The Committee will meet at 9.30 am in Committee Room 1.

1. **Tourism inquiry - Growing pains: can we achieve a 50% growth in tourist revenue by 2015?:** The Committee will take evidence on its tourism inquiry from—
   
   Jim Mather MSP, Minister for Enterprise, Energy and Tourism, John Brown, Deputy Director, Tourism and Whisky Legislation Division, Richard Arnott, Head of Tourism Unit, and Mairi Caldwell, Tourism Policy Adviser, Scottish Government.

2. **Energy Bill (UK Parliament legislation):** The Committee will consider the legislative consent memorandum lodged by John Swinney (LCM(S3) 12.1) and take evidence from—
   
   Jim Mather MSP, Minister for Enterprise, Energy and Tourism, Bruce Stewart, Policy Executive, Marine Strategy, Ross Loveridge, Senior Energy Policy Adviser, and Norman MacLeod, Senior Principal Legal Officer, Scottish Government.

3. **The Scottish Register of Tartans Bill:** The Committee will take evidence on the general principles of the Bill at Stage 1 from—
   
   Jim Mather MSP, Minister for Enterprise, Energy and Tourism, Mike McElhinney, Branch Head, Manufacturing Policy, Scottish Government and George MacKenzie, Keeper of the Records of Scotland;
   
The papers for this meeting are as follows—

**Agenda Item 2**

Paper by the Clerk

Members are reminded to bring a copy of the Scottish Register of Tartans Bill, the accompanying documents and the SPICe briefing to the meeting (previously issued).
Background

1. The Energy Bill was introduced to the House of Commons on 10 January 2008. A Legislative Consent Memorandum (LCM) has been lodged by the Scottish Government as this Bill makes provisions that relate to matters within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers. The LCM is attached at annexe A. The Parliamentary Bureau has referred the Legislative Consent Memorandum to the Economy, Energy and Tourism Committee to consider and report on.

2. The consent of the Scottish Parliament is sought in relation to the following provisions on the storage of Carbon Dioxide under the seabed:

   - Under the Scotland Act 1998, legislative competence for the storage of carbon dioxide within territorial waters adjacent to Scotland (0-12 nautical miles) is devolved to the Scottish Parliament. The provisions in Part 1 of the Energy Bill relate to the storage of carbon dioxide under the seabed from 0-200 nautical miles and therefore require the legislative consent of the Scottish Parliament. The Scottish Ministers will exercise the licensing authority functions provided for in the Energy Bill in this area.

   - The Scottish Ministers currently have executive competence for the control of depositions of carbon dioxide under the seas or under the seabed in UK-controlled waters adjacent to Scotland but beyond territorial waters under Part 2 of the Food and Environment Protection Act 1985 (FEPA). The Energy Bill will alter this executive competence in the waters from 12-200 nautical miles adjacent to Scotland by disapplying FEPA in relation to matters covered in Part 1, Chapter 3 of the Energy Bill. The Energy Bill will create consistent UK-wide licensing arrangements for carbon storage in waters 0-200 nautical miles adjacent to Scotland and UK Government has undertaken to consult closely with the Scottish government in relation to licensing powers in these waters.

3. Part 2 of the Energy Bill amends the existing Renewables Obligation under the Electricity Act 1989 to introduce new banding arrangements for different renewable technologies. This will alter the executive competence of Scottish Ministers by changing the provisions in the original Act, but the UK Government has made clear that ministerial powers and functions will be executively devolved by means of a new Order in Council under section 63 of the Scotland Act 1998. This Order will require the approval of the Scottish
Parliament and the relevant provisions in the Energy Bill cannot be commenced until after this Order has been made.

Legislative consent procedure

4. Chapter 9B of Standing Orders sets out the procedures for the consideration of a Legislative Consent Memorandum. For any bill under consideration in the UK Parliament which makes provision applying to Scotland for any purpose within the legislative competence of the Parliament, or which alters that legislative competence or the executive competence of the Scottish Ministers, a member of the Scottish Executive must lodge a LCM.

5. A LCM must set out a draft legislative consent motion and explain the background to the relevant bill. The Parliamentary Bureau refers the memorandum to the relevant lead committee. As the Bill makes provision for subordinate legislation, the LCM has also been referred to the Subordinate Legislation Committee (SLC). The SLC has considered the relevant provisions of the Bill (the SLC’s report is attached at annexe B) and has drawn the Committee’s attention to the following points—

- The power under clause 34 to transfer functions and modify application of section 188 of the Energy Act 2004. The SLC found this delegated power acceptable but given the potential financial implications of the exercise of this power decided to draw this power to the attention of the lead committee.

