other GB special police forces such as the British Transport Police (BTP) and the Ministry of Defence Police. While nuclear security is reserved, there are various devolved aspects to the proposals and on which the Executive is recommending agreement by means of this Sewel motion.

(a) Jurisdiction of the CNC

Members of the CNC will retain existing powers. Thus they will have all the powers and privileges of a constable at every place comprised in a relevant nuclear site (i.e. a licensed nuclear site other than a designated defence site); everywhere within 5 km of such a place; at every trans-shipment site at which a member of the Constabulary believes it expedient to be in order to safeguard nuclear material whilst it is at the site; and at every other place at which a member of the Constabulary believes it expedient to be in order to safeguard nuclear material which is in transit. This is very largely a re-enactment of UKAEAC jurisdiction. The 5km provision was specifically intended (and the distance chosen) for reasons of nuclear security to enable the Constabulary to patrol an appropriate area around the sites in order to protect them from attack. The principle purpose of the CNC is the policing of nuclear security: not to assist the Scottish police in the investigation and detection of crime in a general sense. However, this touches on a devolved area as only the Scottish Parliament can determine the powers and privileges of a constable in Scotland and could thus competently confer devolved functions on the CNC, but only in respect of its civilian policing activities. Protocols between the UKAEAC and the Scottish Police forces work well to ensure adherence to the respective jurisdictions. These would continue under the proposed new arrangements.

(b) Inspection of the CNC

Inspection of the UKAEAC is currently conducted on a voluntary basis every 3 years and follows the normal HM Inspectors of Constabulary (HMIC) format. The aim is to examine the efficiency and effectiveness of the whole force, particularly specialist aspects, such as firearms handling, across all, or most, of the nuclear sites that it protects. That would include Chapelcross and Dounreay in Scotland. The inspection is conducted by HMIC (E&W) and its inspection teams are accompanied by a Lead Staff Officer from HMIC (Scotland) for the Scottish sites, in order to ensure that these inspections properly reflect Scottish conditions. The inspection arrangements are placed on a statutory footing by the Bill but are otherwise intended to continue with little practical change through formal consultation on the scope and conduct of the Inspection, which would include agreement (as now) between the two Inspectorates on the level of direct Scottish involvement. The function of the CNC is generally a reserved matter, but may touch on devolved matters where an inspection relates to a civilian policing activity.

(c) Collaboration agreements between Scottish forces and the CNC

Scottish police forces can and do enter into collaboration agreements with each other in specified circumstances and Scottish Ministers can direct (after representation) police forces to enter into such agreements. The policy is to allow the CNC and the Scottish forces the
capability to engage in collaboration agreements and to put these arrangements on a statutory basis. Scottish Ministers will also, jointly with the Secretary of State (as in the case of the British Transport Police), be able to direct Scottish forces to enter into an agreement with the CNC. These issues touch on a devolved area as collaboration agreements may relate to efficiency or provision of equipment in relation to the civilian policing activity of the CNC.

As nuclear security is reserved, this chapter of the Bill has no new financial implications for the Scottish Executive.

7. Authorisations relating to radioactive waste (Part 1: Chapter 4)

(a) Purpose

Chapter 4 sets out proposed amendments to the Radioactive Substances Act 1993 (RSA93), the subject matter of which is an exception to the reservation of nuclear energy and nuclear installations under Schedule 5 of the Scotland Act 1998, and, hence, devolved.

(b) Consultation

The proposed amendments were published in draft for public consultation as part of the Nuclear Sites and Radioactive Substances Bill. That draft was the subject of the memorandum of 24 June 2003, by the Scottish Executive, to the Environment and Rural Affairs Committee.

(c) Content

(i) The Bill proposes inserting a new section 16A into RSA93 to allow for "fast-track" transfers of authorisations, for the disposal of radioactive waste from nuclear sites, from one nuclear site operator to another. At present, RSA93 does not allow the transfer of authorisations. Rather, any new operator must apply for a new authorisation and the authorising authority, in Scotland the Scottish Environment Protection Agency (SEPA), will then go through its full determination process which, on nuclear sites, tends to be protracted and resource intensive. "Fast-track" transfer will be allowed when there is a new operator for a nuclear site, but there is otherwise no need for the existing limitations and conditions of authorisation to change. Such a transfer may be deemed necessary if the Nuclear Decommissioning Authority (as proposed in Chapter 1 of the Bill) is to be able to award management contracts to new site operators, for example, in the event of under performance by an existing site operator.

(ii) In addition, it is proposed that the process of variation of the conditions attached to any RSA93 authorisations be changed, with the insertion of new provisions within section 17 of the Act. At present, only SEPA can initiate the variation of an authorisation. Currently if an operator wants any change to its authorisation, it requires the full process of a new application, whereas, under the proposed new section, operators will be able to apply for a variation to their authorisations.

(iii) A new section 17A is to be inserted in RSA93 to provide for the periodic review of the limits and conditions of authorisations granted under sections 13 or 14 of RSA93, whether on nuclear sites or other premises. In addition, the authorising authorities
will have a discretionary power to carry out such additional reviews, as they consider necessary. This replaces the existing administrative procedure whereby the authorising authorities undertake periodic reviews of authorisations.

(iv) Schedule 15 details the consequential amendments required to RSA93.

8. **Renewable Energy Zone (Part 2: Chapter 1)**

(a) **Background**

(i) Although energy is a reserved matter, the Scottish Ministers have certain powers under Executive Devolution Orders to promote renewable energy in Scotland and to consider applications for consent under the Electricity Act 1989. The proposals to create the REZ, although mainly concerned with waters beyond the territorial sea, and therefore not in Scotland, also affect renewable energy developments in coastal and territorial waters. They also contain measures affecting public rights of navigation; the establishment of Safety Zones in and around offshore renewable energy installations; and the jurisdiction of the police. These proposals therefore affect devolved powers.

(ii) Sections 76 and 78 allow for Scottish ministers to be consulted prior to an Order in Council applying criminal and civil law in the REZ. Agreement has also been reached that the existing executively devolved powers for Scottish Ministers to consent to electricity generating stations in Scotland will be extended to the Scottish part of the REZ.

(b) **Proposals**

(i) Chapter 1 creates a legal framework for offshore renewable energy developments beyond territorial waters based on the rights available to the UK as a contracting party to the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The UK Government published proposals to establish a Renewable Energy Zone under UNCLOS in its Energy White Paper and Chapter 1 implements these proposals. The limits of the REZ will be set out in an Order in Council and the Scottish Ministers will be consulted about how these limits will apply in waters adjacent to Scotland.

(ii) Chapter 1 also augments the existing framework of law, which applies to offshore renewable energy developments in territorial and internal waters. The effect is to create a common legal regime for all offshore renewable energy developments whether they are located in internal waters, territorial waters or a Renewable Energy Zone.

(c) **Policing of the Renewable Energy Zone (REZ)**

(i) Chapter 1 of part 2 of the Bill provides for the extension of the powers of the police to investigate alleged offences in the REZ. This touches on a devolved area, hence the need for a Sewel motion. An Order in Council power is to be allocated to the Scottish Ministers to provide that a constable is to have on, under or above a renewable energy installation situated in all Scottish waters to which this section applies (internal,
(ii) Renewable energy installations will typically be unmanned – other than pre-construction, during construction or immediately post-construction. Staffing levels then will vary, but could be simply one boat/small ship and during construction perhaps a handful of craft each with a small crew. Given that installations that do come into being will be unmanned the policing commitment is never likely to be high and the need for the police to become involved in policing installations in the REZ is likely only to occur very rarely. The financial implications of this part of the Bill are likely to be minimal.

(d) Maritime Safety

(i) Clauses 82-87 deal with the maritime safety aspects of offshore renewable installations. They provide for safety zones to be established and for public rights of navigation to be extinguished around these installations. The Executive supports the objective of ensuring the safe operation of vessels and crew working on or around these installations, and agrees that maritime activities around them should be properly regulated.

(ii) Under clauses 82-85 a safety zone may be established around an installation in waters out to the 12 mile territorial sea limits around Great Britain, and also beyond that in the Renewable Energy Zone (REZ), which may extend out to the 200 mile limit. The Scottish Executive has agreed with the Department of Trade and Industry (DTI) that, in relation to Scotland, approval of a safety zone should fall to the Secretary of State, but would be subject to consultation with Scottish Ministers as provided for in Clause 82(4) of the Bill. Scottish Ministers, therefore, will be consulted about cases arising within the 12 mile territorial sea limit adjacent to Scotland, and also for cases beyond that, in the “Scottish part” of the REZ as provided for in Clause 75(5) of the Bill.

(iii) Clauses 86-87 provide for the public right of navigation to be extinguished around an offshore installation. They apply only out to the territorial sea limit (12 miles). A public right of navigation exists in the sea within territorial waters, rivers, lochs and the foreshore. These provisions address the possibility of a development being either a public nuisance or a potential cause of damage. The provisions, therefore, also support the objective of ensuring maritime safety around an offshore renewable installation.

(iv) The procedure for implementing this provision will fall to Scottish Ministers. The public right of navigation falls within devolved competence, since it is a Crown property right but exempted from the Crown reservation in the Scotland Act 1998 (para 1 (a) Part 1 of Schedule 5 to the Scotland Act 1998). The procedure involved is built into the legislation for administering consents under section 36 of the Electricity Act 1989.
These provisions confirm the commitments made to the Parliament during the final stage debate on the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill.

10. Decommissioning of offshore renewable energy installations (Part 2: Chapter 2)

(a) Background

UNCLOS places an obligation on contracting parties to ensure that renewable energy installations in a Renewable Energy Zone are decommissioned. Chapter 2 sets out a regime for the decommissioning of such installations.

(b) Proposals

(i) The Bill gives powers to the Secretary of State to give notice to developers that they are required to prepare, for the approval of the Secretary of State, a programme for the decommissioning of all offshore renewable energy installations.

(ii) The Bill also gives powers to the Secretary of State to require the developer to put in place financial security to cover the cost of these decommissioning programmes and to review this security as necessary.

(iii) The Bill contains provisions (Section 92) for Scottish Ministers to be consulted prior to the notice being served and in advance of the approval, or rejection, of proposals in respect of a development within territorial waters adjacent to Scotland and in the Renewable Energy Zone adjacent to Scotland. These consultation requirements are similar to those that apply under the Petroleum Act in respect of the decommissioning of offshore oil and gas installations.

11. Renewable Sources in Northern Ireland (Part 2: Chapter 3)

(a) Background

(i) Under the Electricity Act 1989 (c.29) and the Renewables Obligation (Scotland) Order 2002 (S.S.I. 2002/163) electricity suppliers in Scotland have a “renewables obligation” to produce to the Gas and Electricity Markets Authority (“GEMA”) certain evidence regarding the supply to customers in Great Britain of electricity generated by using renewable sources. The evidence required is Renewables Obligation Certificates (“ROCs”) issued by the industry regulator. Electricity suppliers in England & Wales have a similar renewables obligation under the Renewables Obligation Order 2002 (S.I. 2002/914). These are known as the Renewables Obligations.

(iv) The provision in the Electricity Act that provided for the creation of these Renewable Obligations did not extend to Northern Ireland. This means that renewable energy generated in Northern Ireland does not meet the requirements of the renewables Obligations and vice versa. The establishment of the electricity interconnector between Scotland and Northern Ireland now makes it possible for renewable energy to
be traded between GB and Northern Ireland and the proposal is to empower secondary legislation so that the ROCs can similarly be traded.

(v) Northern Ireland has not yet made a renewables obligation Order, but it has recently enacted legislation which is analogous to the provisions of the Electricity Act that put in place the renewables obligation. That legislation requires Northern Ireland suppliers to produce, as evidence, Northern Ireland Renewables Obligation Certificates (“NIROCs”) issued by the Northern Ireland equivalent of GEMA, the Northern Ireland Authority for Energy Regulation (“Ofreg”).

(b) Proposals

(i) This Chapter provides for the recognition in Great Britain of Renewables Obligation Certificates issued in Northern Ireland. This will allow reciprocal arrangements to come into force from the outset of the renewables obligation for Northern Ireland. The Northern Ireland Order, which will allow reciprocal arrangements, is expected to come into force on 1 April 2005.

(ii) These provisions will require secondary legislation to amend the Renewables Obligation (Scotland) Order 2002 (S.S.I. 2002/163).

12. Payments of sums raised by fossil fuel levy (Part 3:Chapter 4)

(a) Background

(i) The price paid by electricity suppliers for electricity generated under Scottish Renewable Obligation (SRO) contracts was above the market price for electricity. Suppliers were compensated for their additional costs by payments made out of the Fossil Fuel Levy. Under subsequent arrangements introduced to encourage renewable energy generation, Renewable Obligation Certificates (ROCs) associated with electricity generated under the SRO arrangements can be sold, and the proceeds used to meet the additional costs incurred by suppliers under the SRO contracts. In practice, the proceeds realised have been sufficient to meet costs incurred and collection of the Fossil Fuel Levy has therefore ceased.

(ii) However, before Levy collection ceased, a surplus accumulated in the Levy fund. This was due to two factors; a slowing down in development and subsequent over collection of levy payments by the regulator, Ofgem, and secondly, the sale of ROCs generating more in revenue than it cost suppliers to generate the electricity. The Scottish Executive understands from Ofgem that the current total surplus in the Fund is likely to be of the order of £8-10 million.

(iii) Although existing legislation allows for collection of the levy by Ofgem, no powers exist to give that body any authority to do anything with the accumulated surplus.

(iv) The necessary powers to release the surplus need to be conferred under section 33 of the Electricity Act. Although the existing section 33 powers are executively devolved, the further amendment has to be made at Westminster since it amends the Act in a way that is not consistent with the Executive’s limited devolved power to amend section 33 of that Act.
(b) **Proposals**

(i) Section 135 of the Bill proposes giving Scottish Ministers the power to direct Ofgem to pay into the Scottish Consolidated Fund monies from funds paid to Ofgem under the Fossil Fuel Levy arrangements and arising from the auctioning of electricity generated under SRO contracts. It also proposes a corresponding duty on Scottish Ministers to include in budget proposals to the Scottish Parliament that monies thus raised shall be used to promote the use of energy from renewable sources. Renewable energy will be defined as sources of energy other than fossil fuel or nuclear fuel.

(ii) This provision will enable the Scottish Executive to provide the additional support necessary to meet its commitment to increasing the amount of renewable energy produced in Scotland. Similar powers were obtained by the DTI Secretary of State through a recent Private Members Bill at Westminster.

The Scottish Executive
December 2003
This briefing is designed to give some background to the UK Energy Bill which is due to be considered as a Sewel motion by the Enterprise and Culture Committee on 27 January 2004. It does not go into the detail of each part of the Bill, but picks out highlights which are particularly relevant to Scotland.
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BACKGROUND

The Energy Bill [HL Bill2] was introduced to the House of Lords on 27 November 2003, and has accompanying Explanatory Notes (2003). It has had two readings, on 27-November 2003 and 11 December 2003. The Bill has now gone into Lords Committee stage, after which there will be a final reading in the Lords, followed by the Bill’s passage into the House of Commons. Progress of the Bill (UK Parliament 2004) can be followed directly on the UK Parliament website. The House of Commons Library will produce a detailed Research Paper on the Bill when it enters its Commons phase.

Designed to implement some of the commitments laid down in the Energy White Paper published last year (DTI 2003), the Bill has implications for devolved areas of policy making, and will be considered as a Sewel Motion by the Enterprise and Culture Committee of the Scottish Parliament on 27 January 2004. This briefing is designed to highlight some of the areas which will have an impact in Scotland. The DTI has published a Regulatory Impact Assessment (DTI 2003a). The Scottish Executive has produced a Memorandum on the Bill available in the Enterprise and Culture Committee papers for the meeting on 27 January 2004 (Scottish Parliament 2004a) although it does not enter into any detail on certain aspects of Part 3 of the Bill.

The Bill aims to:

- Establish the Nuclear Decommissioning Authority (NDA) as a new public body to ensure the decommissioning and cleanup of Britain’s civil public sector nuclear sites
- Create a new Civil Nuclear Police Authority to oversee a reconstituted nuclear constabulary directly accountable to the Secretary of State for Trade and Industry
- Establish a comprehensive legal framework to support offshore renewable energy developments
- Create a single wholesale electricity market for Great Britain, bringing greater choice for consumers in Scotland and providing all generators and suppliers with access to a GB-wide market.

