ECONOMY, ENERGY AND TOURISM COMMITTEE

AGENDA

2nd Meeting, 2010 (Session 3)

Wednesday 13 January 2010

The Committee will meet at 9.30 am in Committee Room 5.

1. **Beauly to Denny Power Line**: The Committee will take evidence from—

   Jim Mather, Minister for Enterprise, Energy and Tourism, Colin Imrie, Deputy Director Energy Markets, Simon Coote, Senior Policy Officer, Deployment and Consents Division, and Stephen Wilson, Consents Case Officer, Deployment and Consents Division, Scottish Government.

2. **Energy Bill (UK Parliament legislation)**: The Committee will take evidence on legislative consent memorandum LCM(S3) 12.3 from—

   Jim Mather, Minister for Enterprise, Energy and Tourism, and David Rennie, Branch Head, Fossil Fuels and Carbon Capture and Storage Development Team, Scottish Government.

3. **Energy Bill (UK Parliament legislation)**: The Committee will consider the legislative consent memorandum lodged by John Swinney MSP (Cabinet Secretary for Finance and Sustainable Growth) (LCM(S3) 12.3).

4. **Constitutional Reform and Governance Bill (UK Parliament legislation)**: The Committee will take evidence on legislative consent memorandum LCM(S3) 23.1 from—

   Jim Mather, Minister for Enterprise, Energy and Tourism, Margret Coutts, Head of Corporate Learning, Corporate Learning Services, Lesley Bagha, Solicitor, Solicitors Employment and Litigation Division (EL), and Fraser Gough, Solicitor, Solicitors Employment and Litigation Division (EL), Scottish Government.

5. **Constitutional Reform and Governance Bill (UK Parliament legislation)**: The Committee will consider the legislative consent memorandum lodged by John Swinney MSP (Cabinet Secretary for Finance and Sustainable Growth (LCM(S3) 23.1).
6. **The way forward for Scotland’s banking, building society and financial services sector:** The Committee will take evidence from—

David Nish, Group Chief Executive, Standard Life;

and then from—

Maggie Craig, Acting Director General, Association of British Insurers.

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Stephen Imrie  
Clerk to the Economy, Energy and Tourism Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
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The papers for this meeting are as follows—

**Agenda item 1**

*Beauly to Denny power line*  
EET/S3/10/2/1

**Agenda item 2**

Note by the clerk  
EET/S3/10/2/2

**Agenda item 4**

Note by the clerk  
EET/S3/10/2/3

**Agenda item 6**

Note by the clerk  
EET/S3/10/2/4

Note by the clerk  
EET/S3/10/2/5 (P)
ENERGY BILL (UK PARLIAMENT LEGISLATION) – LEGISLATIVE CONSENT
MEMORANDUM

Background

1. The UK Energy Bill was introduced in the House of Commons on 19 November, 2009. The Bill introduces a financial incentive, funded by electricity suppliers, to support up to four Carbon Capture and Storage (CCS) commercial scale demonstration projects. It is expected that the CCS incentive will be able to provide financial support for future retrofit as well.

2. As a result of recent amendments lodged by the UK Government during the passage of the Bill, it is now subject to a supplementary LCM (LCM(S3) 12.3), which has been lodged by the Scottish Government. These amendments make provisions that relate to matters within the legislative competence of the Scottish Parliament and/or alter the executive competence of the Scottish Ministers. A copy of the supplementary LCM is attached at annexe A.

3. The Parliamentary Bureau referred the LCM to the Economy, Energy and Tourism Committee to consider and report on. The 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. It is the clerks' understanding that to meet the UK Government's timetable associated with the Bill, the Committee report will have to be published as early as 14 January 2010.

Provisions Relating to Scotland

4. The Bill will enable the UK Government to raise a UK-wide levy (which is a reserved matter) on electricity supply to be charged in connection with provision of financial assistance in respect of CCS demonstration projects. The Bill will also include an explicit reference stating that for major projects situated in Scotland, the Secretary of State must consult with Scottish Ministers before making, amending or revoking an assistance scheme and before making regulations relating to assistance schemes.

5. There are further provisions in the Bill which ensure that the Secretary of State gets the consent of Scottish Ministers before making Regulations under part 1 of the Bill, which amend or contain provision extending to Scotland. This is a similar approach taken in the Energy Act 2008.