- In relation to the commencement power in clause 99, as this has not been conferred on the Scottish Ministers and in terms of the Parliament’s standing orders, the Committee is not required to consider it under rule 9B3.6. However, given that the Scottish Ministers will not have any formal role in the commencement of these provisions in, or as regards Scotland, the SLC decided to draw this to the attention of the lead committee.

6. The lead committee must consider the LCM and make a report on its views to the Parliament no later than five sitting days before the Parliament shall consider the legislative consent motion. The Scottish Parliament should give its consent, or otherwise, to Westminster to legislate prior to the first day of the last amending stage of the Bill at Westminster. Ideally, the Committee should decide whether to agree to the LCM at today’s meeting.

Action

7. There is no formal model to be followed in terms of the Committee’s consideration or report on the LCM to this Bill. However, the Committee may wish to consider the following areas in its scrutiny of the LCM and in taking evidence from the Minister for Enterprise, Energy and Tourism—

- the general merits of the relevant provisions contained within the Bill that are identified within the Legislative Consent Memorandum;
• whether the relevant provisions in the Bill justify the need for a Legislative Consent Memorandum;
• the requirement for an Order in Council under section 63 of the Scotland Act 1998;
• the points raised by the Subordinate Legislation Committee in its report on the Legislative Consent Memorandum;
• whether the Committee has any comments on the draft legislative consent motion contained within the LCM;

Decision

8. The Committee is invited to decide whether it wishes to recommend, in a report to the Scottish Parliament, that consent be granted to the UK Parliament to consider the Bill as set out in the draft Legislative Consent motion.

9. If the Committee does agree to recommend that the Scottish Parliament grant consent to the UK Parliament, Members are asked to delegate drafting and publication of a short, factual report to the Convener, Deputy Convener and the clerk without the need to discuss a draft as part of a future Committee meeting. This would include a decision on how to respond to any points raised by the Subordinate Legislation Committee.

Stephen Imrie
Clerk to the Committee
Annexe A

LEGISLATIVE CONSENT MEMORANDUM

UK ENERGY BILL 2008

Legislative Consent Motion

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

"UK Energy Bill: That the Parliament agrees that the relevant provisions of the UK Energy Bill in Part 1, Chapter 3 (Storage of Carbon Dioxide), introduced to the House of Commons on 10 January 2008, should, insofar as they relate to matters within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, be considered by the UK Parliament."

Background

2. This memorandum has been lodged by John Swinney MSP, Cabinet Secretary for Finance & Sustainable Growth, under rule 9B.3.1(a) of the Parliament’s standing orders. The UK Energy Bill was introduced in the UK Parliament on 10 January. The Bill can be found at:

http://services.parliament.uk/bills/2007-08/energy.html

3. The main purpose of the Energy Bill is to implement the legislative aspects of the Energy White Paper, Meeting the Energy Challenge (Cm. 7124, May 2007). The Energy White Paper can be found at:

http://www.berr.gov.uk/energy/whitepaper/page39534.html

4. The principal objective of the Bill is to update the legislative framework to meet the needs of the current energy market and to ensure that it is fit for the future energy challenges that the UK faces. The key elements of the Bill are:

- **Part 1: Gas Importation & Storage and Carbon Storage** – This covers provisions relating to the storage of natural gas and unloading of Liquefied Natural Gas (LNG) from 12 to 200 nautical miles (nm) adjacent to the UK, as well as the storage of carbon dioxide under the seabed from 0 to 200nm;

- **Part 2: Electricity from Renewable Sources** – This modifies the existing Renewables Obligation to make it more efficient and increase the use of renewables. It also amends the powers of Ofgem to run tender exercises to establish offshore transmission network operators to manage conveyance of high voltage electricity from offshore generating stations.

- **Part 3: Decommissioning of Energy Installations** – This covers provisions to ensure the taxpayer is protected from meeting the costs of decommissioning energy installations in the following sectors: nuclear; offshore renewables; oil & gas.

- **Part 4: Provisions relating to Oil & Gas** – The Bill makes some changes to existing legislation covering petroleum licensing and third party access dispute
resolution procedures, by extending their scope to cover upstream oil and gas infrastructure.