DETAIL OF THE BILL

The Bill comprises three parts:

1. The Civil Nuclear Industry
2. Renewable Energy Sources
3. The British Electricity Trading & Transmission Arrangements (“BETTA”)

PART 1 – THE CIVIL NUCLEAR INDUSTRY

The subject matter of Part 1 of the Bill was initially consulted on as part of the draft Nuclear Sites and Radioactive Substances Bill (DTI 2003d). This draft Bill was considered by the House of Commons Trade and Industry Committee in its Report of 29 October 2003. The Government aims to respond to the Committee’s recommendations shortly.

Part 1 of the Bill will establish the Nuclear Decommissioning Authority (NDA) as a new public body to ensure the decommissioning and cleanup of Britain’s civil public sector nuclear sites. It is hoped that the NDA will be established by April 2005.
Currently, UKAEA (United Kingdom Atomic Energy Authority) has responsibility for decommissioning and restoring sites at Dounreay, Windscale, Harwell and Winfrith, whilst BNFL run the older Magnox nuclear power stations, including Chapelcross. NDA will have responsibility for decommissioning the UKAEA and BNFL sites. UKAEA have welcomed the proposals in the Energy Bill, which will see their status change to that of a contractor for the management of sites. UKAEA will be given the opportunity to illustrate that it can be the preferred contractor (UKAEA 2003). BNFL has been given a new strategic direction (BNFL 2003) which includes:

- establishment of a new parent company in April 2005 which will hold those parts of BNFL that will not become the responsibility of the NDA
- following creation of the NDA, the principal focus of the successor company will be clean-up at UK sites
- a new group of subsidiary companies will be set up with initial responsibility for managing clean-up operations at sites under arrangements to be agreed by the NDA
- the vast majority of the existing BNFL UK workforce will remain employed by companies that operate current BNFL sites – other employees will transfer into companies within the clean-up group
- a new Nuclear Science and Technology Company (NSTS) will be formed as a subsidiary, and will provide research and technology services on a commercial basis.

BNFL will continue to have responsibility for Chapelcross for a few years, but eventually this will be put out to tender, hence the need for legislation which allows transfer of site licenses.

Whilst management of nuclear sites is a reserved matter, radioactive waste policy is devolved and responsibility for implementation lies with SEPA. As the Executive’s Energy Bill Memorandum points out “The NDA will have strategic responsibility for the management of legacy sites and wastes.”

Given that the NDA will have functions relating to devolved and reserved matters, it will operate in a similar fashion to other cross-border authorities designated under section 88 of the Scotland Act 1998. The Scottish Executive Memorandum states:

“The Secretary of State and the Scottish Ministers will jointly make directions which confer responsibilities on the NDA in relation to the disposal of hazardous materials (including radioactive waste) and the operation of disposal facilities on any nuclear site in Scotland. Directions will also be made jointly concerning the cleaning-up, decommissioning, treatment and storage of hazardous materials on certain principle nuclear sites in Scotland. The Secretary of State will consult the Scottish Ministers for directions which give the NDA responsibility for the operation of treatment and storage facilities on licensed, Crown or nuclear research sites before such a direction is made. Consultation will not apply where the facility to be operated is for the processing or reprocessing of spent (or irradiated) nuclear fuel.”

SEPA’s response to the draft Nuclear Sites and Radioactive Substances Bill, where initial proposals were floated, indicated that it would value the chance to comment on an amended text which reflected the fact that there will be devolved aspects to the legislation. At this time SEPA was also of the view that as radioactive waste policy was last updated in 1995, it was time for a review.
SEPA’s response to the preceding Government White Paper ‘Managing the Nuclear Legacy’ (DTI 2002) stated, amongst other things that SEPA (DTI 2002a):

- Broadly welcomed the White Paper and a Liabilities Management Unit (LMU) within DTI
- Would wish to satisfy itself that prospective licensees have sufficient technical and management skills to ensure compliance with any authorisations granted
- Saw a need for a Memorandum of Understanding to be drawn up quickly between the Liabilities Management Authority (now proposed to be NDA) and SEPA
- Expressed concern about the absence of legislation on requirement to deal with radioactively contaminated land.

It is worth noting that there is an ongoing DTI (2003b) consultation into modernising the policy for decommissioning the UK’s nuclear facilities. This consultation runs to 27 February 2004.

Some NGO’s have expressed concerns around Part 1 of the Bill. Greenpeace (2004) state that:

“The Bill fails to give the NDA an overarching objective or environmental principles. Lack of environmental principles could lead to inappropriate methods of nuclear waste management being promoted, decommissioning being used as an excuse for increased discharges of radioactivity, a failure to prioritise the immobilisation of the most hazardous waste, and unnecessary transfers of waste from one site to another. For example SEPA is currently consulting on proposals to transport hundreds of tonnes of radioactive waste from Dounreay to Drigg in Cumbria. “

“The NDA will only have an obligation to meet regulatory requirements. Yet the UK’s nuclear regulatory system is in a mess. Statutory Guidance to SEPA on radioactive discharges is long overdue. But ‘patching it up’ by producing Guidance and Memorandums of Understanding (MoUs), can be no substitute for including environmental principles in the primary legislation for the NDA.”

PART 2 – RENEWABLE ENERGY SOURCES

At present there is no comprehensive legal framework in place for offshore renewable energy developments beyond the 12 nautical mile limit of UK territorial waters. However, as a contracting party to the United Nations Convention on the Law of the Sea [also known as UNCLOS] (United Nations 1982), the United Kingdom has rights to waters extending beyond the territorial limit.

Part 2 of the Bill seeks to establish Renewable Energy Zones (REZ) beyond the territorial limit, with Scottish Ministers having certain powers, including approval of renewable energy developments in line with powers they already hold on land under section 36 of the Electricity Act 1989 (c29). Local authorities deal with certain sizes and categories of renewable development on land - similar powers for offshore development would mean a requirement for technical expertise at local levels to deal with issues such as offshore development of wind and marine technologies.

The limits of the REZs will be set out in an Order in Council with Scottish Ministers consulted.

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1 Issued by the Privy Council and relating to regulation of professional bodies, or the transfer of responsibilities between government departments, ‘Orders in Council’ are classified as secondary legislation. Normally alterations to legislation are made using statutory instruments, but where this is inappropriate Orders in Council are used.
There are further measures in the Bill which relate to devolved matters in the REZs, including:

- Public rights of navigation
- Establishment of safety zones
- Police jurisdiction
- Decommissioning of installations

The Bill allows for Scottish Ministers to be consulted prior to an Order in Council applying criminal and civil law in the REZ. Where consent has been granted for the construction or operation of a renewable energy installation, an application can be made to restrict public rights of navigation – this power will rest with Scottish Ministers. Safety zones around renewable energy installations will be approved by the Secretary of State, with Scottish Ministers consulted on safety zones within the REZs and in territorial waters. A fine or imprisonment may be merited where a person is convicted of entering a safety zone.

Under the UNCLOS agreement, there is an obligation to ensure renewable energy installations are decommissioned. At the time a developer submits an application, it can be a requirement that a decommissioning programme is submitted, setting out likely expenditure, timescale, and restoration measures required to decommission renewable energy installations. It will be the responsibility of the developer to ensure this programme is complied with. Developers can also be required to give financial security for the decommissioning programme.

The Bill will make Ofgem the licensing authority for generation, transmission, distribution and supply offshore. Ofgem (2003a) say “they will be working with the Department of Trade and Industry on the detail of how the regulatory regime in relation to new renewables will work”.

The British Wind Energy Association is broadly supportive (BWEA 2003) of the proposal to extend the statutory regime further offshore.

Part 2 of the Bill extends the Renewables Obligation Certificates (ROCs) regime to Northern Ireland, thus ensuring trade can be made across the Scotland – Northern Ireland interconnector in renewable sourced electricity.

PART 3 – THE BRITISH ELECTRICITY TRADING & TRANSMISSION ARRANGEMENTS (“BETTA”)

The Bill seeks to introduce a single wholesale electricity market across the UK. At the moment, there are 2 systems – in England and Wales there is a competitive generation market and one electricity network run by the National Grid Company. In Scotland the grid is owned and run by ScottishPower and Scottish and Southern Energy. The differing structures are governed by different rules and are as a result of arrangements put in place after electricity privatisation.

The gas and electricity regulator, Ofgem has published a factsheet (Ofgem 2003a) on the Bill, highlighting the areas which will affect their work. These are:

- A common set of trading rules so that electricity can be traded freely across Great Britain
- A common set of rules for access to, and charging for the use of, the transmission network
- A GB system operator, independent of generation and demand interests, so that those seeking to use the system and access the market can be confident there will be no limitation to access.
Ofgem indicate that their consultation measures on BETTA in Scotland were the same as on other Ofgem consultations, i.e. document publication followed by a period of response time.

Traditionally, ScottishPower and Scottish and Southern Energy have been known as ‘vertically integrated’ companies in that they dealt with generation, transmission, distribution and supply. This close structure was felt by Ofgem to be anti-competitive and has, to some extent, been dismantled, with separate companies being created to deal with these different elements, albeit under the umbrella of the two companies. As things stand, ScottishPower and Scottish and Southern Energy control the grid network in Scotland, and most of the interconnector capacity with England.

This situation has resulted in independent Scottish generators, particularly renewable generators, finding difficulties in connecting to the grid and selling to the GB market.

Under the proposals in the Bill, ScottishPower and Scottish and Southern Energy will no longer have control of the grid in Scotland, though they will continue to own the assets. Instead, a single company, most likely the National Grid Company which runs the electricity grid in England and Wales, will take over grid transmission responsibility. Ofgem (2003a) are of the view that this will:

- “Bring more competitive prices and greater choice to all electricity customers, particularly those in Scotland
- Mean that renewable and other generators, particularly in Scotland, will benefit from access to a wider market, once the necessary physical infrastructure is in place.”

According to the DTI (2003):

“BETTA will mean that Scottish domestic and business customers will benefit from the same levels of competition that are now established in England and Wales. The single set of trading rules, connection policies and transmission charging arrangement under BETTA will reduce barriers for independent generators across GB to getting their power to market. BETTA will help to create a diverse generating base in GB and encourage new transmission capacity, helping to support renewables development.”

The Scottish Executive has welcomed proposals to share higher transmission costs in the north of Scotland across the rest of the UK. This will replace the previous ‘hydro benefit’ scheme which protected consumers in the north from paying for higher transmission costs (Ofgem 2003a).

In written evidence submitted to the Enterprise and Culture Committee for its meeting on 20 January 2004 (Scottish Parliament 2004b) Scottish Power stated that:

“Ofgem’s proposals for zonal transmission access and losses charges under BETTA….will be detrimental to the growth of renewables, undermine past decisions to invest and have an exaggerated and discriminatory effect on Scotland.”

“The Renewables Directive imposes an unambiguous obligation on Member States to ensure that charging of transmission and distribution fees shall not discriminate against renewables. Our estimates show that Ofgem’s proposals would lead to the average charge for renewable generators being almost six times the average charge for non-renewable generators, and the average embedded benefit available to renewable generators being less than one fifth of that available to non-renewable generators.”

providing research and information services to the Scottish Parliament
In written evidence to the same meeting Scottish and Southern Energy said:

“It is important that the arrangements for charging generators for the use of the electricity network do not discriminate against those connected in Scotland. One issue is transmission use of system charges following the start of BETTA. The National Grid has published indicative transmission charges of £21/kW which would seriously challenge the economics of transmission connected renewable generation. Modelling by the Scottish licensees suggests that a figure of £12/kW –while still a significant increase on current levels – would be more equitable. Another example is highlighted by the DTI/Ofgem (2003c) consultation, Small Generator Issues Under BETTA, which contains proposals which, if implemented, would have the effect of Scottish generators paying significantly more than their English and Welsh counterparts (£19/kW against £6/kW in England and Wales). A fair outcome would be a generator charge for connections at 132kV in Scotland of around £6/kW, which would put generators north of the border on a comparable basis to their competitors in England and Wales.”

The Scottish Renewables Forum has concerns about BETTA. They state that:

“The stated aims of BETTA are to reduce the price of electricity to the consumer, and to facilitate development of renewable energy, particularly in Scotland. Our analysis of current consultations suggests that these aims will not be achieved. Key problems are:

- Discrimination between Scottish and English-Welsh generators, leading to higher charges for connection to the grid
- Introduction of locational charges for generators in Scotland. Locational charges are meant to reflect the fact that moving power long distances is more costly. However the current proposed differences are too high and would stifle all generation in Northern Scotland
- Overly bureaucratic regulatory codes. Codes designed for large generators are being applied to smaller generators without adjustment, creating onerous conditions on smaller operators.”

Scottish Renewables Forum has also responded (2004) to the DTI ‘Small Generator Issues under BETTA’ consultation.

Part 3 of the Bill also provides for the appointment of a special administrator to run the networks should one of the monopolies running pipes or wires become insolvent.

Part 3 further allows for excess monies collected under the Fossil Fuel Levy, (which ensured suppliers did not have to bear the excess costs of supplying from renewable sources), to be used to promote renewable energy in Scotland. The written answer below gives some more detail:

S2O-1048 - Christine May (Central Fife) (Lab) : To ask the Scottish Executive what steps are being taken to allow monies collected by Ofgem under the fossil fuel levy to be made available to the Scottish Consolidated Fund and what steps it will take to ensure that any such monies are used for the purpose of promoting renewable energy.

Answered by Lewis Macdonald (15 January 2004): The Energy Bill, introduced in the House of Lords on 27 November, contains a clause which will enable Scottish ministers to direct Ofgem to pay funds from its Scottish fossil fuel levy account into the Scottish Consolidated Fund. The funds in question are surplus monies arising from the auctioning of renewable obligation certificates associated with electricity generated under Scottish renewables obligation contracts.

The clause requires Scottish ministers to include provision in budget proposals to the Scottish Parliament that the funds raised shall be used to promote the use of energy generated from renewable sources.
SOURCES


Department of Trade and Industry (2003d) *Draft Nuclear Sites and Radioactive Substances Bill.* Published 24 June 2003Available at: [http://www.dti.gov.uk/nuclearcleanup/pdfs/print-05publication.pdf](http://www.dti.gov.uk/nuclearcleanup/pdfs/print-05publication.pdf)


Summary

1. The Scottish Executive will shortly lay subordinate legislation to re-introduce Individual Learning Accounts, which were suspended and then closed in late 2001, following allegations of fraud. The Executive made a commitment to the previous Enterprise and Lifelong Learning Committee to give a briefing on any redesign of the scheme before subordinate legislation was laid. The Deputy First Minister is attending the meeting to present the proposals for the relaunch of the scheme.

2. The following documents are attached for members’ information:
   - Submission from the Executive: Draft Regulations and Guidance (to follow)
   - Executive Summary of the Audit Committee’s report Individual Learning Accounts in Scotland, 1st Report 2004 (Session 2) (SP paper 72)
   - Executive Summary of the Auditor General’s report Individual Learning Accounts in Scotland (AGS/2003/03) (Annex C)

Introduction

Policy background

1. Individual Learning Accounts (ILAs) were introduced as part of a range of Executive measures to address low skills in the workforce. The specific aim of ILAs as stated by the Executive was to:

   "help overcome financial barriers to learning faced by individuals, and to widen participation in learning, by offering people a facility to pay for their learning throughout their lifetime."

2. The primary legislative framework for ILAs was enacted in the Education and Training (Scotland) Act 2000, and the detail of the ILAs was set out in the Education and Training (Scotland) Regulations 2000, (SSI 2000/292).

3. The first 100,000 account holders each received up to £150 towards spending on eligible learning if they also contributed £25 themselves. Employers’ contributions were voluntary and subject to tax/National Insurance relief. For individuals who had fully spent their £150 contribution, and for those applying after the first 100,000 accounts were opened, discounts on some courses of 20%, and in a few cases 80%, were available.

4. The House of Commons Select Committee on Education and Skills states in its third report that: ‘The Individual Learning Account Scheme collapsed in the Autumn of 2001 amidst two main concerns: its rapid growth had outstripped its expected cost to public funds; and there were suspicions that abuse of the
scheme had become so endemic that it could not be eradicated without killing the scheme itself.'

6. The Scottish scheme was suspended by the Scottish Executive in November 2001, and closed in December 2001. A press release issued at the time of closure by the then Minister Wendy Alexander stated:

‘Individual Learning Accounts have attracted over 110,000 learners here, and have been a great success in bringing down the financial barriers to learning. […]Consideration is being given to what future arrangements might be put in place to support individual learning. Any new scheme will take the best from the first ILA programme and remedy its shortcomings.'