6. The disbursal of the CCS financial incentive funds in Scotland would fall within devolved competence. The Scottish Government feels that an allocation approach is unlikely to be the best option for supporting projects. Given the significant cost of each demonstration project, it would pursue funding on an individual basis.
7. The Scottish Government announced on 9 November its position on coal fired power stations, which aligns with the UK position. All new coal plant are now required to demonstrate CCS on 300MW (net) on start up and from 2020 all new coal plant must be fully CCS compliant. In addition to this, if CCS is considered technically and financially viable by 2018 it is likely that retro-fitting of all existing plant would be required by 2025.

8. By way of an update, a letter from the Minister for Enterprise, Energy and Tourism to the Convener is attached at annexe B.

**Action and Decision**

9. 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;
   - whether the Committee has any comments on the draft legislative consent motion contained within the LCM.

10. 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.

11. 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 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. This is due to the relatively tight timetable for deliberations before the Bill is expected to reach the last revising stage in the House of Commons.

    Stephen Imrie
    Clerk to the Committee
Draft Legislative Consent Motion

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

“That the Parliament agrees that the relevant provisions of the UK Energy Bill introduced in the House of Commons on 19 November 2009 relating to the disbursal of funds for any future Carbon Capture and Storage demonstration projects which will be the subject of assistance schemes (as they relate to environmental issues), so far as these matters fall within the legislative competence of the Scottish Parliament, or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by John Swinney Cabinet Secretary for Finance and Sustainable Growth under Rule 9.B.3.1(a) of the Parliament’s standing orders. The Energy Bill was introduced in the House of Commons on 19 November. More information on the Bill can be found at:

http://services.parliament.uk/bills/2009-10/energy.html

Content of the Energy Bill

3. The UK Energy Bill will introduce a financial incentive, funded by electricity suppliers, to support up to four Carbon Capture and Storage (CCS) commercial-scale demonstration projects. It is expected that the CCS incentive will be able to provide financial support for future retrofit. This supports our ambition to move to a low carbon economy while maintaining the security and diversity of electricity supplies.

4. The Bill will also include provisions required to implement other policies in relation to refocusing Ofgem’s objectives and creating a mandatory social price support scheme. Whilst neither of these areas will require an LCM, Scottish Government officials will liaise closely with DECC colleagues on the content of these Bill clauses.

Provisions Which Relate to Scotland

5. The UK Energy Bill will enable the UK Government to raise a UK wide levy (reserved) on electricity supply to be charged in connection with the provision of financial assistance in respect of CCS demonstration projects. The Bill will include an explicit reference stating that for projects situated in Scotland, the Secretary of State must consult with Scottish Ministers before making, amending or revoking an assistance scheme and before making regulations relating to assistance schemes.

6. In addition to this there are further provisions in the Bill which ensure that the Secretary of State obtains the consent of Scottish Ministers before making Regulations
under Part 1 of the Bill which amend or contain provision extending to Scotland. This is a similar approach to that taken in the Energy Act 2008.

**Reasons for seeking a legislative consent motion**

7. The disbursal of the CCS financial incentive funds in Scotland would fall within devolved competence and an appropriate amount of the UK raised levy would be assigned to Scotland based on the Barnett formula. However, any allocation of funds is unlikely to be sufficient to fund a demonstration project (current cost of a project is estimated at around £1bn). However, by pursuing the LCM to allow disbursal of the funds on a UK wide basis Scotland would stand to benefit if successful in securing at least one of the 4 demonstration projects.

**Consultation**


On the same day the Scottish Government also announced its position on coal fired power stations, which aligns with the UK position. All new coal plant are now required to demonstrate CCS on 300MW (net) on start up and from 2020 all new coal plant must be fully CCS. In addition to this, if CCS is considered technically and financially viable by 2018 it is likely that retro-fitting of all existing plant would be required by 2025.

9. Over the coming months DECC will be working with stakeholders to further develop policies to establish a dedicated financial support mechanism for CCS. They expect, subject to successful enactment of the Bill, to consult formally in early Summer 2010 on the detail of the secondary legislation required to fully implement the CCS incentive. The aim is for the statutory framework for supporting CCS, including the necessary regulations, to be in force in time to support the first CCS demonstration project under the existing competition.

**Conclusion**

10. An ambition of the Scottish Government is to move to a low carbon economy while maintaining the security and diversity of electricity supplies. The proposals of the Bill will help achieve this and should be supported.