- **Part 5: Miscellaneous** – This contains various provisions covering reporting on energy requirements; giving legislative effect to earlier administrative transfer of certain aspects of energy regulation; and nuclear security.

- **Part 6: General** – Consequential provisions and amendments relating to offences, subordinate legislation, transitional provision, extent and commencement.

**Provisions which relate to Scotland**

5. The following paragraphs describe the elements of the UK Bill for which the consent of the Scottish Parliament is sought, and provide information on two matters which both the Scottish Government and the UK Government consider do not require legislative consent. Further background information in relation to the Storage of Carbon Dioxide under the seabed is provided at Annex A.

**Devolved provisions which require the consent of the Scottish Parliament:**

- **Storage of Carbon Dioxide under the seabed** – (Part 1, Chapter 3)
  - *legislative competence* for the storage of carbon dioxide within territorial waters adjacent to Scotland (0-12nm) is devolved to the Scottish Parliament under the Scotland Act.
  - The Scottish Ministers currently have *executive competence* in terms of Part 2 of the Food & Environment Protection Act 1985 (FEPA) for the control of depositions of carbon dioxide in the sea or under the seabed in UK-controlled waters adjacent to Scotland beyond territorial waters. The Bill will create consistent UK-wide licensing arrangements for carbon storage in waters 0-200nm adjacent to Scotland.
  - The proposed regime as it applies to territorial waters adjacent to Scotland (0 to 12nm) falls within the legislative competence of the Scottish Parliament and requires legislative consent. The Scottish Ministers will exercise the licensing authority functions provided for in the UK Bill in this area.
  - The UK Bill will also alter existing executive competence (described above) in the waters 12-200nm adjacent to Scotland through the disapplication of FEPA in relation to matters covered by Part 1, Chapter 3 of the Energy Bill. The UK Government has undertaken to consult closely with the Scottish Government in relation to the exercise of licensing powers in these waters. This undertaking recognises the significant extent of existing Scottish Government executive competence in waters adjacent to Scotland but beyond territorial waters, including under FEPA, and the importance of co-ordinating the exercise of devolved and reserved functions in all waters adjacent to Scotland.

**Devolved provisions which do not require the consent of the Scottish Parliament**

- **Renewables Obligation** – (Part 2) – competence for the Renewables Obligation under the Electricity Act 1989 has been executively devolved to Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 3) Order 2006 (SI 2006/3258). The Bill amends the existing Renewables Obligation regime under the Electricity Act 1989, to introduce new banding arrangements to
provide different levels of support for different renewable technologies based on their cost and other considerations specified in the Bill.

- The Bill will alter the executive competence of Scottish Ministers, by altering the provisions in the original Act, but the change does not require a Legislative Consent Motion. This is because the UK Government has made clear that ministerial powers and functions under the revised provisions will be executively devolved. This “re-devolution” of the revised provisions will be achieved by means of a new Order in Council under s.63 of the Scotland Act 1998 (section 94 of the Bill refers). Since the relevant provisions in the Energy Bill cannot be commenced until after the new s.63 Order has been made, and since the Order will itself require approval in the Scottish Parliament, a Legislative Consent Motion covering this element of the UK Bill is not required. The consent of the Scottish Parliament will instead be sought in connection with the s.63 Order.

- **Nuclear Decommissioning** – (Part 3, Chapter 1) – These provisions do not extend to Scotland, so a Legislative Consent Motion is not necessary.

### Proposals

6. The Scottish Government supports the UK Government’s policy commitment to ensuring secure supplies of energy and tackling climate change by reducing carbon emissions. The UK Bill is intended to support delivery of those policy objectives. It will create a common regulatory framework for the storage of carbon dioxide under the seabed, and will enable support to be better-targeted at emerging renewable energy sources. Both of these features will be crucial in meeting our ambitious climate change target to reduce CO2 emissions by 80% by 2050, and fall within the same framework for co-operation with the UK Government that the Scottish Ministers recommended to the Scottish Parliament in the Legislative Consent Memorandum for the UK Climate Change Bill 2007.

7. The Bill will also provide the enabling framework for the UK to comply with the European Union’s draft Directive on the Geological Storage of Carbon Dioxide, which is expected to be agreed during 2008, and will need to be implemented within 12 months of agreement. Onshore storage of carbon dioxide will be dealt with by the draft Directive and amendments to other existing EU Directives and UK / Scottish regulations. The Scottish Government therefore recommends that the Parliament supports the Bill’s provisions on carbon dioxide storage and allows Westminster to legislate on its behalf.