**Auditor General and Audit Committee’s Reports**

7. The Auditor General reported on February 2002 on the Individual Learning Accounts scheme and its implementation. The Executive Summary of this report is attached. The Parliament’s Audit Committee published its report in January 2004, and the Executive Summary of this report is also attached.

**Recommendation**

8. The Deputy First Minister will attend the meeting to give evidence on the proposed revised Individual Learning Account scheme. The Executive agreed to present its proposals to the Committee prior to the introduction of subordinate legislation.

9. **Committee members are invited to consider the draft regulations and guidance on the revised ILA’s scheme provided by the Deputy First Minister.**

Judith Evans
Clerk (Acting)

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1 Select Committee on Education and Skills Third Report on Individual Learning Accounts (HC561-I), May 2002, London
Individual Learning Accounts in Scotland: Draft Regulations and Guidelines

Draft Regulations and Guidelines relating to the re-introduction of Individual Learning Accounts in Scotland are attached.

Members are reminded that there will be a further opportunity to consider this information in more detail when the subordinate legislation is formally laid before Parliament, which is likely to happen shortly.

Judith Evans
Clerk (Acting)
The Scottish Ministers, in exercise of the powers conferred on them by sections 1, 2 and 3(2) of the Education and Training (Scotland) Act 2000(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—1) These Regulations may be cited as the Individual Learning Account Scotland Regulations 2004 and shall come into force on 2004.

(2) In these Regulations—

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(b);

“account holder’s year” means the period commencing upon the date on which the learning account is opened, and expiring on the first day of the same month in the following year, and each subsequent period of 12 months;

“approved learning” means education or training falling within regulation 10(1) or 10(2);

“the Act” means the Education and Training (Scotland) Act 2000;

“European Economic Area” means the European Community and, subject to the conditions laid down in the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(c), as adjusted by the Protocol signed at Brussels on 17th March 1993(d), the area comprised by the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;

“learning account” means an account opened and maintained by the Scottish Ministers in the name of the learning account holder which records the amount of grant available to be credited in any account year;

“Learning Account Administrator” means a person or body which has been designated by the Scottish Ministers in terms of sections 1(4) and (5) of the Act and whose designated status has not been withdrawn;

“learning account holder” means a person who is a party to qualifying arrangements as specified in regulation 2;

(a) 2000 asp 8.
(b) 1992, c. 4.
(c) Cm 2073.
(d) Cm 2183.
“Learning Provider” means a person or body who is a qualifying person or body as specified in regulation 5, and who provides approved learning;

“Learning Provider Registration Agreement” means the formal agreement to be entered into between the Learning Account Administrator and the Learning Provider, specifying the obligations of the parties, including the maintenance of the Quality Standards;

“Learning Provider Payment Agreement” means the formal agreement to be entered into between the Scottish Ministers and the Learning Provider specifying the obligations of the parties as regards the application for, and payment of grants;

“Operational Rules” means those rules, compliance with which shall be a condition of any payment of grant under the Scheme, and which have been accepted by a Learning Provider as part of the “Learning Provider Registration Agreement” and any subsequent revision thereof notified to a Learning Provider by the Scottish Ministers;

“qualifying person” has, in regard to learning account holders, the meaning given in regulation 3 and, in regard to Learning Providers, the meaning given in regulation 5;

“Quality Standards” means those standards, stipulated by a Learning Account Administrator, which have been accepted by a Learning Provider as part of the Learning Provider Registration Agreement, and any subsequent version thereof notified to a Learning Provider by the Learning Account Administrator;

“Scheme” means the learning account scheme established under these Regulations.

**Qualifying arrangements (learning account holders)**

2. (1) For the purposes of section 2 of the Act, arrangements qualify under that section if—
   (a) they take the form of registration by a qualifying person, being a learning account holder, with the Scottish Ministers in accordance with regulation 4; and
   (b) the registration has not been cancelled or withdrawn in accordance with regulation 4(6) to 4(8);

   (2) The qualifying arrangements as specified in paragraph (1) are identified under the names “[ILA Scotland Targeted Arrangements]” and “[ILA Scotland Universal Arrangements.”].

   (3) The qualifying arrangements named “[ILA Scotland Targeted Arrangements]” and “[ILA Scotland Universal Arrangements]” are collectively known as “ILA Scotland”.

**Qualifying persons (learning account holders)**

3.—2) For the purposes of these Regulations, a learning account holder is a qualifying person for the purposes of entering the qualifying arrangements named “[ILA Scotland Universal Arrangements]” if he or she has registered with the Scottish Ministers in terms of regulation 4, and satisfies at that time the conditions specified in paragraphs (3) to (5) below.

   (2) For the purposes of these Regulations, a learning account holder is a qualifying person for the purposes of entering the qualifying arrangements named “[ILA Scotland Targeted Arrangements]” if he or she has registered with the Scottish Ministers in terms of regulation 4, and satisfies at the date of registration the conditions specified in paragraphs (3) to (5), and (7) below.

   (3) The condition in this paragraph is that the person has attained the age of 18.

   (4) The condition in this paragraph is that the person—
   (a) is a British citizen; or
   (b) is settled in the United Kingdom within the meaning of section 33(2A) of the Immigration Act 1971(a); or

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(a) 1971 c.77; amended, and subsection (2A) inserted, by the British Nationality Act 1981 (c.61), section 39 and Schedule 4.
(c) is a refugee, ordinarily resident in the United Kingdom who has not ceased to be so resident since that person was recognised as a refugee; or

(d) is a person who—

(i) has been informed by a person acting under the authority of the Secretary of State for the Home Department that, although that person is considered not to qualify for recognition as a refugee, it is thought right to allow that person to remain in the United Kingdom;

(ii) has been granted leave to enter or remain accordingly; and

(iii) has been ordinarily resident in the United Kingdom throughout the period since that person was granted leave to enter or remain; or

(e) is a person not falling within paragraphs (a) to (d) but is a national of a member state of the European Economic Area who is working in the United Kingdom.

(5) The condition in this paragraph is that the person is either—

(a) resident in Scotland, or

(b) temporarily resident outside Scotland but ordinarily resident in Scotland (unless paragraph (6) applies).

(6) For the purposes of these regulations, the residence of a member of the naval, military or air force of the Crown (“a member of the armed forces”) shall be determined as follows:

(a) unless sub-paragraph (b) applies, a member of the armed forces shall be treated as resident at the establishment where he or she is for the time being serving; and

(b) where the member of the armed forces is serving at an establishment outside the United Kingdom, that person shall be treated as resident at the establishment in the United Kingdom where he or she most recently served, disregarding any establishment at which he or she served for a period of less than one month.

(7) The condition in this paragraph is that the person is either:

(a) a person with a gross income from earnings not exceeding £15,000 in the account holder’s year; or

(b) a person in receipt of any one of the following:

(i) a jobseeker’s allowance payable under Part I of the Jobseekers Act 1995 (The Jobseeker’s Allowance)(a);

(ii) income support payable under section 124 of the 1992 Act (income support)(b);

(iii) invalid care allowance payable under section 70 of the 1992 Act (carer’s allowance)(c);

(iv) incapacity benefit payable under section 30A of the 1992 Act (incapacity benefit: entitlement)(d);

(v) the maximum rate of child tax credit payable under section 9 of the Tax Credits Act 2002 (maximum rate)(e).

(8) For the purposes of this regulation, a person’s gross income from earnings shall include the amount of income tax and social security contributions payable in respect of it.

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(a) 1995 c. 18.

(b) Section 124 was amended by paragraph 30 of Schedule 2, and Schedule 3, of the Jobseekers Act 1995 (c.18) and paragraph 28 of Schedule 8 of the Welfare Reform and Pensions Act 1999 (c. 30).

(c) Section 130 was amended by paragraph 3 of Schedule 9 of the Local Government Finance Act 1992 (c.14); paragraph 174(4) of Schedule 13 of the Local Government etc. (Scotland) Act 1994 (c.39) and Part VI of Schedule 19 of the Housing Act 1996 (c.52).

(d) Section 30A was inserted by section 1 of the Social Security (Incapacity for Work) Act 1994 (c. 18).

(e) 2002 c. 21.
For the purposes of this regulation, “earnings”, in the case of employed earners, has the same meaning as in regulation 35 of the Income Support (General) Regulations 1987(a), and, in the case of self-employed earners, has the same meaning as in regulation 37 of the said Regulations.

A learning account holder may register with the Scottish Ministers in terms of regulation 4, either as a qualifying person for the purposes of entering the qualifying arrangements named “[ILA Scotland Universal Arrangements]” or for the purposes of entering the qualifying arrangements named “[ILA Scotland Targeted Arrangements]”, but not both at the same time.

Where a learning account holder is registered as a qualifying person for the purposes of entering the qualifying arrangements named “[ILA Scotland Targeted Arrangements]” for one account holder’s year in accordance with regulation 4(3), but upon the date of expiry of the account holder’s year, the learning account holder no longer satisfies the conditions specified in paragraph (7), the learning account holder is automatically entitled to be registered with the Scottish Ministers as a qualifying person for the purposes of entering the qualifying arrangements named “[ILA Scotland Universal Arrangements]”, provided that:

(a) he or she shall not be required to submit a further application for registration in accordance with regulation 4(1); and
(b) he or she satisfies at the said date of expiry of the account holder’s year, the conditions specified in paragraphs (3) to (5).

Registration (learning account holders)

4.—3) An application for registration as a learning account holder shall be made in such form and in such manner as the Scottish Ministers may, from time to time, determine, and different forms of application may be determined for ILA Scotland Targeted Arrangements, ILA Scotland Universal Arrangements, or renewal of applications.

(2) An application for registration as a learning account holder for the purposes of entering the arrangements named “[ILA Scotland Targeted Arrangements]” and an application for registration as a learning account holder for the purposes of entering the arrangements named “[ILA Scotland Universal Arrangements]” shall not be submitted prior to such respective dates as the Scottish Ministers may determine.

(3) An application for registration as a learning account holder for the purposes of entering the qualifying arrangements named “ILA Scotland Targeted Arrangements” shall be made in respect of the period from the date of registration for one account holder’s year only, but upon expiry of the account holder’s year, a further application for such registration may be made for the following account holder’s year, and so on for successive account holder’s years.

(4) The Scottish Ministers may require an applicant for registration as a learning account holder to provide such information or documents as the Scottish Ministers may require, in order for the Scottish Ministers to determine whether the person is eligible to become a learning account holder, and may decline to accept an application for registration unless such information or documents are provided.

(5) A registered learning account holder may, from time to time, be required to provide to a Learning Account Administrator such information, details and documents as may be required for

(a) S.I. 1987/1967
the purpose of assessing the quality and effectiveness of the approved learning in respect of which a grant has been paid.

(6) The Scottish Ministers may at any time cancel the registration of a learning account holder if:

(a) it appears to the Scottish Ministers that the person does not satisfy the conditions specified in regulation 3(3) to (5) in respect of the qualifying arrangements named [“ILA Scotland Universal Arrangements”] or the conditions specified in regulation 3(3) to (5) and 3(7) in respect of the qualifying arrangements named [“ILA Scotland Targeted Arrangements.”];

(b) it appears to the Scottish Ministers that any information provided under paragraphs (1) to (5) by or on behalf of the learning account holder was false, or if the learning account holder has failed to provide any other information or documents which were requested by the Learning Account Administrator under paragraph (5); or

(c) the learning account holder has been convicted of an offence involving dishonesty or fraud in relation to ILA Scotland.

(7) A learning account holder may at any time withdraw his or her registration with the Scottish Ministers by notifying the Scottish Ministers in such form as the Scottish Ministers may determine.

(8) Where registration is cancelled or withdrawn, the Scottish Ministers shall close the relevant learning account and shall advise the Learning Account Administrator of that fact.

(9) While a person is a party to qualifying arrangements, as specified in regulation 2, he or she may not at any time during which he or she is a party to the qualifying arrangements become a party to other such arrangements, and accordingly any subsequent registration with the Scottish Ministers shall be of no effect.

(10) A learning account holder shall forthwith notify the Scottish Ministers of any change of circumstances which may affect his or her status as a qualifying person.

Qualifying persons and Registration (Learning Providers)

5. For the purpose of these Regulations, in regard to qualification as a Learning Provider, a person or body shall, subject to regulation 7, be a qualifying person or body if they have registered with a Learning Account Administrator in terms of regulation 6 and that registration has not been suspended, withdrawn or cancelled.

Registration (Learning Providers)

6.—4) An application for registration as a Learning Provider shall be made in such form and in such manner as a Learning Account Administrator may, from time to time, determine.

(2) A Learning Account Administrator may require an applicant for registration as a Learning Provider to provide such information or documents, as the Learning Account Administrator may require to enable it to determine whether the applicant is suitable to become a Learning Provider for the purposes of the Scheme, and the Learning Account Administrator may decline to accept an application for registration unless such information and documents are provided.

(3) A Learning Account Administrator may grant an application for registration as a Learning Provider only if—

(a) it appears to the Learning Account Administrator that the applicant is a suitable person to deliver education and training in conformity with the Quality Standards for the purposes of the Scheme; or

(b) the applicant has delivered a validly executed Learning Provider Registration Agreement to the Learning Account Administrator.
(4) Where an application for registration has been granted, the Learning Account Administrator shall notify the Scottish Ministers of that fact in such a manner as the Scottish Ministers may, from time to time, determine, whether by means of updating a central database or register or otherwise.

Suspension and Cancellation of Registration (Learning Providers)

7.—5) The Learning Account Administrator may, forthwith, either suspend or cancel the registration of a Learning Provider in the event that—

(a) in the opinion of the Learning Account Administrator, the Learning Provider has failed to comply with the Quality Standards; or

(b) in the opinion of the Learning Account Administrator, the Learning Provider has failed to comply with the Operational Rules; or

(c) the Learning Provider has not delivered a validly executed Learning Provider Payment Agreement to the Scottish Ministers; or

(d) the Learning Provider has otherwise breached any of the terms of the Learning Provider Registration Agreement or the Learning Provider Payment Agreement; or

(e) an administration order is made in respect of the Learning Provider, or a voluntary arrangement is proposed in respect of the Learning Provider, or a resolution is passed or an order made for the winding up of the Learning Provider (other than a resolution or a members’ voluntary winding up for the purpose of reconstruction in terms approved by the Scottish Ministers) or a receiver or administrative receiver or liquidator shall be appointed over the whole or any part of the undertaking or assets of the Learning Provider, or the Learning Provider shall make or seek to make any composition or arrangement with its creditors, or shall become bankrupt, apparently insolvent or shall have a Trustee appointed over any of its assets or, where the Learning Provider is a partnership, any of its partners suffers any of the foregoing; or

(f) there is a change of control (as defined in the Income and Corporation Taxes Act 1988) of the Learning Provider or any other material change in its management which, in the opinion of the Learning Account Administrator, may adversely affect the operation of the Scheme; or

(g) in the reasonable opinion of the Learning Account Administrator, the Learning Provider has acted or omitted to act in a manner tending to bring the Scheme into disrepute.

(2) In the event that a Learning Provider’s registration is suspended, the Learning Account Administrator shall advise the Scottish Ministers of the fact. The suspension shall continue until the Learning Account Administrator is satisfied that the default situation in question has been rectified. If the Learning Account Administrator is not so satisfied within [6] months after the date of suspension, the Learning Account Administrator may cancel the learning provider’s registration at any time after the expiry of that [6] month period.

(3) The Learning Provider may, at any time, withdraw its registration by giving the Learning Account Administrator not less than [3] months’ prior notice in writing to that effect.

(4) Where a Learning Provider’s registration is cancelled or withdrawn, the Learning Account Administrator shall forthwith advise the Scottish Ministers of that fact.

Review

8.— Where a Learning Provider is aggrieved by a decision of the Learning Account Administrator to suspend or cancel the Learning Provider’s registration in terms of regulation 7, that Learning Provider may, within the period of 21 days of the date when the Learning Provider is notified of the decision in question, request that the decision shall be reviewed in accordance with the ILA Scotland review process current at the time of the request for the review, such review process for Learning Providers to be published by the Scottish Ministers.
Grants in respect of learning account holders

9. —(1) Grant may be paid, in accordance with regulations 11 and 12 below, in respect of Learning Account holders in connection with their approved learning, where the learning account holder at the time of payment of the grant is not eligible for any scholarship, grant or other allowance paid out of public funds in respect of that part of the cost of the education or training in question to be paid from learning account funds, and that education or training constitutes approved learning.