SCOTTISH GOVERNMENT
November 2009
LETTER FROM MINISTER FOR ENTERPRISE, ENERGY AND TOURISM TO THE CONVENER

7 January 2010

Dear Iain,

DRAFT LEGISLATIVE CONSENT MOTION – UK ENERGY BILL

I am writing to you with reference to the Legislative Consent Motion lodged by Mr Swinney in December 2009, regarding the UK Energy Bill and the disbursal of funds for four Carbon Capture and Storage (CCS) demonstration projects which will be the subject of assistance schemes using levied funds collected from electricity suppliers.

Based on further discussions between DECC and Scottish Government officials, I would like to take the opportunity to update the Committee with regard to two changes on the policy intention of the draft motion which have recently emerged.

Firstly, paragraph 6 of the memorandum, confirms that the Secretary of State will obtain the consent of Scottish Ministers before making regulations under part 1 of the Bill which amends or contains provision extending to Scotland. I wish to clarify that this would relate to provisions which would be within the legislative competence of the Scottish Parliament. This is a similar approach to that taken in the Energy Act 2008.

Secondly, in relation to paragraph 7, subsequent discussions on policy means that an allocation approach is unlikely to be the best option for supporting projects. Given the significant cost of each demonstration project, pursuing funding on an individual project basis is, we believe, the best way ahead.

We believe that Scotland is well placed to benefit from such an approach. We have a number of outstanding prospects for demonstration projects. We also have significant potential storage capacity in the North Sea as well as strengths in academia and industry and infrastructure which are already ensuring that Scotland is a leading player in the development of CCS. We are confident that a number of these demonstration projects could be located in Scotland.

I hope this update is useful and I look forward to discussing the LCM at my forthcoming appearance at the Committee on 13 January.

JIM MATHER
Background

1. The Constitutional Reform and Governance Bill ("the Bill") was introduced in the House of Commons on 20 July 2009. The Bill covers reforms and changes in the following areas:
   - The Civil Service Order
   - Ratification of Treaties
   - The House of Lords
   - Public Order
   - Time Limit for Human Rights Action Against Devolved Administrations
   - Courts and Tribunals
   - National Audit
   - Transparency of Government Financial Reporting to Parliament

2. Certain provisions in Part 1 (The Civil Service) and Part 5 (Time Limits for Human Rights Actions Against Devolved Administration)s of the Bill alter the executive competence of Scottish Ministers and so require the Scottish Parliament’s consent to a legislative consent motion.

3. It is the clerks understanding that in order to meet the UK Government’s timetable associated with the Bill, the Committee report will have to be published as early as 14 January 2010.

Provisions in the Bill Relating to Scotland

4. The following paragraphs describe the specific provisions for which consent of the Scottish Parliament is sought:

   - **Clause 5 - Civil service code**
     This clause requires the Minister for the Civil Service to publish a code of conduct for the civil service and provides for a discretionary power for Ministers to publish a separate code of conduct for civil servants who serve the Scottish Government. The Minister for the Civil Service must consult the First Minister before publishing a separate code of conduct for civil servants who serve the Scottish Government and the First Minister must lay this code before the Scottish Parliament.
     This replaces the current administrative arrangements whereby the UK Civil Service code is amended for its relevance to civil servants serving the Scottish Government/Administration. The codes published under this clause
will be along the lines of the existing Civil Service codes and will form part of a civil servant’s terms and conditions.

- **Clause 8 – Special advisers code.** This clause was agreed by amendment. It reflects discussion between Cabinet Secretary for Finance and Sustainable Growth and the UK Minister of State for Justice about the need for a separate code of conduct for special advisers to the Scottish Government.

  This clause requires the Minister for the Civil Service to publish a code of conduct for special advisers and provides a discretionary power for the Minister to publish a separate code of conduct for special advisers who serve the Scottish Government. The Minister for the Civil Service must consult the First Minister before publishing a separate code of conduct for civil servants who serve the Scottish Government and there is a duty on the First Minister to lay this code before the Scottish Parliament.

  The new provision of a separate code of conduct for special advisers who serve the Scottish Government replaces the existing administrative arrangement whereby the code for special advisers is amended for its relevance to the devolved administration and lodged with SPICe. The code published under this clause will be along the lines of the existing special advisers’ code and will form part of a special adviser’s terms and conditions.

- **Clause 15 (Scottish Executive part) – appointment of Special Advisers**

  The First Minister personally is required to select for appointment Special Advisers to the Scottish Government.