### Consultation

8. The UK Government’s Department for Business, Enterprise & Regulatory Reform has consulted publicly on the proposals contained in the Bill as part of its consultation on the preceding Energy White Paper in 2007, and in the consultation on nuclear power, preceding publication of the Nuclear White Paper in 2008. The proposals on carbon storage have been considered by the industry as part of the UK Government’s competition for a carbon storage demonstrator project, and the UK Government is consulting further on arrangements for the implementation of the carbon storage parts of the Bill. Organisations from the Scottish public and private sectors, including SEPA, have been amongst the consultees, and Ministers and officials from the Scottish Government have had the opportunity to participate in these consultations and to see some earlier drafts of the Bill.
Financial Implications

9. The UK Government’s view is that the Bill is not expected to have any significant implications on public expenditure. This is because the Bill makes provisions to ensure that private sector investment is made in accordance with energy policy objectives, and does not make any commitments for public expenditure. The Bill will give powers to the Secretary of State and the Scottish Ministers to recover the costs of administering the licensing regime for storage of carbon dioxide under the seabed from applicants for licences.

10. In the longer term, once a carbon storage licence has been terminated (i.e. when a carbon store is deemed to have become permanently secure), the Scottish Ministers (in relation to sites in territorial waters adjacent to Scotland) may be required to meet obligations (including financial arrangements) associated with the long term liability of the store. The UK Government may be required to meet obligations in relation to sites in waters 12-200nm adjacent to Scotland.

11. In terms of changes to the Renewables Obligation, the mechanism provides for subsidy of renewable generation by UK electricity consumers, and it is expected that these costs will be passed onto consumers through charges.

SCOTTISH GOVERNMENT
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Storage of Carbon Dioxide under the seabed

1. Carbon Capture and Storage (CCS) is a process involving the capture of carbon dioxide from the burning of fossil fuels, its transportation, and storage in secure spaces, such as geological formations, including under the seabed. CCS can be applied to a range of industrial processes including coal-fired and gas-fired electricity generation. It has the potential to reduce carbon dioxide emissions by up to 90% of standard coal-fired generation. The Stern Review\(^1\) highlighted the potential role that CCS could play in tackling climate change, with the potential to contribute up to as much as 28% of global carbon dioxide mitigation by 2050. However, CCS has not yet been applied to commercial-scale electricity generation.

2. The Scottish Government believes that CCS has the potential to play a significant role in meeting our climate change targets to reduce CO₂ emissions by 80% by 2050, in line with international recommendations of the International Panel on Climate Change (IPCC). There are significant potential storage sites in the North Sea, where depleted oil and gas fields can be used for permanent CO₂ storage. The Scottish Government is participating in research into the potential to develop carbon stores in waters adjacent to Scotland, and the potential of the North Sea has also been recognised by the European Commission in its Communication on CCS, issued in January 2008.

3. Alongside its Communication, the European Commission also issued a draft Directive on CCS in January 2008\(^2\), which is expected to be adopted by the European Council and Parliament later in 2008. This will create a binding framework for the regulation of the capture, transportation and storage of CO₂ across the European Union, both on and offshore, and is viewed by the EU as a necessary step in meeting its target to reduce CO₂ emissions by 20% by 2020. As part of the Directive, Member States will be required to ensure that they have in place the necessary frameworks for regulating carbon storage, and the UK Energy Bill is the vehicle that will transpose this Directive in the UK, and for waters adjacent to Scotland. Amendments to other European Directives such as the Environmental Impact Assessment (85/337/EEC) and Integrated Pollution Prevention & Control Directives (96/61/EC) will also create the new EU CCS regime, and will be achieved

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\(^1\) The Stern Review – The Economics of Climate Change. Nicholas Stern, 2006: [http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm](http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm)

in Scotland and the UK through amendments to existing regulations. The Energy Bill is likely to be the only element of primary legislation necessary to transpose the EU CCS Directive.

4. The UK Government is also committed to the development of CCS with electricity generation, and launched a competition in November 2007 to support a CCS demonstration project in the UK. This will be one of the first demonstrations anywhere in the world, and it is hoped that it would be amongst the 15 CCS demonstrator projects that the European Union wants to see in place within the next few years. The objective is for the demonstration project to be operational by 2014. The demonstration cannot proceed without an appropriate legislative regulatory regime being in place. The UK is expected to announce the competition winner during summer 2009, and having the legislative framework in place will enable applicants to compete to situate a storage project in territorial waters adjacent to Scotland.