(2) Any entitlement to payment of grant held by a Learning Provider shall be in respect of that Learning Provider only, and may not be transferred to another Learning Provider.

(3) Where a person–

(i) is a party to arrangements which qualify under section 2 of the Act; and

(ii) holds an account which qualifies under section 104 of the Learning and Skills Act 2000(a)

grants shall not be payable both in respect of those arrangements and that account in relation to the same period of time.

Education and training for which grant can be paid

10.—(1) In these regulations, “approved learning” for the purposes of the qualifying arrangements named “ILA Scotland Targeted Arrangements”, as specified in regulation 2(2), means any education or training, other than excepted education or training, which has been approved by a Learning Account Administrator, and which is provided by a Learning Provider who has been registered by a Learning Account Administrator for the purposes of regulation 6, and whose registration has not been suspended, withdrawn or cancelled.

(2) In these regulations, “approved learning” for the purposes of the qualifying arrangements named “ILA Scotland Universal Arrangements” as specified in regulation 2(2), means such education or training as may be specified by direction made by the Scottish Ministers, which has been approved by a Learning Account administrator, and which is provided by a Learning Provider who has been registered by a Learning Account Administrator for the purposes of regulation 6, and whose registration has not been suspended, withdrawn or cancelled.

(3) In this regulation, “excepted education or training” means –

(a) secondary education within the meaning of section 135(2)(b) of the Education (Scotland) Act 1980(b);

(b) full-time higher education (that is to say education provided by means of a full-time course of any description mentioned in section 38(2)(b), (c), (d) or (e) of the Further and Higher Education (Scotland) Act 1992(c);

(c) education or training which is a statutory requirement for the individual’s particular employment;

(d) lessons for the purposes of sitting a test of competence to drive leading to a category A or B driving licence granted under the Motor Vehicles (Driving Licences) Regulations 1999(d);

(e) such other education or training as may be specified by direction made by the Scottish Ministers.

(a) 2000 c.21.
(b) 1980 c.44.
(c) 1992 c.37.
(d) S.I. 1999/2864.
Amount of grant

11.- (1) The amount of grant for which a learning account holder shall be eligible in an account holder’s year is such amount as may from time to time be determined by the Scottish Ministers, it being a requirement however that the learning account holder has first paid, or secured the making of payment, to the Learning Provider (and not received by way of discount or vouchers) either:

(a) the amount of the minimum contribution as may from time to time be determined by the Scottish Ministers, or

(b) the amount of the balance, after deducting the applicable grant allowed, towards the cost of the approved learning, whichever is the greater.

(2) The Scottish Ministers may determine that the amount of grant for which a learning account holder shall be eligible in an account holder’s year may be either the same amount or differing amounts, such amounts to be from time to time determined by the Scottish Ministers, depending upon whether the learning account holder as a qualifying person is entering the qualifying arrangements named [“ILA Scotland Universal Arrangements”], or is entering the qualifying arrangements named [“ILA Scotland Targeted Arrangements”, in accordance with regulation 3(1) and (2).

(3) The costs of approved learning which shall be eligible for grant in accordance with paragraph (1) shall be the direct costs of the approved learning, including course registration, assessment fees, qualification and examination fees, the provision of professional advice and guidance, or such other costs as may be determined by the Scottish Ministers.

Grant: supplementary provision

12.- (1) Grants shall be paid at such times and in such instalments as the Scottish Ministers may determine.

(2) Grants shall be paid to the person who has entered into a Learning Provider Registration Agreement with a Learning Account Administrator and a Learning Provider Payment Agreement with the Scottish Ministers and is the person providing the approved learning.

(3) Grants shall be paid on such terms as the Scottish Ministers may determine and those terms may include terms requiring repayment of whole or part of the grant–

(a) by the Learning Provider if–

(i) the approved learning in question is not provided, or

(ii) the learning account holder does not commence the approved learning, or

(iii) any other terms on which the grant was paid are not complied with, or

(iv) any funds have been paid to the Learning Provider in error; or

(b) by the learning account holder if–

(i) his or her registration is cancelled or at the time of payment of the grant the registration is capable of being cancelled in accordance with regulation 4(6), or

(ii) any of the conditions contained in regulation 3(3) to (5) in respect of the qualifying arrangements named [“ILA Scotland Universal Arrangements”], or the conditions contained in regulation 3(3) to (5) and 3(7) in respect of the qualifying arrangements named [“ILA Scotland Targeted Arrangements”], were not satisfied at the time of registration with the Scottish Ministers; or

(iii) the condition contained in regulation 9(1) was not satisfied at the time of payment of the grant; or

(iv) any funds have been paid to the learning account holder in error.

(4) For the purposes of paragraph (3)(a)(ii) the approved learning shall be deemed to have commenced upon the date on which the learning account holder first attends to receive the approved learning concerned or, in the case of distance learning, the date on which Scottish
Ministers are provided with confirmation, in such form as they may require, that the learning account holder has received and has accepted the relevant training materials.

(5) Without prejudice to sub-paragraph (3) above, no grant shall be paid to a Learning Provider unless the Scottish Ministers are satisfied that:

(a) in respect of each claim submitted for learning account funds, the Learning Provider has complied with the Operational Rules, applicable at the time each such claim is submitted;
(b) that the Learning Provider has complied with the terms of the relevant Learning Provider Payment Agreement; and
(c) that the Learning Provider has been registered by a Learning Account Administrator in terms of regulation 6 and that registration has not been withdrawn, suspended or cancelled.

(6) The Scottish Ministers shall be entitled to vary, supplement, replace or otherwise amend the Operational Rules from time to time. The Scottish Ministers shall notify any such changes to the Learning Account Administrator and the Learning Account Administrator shall notify them to Learning Providers. It shall be a condition of the payment of all grants that Learning Providers comply at all times with the Operational Rules as they apply from time to time.

**Suspension or termination of the scheme**

13. The Scheme may be suspended or terminated upon Scottish Ministers giving written notice to that effect to learning account holders and Learning Providers.

**Transitional provisions**

14. Any payments which are due in terms of the Education and Training (Scotland) Regulations 2000(a), as amended, shall continue to be payable notwithstanding revocation of said Regulations.

**Revocations**

15. The Education and Training (Scotland) Regulations 2000, the Education and Training (Scotland) Amendment Regulations 2000(b) and the Education and Training (Scotland) Amendment Regulations 2001(c) are, excepting only regulation 10 of said Education and Training (Scotland) Regulations 2000, hereby revoked.

St Andrew’s House, Edinburgh

Authorisation to sign by the Scottish Ministers

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(b) S.S.I. 2000/342.
(c) S.S.I. 2001/329.
EXPLANATORY NOTE

[The whole of the Note to be adjusted at final draft]

(This note is not part of the Regulations)

These Regulations revoke, with one minor exception, the provisions of the Education and Training (Scotland) Regulations 2000 (“the 2000 Regulations”). They also revoke the Education and Training (Scotland) Amendment Regulations 2000 (“the 2000 Amendment Regulations”) and the Education and Training (Scotland) Amendment Regulations 2001 (“the 2001 Amendment Regulations”).

They define “arrangements” which qualify under section 2 of the Education and Training (Scotland) Act 2000 (“the Act”). They provide for payment of grants in respect of persons who are parties to such qualifying arrangements (those persons being defined in the Regulations as “learning account holders”). They also set out the qualifying requirements in regard to persons or bodies providing education or training under the Regulations (those persons being defined in the Regulations as “Learning Providers”).

Regulations 2 to 4 deal with qualifying arrangements for, and registration of, learning account holders. The arrangements take the form of registration by a qualifying person (defined in regulation 3) with a body approved by the Scottish Ministers (referred to in the Regulations as a “Learning Account Administrator”), and where the registration of the Learning Provider with the Learning Account Administrator has not been cancelled or withdrawn. The qualifying arrangements are identified by the names “ILA Scotland Targeted Arrangements” and “ILA Scotland Universal Arrangements”, and which are collectively known as “ILA Scotland”. Regulation 4 deals with general matters in connection with registration of learning account holders.

Regulations 5 and 6 deal with qualifying arrangements for, and registration of, Learning Providers. Regulation 5 sets out the general requirements for qualification as a Learning Provider. Regulation 6 sets out requirements in relation to the registration of a Learning Provider, including that the Learning Account Administrator may grant an application for registration as a Learning Provider only if the applicant is suitable to deliver education and training in conformity with the Quality Standards (as defined in Regulation 1(2)) of the ILA Scotland scheme, and that the applicant has delivered a validly executed Learning Provider Registration Agreement (as defined in Regulation 1(2)) to the Learning Account Administrator.

Regulation 7 provides that the Learning Account Administrator may suspend or cancel the registration of a Learning Provider in certain defined circumstances, and that the Learning Provider may withdraw its registration upon at least 3 months prior notice. The provisions for suspension or cancellation include where the Learning Provider has failed to comply with either the Quality Standards of the learning account scheme, or the Operational Rules of the scheme (as defined in Regulation 1(2)), or where the Learning Provider has breached any of the terms of the ancillary documentation (called the Learning Provider Registration Agreement and the Learning Provider Payment Agreement and as defined in Regulation 1(2)) that it requires to enter in relation to the learning account scheme.

Regulation 8 provides for the ability of the Learning Provider to request a review by the Scottish Ministers of a decision of the Learning Account Administrator to suspend or cancel the Learning Provider’s registration.

Regulations 9 to 12 provide for the conditions of payment of grants in respect of learning account holders. Regulation 9 provides for the power to pay grants, and imposes restrictions on entitlement to receive grant. Regulation 10 provides for the kind of education or training in respect of which grant is payable. Regulation 11 provides for requirements in relation to the amount of grant payable under the learning account scheme. These include that the amount shall be from time to time determined by the Scottish Ministers, and that the amount may either be the same or different depending upon whether grant is paid under the ILA Scotland Targeted Arrangements or the ILA Scotland Universal Arrangements. Regulation 12 contains various
supplementary provisions including provision for the grant to be paid on such terms as the Scottish Ministers may determine, and provision for payment of grants to the person providing the education or training. Provision is also made for grant to be repaid in specified circumstances, by the person providing the education or training, or by the learning account holder.

Regulation 13 provides for suspension or termination of the learning account scheme by the Scottish Ministers.

Regulation 14 contains transitional provisions.

Regulation 15 provides for revocation of the 2000 Regulations together with the 2000 Amendment Regulations and the 2001 Amendment Regulations, excepting only regulation 10 of the 2000 Regulations, which relates to a minor amendment of the Act dealing with the renumbering of references to sections within it.
ILA SCOTLAND

Operational Rules and Supplementary Guidance for Learning Providers

Draft Version 0.3
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Introduction

1. This document is a guide to the Operational Rules of the Individual Learning Account Scotland (ILA Scotland) scheme.

2. It is important to note that the Operational Rules and this guidance apply to all learning providers who are registered with the Scottish University for Industry (SUIf) to provide approved learning and claim ILA Scotland grants for people who qualify in the terms of the Scottish scheme.

3. Any queries on the contents of this guidance should be directed to the ILA Scotland Helpline:

   **Tel: ????????????**

4. Please also refer to the Frequently Asked Questions section on the ILA Scotland website.
What learning providers must do

Complying with the Operational Rules and Regulations

5. **This Guidance does not supersede or replace the Operational Rules or Regulations of ILA Scotland.** Providers should be aware that any breach of the Rules or Regulations could render them liable to repay money to the scheme and/or result in their suspension or removal from the scheme.

Learning Provider Registration etc

6. Any organisation wishing to provide approved learning and claim ILA Scotland grants for people who qualify in the terms of the Scottish scheme must be registered with SUfi as an approved Learning Provider and have its ILA Scotland-eligible learning included on the ILA Scotland database.

7. As a condition of that registration all learning providers must accept and sign a Learning Provider Registration Agreement (LPRA). This Agreement (see separate guidance) is designed to ensure that Learning Providers understand and accept their responsibilities under the scheme and that they will operate in an appropriate manner.

8. Under the LPRA, Learning Providers are expected to help individuals choose learning that is relevant to their needs and abilities by giving clear and unambiguous advice.

Registration of “booked” learning on the ILA Scotland system

9. Learning Providers must book, confirm or cancel all claims for ILA Scotland funding via the online ILA Scotland system. No alternative system will be available. Further details about these arrangements are provided in the *How To Use The Learning Provider Web Site System* guidance document.

Payment of Learner’s (and any 3rd Party) Contributions

10. In the case of all ILA Scotland approved courses, learners are **always** required to make a personal contribution (minimum amount £10) towards the course cost. The responsibility for ensuring that they do so rests with the Learning Provider. Learning Providers are **not** allowed to make any contribution towards the learner’s share of the costs (see also para. 13 below re. price discounts). In any case where it is found that the learner did not make the appropriate contribution the Learning Provider will be liable to repay any ILA Scotland grant paid to them on that learner’s behalf.

11. Learning Providers must ensure that they keep appropriate financial records of these learner contributions, as well as any 3rd party contributions (e.g. from employers or others) that were made towards the cost of that learning episode, and make these available on demand.
12. The ILA Scotland funds claimed by the provider must always be calculated on the basis of the course price after the deduction of the learner’s contribution and any 3rd party contributions.

EXAMPLE

13. Price of course - £250, less:
   Employer’s contribution - £125 less:
   Learner’s contribution - £10
   ILA Scotland claim = £115

Discounting the full, published course price

14. Learning Providers who offer, for any reason, a discount on the full, published price of any course must register that course on the ILA Scotland database as two (or more) separate learning opportunities, individually priced to show the price payable after the deduction of the discount. (NB. Any discount from the Learning Provider must NOT be recorded as a third party contribution to the full price of the course.)

Refunding or offsetting the learner’s contribution

15. The refunding of the learner’s contribution by a Learning Provider is not acceptable unless in cases where the individual is dissatisfied with the learning or fails to continue to attend the course. It is not allowed as an incentive for completing the course. In any instance where a personal contribution is refunded to the learner, the related ILA Scotland claim must be cancelled and repaid to the Student Awards Agency for Scotland (SAAS). Details of the account to which such repayments should be made can be obtained from [telephone contact number].

16. Offsetting the learner’s contribution (e.g. by classifying the learner’s internet connection charges as a contribution towards the price of learning) is not acceptable in any form.

17. Once a learner has started an ILA course and a valid claim for payment has been made by the Learning Provider, this is recorded against the individual’s ILA record and a commitment made to the Learning Provider for these funds to be paid from the learner’s available ILA entitlement. If the learner later decides to leave the course (for whatever reason), he/she cannot reclaim any of that element of the ILA grant for alternative use. However, in such circumstances and at their own discretion, the Learning Provider may agree to repay any ILA Scotland funds paid in respect of that learning, so that the learner’s ILA may be re-credited.
The Learning Token

18. When a Learning Provider books a learning episode on the ILA Scotland system, a 'learning token' unique to that piece of learning is issued direct to the learner by SAAS. On or after the start date of learning (see below), the learner must surrender that unique learning token to the Learning Provider. In order to confirm a claim for ILA funds on behalf of that learner, the Learning Provider must enter the learning token on the ILA Scotland system.

19. It is not acceptable for details of the learning token to be given by the learner to the Learning Provider by any means, e.g. by telephone, other than surrender of the actual token, signed and dated by the learner. Therefore, the Learning Provider must retain the learning token, signed and dated by the learner on the date it is surrendered, for audit purposes (ref. paragraph 24 below).

Definition of the start date of learning

20. For classroom-based learning, the start date is the date on which the learner first attends a class.

21. For distance learning as defined in the Definition of Eligible Learning (see Annex B), the start date is the date on which the learning materials necessary for the learner to start learning have been received and accepted by the learner. For distance learning courses which require that the learner first attends an induction class, the start date is the date on which the learner attends that class.

22. The ILA Scotland guidance for learners will stress that the learning token should be supplied to the Learning Provider promptly upon starting the learning. However, Learning Providers may wish to make learners aware that if they fail to supply the learning token to the Learning Provider they may be billed for the full cost of the learning.

23. Any claim for payment of ILA Scotland grant before the start date of learning is not acceptable and automatically invalidates that claim.

Value for Money

24. SUfI is entitled to take into account value for money when making decisions about whether a Learning Provider or course should be approved for ILA Scotland registration. Where it is considered that the price of the ILA Scotland-eligible learning does not constitute value for money, the Scottish Ministers and SUfI reserve the right to refuse or withdraw approval of the course or Learning Provider.