5. Most of the activities involved in CCS are standard industrial processes and can be readily regulated by established legislation. However, permanent storage of carbon dioxide is a novel activity, and existing legislation to control depositions below the surface of the land and under the seabed is not well suited to licensing the storage of carbon dioxide. This has been recognised by the European Commission, and the draft Directive on CCS creates a completely new regulatory framework for carbon storage, whilst amending other frameworks to deal with the capture and transportation aspects. The carbon storage license provisions are also set out in such a way as to make them compatible with the granting of leases by the Crown Estate for use of the seabed, which will be necessary before exploration or storage can take place.

6. Part 1, Chapter 3 of the Bill establishes a framework for the licensing of carbon dioxide storage and the enforcement of the licence provisions. It also applies existing legislation (for example the decommissioning legislation in the Petroleum Act 1998) to marine structures used for the purposes of carbon dioxide storage. Chapter 1 of the Bill, amongst other things, asserts the UK's rights to the use of sub-surface space in waters 12-200nm adjacent to the UK for the storage of carbon dioxide. Specific requirements that the Bill will apply to the Scottish Ministers for territorial waters adjacent to Scotland include:

- A power for Scottish Ministers to grant licences for the creation of controlled places for the storage of carbon dioxide, or exploration of potential sites in relation to this;
- A power for Scottish Ministers to make regulations prescribing the conditions related to the application and granting of a licence for storage of carbon dioxide in a controlled place;
- A power for Scottish Ministers to attach conditions to a licence, including provisions relating to financial security, review and modification of the licence, closure of the carbon storage facility, and provision for termination of the licence;
- A power of direction for Scottish Ministers to require licence holders to act as directed if they fail to comply with any provisions of the licence;
• A requirement on Scottish Ministers to keep a register containing certain information relating to licences;
• A power for Scottish Ministers to make provision through regulations about the termination of licences;
• A power for Scottish Ministers to transfer licensing functions to another person (a form of 'agency agreement').

7. The framework is limited to waters 0-200nm adjacent to the UK. This is due to the fact that this area is likely to be of primary interest to developers in the short-term. Moreover, storage of carbon dioxide on land requires amendment of existing EU Directives. This amendment forms part of the European Commission’s draft Directive on CCS, however, national legislation in this area is dependent on agreement. The provisions in this Chapter of the Bill are intended to provide sufficient flexibility for the EU regime to be readily implemented once agreed at the European level in relation to waters.

SCOTTISH GOVERNMENT
April 2008
Annexe B

Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

   (a) any-

      (i) subordinate legislation laid before the Parliament;

      (ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter,

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation; and

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Jackie Baillie
Jackson Carlaw
Helen Eadie
Ian McKee
John Park
Gil Paterson (Deputy Convener)
Jamie Stone (Convener)
Committee Clerking Team:

Clerk to the Committee
Gillian Baxendine

Senior Assistant Clerk
David McLaren

Assistant Clerk
Jake Thomas
Introduction

1. At its meetings on 6 May and 19 May 2008, the Committee considered provisions in the Energy Bill which confer on the Scottish Ministers powers to make subordinate legislation. These powers relate to the regulation of the storage of carbon dioxide in facilities within or under the territorial sea of the UK adjacent to Scotland contained in Part 1 Chapter 3 of the Bill. The Committee submits this report to the Economy, Energy and Tourism Committee under Rule 9B.3.6 of Standing Orders.

2. The Scottish Government provided the Parliament with a legislative consent memorandum\(^3\).

3. The Committee’s correspondence with the Scottish Government is reproduced in Annexes 1 and 2.

Delegated Powers Provisions

4. The Committee is content with the delegated powers in clauses 19, 21, 93 and 96.

5. The Committee requested clarification from the Scottish Government on a number of matters arising out of clauses 27, 30, 31, 34 and 99 of the Bill. The Scottish Government’s response is set out in Annex 1. In light of this response the Committee is content with the delegated powers in clauses 27, 30 and 31.

Clause 34 Power of Scottish Ministers to transfer functions & modify application of section 188 Energy Act 2004
Application of section 188 of the Energy Act 2004 to carbon storage –power to impose charges to fund energy functions

\(^3\) LCM
6. The Committee noted that Ministers are given power by order to transfer their functions under this Act to any other person. That transfer lasts until the order is revoked. Transfers may be made in relation to specified activities and to different persons according to activity or place of activity. They may also provide for payments to be made to the transferee and for such payments to be paid into the Scottish Consolidated Fund. The power may also modify section 188 of the Energy Act 2004 as is considered appropriate in consequence of the transfer. Section 188 of the 2004 Act provides a power to charge for services provided in respect of energy functions including the issue of carbon dioxide storage licences in connection with activities carried on in the territorial sea. (Section 188 is extended to cover carbon storage by paragraph 13 of Schedule 1 to the Bill.) Such regulations are subject to negative procedure. The Committee noted that clause 34 therefore confers additional functions on the Scottish Ministers under section 188 in connection with their licensing function for carbon dioxide storage and provides Ministers with power to modify that section in so far as it applies to them as appropriate in consequence of any transfer of functions order.

7. The Committee considered that it seemed appropriate for Ministers to have the ability to transfer their licensing functions to another body should they consider that appropriate for administrative reasons and subordinate legislation an appropriate mechanism for doing so.

8. The Committee noted however, that the function to modify the application of section 188 of the Energy Act 2004 can be seen at its broadest as a power to modify existing primary legislation in consequence of future transfers. The Committee therefore sought an explanation from the Scottish Government as to why such a power should be subject to negative procedure before coming to a view as to whether the level of Parliamentary scrutiny applicable to the exercise of the power is appropriate.

9. The Government provided a very helpful explanation of the background to this power and how it is intended to be exercised. The Committee notes that the ability to amend section 188 of the Energy Act 2004 is limited to those amendments considered appropriate in consequence of the transfer of any functions under this section. The limitation of the scope of the power combined with the administrative nature of its content support the Government’s argument that negative procedure is appropriate in this case. The Committee also notes that under the Parliament’s standing orders, it could draw the attention of the Parliament to any instrument made under this power which imposed a charge on the Scottish Consolidated Fund or required payments to be made to that Fund should it consider it appropriate to do so. This would help to ensure proper Parliamentary scrutiny of the matter within negative procedure.

10. The Committee finds this delegated power acceptable. However, given the potential financial implications of the exercise of this power it draws this power to the attention of the lead committee for its interests in the LCM.
Clause 99 Commencement

11. The Committee noted that Scottish Ministers do not have power to commence the provisions which confer functions on them under the Bill. Rather, this power rests with the Secretary of State who may commence the provisions by Order or Orders which will be laid in the Westminster Parliament only. It asked the Scottish Government to explain why the power to commence these provisions in or as regards Scotland rests with the Secretary of State.

12. In its response, the Scottish Government advises that the Secretary of State and the Scottish Ministers have agreed that there should be a uniform commencement date for the provisions throughout the waters adjacent to the UK in order to avoid uncertainty for industry when competing in the UK carbon dioxide storage demonstration competition. It is also thought it may be necessary for the purposes of implementation of future EU measures on carbon dioxide storage. The Government also advises that an agreement is to be drawn up which will provide for consultation with the Scottish Ministers prior to commencement of these provisions. The Committee notes however that this will not appear on the face of the Bill.

13. As this power has not been conferred on the Scottish Ministers, in terms of the Parliament’s standing orders, the Committee is not required to consider them under rule 9B3.6. However, given that the Scottish Ministers will not have any formal role in the commencement of these provisions in or as regards Scotland the Committee draws this to the attention of the lead committee for its interests in the LCM.
ANNEX 1
Letter to the Scottish Government

1. The Subordinate Legislation Committee considered the delegated powers conferred to Scottish Ministers in the Energy Bill LCM at its meeting on Tuesday 6 May. The Committee sought further explanation of the following matters.

Clause 26 Inspectors

2. The Committee seeks an explanation from the Government as to the necessity for the breadth of this power to confer enforcement powers rather than specifying what these may be on the face of the Bill before coming to a view on whether the scope of the power is acceptable. The Committee also seeks justification from the Government for their choice of negative procedure in this case.

Clause 29 Abandonment of installations – section 39 of the Petroleum Act 1998

3. The Committee notes that the Bill confers power on the Scottish Ministers to make regulations which may apply Part IV of the Petroleum Act 1998 to carbon storage installations subject to such modifications as may be specified in the regulations. Given that Part IV provides for the regulation of the abandonment of installations this seems an important element of the overall control of carbon storage. The Government is seeking broad powers which include the ability to depart from the scheme previously set down by Parliament. The Committee therefore asks the Scottish Government for an explanation of the use of negative procedure in this context before reaching a view on whether the power is appropriate. The Committee considers that where the power available to Ministers permits the modification of the application of primary legislation there should be strong justification for not adopting affirmative procedure.