Audit requirements

25. Learning Providers must be able to present, on request, to SUfI, its representatives or Audit Scotland, documentary evidence of the following:

- the start date of the learning and proof that the individual has commenced that episode of learning in line with the start date definitions provided above
- receipt of the learner’s personal contribution to the course price
• receipt of any 3rd party contribution to the course price

• the learning token unique to that piece of learning, signed and dated by the learner.

26. All of these documents must be retained for a minimum of 7 years, and Learning Providers should ensure that the documentation is easily retrievable for inspection purposes. If a Learning Provider does not hold this documentation as evidence that they have operated in compliance with the ILA Scotland operational rules, they may be required to repay in full any ILA Scotland funding for which a valid claim cannot be established.

How ILA Scotland grants are applied and paid

27. ILA Scotland grants cannot be claimed retrospectively where a learner has already paid in full for their course of learning.

28. The costs of books or other material (e.g. CD-ROMs) are not eligible for ILA funding unless included in the course fees. Computer hardware costs are not eligible under any circumstances.

29. In any cases of doubt, SUfI can advise both ILA members and Learning Providers about how ILA Scotland grants apply in individual circumstances.

30. A step by step guide on how to book learning, confirm an individual's start date and claim ILA Scotland grants is provided in the How To Use The Learning Provider Web Site System guidance document.

What learning providers must not do

31. As a condition of ILA Scotland registration you must not:

• employ or use a marketing company or other agent to promote ILA Scotland-approved learning unless you are assured that their marketing activity fully complies with the ILA Scotland regulations, Operational Rules and Marketing Guidance. Learning Providers will be held directly responsible for any non-compliant practices of any marketing company engaged by them and such practices by the marketing agents may result in the suspension or withdrawal of the Learning Provider's ILA Scotland registration.

• use the logo of the Scottish Executive, any other Government Department involved in the ILA Scotland scheme, SAAS or SUfI on your promotional literature.

• use the ILA Scotland trademark or logo without express permission.

• imply that you are representing, in partnership with or accredited by, the Scottish Executive, any other Government Department involved in the ILA Scotland scheme, SAAS or SUfI when promoting your learning.

• imply in any way that ILA Scotland funds can be used only for learning provided by you.
• fail to collect the learner’s contribution, waive or refund that contribution unless the learner decides not to undertake or continue with the learning.

• offer cash or other incentives (such as “expenses”, or free or subsidised software/hardware) to ILA Scotland members to sign up for or undertake your course.

• allow the individual to start an episode of learning for which they wish to use an ILA Scotland grant before their ILA Scotland membership is valid.

• claim an ILA Scotland payment for learning that an individual has not started and/or for which the learner has not received and accepted the appropriate learning material.

32. You must not submit a claim for payment before the learning has commenced and the applicant has provided the learning token.

Failure to comply with the scheme rules

Withdrawal of ILA Scotland registration etc

33. Scottish Ministers, through SUfI, reserve the right to suspend or withdraw registration of a Learning Provider at any time if they consider that the ILA Scotland rules and/or conditions are not met, or the behaviour of the Learning Provider is likely to bring the ILA Scotland scheme into disrepute. In addition, if it is considered that the Learning Provider may have been acting inappropriately or improperly, steps may be taken to withhold the payment of outstanding claims while the matter is resolved.

34. Any Learning Provider considered to have failed to comply with the ILA Scotland Operational Rules and regulations, or the conditions laid out in this guidance, will be contacted and asked to respond in writing within 10 working days to the concerns that have been identified.

35. Should the Learning Provider fail to respond or fully address the issues raised within 30 days, the Learning Provider’s ILA Scotland registration may be withdrawn.

Investigations

36. Any resulting investigation may involve SUfI or its agents undertaking a visit to the Learning Provider’s premises. The purpose of this visit will be to ensure that the Learning Provider has claimed ILA Scotland funds in accordance with this guidance and the ILA Scotland Operational Rules and regulations. SUfI or its agents will require access to all appropriate material and this may include, among other things, the following: -

• Copies of marketing material.
• Details of courses for which the Learning Provider is claiming/has claimed ILA Scotland grants.
• Learning tokens, signed and dated by the learner, in respect of all claims for ILA Scotland grants.
• Financial records to verify that each learner has made a personal contribution towards the cost of the learning for which an ILA Scotland grant has been claimed.
• Evidence that the Learning Provider is offering value for money.

37. If the Learning Provider refuses access or is unable to supply any of the documentation referred to in paragraph 34, they may be required to repay in full any ILA Scotland grant for which they are unable to prove that a valid claim has been made. This may also result in the Learning Provider’s ILA Scotland registration being withdrawn.

38. In most cases the Learning Provider will be given 30 days to respond in writing to any concerns raised. However, SUfl reserves the right to withdraw a Learning Provider’s registration without notice if that Learning Provider fails to respond or if it is considered that there is sufficient evidence to indicate potential fraud. The identification of any fraudulent activity may also result in direct referral to the police.

The right to withhold payment or demand repayment of grants

39. The Scottish Ministers, reserve the right to withhold payment or demand repayment of ILA Scotland grants in whole or in part where the claim does not comply with the terms of the ILA Scotland Operational Rules and regulations.

Data Protection

40. Learning Providers are reminded of their obligation to conform to the Data Protection Act.
ILA Scotland

Operational Rules for Learning Providers

Non-compliance with any of these rules may invalidate any related claim for ILA Scotland grant funding and could affect the status of your registration as an ILA-eligible learning provider.

These rules are made by the Scottish Ministers pursuant to section 1 of the Education and Training (Scotland) Act 2000

Definitions

In these Rules, the following words and phrases shall have the meaning set out opposite them:-

“Learning Account Administrator” means Scottish Ufi Limited (company number 204868) having its registered office at Europa Building, 450 Argyle Street, Glasgow G2 8LG;

“learning episode” means each learning opportunity booked by a learner and entered into the ILA Scotland system in accordance with these Rules;

“learning opportunity” means any course of study, instruction, education or training (including distance learning and correspondence courses) made available by your organisation as a learning provider in terms of the ILA Scotland scheme;

“Approved Learning” means a learning opportunity that has been approved by the Learning Account Administrator as being eligible for funding under the ILA Scotland scheme;

“the Regulations” means the Individual Learning Account Scotland Regulations 2004 (SSI []) as the same may be varied, amended or replaced from time to time;

“ILA Scotland database” means the subset of the web-based database of current learning opportunities which quality as Approved Learning and that is maintained by the Learning Account Administrator;

“ILA Scotland system” means the web based system maintained by the Scottish Ministers for your organisation as a learning provider in terms of the ILA Scotland scheme to process all ILA Scotland scheme transactions;

“Quality Standards” means those standards which must be met and maintained by your organisation as part of the Learning Provider Registration Agreement entered into with the Learning Account Administrator, and any subsequent version thereof notified to a Learning Provider by the Learning Account Administrator.
Changes to your organisation’s details

1. You must advise the Learning Account Administrator immediately of any change, after the date of your application to register with the Learning Account Administrator, in how the Quality Standards apply to your organisation. Documentary evidence, if requested, of any change must be supplied to the Learning Account Administrator within 3 working days of demand.

2. You must advise the Learning Account Administrator immediately, in writing, of any change to your organisation’s name, address, nominated contact(s) or bank details for ILA Scotland.

Learning opportunity details

3. You must advise the Learning Account Administrator immediately of any change to the details of any learning opportunity which qualifies as Approved Learning and which has been published on the ILA Scotland database.

Marketing of ILA Scotland-eligible learning opportunities

4. All marketing activity in respect of Approved Learning by your organisation or any party acting on your behalf must be in compliance with the ILA Scotland Marketing Guidance for Learning Providers and as such may be varied from time to time by the Scottish Ministers or the Learning Account Administrator.

Pricing of learning episodes

5. The price of any learning episode on which any claim for ILA Scotland funding is calculated, must be the price published on the ILA Scotland database on the date when the learner enters into an agreement with your organisation to undertake that learning episode. No reduction in that price may be offered for any reason.

6. The price of any learning episode to any learner, whether ILA Scotland-funded or not, must be the price published on the ILA Scotland database on the date when the learner enters into an agreement with your organisation to undertake that learning episode.

7. Any third party (e.g. employer’s) contribution to the price of a learning episode must be recorded on the ILA Scotland system when the online booking of the learning episode is made. Evidence of the amount and collection of such third party contribution must be retained and made available for inspection on demand, in accordance with rule 10 below.

8. The individual learner’s personal contribution to the price of any learning episode must be collected in every case. That contribution must be no less than £10 for any learning episode. The learner’s personal contribution must be a cash or credit card transaction and may not be collected through any “in kind” contribution or other such arrangement. There must be no refund or offset, at any time, of any part of that personal contribution, unless the corresponding ILA Scotland grant has not been claimed from, or has been repaid to, the Scottish Ministers.

9. Collection of the learner’s personal contribution to payment for any learning episode must be recorded on the ILA Scotland system when the online booking of the learning episode is made. Evidence of the collection of such personal contribution must be retained and made available for inspection on demand, in accordance with rule 10 below.
Retention of and access to documents relating to ILA Scotland-funded learning

10. You must retain for a period of 7 years the following documentary evidence in respect of any ILA Scotland grant funding claim:
   - evidence of the learner’s agreement with your organisation to undertake the ILA Scotland-funded learning episode;
   - evidence of the actual start date of learning;
   - evidence of the receipt of the learner’s personal contribution to the price of the ILA Scotland-funded learning episode;
   - evidence of the receipt of any third party contribution to the price of the ILA Scotland-funded learning episode;
   - the learning token associated with that learning episode.

11. You must allow access to, or deliver, within 3 working days of demand, such evidence, in such paper or electronic form as may be required by the Learning Account Administrator or their representatives, officers of the Auditor General Scotland, or such other persons as the Scottish Ministers may reasonably specify from time to time.

Management of your web-based ILA Scotland operations

12. All bookings, confirmations or cancellations of any ILA Scotland-funded learning episodes must be conducted via the ILA Scotland system. No alternative medium for such transactions shall be acceptable.

13. You must manage your own web-based ILA Scotland operations through a nominated web administrator, who will be responsible for controlling any multiple users of the ILA Scotland system within your organisation.

14. You must inform the Student Awards Agency for Scotland on behalf of the Scottish Ministers immediately of the details of any change of web administrator.

15. You shall be responsible for maintaining and keeping secure in accordance with the instructions issued by the Scottish Ministers for such purposes all user names and passwords issued to you for the ILA Scotland system. You shall be liable to pay any losses, claims and expenses arising as a consequence of any breaches in security of the ILA Scotland system for which you, your agents or your employees are responsible. You shall notify the Student Awards Agency for Scotland on behalf of the Scottish Ministers in writing immediately if any breach of the security of the ILA Scotland system occurs, and provide details of such breach.

Booking a learning episode on the ILA Scotland system

16. Any learning episode must be booked on the ILA Scotland system within 45 days of the learner’s enrolment with your organisation for that learning episode.

17. A learning episode may be booked on the ILA Scotland system up to 180 days before the start date of learning, but not earlier.

18. Any booking not confirmed by your organisation on the ILA Scotland system within 180 days after the booking was made on the ILA Scotland system will expire automatically.
Confirming the start of a booked learning episode

19. The *start date of learning is deemed to be*:
   - (for classroom-based learning) the date on which the learner first attends class; or
   - (for distance or open learning) the date on which the learner has received *and*
     confirms in writing acceptance of all of the learning materials and equipment which
     your organisation has undertaken to supply as the provider of that learning episode.

20. The start of any learning episode must not be confirmed on the ILA Scotland system
    before the actual start of learning.

21. The start of any learning episode must be confirmed on the ILA Scotland system *within
    45 days* of the actual start of learning.

22. No claim may be made in respect of a learning episode which started prior to the
    individual learner’s receipt of valid ILA Scotland membership from the Student Awards
    Agency for Scotland on behalf of the Scottish Ministers.

Cancelling a booking or confirmation on the ILA Scotland system

23. You must record any cancelled learning episode on the ILA Scotland system *within 28
    days* of the cancellation.

24. In the event of cancellation of a learning episode, all documentary evidence specified at
    rule 10 above must be retained *for a period of 7 years* from the date of the cancellation,
    and be available for inspection as required by the provisions of rule 10.
ILA Scotland

Definition of Eligible Learning

Learning Eligible for ILA Scotland grant funding

1. General Information

a) This guidance is effective from 14 January 2004 until further notice. The Scottish Ministers reserve the right to vary the eligibility criteria at any time, by giving prior notice to Learning Providers.

b) The ILA Scotland scheme is available solely for learners ordinarily resident in Scotland.

c) Learners can only benefit from ILA support if their ILA membership is valid on or before the course start date and they have not already paid the full price of the course.

d) The learning account year will be effective from the date the account number is issued to the learner, until the first of the same month in the following year, and each subsequent 12 month period.

2. Level of grant

a) The ILA Scotland grant is initially available only to a targeted group of learners: those on low income (individual gross annual earned income of less than £15k); or those in receipt of the following benefits:
   - Jobseekers Allowance
   - Income Support
   - Incapacity Benefit
   - Invalid Care Allowance
   - Child Tax Credit (maximum rate).

b) For learners in this group, funding of up to £200 per learning account year is available for all eligible learning.

c) The actual amount of ILA Scotland grant towards the price of eligible learning is calculated on the basis of the course price after the deduction of any third party (e.g. employer’s) contribution.

d) The learner must, without exception, contribute a minimum of £10 to the price of each learning episode.

3. Costs which qualify for grant funding

a) In addition to course tuition fees, ILA grants can be used to pay for other costs directly associated with the course, such as registration, examination, accreditation and assessment fees or for qualifications, when such other costs are included within the
course fee and provided that they are in reasonable proportion to the actual course costs.

b) The course fee is defined as the price included in the ILA Scotland database.

4. **Costs which do not qualify for grant funding**
   a) Books and other materials (e.g. CD-ROMs), unless included within the course fee.
   b) Computer hardware.

5. **Distance Learning**
   a) To be eligible for ILA Scotland funding, distance learning must include a level of qualified tutor support and/or monitoring deemed appropriate by the Learning Account Administrator.
   b) Distance learning without tutor support and monitoring, will NOT be eligible for ILA Scotland funding.

6. **Eligible learning**
   a) ILA-eligible learning is limited to courses which are:
      - offered by a Learning Provider with a current registration as an approved ILA Scotland Learning Provider; AND
      - included in the ILA Scotland database.
   b) In the case of ICT training, only courses leading to a recognised qualification or certificate at a level up to or equivalent to SCQF level 5 (Int 2, SG Credit, SVQ2), are eligible for ILA Scotland funding. (ICT training is any training related to computer hardware, software and/or associated communications media such as the Internet.) **N.B.** This requirement does NOT apply to eligible learning in other subject areas.
   c) This qualification/certification requirement does NOT apply to other types of eligible learning.

7. **Learning not eligible for ILA Scotland funding**
   The following types of learning are not eligible for the scheme:
   - ICT training above SCQF level 5 (Int 2, SG Credit, SVQ level 2)
   - ICT training which does not lead to a recognised qualification or certificate
   - Secondary Education
   - Full-time higher education courses
   - Advanced professional qualifications
   - Learning which is a statutory requirement for the individual's employment
   - Work-related training
   - Adult literacy and numeracy training
   - Lessons towards attaining driving licence category A or B
   - Courses given as a reward or an inducement by an employer
   - Private flying lessons (including fixed wing, rotary and paragliding)
   - Diving lessons (scuba, deep sea and high board)
   - Outward bound type courses; and
• Leisure or sporting activities, other than those which lead to a recognised qualification or certificate at SCQF level 5 (Int 2, SG Credit, SVQ level 2) or above (e.g. those leading to a recognised coaching/teaching qualification).

The following definitions are applied to the above exclusions:

• **ICT training which does not lead to a recognised qualification or certificate**
  is any ICT training which does not lead to a qualification or certificate recognised by the Learning Account Administrator.

• **Secondary Education** as defined in section 135(2)(b) of the Education Scotland Act 1980.

• **Full Time Higher Education (HE)** as defined in section 38(2)(b), (c), (d) or (e) of the Further Education and Higher Education (Scotland) Act 1992. This includes full time degree courses offered by Universities or Colleges and courses such as Higher National Certificates, Higher National Diplomas and Diplomas of Higher Education which match the definition of full time courses. (N.B. Part-time HE courses, including distance learning courses such as those offered by the Open University are eligible for ILA Scotland funding).