Clause 30 Termination of licence: regulations

4. The Committee seeks an explanation from the Government justifying the scope of this power and the use of negative procedure before reaching a view on whether the power is acceptable.

Clause 33 Power of Scottish Ministers to transfer functions & modify application of section 188 Energy Act 2004
Application of section 188 of the Energy Act 2004 to carbon storage –power to impose charges to fund energy functions

5. The Committee seeks an explanation from the Scottish Government as to why the power to modify the application of section 188 of the Energy Act 2004 should be subject to negative procedure before coming to a view as to whether the level of Parliamentary scrutiny applicable to the exercise of the power is appropriate.
Clause 94 Commencement

6. The Committee asks for an explanation from the Scottish Government as to why the power to commence these provisions in or as regards Scotland rests with the Secretary of State.
ANNEX 2
Response from the Scottish Government

7. The Scottish Government responds as follows. References to clauses are to the updated clause numbers of the Energy Bill now available on the UK Parliament website which has the latest version of the Bill which includes the amendments that were laid and approved at Report.

http://services.parliament.uk/bills/2007-08/energy.html

Question 1 - Clause 27 Inspectors

8. Clause 27 (inspections) allows the Scottish Ministers to appoint inspectors to assist in carrying out functions under the carbon dioxide storage provisions. Subsection (3) as applied by subsection (5) enables the Scottish Ministers to make regulations specifying the powers and duties of inspectors in undertaking these activities.

9. The regulations may apply to inspectors and other persons acting on the Scottish Ministers’ directions. It is likely that over time the powers and duties of inspectors and such persons will need to be amended to reflect the development of carbon dioxide storage activities and any learning and knowledge gained from their regulation. Therefore, it is considered appropriate that these powers and duties should be set out in regulations to ensure the necessary flexibility. This approach mirrors that set out in section 20 of the Petroleum Act 1998 for submarine pipeline inspectors, where the powers are made by regulations, subject to negative resolution procedure.

10. The types of power and duties that will be set out in regulations may include those set out in section 108(4) of the Environment Act 1995, such as powers to enter premises, to carry out an investigation, to require information and to take samples. The Scottish Government consider that, as with the approach for submarine pipeline inspectors in the Petroleum Act 1998, the negative resolution procedure strikes the right balance between giving Parliament an opportunity to scrutinise while recognising the administrative detail involved.

Question 2 - Clause 30 Abandonment of installations – section 39 of the Petroleum Act 1998

11. The intention is that the structures used for injecting carbon dioxide into the seabed will be subject to essentially the same obligations on abandonment (sometimes described as “decommissioning”) as those applicable to other offshore structures. Clause 30 (abandonment of installations) accordingly ensures that the requirements of Part 4 of the Petroleum Act 1998 will apply to any carbon storage installations. Subsection (2)(b) enables the Scottish Ministers to modify the application of those provisions in the event that in practice the obligations need to be adjusted to take into account the specific technical nature of installations used for carbon dioxide storage.
12. The Scottish Government consider it to be important to have this flexibility because currently there is no experience of operating and decommissioning a commercial scale carbon capture and storage project. By using this power, the Scottish Ministers will be able to ensure that the marine environment is properly protected, by making any necessary amendments to the decommissioning obligations relating to carbon dioxide storage installations, so that they remain fit for purpose. It is difficult at present to foresee all of the changes that might be necessary.

13. Regulations made under this clause will be subject to the negative resolution procedure. This is because any modifications to application of the provisions of Part 4 of the Petroleum Act would be of a technical nature, reflecting the specific engineering, construction, environmental and other relevant considerations associated with carbon dioxide storage installations and facilities. It is considered that the negative resolution procedure strikes the right balance between giving Parliament an opportunity to scrutinise while recognising the administrative detail involved.

**Question 3 - Clause 31 Termination of licence: regulations**

14. Clause 31 (termination of licences: regulations) confers on the Scottish Ministers a power to make regulations covering the circumstances in which a licence may be terminated. The intention is to make regulations that prescribe the circumstances in which the regulatory authority may accept termination of a licence, thus restricting the regulatory authority’s discretion in this regard.