• **Advanced Professional Qualifications**, which are defined as being courses leading to a professional qualification at SCQF level 9 (Ordinary degree) or above, or which are generally recognised as a graduate or postgraduate qualification by professional bodies and/or employers (e.g. many qualifications in accountancy or architecture), are excluded from ILA Scotland funding. (N.B. Continuing Professional Development courses which do not lead to a professional qualification at SCQF level 9 (Ordinary degree) or above, or enjoy equivalent professional recognition, ARE eligible for ILA Scotland funding.)

• **Learning which is a statutory requirement for the individual’s employment**
  is defined as being any training which an employee is required by law to undertake in order to carry out the duties associated with her/his employment (e.g., certain health and safety training).

• **Work related training** is defined as being any training for which there is no legal requirement but which an employee would normally be expected to undertake in order to be able to carry out the duties associated with her/his employment (e.g. any training which an employer might reasonably be expected to provide in order that employees are able to carry out their normal duties, such as training to operate a new computer system or type of machinery, etc.).

• **Adult literacy and numeracy training** is defined as being any learning which helps individuals to improve their reading, writing and number skills which may lead to a qualification at SCQF Level 4 (Int 1, SG General, SVQ1), or lower. (N.B. Such learning should already be available free to learners through community learning and development partnerships and/or through the funding mechanisms in place for integrated provision where there is a clear and discrete focus on improving literacy and numeracy.)

• **Driving lessons in category A or B** are defined as being those which lead to the award of an ordinary driving licence. ILA Scotland funding cannot under any circumstances be used to gain an ordinary car or motorcycle driving licence. However,
ILA Scotland funding can be used to gain a driving qualification which is additional to an ordinary driving licence e.g. for HGV or forklift truck driving. ILA Scotland funding can also be used to gain a driving instructor qualification.

- **Courses given as a reward or inducement by an employer** means:
  (i) Rewarding an employee (paying for, or reimbursing, the cost of any facilities or other benefits) for the performance of the duties of his office or employment under his employer or for the manner in which he has performed them; or  
  (ii) Providing the employee with an employment inducement, which is unconnected with the imparting, instilling, improvement or reinforcement of knowledge, skills or personal qualities.

- **Leisure or sports activities** other than those which lead to a recognised qualification or certificate at SCQF Level 5 (Int 2, SG Credit, SVQ2) or above (e.g. those leading to a recognised coaching/teaching qualification) are defined as being recreational or leisure classes, such as beginners’ courses in golf or watercolour painting.  
  **(N.B.** Courses which cover the same subject area but DO lead to a qualification at the appropriate level (e.g. art therapy for therapists or training to become a golf coach) would be eligible.
Introduction

This paper sets out the arrangements for the Committee’s consideration of devolved matters which are contained within a UK Bill – the Higher Education Bill.

Parliament is due to debate a ‘Sewel Motion’ (S2M-788) in the name of Mr Jim Wallace MSP, Deputy First Minister and Minister for Enterprise and Lifelong Learning: ‘That the Parliament agrees that the provisions contained in the Higher Education Bill which have the effect of creating a UK Arts and Humanities Research Council, and which confer powers and functions on Scottish Ministers, so far as those provisions relate to matters within the legislative competence of the Parliament, should be considered by the UK Parliament.’

The Deputy First Minister will appear before the Committee at this meeting to answer any queries members may have on the Motion, in advance of the debate in the Parliament. A date for the debate has not yet been agreed but it is expected to take place in the week commencing 9 February 2004.

Sewel Motions

A Sewel Motion is a device by which the Executive invites the Scottish Parliament to agree to allow the UK Parliament to legislate on relevant devolved matters. The motion is a matter of convention rather than law, and the decision of the Scottish Parliament therefore has no legal effect. Instead, in agreeing or disagreeing to the motion, the Scottish Parliament will be expressing a view on the matters referred to in the motion.

Executive Memorandum

The Executive has prepared a memorandum – attached at Annex A – which outlines the terms of the UK Higher Education Bill and highlights the provisions which relate to devolved matters.

The Bill is enclosed, together with the UK government’s Explanatory Note.

This Sewel Motion refers to the creation of an Arts and Humanities Research Council. There is currently a non-statutory Arts and Humanities Research Board, which was established in 1988 with funding from the various UK funding bodies for higher education, including the Scottish Higher Education Funding Council. The attached Executive Memorandum states that the reasons for creating a statutory Research Council are: ‘that an AHRC would have an equivalent status to that of the existing Science Councils, and so would enable Arts and Humanities Departments to bid for research funding on an equal footing to Science Departments. It would also
allow the sector to work more closely with the other Research Councils on the research agenda and on cross-cutting strategic issues.’

Universities Scotland, the representative body for Scottish universities and higher education institutions, has been involved in the consultation process and has indicated that it supports the creation of an Arts and Humanities Research Council. Members will be aware that funding for research in science and technology outwith the Research Councils is not reserved, so that the Scottish Higher Education Funding Council can provide funding for research directed by Scottish Ministers. The intention is to create similar arrangements for the proposed Arts and Humanities Research Council.

The Bill was introduced in the House of Commons on 8 January 2004, and members will be aware that it is due to receive its second reading on 27 January 2004.

**Threshold for Student Loan Repayments**

Members will be aware that there are proposals in the White Paper on the Future of Higher Education (Cm 5735) to raise the income threshold for student loan repayments from £10,000 to £15,000. This is not covered in the Higher Education Bill, and would be addressed through subordinate legislation. There is no requirement for a Sewel motion in this area, as the element of the change required relating to the Inland Revenue is reserved, and the Scottish Executive would lay subordinate legislation on the element relating to the threshold before the Scottish Parliament.

**Procedure**

As there are no formal procedures for the consideration of Sewel Motions set out in Standing Orders, there is no formal requirement for the Committee to report to the Parliament.

Judith Evans
Clerk to the Committee (Acting)
MEMORANDUM
HIGHER EDUCATION BILL

Purpose

The purpose of this memorandum is to provide details of Part 1 of the Higher Education Bill being introduced at the UK Parliament in January 2004 which relates to issues that are currently within the competence of the Scottish Parliament in respect of the funding of Arts and Humanities research. The Parliament is invited to agree that this should be considered by the UK Parliament under the terms of a Sewel motion associated with this memorandum, and to note that in due course an Order made under section 30 of the Scotland Act will be required to reserve this currently devolved area.

Background

1. The Higher Education Bill contains provisions to create a Arts and Humanities Research Council (AHRC) with different objectives but equivalent legal status to the existing Research Councils funded by the DTI’s Office of Science and Technology within the meaning of the Science and Technology Act 1965 (STA). The AHRC will then take over the role of the existing Arts and Humanities Research Board (AHRB) whose operations, along with its employees, assets, liabilities etc. will then be transferred to the AHRC.

2. The AHRB is currently non-statutory and was established in 1998 with funding provided by the Higher Education Funding Council for England (HEFCE), the British Academy, and the Department for Education (now the Department for Employment and Learning) in Northern Ireland (DEI). In 1999, the Scottish Higher Education Funding Council (SHEFC) and the equivalent body in Wales (HEFCW) decided to join in providing funding to the AHRB, and it now supports research and postgraduate study in all parts of the UK. Currently SHEFC contributes around £5 million per year to the AHRB.

3. The role of the AHRB is analogous to that of the seven existing Research Councils which operate across all parts of the UK; however, the AHRB does not have the statutory status of a Research Council created by Royal Charter under the terms of the STA, which are funded by the DTI under reserved powers. Following a review in 2002, carried out jointly by the UK administrations, it was agreed that converting the AHRB to a new AHRC on equivalent legislative footing to the science Research Councils would enable a number of improvements to be made in arts and humanities research funding. In brief, these are that an AHRC would have an equivalent status to that of the existing Science Councils, and so would enable Arts and Humanities Departments to bid for research funding on an equal footing to Science Departments. It would also allow the sector to work more closely with the other Research Councils on the research agenda and on cross-cutting strategic issues.

Rationale and Benefits for Scotland participating in an AHRC

4. Scottish Arts and Humanities research funding benefits significantly from being part of a UK-wide system for administering project grants by the AHRB. For example, in 2001-02, 11% of research award funding was allocated to Higher Education Institutions (HEIs) in Scotland, and 4 of the 17 research centres funded by the AHRB are in Scottish HEIs. Four
of the fifteen conveners of peer review panels are currently from Scottish Universities. These figures, and similar figures from the UK Science Research Councils, indicate that Scottish research benefits from being part of a UK-wide system for the distribution of research project funding.

5. While the AHRB system has delivered benefits, there has however been a consistent pressure from the academic community in Scotland, that it does not deliver all that it might for Arts and Humanities research in Scotland. These views are similar to those in other parts of the UK. The Scottish Executive therefore consulted widely on the proposal to convert the AHRB to AHRC following the publication of the UK Review document in 2002. It held discussions with the Deans of University Arts Faculties and received several letters supporting the change, with none against. The conclusion reached by the Scottish Executive was that the University sector in Scotland is overwhelmingly supportive of the change, as are the current AHRB members and Scottish Higher Education Funding Council (SHEFC).

6. During the consultation, the sector in Scotland strongly supported putting arts and humanities on the same footing as sciences. It very much supported the view that funding could benefit from being part of the same system of budgets set by the DTI for the Science Research Councils, which totals over £2 billion. The sector agreed this would improve stability of funding for Arts and Humanities research and also provide an opportunity for Departments to bid against a much larger overall budget. The sector was concerned that under the current funding of the AHRB, which is derived from contributions from the UK Higher Education Funding Councils, Arts and Humanities research could potentially lose status against that for science. The size of the AHRB’s overall budget is dependent on the continued decision of the Funding Councils to maintain their contributions, and so offers scope for a divergence in funding priorities compared to other research. Establishing an AHRC would ensure that schemes of project funding like those available in the sciences are fully developed for the arts and humanities. The sector was also concerned that the AHRB had no place at the table when high-level discussions are taking place about research funding and policy.

7. The consultation also showed a clear wish for funding to reflect the widely accepted view that artificial boundaries between the different sectors of science, engineering, technology, arts and humanities are reducing the opportunities for innovation. Similarly the sector wanted to encourage a culture which works across the various sectors very flexibly and fluidly. The transformation of the AHRB into a UK-Research Council will help to maximise opportunities for multi-disciplinary research, not only in supporting projects which cross subject boundaries but also in contributing arts and humanities perspective in the development of research policy in other spheres, and vice-versa. A UK-wide AHRC will also help to increase the level of collaboration between Scottish researchers and their counterparts in the rest of the UK.

8. One alternative to a UK-wide AHRC could be that the rest of the UK will want to proceed to establish an AHRC without Scottish involvement. This would presumably mean establishing a Scottish based funding board: this was seen as likely to be deeply damaging to the sector, through loss of competitive status of Scottish research in UK terms.

9. On the basis of this clear and unambiguous support from the sector outlined above, Scottish Ministers agreed to proceed with the change, and the UK administrations jointly announced in January 2003 that they intended to introduce the necessary legislation.
**Legislation**

10. The legislation to create an AHRC reserved to the UK Parliament will be carried out in two distinct stages. Legislation to change the status of the AHRB to an AHRC will be achieved through the UK Government’s Higher Education Bill, to be introduced in January 2004, and consent of the Scottish Parliament will be achieved through the Sewel motion associated with this Memorandum. A new Royal Charter will be granted once all of the legislation is in place and this is expected to be in autumn 2004 or early 2005.

11. The second stage of the legislation is to enable the AHRC to be made a reserved body and funded by OST exactly like the UK science Research Councils. This process will require a separate legislative process under the arrangements laid out in the Scotland Act for adjusting the devolution settlement. The Scottish Executive and UK Government will therefore support the making of an Order under section 30(2) of the Scotland Act 1998 to modify Schedule 5 of that Act as it relates to those matters that are reserved. It is expected that this Order will be laid in both Houses in Westminster and Scottish Parliament in the summer or autumn of 2004.

**Content of the Bill**

12. The Higher Education Bill is the legislation which has emerged from the White Paper ‘The Future of Higher Education’ which was published in January 2003. The Bill deals with a range of issues relating to Higher Education, most of which is relevant only to England and Wales. However, the provisions to create the AHRC apply across the UK.

13. Part 1 of the Bill relates to Research in Arts and Humanities and will establish the AHRC on a similar basis as currently exists for science research under the Science and Technology Act 1965. The Bill sets out the functions proposed for the AHRC which include:

- carrying out, facilitating, encouraging and supporting research and instruction in the arts and humanities
- advancing and disseminating knowledge in, and promoting understanding of, the arts and humanities
- promoting awareness of the body’s activities; and
- providing advice on matters relating to the body’s activities

14. Part 1 also provides for the transfer of the AHRB and it sets out key elements of the operational framework including those relating to expenses, reporting arrangements to the Secretary of State, and details of income and expenditure that the AHRC will require to provide to the Secretary of State as required. Part 1 of the Bill provides for the Secretary of State to directly fund AHRC activities through the DTI on the same basis as for the other Research Councils.

15. Funding for Science research outside the Research Councils is not a reserved power within the meaning of section 5 of the Science and Technology Act 1965, and so Scottish Ministers are able to fund science research directly to suit our requirements. Such powers are currently used to fund strategically important science research through SHEFC. Similar
arrangements will be made for Arts and Humanities research which will allow Scottish Ministers the option to fund arts and humanities research directly.

**Royal Charter**

16. The draft Royal Charter for the AHRC, published alongside the HE bill, mirrors the format and content of the Charters for the science Research Councils and sets out the responsibility and constitutional arrangements of the AHRC. However, in the Review of the AHRB it was recognised that some Arts and Humanities research was highly specific to geography and culture, and that this needed to be protected by special provisions within the Royal Charter. While formal reporting for AHRC, as with the other Research Councils, will be to OST, accountability arrangements will ensure that AHRC plays a proper role in regionally specific research. Hence, the objects set out in the Royal Charter include explicit recognition of the role of AHRC in supporting “research relating to the cultural aspects of different parts of the UK”. Additional safeguards will also be included alongside the Royal Charter which will require the AHRC to report annually on the research it commissions, including that on regionally specific subjects, as well as on the regional distribution of its research funding. This is further underpinned by a number of other mechanisms that will include transparency and visibility of the AHRC; criteria for decision making about research funding; and ensuring that membership continues to be broadly representative of the different parts of the UK.

**Financial Implications**

17. The Executive, through SHEFC, is providing funding of £5.4m to AHRB in 2003-04; provision for 2004-05 has not yet been agreed. It is expected that the AHRC will become operational from 1 April 2005 and a transfer of funds from the Scottish Executive to the OST will be necessary at this point. This will be a once-for-all transfer and the arrangements for this have still to be determined. However, funding responsibility for AHRC will not transfer to OST before the legislation to reserve the new body is complete. It has been agreed that the level of funding to be passed back to Westminster will not exceed current levels.

18. Ministers will have the option, as now, of funding Arts and Humanities Research directly if they wish.
SEWEL MOTION

Higher Education Bill

That the Parliament agrees that the provisions contained in the Higher Education Bill which have the effect of creating a UK Arts and Humanities Research Council, and which confer powers and functions on Scottish Ministers, so far as those provisions relate to matters within the legislative competence of the Parliament, should be considered by the UK Parliament.
Enterprise and Culture Committee
Meeting 27 January 2004

Broadband Inquiry: Proposed Remit, Work Programme and Witnesses

Introduction

1. At its meeting on 6 January 2004 the Committee agreed to conduct an inquiry into the roll-out of broadband in Scotland. This paper sets out a proposed remit and arrangements for evidence-taking for the inquiry.

Background

2. Briefing 04/04 from SPICe provides background information on the roll-out of broadband, and outlines a number of issues relevant to developing the accessibility and usage of broadband in Scotland.


Remit

4. It is proposed that the current inquiry should try to avoid duplicating any of the wide-ranging and comprehensive background information on broadband, and the wider infrastructure and new economy context, covered by the 2001 inquiry.

5. Rather, it is proposed that the inquiry focuses on building on and updating that work by:

   • examining the implementation of the Executive’s broadband strategy, including progress towards its target of ADSL (Asymmetric Digital Subscriber Line) affordable broadband coverage for 70% of the population by the end of March 2004;
   • assessing any difficulties and barriers being encountered, including a particular focus on rural areas and digitally-excluded urban areas;
   • evaluating the impact of broadband roll-out on individuals and businesses, including strategies and projects to encourage business efficiency and development.
6. There has been general agreement that the provision of broadband communications infrastructure has very significant advantages for both individual and business internet users, and significant potential economic development benefits. Areas without broadband access may be left at a disadvantage in terms of business competitiveness and economic development. However, it is also recognised that there are barriers to securing the availability of affordable and competitive broadband facilities throughout all of Scotland.