15. The regulations might also prescribe circumstances, additional to those contained in carbon dioxide storage licences, as to when termination may occur (this may include, for example, termination upon application from the licence holder with consent of the regulatory authority, or termination at the regulatory authority’s discretion). This clause will also allow the Scottish Ministers to incur financial expenditure, or make other financial arrangements (including, for example, requiring the licensee to make a payment to the Scottish Ministers), where the long term stewardship of the store after licence termination is undertaken by the Scottish Ministers or another body to which that function may be transferred under clause 34 (transfer of functions).

16. The Scottish Government consider that regulations made under this clause should be subject to the negative resolution procedure to strike the right balance between enabling flexibility and allowing for appropriate Parliamentary scrutiny.

**Question 4 - Clause 34 Power of Scottish Ministers to transfer functions & modify application of section 188 Energy Act 2004**

Application of section 188 of the Energy Act 2004 to carbon storage –power to impose charges to fund energy functions

17. Clause 34 (transfer of functions) provides a delegated power the Scottish Ministers to transfer some or all of the functions under the carbon dioxide storage provisions in the Bill to another person (with the exception of functions exercisable...
by statutory instrument). Therefore, as a result of such a transfer the relevant authority could, for example, undertake the following functions:

- grant a carbon dioxide storage licence;
- direct a licence holder to comply with any provision of a licence;
- apply to the court for an injunction in relation to a breach of the prohibition in clause 17;
- prosecute offences;
- appoint inspectors; and
- maintain a public register.

18. The Scottish Ministers will be able to transfer different functions to different persons, and change or revoke the transfer, and will have the power to direct the relevant authorities in the exercise of the functions transferred to them.

19. An order transferring functions to another person in this clause may also include provision concerning finances. In particular, the order may provide for payments to be made to the relevant authority in respect of the functions it is exercising and it may require fees collected by that authority to be paid to the Scottish Consolidated Fund.

20. An order may also modify section 188 of the Energy Act 2004 or regulations under that section. Section 188 gives the power to collect charges in respect of its performance of energy-related functions. The Energy Bill will amend section 188 to give the powers to the Scottish Ministers to collect charges in respect of its performance of energy-related functions where they exercise functions under or related to the carbon dioxide provisions of the Bill.

21. The intention is to use these powers to delegate regulatory responsibility to one or more independent authorities other than the Scottish Ministers, should this be considered appropriate in the future, while retaining the power to direct the relevant authorities in the exercise of their functions, should this be deemed necessary. It is also considered important to ensure that financing can be made available to the person undertaking certain functions if required, while at the same time retaining the power, if needed, to require fees collected by that person to be transferred to the Scottish Consolidated Fund.

22. The Scottish Government consider that the powers made under clause 34 should be subject to the negative resolution procedure. The decision to transfer functions to another body is one which requires Parliamentary scrutiny. However, any such transfer would be technical in nature, requiring an assessment of the suitability of the proposed regulatory authority to carry out the specific function. The scrutiny afforded by negative resolution is therefore considered to be sufficient. Similarly, although there is a power to amend section 188 of the Energy Act 2004 and related regulations by an order, the power is limited to making amendments “in consequence of the transfer of a function” under this clause. It is anticipated that section 188 of the Energy Act 2004 and the related regulations would be modified so as to enable the authority to which functions under the carbon dioxide storage provisions in the Bill have been transferred, to collect charges, if necessary, in connection with the performance of those functions. It is considered that it would be appropriate for the order to be subject to negative resolution procedure, given the
technical nature of the provision and the limited scope of the provision made in exercise of the power.

Question 5 - Clause 94 Commencement

23. In reaching agreement with the UK Government that the carbon storage provisions of Part 3 of the Energy Bill should extend to Scotland, the Secretary of State and Scottish Ministers have agreed that there should be a uniform commencement date for the provisions on both sides of the border. This will prevent any situation occurring whereby provisions could be commenced at differing times, introducing uncertainty for the industry in the context of both the UK CCS demonstration competition and the implementation of the EU directive.

24. In drawing up the Memorandum of Understanding between the Secretary of State and the Scottish Ministers, which will set conditions for both licensing authorities to cooperate throughout the 0-200 mile zone in waters adjacent to Scotland, the Secretary of State has agreed that he will consult the Scottish Ministers before making a commencement order under Clause 94. The Scottish Government is satisfied that such an agreement will not prejudice the powers of Scottish Ministers and will be in the best interests of the industry throughout waters in the 0-200 mile area.