7. The Scottish Executive has developed a strategy for intervention to ensure that commercial telecommunications companies provide widespread coverage, and in December 2002 set a target of affordable broadband technology being available to 70% of the population by the end of March 2004.

8. Increased access to broadband also needs to be accompanied by measures which ensure that the facilities can be used to maximum economic advantage, developing the capacity of existing businesses and creating opportunities for new businesses.

9. The following is suggested as a draft remit for the inquiry:

“The Committee wishes to inquire into the implementation and effectiveness of the Scottish Executive’s broadband strategy, and specifically to examine:

The progress which has been made under the strategy and whether the Executive’s target has been met

- is the rate of progress satisfactory?
- what gaps in availability remain?
- how successfully have particular public policy and funding initiatives contributed to progress, both generally and in relation to particular areas (e.g. rural areas)?
- what have been the barriers to progress?
- what are the links between this target and the UK Government’s targets?

The impact of broadband availability

- what has been the uptake and use of available broadband?
- what difference has it made to businesses and to people in particular communities – for example:
  - to what extent has broadband availability contributed to business development and start-ups?
  - have businesses been able to make the best use of it?
  - how is the impact of broadband availability on social inclusion or regional inequality being measured or assessed?
- what benefits are arising from efforts to secure broadband delivery in rural and other areas where it might not be provided commercially?

- how successfully have particular public policy and funding initiatives contributed to progress, both generally and in relation to particular areas (e.g. rural areas)?

**Whether new targets are required?**

- If so, what should those targets be and what links are there with policy development at a UK level?
- are targets for the impact of broadband (as well as availability) required?
- What technological, commercial, regulatory and other barriers to further increasing availability still exist?
- What policy developments and funding are likely to be required to achieve those targets?

10. **The Committee is invited to consider the draft remit as a basis for its inquiry.**

**Programme**

11. A proposed work programme is outlined below. This programme would allow the evidence-taking to be completed before the Easter recess. A draft report could then be considered after the recess, with a view to publishing the report in early to mid May.

12. In preparation for the inquiry, it is proposed that members will be circulated key background documents outlining policy developments in relation to broadband.

**Written evidence**

13. Written submissions will be sought from all witnesses called to give oral evidence, and these will be circulated prior to the relevant meeting.

14. In addition, it is proposed to issue an open call for written evidence as soon as the remit of the Inquiry is agreed. It is proposed to seek submissions by Friday 27 February 2004, giving respondents over 4 weeks to reply. This timetable would allow the Committee to consider all written submissions at an early stage of the oral evidence programme. It would also allow the Committee to consider seeking additional oral evidence from any individuals or organisations which have made written submissions of particular interest to the Committee. A call for evidence would appear on the Committee’s webpage, would be accompanied by a news release to relevant media outlets, and would also be sent directly to key relevant organisations. **The Committee is invited to consider issuing an open call for written evidence, and to authorise the Convener and clerks to liaise with the Media Office to issue a news release based on the agreed remit.**
Petitions

15. The Committee has previously agreed to consider petitions in the context of relevant inquiry work. E-Petition 694 is an on-line petition, currently available on the Public Petitions Committee’s web-page for signatures until the end of January. The e-petition, from Mr AG Kennedy on behalf of the Machars Broadband Action Group, raises concerns about the availability of broadband access, citing south west Scotland as a particular example. It calls for the Parliament to ensure the provision of broadband facilities to all communities throughout Scotland by mid 2005. This is currently still open for signatures. If this petition is submitted, it will be considered by the Public Petitions Committee in due course and it may be anticipated that this petition may be referred to the Enterprise and Culture Committee. However, the e-petitioner raises issues of direct relevance to this inquiry, and it may be appropriate to seek further evidence from him. The Committee is invited to consider whether it wishes to seek written and/or oral evidence from the e-petitioners during this inquiry.

Oral evidence

16. It is proposed to hold four evidence sessions. Evidence for this inquiry would comprise the bulk of the Committee meetings on 2, 9, 16 and 23 March. This would allow the bulk of the inquiry work to avoid clashing with the planned work programme for the Renewable Energy Inquiry and the Committee’s budget scrutiny. It is proposed to take witnesses in panels where appropriate. Each panel would have no more than 3 witnesses and should last approximately 45 minutes. It should be possible to accommodate 2 panels on each of the above dates.

17. A proposed outline programme of oral witnesses is set out at Annex A. Any further witnesses from whom the Committee decides it wishes to hear following the receipt of written evidence could be accommodated on 16 March. Members are invited to consider the proposals below and agree an outline programme of witnesses for this inquiry.

Scottish Enterprise event

18. Scottish Enterprise has stated that it is will potentially hold a learning event on broadband involving industry suppliers, consumers and the full range of stakeholders. Although not yet confirmed, it has been provisionally planned for early March so would fit well with the Committee’s proposed timetable and enable members to test industry views of progress on broadband to date.

Witness expenses

19. Witnesses called by a committee are entitled to claim certain expenses and a committee is required to decide whether each claim should be paid. Guidance from the Parliament’s Legal Services Directorate indicates that a committee may delegate authority to the convener to decide whether any claims arising
from an item of business should be paid. The Committee is therefore invited to consider whether the Convener should be delegated authority to decide on any claims arising from this inquiry.

Recommendations

20. The Committee is invited to agree arrangements for this inquiry. In particular, the Committee is invited to agree:

a) The remit for the inquiry

b) To issue an open call for written evidence, and to authorise the Convener and clerks to liaise with the Media Office to issue a news release based on the agreed remit.

c) To include consideration of E-Petition 694 in this inquiry and take evidence from the petitioners

d) The programme of oral evidence and suggested witnesses

e) To note the planned Scottish Enterprise event on broadband, provisionally planned for early March

f) To delegate to the Convener authority to approve any claims under the witness expenses scheme arising from this inquiry.

Alasdair Morgan
Convener
### Outline Inquiry Schedule

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<td>Panel 1 Enterprise Company perspective</td>
<td>To get a strategic overview of progress under the strategy, and to examine some of the major policy initiatives aimed at increasing broadband availability and use.</td>
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<td>Panel 2 Strategic business/consumer perspective – representative organisations</td>
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<td><strong>9 March 2004</strong></td>
<td>Panel 1 Urban digital exclusion panel</td>
<td>To examine some of the practical barriers to provision, to hear some of the difficulties and competitive disadvantages faced by ordinary business people in areas where broadband is not yet economically available, and some of the practical benefits felt by those who have got it.</td>
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<td>Panel 2 Rural access panel (possibly including Mr Alan Kennedy/Machars Broadband Action Group – e-petitioner)</td>
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<td><strong>16 March 2004</strong></td>
<td>Panel 1 Supplier perspective</td>
<td>To examine future prospects for broadband development, and the technological and policy solutions which will be required (+other interesting witnesses from written evidence)</td>
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<td>Panel 2 Independent analytical overview</td>
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<td>Panel 3 <em>(Any other witnesses identified from written submissions)</em></td>
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<td><strong>23 March 2004</strong></td>
<td>Panel 1 Minister for Enterprise and Lifelong Learning</td>
<td>To explore the success of various intervention tactics, the need for further targets and funding, the linkages with UK Government policy, etc.</td>
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This briefing has been written for the Enterprise and Culture Committee in preparation for an inquiry into progress in providing access to broadband across Scotland.
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KEY POINTS

• Broadband allows faster and cheaper access to the internet than a dial up connection giving benefits to business, public services and home users
• Left to the operation of market forces it is likely that access to broadband will not be made available at an affordable cost to all parts of Scotland
• Following recommendations of the Enterprise and Lifelong Learning Committee the Executive has set a target of 70% affordable broadband access by end March 2004
• Lines of inquiry are suggested including
  • Progress in extending coverage and achieving targets
  • Need for new targets
  • Barriers to extending broadband coverage
  • Effectiveness of government support for broadband in achieving wider objectives
WHAT IS BROADBAND?

Broadband is an always on internet connection which can transmit or download data up to 40 times as fast as a standard telephone and modem. A technical definition describes it as a telecommunications link allowing transmission at 2Megabit/second or more but it is used as shorthand to describe any fast internet access.

Assymetric Digital Subscriber Line (ADSL) is the most common and usually the cheapest type of broadband access. This uses conventional copper telephone lines but requires significant investment by the telecoms provider to upgrade the local telephone exchange. Any fixed line telephone located within 5.5kms (as the wire travels) of an upgraded exchange can be adapted to provide broadband. Basic speed is 512 kilobits per second (kbps) and costs range from £25 per month. Coverage is dependent on the rate at which the telephone provider (BT) upgrades local exchanges.

Where cable has been laid then high speed internet connection can be provided relatively cheaply especially if taken as part of a package including television and telephone. However coverage is low and concentrated in urban areas.

Other methods use electricity transmission lines, wireless transmission or satellites. These have their advantages in rural areas where there is no dense telephone or cable network but tend to be more expensive to the user and have some technical limitations.

A summary of the characteristics of each technology is given on the next page.

THE ADVANTAGES OF BROADBAND

Connecting Scotland our broadband future: Making it Happen lists the following advantages to business

- reducing costs;
- allowing customers to order online;
- developing and delivering goods or services in new ways;
- enhancing after sales service;
- checking the availability of supplies online;
- ordering supplies online and gaining fast access to global markets; and
- enhancing the company's image and credibility.

Broadband is also capable of improving the delivery of public services such as libraries, medical services and education. Home users of the internet can also enjoy the benefits of faster and cheaper internet access using broadband.

PROBLEMS IN PROVIDING BROADBAND INTERNET ACCESS

Left to the operation of market forces it is likely that the rate at which broadband capacity is installed will be too slow, coverage will be incomplete, quality will be too low and cost to the user too high. These problems will be most pronounced in remoter and rural areas and may be compounded if a dominant supplier behaves in a monopolistic manner. There is thus a view that there is a role for government in ensuring that high quality telecommunications
infrastructure is available throughout Scotland. (Enterprise and Lifelong Learning Committee 2001)

**Summary of the Characteristics of each technology**

<table>
<thead>
<tr>
<th>Technology</th>
<th>Likely availability in Scotland</th>
<th>Cost</th>
<th>Provider(s)</th>
<th>Drawbacks (if any)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADSL</td>
<td>Low</td>
<td>BT + second tier suppliers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cable</td>
<td>Limited to major centres of population</td>
<td>Low</td>
<td>NTL, Telewest</td>
<td></td>
</tr>
<tr>
<td>Wireless Local Area Network (WLAN)</td>
<td>Anywhere with another broadband feed – allows distribution to local communities without wiring</td>
<td>Low</td>
<td>Feeds from BT and cable companies: companies such as The Cloud provide access points</td>
<td>Needs broadband feed</td>
</tr>
<tr>
<td>Satellite</td>
<td>Anywhere reachable by satellite TV – almost the whole of the country</td>
<td>High (installation), Medium (running) and needs local distribution by eg WLAN to serve more than a single customer. At current pricing installation of a satellite terminal costs £949 with running costs of £60 per month</td>
<td>BT and third parties such as Aramiska. Aramiska and ehotspot are now installing satellite + WLAN systems in rural communities.</td>
<td>Latency – realtime applications suffer from poor response time</td>
</tr>
<tr>
<td>Powerline</td>
<td>In principle anywhere with power connection: distance limitations unknown</td>
<td>Low</td>
<td>Power companies such as Scottish Hydro-Electric</td>
<td>Unproven especially in remote locations</td>
</tr>
</tbody>
</table>

Source: Professor S P Beaumont, The Alba Centre

**THE REGULATORY FRAMEWORK**

Under [Article 88 of the EC Treaty](https://eur-lex.europa.eu/), Member States are constrained on the extent to which they can provide state aid to any particular business or industry. However it is usually possible to provide limited state aid for small and medium sized enterprises, for research and development and for disadvantaged areas. This gives scope for intervention by the Executive in support of extending the coverage of broadband.

Regulation of anti-competitive practises and agreements; abuse of dominant position; and monopolies and mergers are reserved matters as are telecommunications, wireless telegraphy and internet services. The regulator for the UK communications industries, Ofcom has
THE UK CONTEXT

The Select Committee on Environment, Food and Rural Affairs published its Report of an inquiry into Government Broadband Policy in July 2003. The introduction to the report states:

“The [UK] Government regards access to new technologies to be of vital importance. It has set itself a goal of "getting the United Kingdom online - to ensure that the country, its citizens, and its businesses derive the maximum benefit from Information and Communication Technology". The achievement of such a goal, it claims, will result in "better public services, a stronger economy, increased productivity and opportunity for all." The aim is for the United Kingdom to be a "world-class place for e-business, public service delivery and online participation."

The Report went on to say:

“The [UK] Government has set a range of objectives with regard to access to broadband. Its main target is that the United Kingdom should have the most extensive and competitive broadband market in the G7 by 2005. Implicit, it says, in its target for extensiveness is that broadband be made available in rural areas. It has also said that by 2006 every primary and secondary school in the country will have broadband internet access, and has committed itself to make connections available to every GP surgery, hospital, primary care trust and health authority in the country. The Government has invested over £1 billion in providing key public services with broadband connectivity. In addition it has provided a £30 million fund to the Regional Development Agencies to enable them to undertake studies and pilot projects relating to the extension of availability and take-up."

A selection of the Committee’s conclusions and recommendations and the Government’s response, published September 2003, are shown below to demonstrate what is being done at UK level and in England and helps answer some questions over the actions of telecom suppliers, regulation and state aid to business.

Recommendation 1
We agree with the Countryside Land and Business Association that setting trigger levels for all exchanges, no matter how high they might be, would help rural communities to gauge their prospects of accessing broadband via ADSL. We therefore strongly urge BT to set trigger levels on all exchanges.

This approach was advocated by Ministers at meetings with BT to discuss the rural broadband issue last year. Having encouraged BT to be more transparent in providing information on trigger levels and likely enablement of rural exchanges, the Government has welcomed BT’s pre-registration scheme and in particular the setting of trigger levels which has led to 900 exchanges meeting their demand trigger of which more than 500 are already live for broadband and the rest are in the process of being upgraded. Ministers will write to BT to put forward the view that it is in their interests as a company as well as in the local public interest, for them to be open and transparent about trigger levels, but this must be a commercial decision for the company.
Recommendation 2
We recommend that Oftel and BT meet to clarify whatever confusion persists about the degree to which BT is able to cross-subsidise the enablement of exchanges with money made in profitable areas.

This is an issue for Oftel and BT, but the Government is pleased that Oftel has met BT to clarify the degree to which BT is able to cross-subsidise the enablement of exchanges. The Government understands that there is no regulatory rule which requires BT to recover the costs of upgrading an exchange from revenue generated in the area served by that exchange. However, in setting the prices of its broadband products (which it sets on a national basis), BT must comply with competition law and its regulatory obligations. This means, for example, that the products must not be priced below cost with a view to excluding competitors.

Recommendation 3
By offering good quality services online the Government can make a vital contribution to stimulating demand for broadband services, which will in turn encourage investment in such services. We recommend that the Government move quickly to offering all of its own services online, including those services particularly directed at rural communities. We also recommend that the Government encourage other public sector bodies to make services available online as quickly as possible. Encouraging demand should not stop once broadband has been made accessible: take-up of the service is also important.

The Government accepts this recommendation. Government is committed to ensuring that central government services are made available electronically by 2005 and that key services achieve high levels of use. The latest Electronic Service Delivery survey shows that 63% of services were e-enabled at the end of 2002 and departments have forecast that they are on track for getting all government services on line by 2005 target.

The Government's strategy includes the creation of a mixed economy for the supply of public services, where consumers (citizens and businesses) will be able to access e-government services via intermediaries in the public, private or voluntary sector. The Office of the e-Envoy published a consultation document on the framework for intermediaries on 29 May 2003 that aims to ensure that all departments involve intermediaries. This means people will be able to access services in a way which suits them best and through organisations they know and trust. Benefits to rural areas would stem from intermediaries' wider yet focused reach, helping to mitigate issues of social and economic exclusion, IT literacy and poor rural infrastructure. There has already been some success. For example the British Cattle Movement Service (BCMS) allows intermediaries to supply cattle movement data from agents directly into the BCMS validation system.

Government agrees that take up of services is important. As part of the Spending Review 2002, the Government recognised the need to look beyond simply getting services online to making sure they bring about a real improvement in the quality of services and that people want to use them. To push this forward the Government's target of getting all e-Government services online by 2005 has been enhanced to include a commitment "with key services achieving high levels of use". In order to achieve this, the Office of the e-Envoy is currently developing a methodology, definitions and targets for each of the key services.
Recommendation 9

There is a proportion of the countryside - generally the most rural and remote areas - where the provision of broadband cannot reasonably be left to the marketplace. In order not to disadvantage such areas intervention is essential. We therefore recommend that the Government rapidly identify those areas in which its intervention is needed, develop policies, in conjunction with Regional Development Agencies and local authorities which ensure that broadband is made accessible in remote areas; and back those policies with adequate funds. It should, for example, make specific funds available under the England Rural Development Programme to subsidise the cost of broadband in the most remote areas.

The Rural Broadband Team set up at the beginning of May within DTI will focus on the problems and issues of delivering broadband into rural areas. The team is exploring the issues raised above, including where intervention may be required with a variety of partners including the Regional Development Agencies, local authorities and other intermediary bodies. This is feeding into a strategy for rural broadband which the Government hopes to be a position to announce later in the year.

Support is already potentially available under the England Rural Development Programme. Projects under the "basic services" measure of the Rural Enterprise Scheme could include investment in broadband access. However, the Government does not propose to make available specific, ring-fenced funds. That would limit the flexibility of regions in using the funding available to them to tackle regional and local needs. Further subdivision of the overall budget would also make budgetary management more difficult, and increase the risk of not maximising our use of EU funding. When regional targeting statements for the use of the Rural Enterprise Scheme and the other project-based schemes are next revised, however, we will consider whether the Department of the Environment, Food and Rural Affairs (Defra) centrally should encourage regions to place particular emphasis on broadband services.

Recommendation 10

We recommend that the Government clarify in its response to this report its understanding of European state aid rules as they relate to public sector support for broadband. We are keen to ensure that such rules, or current misunderstanding of them, do not affect public support for broadband provision in the most remote communities.

The Government agrees that a proper appreciation of the EU State Aid rules is important for understanding the constraint on the public sector's involvement in broadband rollout.

The traditional way to provide support for broadband is through aid given under the regional aid rules. However, for large firms this is only an option in UK Assisted Areas. Small and Medium Sized Enterprises can be assisted in all areas as long as the aid complies with the terms of the Small and Medium Sized Enterprise Block Exemption (Commission Regulation (EC) 70/2001).

There is however potentially a further state aid compliant way to support business access in non-Assisted Areas. This is through funding of what are known as Services of General Economic Interest (SGEI). An SGEI is not defined in the Treaty and it is for individual Member States to determine what constitutes an SGEI, with the Commission only having a role in case of manifest error. In general an SGEI is a service that the market does not provide or does not provide to the extent or to the quality which the Government would like. An SGEI must also serve the generality of economic interest and not the interest of one particular group. An SGEI can be set by any level of Government. Broadband in for example rural areas could be seen as...
an SGEI. There is a market failure in that the market will not quickly provide universal access to broadband.

The state aid status of funding for SGEI has been clarified recently. Under a recent Decision from the European Court of Justice (ECJ) (C 280/00 Altmark) funding will not count as aid if it meets four strict conditions.

i. the undertaking must actually have been given a public service obligation (SGEI) to perform and this must have been clearly defined in advance;

ii. the parameters of the basis of which the compensation is calculated must be established in advance in an objective and transparent manner;

iii. the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a relevant profit;

iv. where the undertaking is not chosen in a public procurement procedure, the level of compensation must be determined by comparison with an analysis of the costs which a typical undertaking in the same sector would incur.

If these tests are satisfied then there has been no advantage in state aid terms to the company aided.

The Department of Trade and Industry will clarify this area of policy in October by guidance for local authorities. There are no plans to make broadband an SGEI on a national basis.

Recommendation 13

We recommend that the Government now reformulate its objectives in respect of broadband to reflect the need for broadband to be accessible in all areas of the country. We further recommend that the Government back its new objectives with practical policies which will ensure that broadband is accessible to all at affordable rates as soon as practicable.

Defra and DTI Ministers confirmed in oral evidence to the Committee and in a press notice of 23rd May 2003 a joint aim that every community in the UK, irrespective of location should have the opportunity to access affordable broadband from a competitive market.

Government does not believe that there is a case for general subsidy. In the main part we believe that the competitive market which has brought about the current level of availability should be allowed and encouraged to rollout services where it believes this to be economically viable and to develop innovative approaches to doing so. The Government has some powerful levers where the market will not deliver. These include the £1 billion investment by Government on public sector connectivity through the Broadband Aggregation Project. Regional Development Agencies have £1.8 billion to spend next year on regional economic development. Where broadband is a significant barrier to development it would be legitimate for them to spend money on this. Regional Development Agencies have already been given £30 million for pilot broadband projects to learn what will work in extending availability (UK Broadband Fund) and European Structural Funds can be another source of funding where applicable.

The Rural Broadband Team will make sure that these levers have maximum impact in rural areas.
As part of the work to develop a rural broadband strategy, both departments will explore the scope for setting specific quantified targets for rural broadband provision if appropriate parameters sufficiently susceptible to Government influence can be identified.

ELL COMMITTEE RECOMMENDATIONS – JUNE 2001

The Enterprise and Lifelong Learning Committee produced its report in June 2001 and made the following recommendations on the provision of broadband:

- The Committee firmly believes that there is a role for the Scottish Executive to take a lead to ensure that high-quality telecommunications infrastructure, which will promote the development of the new economy, is available throughout Scotland.
- The Committee congratulates the Executive in taking the initiative in seeking to demonstrate the business case for investment in telecommunications in remoter areas through researching public-sector demand. It recommends the roll-out of this process throughout the country (para 195).
- The Committee believes that the current initiatives, whilst welcome, are unlikely to lead to the provision of broadband facilities throughout Scotland. Whilst demand aggregation and procurement should be the Executive’s first line of attack, it should not exclude the possibility of other positive action, including selective public support for telecommunications infrastructure provision (para 200).
- The Committee believes that there is a case for appropriate selective public investment in telecommunications infrastructure, where this investment supports facilities that would not otherwise be provided by the private sector, and that the Executive should make provision for this if required (para 210).
- In this context, the Committee recommends that the Executive establish a target date to establish economic broadband communication links to all businesses and homes in Scotland. This target should be an ambitious one, which is benchmarked against those of our competitor nations - for instance the commitment of the Swedish Government to ensure a 2Mbps service to all businesses and households by 2003.
- The Committee is aware that any strategy has to be set against the important backdrop of the regulatory framework for telecommunications. The Committee believes that if there is to be public involvement in the development of telecommunications infrastructure, even to the extent of the Executive aggregating demand to encourage broadband provision in smaller towns, this may create a need for a watchdog function on competitive provision.
- The Committee is aware of the changing role of Oftel and its evolution to Ofcom. It believes that there is a need to clarify the relationship between the Scottish Executive, the Parliament and the new regulatory body.

The Scottish Executive Response to the recommendations on broadband was as follows

- The Executive’s aim is to ensure that affordable and pervasive broadband connections are available to citizens and businesses across Scotland.
- Infrastructure investment is likely to be most efficiently provided by the private sector in this complex and dynamic market. However, services may not be provided in some, and particularly rural, areas.
- The Executive will promote procurement of broadband connections for public services in a way that stimulates providers to offer a wide range of services to businesses and consumers.
- The public sector will consider joint public-private provision in remote areas which might not receive sufficient provision on a commercial basis.

providing research and information services to the Scottish Parliament
A target has been set of achieving availability of affordable broadband to 70% of the Scottish population by end March 2004.

Further information on action being undertaken by the Executive is given in SPICE Briefing 03-08 The New Economy - Update from which the next section is taken.

Some of the Executive intervention plans to increase the uptake of broadband include:

Project ATLAS
The first phase of project ATLAS (Accessing Telecomms Links Across Scotland) was to set up a virtual Telecoms Trading Exchange (TTE) in Scotland supported by a link (backhaul) to London. The TTE is connected to UK and worldwide telecoms suppliers via a dedicated high capacity London-Scotland link procured by Scottish Enterprise from Perth based SSE Telecom.

On 30 September 2002, Band-X, the bandwidth exchange, was awarded the contract by Scottish Enterprise to offer its IP transit trading platform to the Scottish market. The contract, called the Telecoms Trading Exchange (TTE), was established to help deliver increased broadband links to businesses across Scotland. The project is to run for at least three years and involves Band-X building and operating the facility and subsequently promoting and selling the IP transit service to Scottish wholesale customers. This project is aimed at allowing Scottish Internet Service Provider (ISPs) to compare information and wholesale prices via a dedicated website and purchase IP transit in Scotland from leading international networks at London prices. London is one of the most competitive IP markets in the world with transit prices on the Band-X exchange below £100 per megabit.

On 22 January 2003, Band-X announced that the TTE had gone live “ahead of schedule” and secured its first customer, Glasgow based hosting specialist, European Quality Serviced Networks, Ltd (EQSN). Phase II of project ATLAS aims to spread the benefits of the project more widely by building remote hubs in some of Scottish Enterprise’s business parks, with backhaul links to the main ATLAS hub located in Scolocate in Edinburgh. It should be noted that this contract has been legally challenged and is currently the subject of an EU Competition Commission Inquiry. The Third Report of the Broadband Stakeholder Group states

“A complaint was brought against the project by a telecommunications operator on the grounds it interfered with the free market and constituted illegal State Aid. While Scottish Enterprise (SE) has argued that it was responding to market failure, the company that brought the complaint claims that the project is competing with commercial operators in

providing research and information services to the Scottish Parliament
breach of Article 87(1) of a European treaty on competition. A number of commercial companies are already providing network services in several of these business parks and they claim that Project Atlas distorts the market because SE does not have to seek a commercial rate of return like other businesses.

This is an important test case on the application of state aid to public sector broadband infrastructure provision, and the issue of current vs next generation services. The outcome, which is expected early in 2004, will therefore be very significant and should provide further legal clarity on the issues related to public sector infrastructure provision.”

In addition to the pathfinder projects mentioned above, the Executive also outlined plans for trials of alternative delivery mechanisms for Broadband in rural areas. The following are examples of some of the projects on trial:

**FIXED WIRELESS PROJECT – WESTERN ISLES**

The fixed wireless project in the Western Isles aims to extend broadband access to the public sector and businesses throughout the region. This project is currently at the procurement stage, with plans in place to have the main network ready for March 2003.

**POWERLINE CARRIER TRIALS – CRIEFF AND CAMPBELTOWN**

The pilot scheme to offer 24 hour high speed Internet access for rural communities in the north of Scotland was launched in Crieff in June 2002. Alongside a similar initiative in Campbeltown, this project uses electricity power networks to deliver broadband communications.

**RELATED DEVELOPMENTS**

On 13 February 2002, BT launched their new satellite broadband service. This was of importance in that it was designed to deliver high speed internet access to Scotland’s rural communities. This coincided with a commitment made by Highlands and Islands Enterprise, Scottish Enterprise Dumfries and Galloway, and Scottish Enterprise Borders, to subsidise satellite installation costs for local businesses in their respective areas.

Funding of these activities comes from the UK Broadband Fund and the Executive’s £24million Broadband Fund (Scottish Executive Press Release)

**THE CURRENT POSITION**

Because broadband can be provided in different ways and by different suppliers it is not easy to compile definitive statistics on the extent of coverage at any particular date. There is already 100% satellite coverage but this is not deemed to meet the normal criteria for affordability. Research on Broadband Conducted by Analysys Consulting Ltd for the Scottish Executive shows that affordable broadband coverage in Scotland at end March 2003 was still only 57% which is significantly below the UK average of 72% and exceeded by all English regions except the South West.

Information on the Scottish Executive web site shows that broadband coverage had increased to 67% by end September 2003.
POSSIBLE AREAS OF INQUIRY

Progress in making broadband available across Scotland

While progress has been made in extending the availability of broadband across Scotland, coverage is below the UK average. The Committee may wish to consider whether the rate of progress is satisfactory or whether more could and should be done by government to increase availability.

Targets

The target for broadband availability is for 70% population coverage by end March 2004. According to the Scottish Executive web site 67% coverage had been achieved by end September 2003 an increase of about 9% in 6 months suggesting that the target will be met. The Committee will wish confirmation that the target is likely to be met. No new target has yet been set. The Committee may wish to consider whether a new target should be set and, if so and in the light of possible costs, may wish to consider what the target should be.

Barriers to extending broadband coverage

While there are technical difficulties in providing access to broadband in remoter areas these can generally be overcome but at a cost. Concern has also been expressed that availability of the most popular technology, ADSL, has been inhibited by the need to access local telephone exchanges which are controlled by the main telecoms supplier BT. The Committee may wish to consider whether more could be done to encourage competition between suppliers and reduce costs and whether there is any evidence of monopolistic behaviour by any supplier.

Effectiveness of government support for broadband in achieving wider objectives

The justification for government intervention is partly the contribution access to broadband can make to economic growth and partly the wish to reduce regional inequality. The effectiveness of providing access to broadband in achieving these objectives will depend on the take up of broadband but where broadband has been provided uptake has tended to be below expectations. The Committee may wish to consider how cost effective expenditure by the Executive on broadband has been in promoting economic growth and in reducing inequality.

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Enterprise and Culture Committee
Meeting 27 January 2004

Renewable Energy Inquiry: Evidence to date

Summary

This paper briefly reviews the evidence received to date, seeks to identify emerging themes and invites members to discuss future lines of inquiry.

Introduction

The Committee has now taken oral evidence from the following organisations as part of its renewable energy inquiry:

- Director of the Institute for Energy Systems
- Scottish Enterprise
- Five petitioners
- COSLA
- Argyll and Bute Council and Alienergy (Argyll Lomond and the Islands Energy Agency)
- Scottish Power and Scottish and Southern Energy
- Scottish Renewables Forum (officials)

Witnesses due to give oral evidence over the coming weeks are:

- British Energy and British Nuclear Fuels Ltd (BNFL)
- Scottish Natural Heritage
- Scottish Environment Link
- Scottish Renewables Forum (representatives of research and development companies)
- Ofgem
- Department of Trade and Industry
- Deputy First Minister.

The Committee has also visited a windfarm in Campbeltown and the Vestas-Celtic turbine factory, and held an open meeting in Campbeltown which was attended by over 60 local people.

At this half-way point in the planned oral evidence sessions, Committee members are invited to consider the emerging themes for the inquiry, and to identify particular areas for additional investigation (including any additional oral evidence).

The Committee has provisionally scheduled fact finding for early March. In light of the evidence taken to date members may also wish to consider which visits they wishes to undertake.

At the time of writing, around 35 written evidence submissions have been received. The deadline for written submissions in 26 January, and I will give an update at the Committee meeting on the final number of submissions. Members will have a further
opportunity to identify additional oral witnesses following circulation of the written evidence.

Emerging themes

This list is intended to stimulate debate rather than to provide a comprehensive summary of the issues heard to date. Members are invited to add to it and in particular to indicate where there are areas where they feel that additional oral evidence would be helpful.

- Community involvement in and community benefits from renewable energy developments

- Planning arrangements, including the current fee arrangements, the role of the MoD, the use by developers of section 36 of the Electricity Act 1989 in relation to windfarms above 50MW, and the need for national and/or regional strategic plans and targets

- Impact of BETTA, in relation to potentially higher costs for Scottish consumers, and to the potential impact of changes in transmission costs for the development of renewables.

- Appropriate mechanisms to stimulate R&D on emerging technologies and bring them to market

- Broader market support framework, including whether ROCs could or should be used to direct the market

- The National Grid, including capability and capacity issues

- Skills base for renewable energy, including the potential for ‘virtuous circles’ to be formed by linking with initiatives in other policy areas, eg New Deal and Warm Deal or housing stock transfers

- Liaison between Scottish and UK Ministers with responsibility for energy policy, particularly in light of the BETTA negotiations

- Energy conservation, including the potential for meeting the UK government target of 50% reduction in CO2 through energy conservation measures (ie a larger contribution than through the renewable generation of electricity. This could also consider issues such as the development of renewable transport options eg biofuels.

Recommendation

Members are invited to discuss the emerging themes of the inquiry, and to identify additional oral witnesses.

Alasdair Morgan
Convener