  This provision when read alongside s51 of the Scotland Act 1998 (which provides for Scottish Ministers to appoint persons to the Scottish Administration) will enable the First Minister to appoint Special Advisers without the need for a delegation such as exists at the moment. It makes no alteration to the current arrangements whereby the Prime Minister (as Minister for the Civil Service) must approve any terms and conditions which are not covered by the Special Adviser’s code.

- **Clause 16 – Annual Reports about Special Advisers**

  The First Minister is required to prepare an annual report on the number and costs of Special Advisers and there is a duty on the First Minister to lay this annual report before the Scottish Parliament.

  This replaces the current administrative practice of informing the Scottish Parliament of the number and costs of special advisers through the mechanism of an inspired PQ.

- **Clause 17– Additional Functions of the Civil Service Commission**

  This clause enables the Minister for Civil Service & The Commission to agree to the Commission carrying out additional functions in relation to the Civil Service and for any civil service management authority to provide the Commission with any information it reasonable requires.
• **Schedule 1 – Report of the Civil Service Commission**
  Schedule 1 makes it a duty on the First Minister to lay before the Scottish Parliament a copy of the annual report of the Civil Service Commission

• **Clause 35 - Time limit for human rights actions against Scottish Ministers.** *This clause was agreed by amendment in keeping with discussions earlier in this year between the Scottish Government and the UK Government to resolve the anomaly exposed by the House of Lords judgement in the Somerville case*
  This clause introduces a one-year time bar for human rights actions to be brought against Scottish Ministers.
  This establishes consistency across all devolved administrations. It repeals the Convention Rights Proceedings (Amendment) (Scotland) Act 2009 and Scotland Act Order

**Financial Implications**

7. According to the Scottish Government, the Bill, including specifically the proposed provisions subject to the LCM, is expected to have neutral or a marginal cost implication in Scotland.

**Action and Decision**

8. The Constitutional Reform and Governance Bill does not address the question of how best to develop the Civil Service in Scotland over time; but nor does it preclude that discussion in future. It simply puts current arrangements on a statutory footing. According to the Scottish Government, in that context, the legislative consent motion concerns 6 relatively minor and uncontroversial provisions in the Bill, which would not on their own merit separate Scottish legislation.

9. 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—
   a. the general merits of the relevant provisions contained within the Bill that are identified within the Legislative Consent Memorandum;
   b. whether the relevant provisions in the Bill justify the need for a Legislative Consent Memorandum;
   c. whether the Committee has any comments on the draft legislative consent motion contained within the LCM.

10. 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.

11. 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 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. This is due to the relatively tight timetable for deliberations before the Bill is expected to reach the last revising stage in the House of Commons.

Stephen Imrie
Clerk to the Committee
Annexe A

LEGISLATIVE CONSENT MEMORANDUM
UK CONSTITUTIONAL REFORM AND GOVERNANCE BILL

Draft Legislative Consent Motion

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

“That the Parliament agrees that the relevant provisions of the Constitutional Reform and Governance Bill, introduced in the House of Commons on 20 July 2009, relating to the Civil Service and Human Rights Claims against Devolved Administrations, so far as these matters alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by John Swinney, Cabinet Secretary for Finance and Sustainable Growth, under Rule 9.B.3.1 (a) of the Parliament’s standing orders. The Constitutional Reform and Governance Bill was introduced in the House of Commons on 20 July 2009. The Bill can be found at:

http://services.parliament.uk/bills/2008-09/constitutionalreformandgovernance.html.

Content of the Constitutional Reform and Governance Bill

3. The Constitutional Reform and Governance Bill relates to (i) the Civil Service; (ii) Ratification of Treaties; (iii) The House of Lords; (iv) Public Order; (v) Time Limits for Human Rights Actions Against Devolved Administrations; (vi) Courts and Tribunals; (vii) National Audit; (viii) Transparency of Government Financial Reporting to Parliament.

Provisions Which Relate to Scotland

4. It is only certain Civil Service provisions in the Bill that alter the executive competence of Scottish Ministers

5. The Civil Service in Scotland is part of the unified “Home Civil Service” operating in Great Britain. The Northern Ireland Civil Service is separate. The Bill would put the Home Civil Service on a statutory footing without altering the administrative arrangements currently established through Orders in Council. Essentially, the reform relates to the legal status rather than the nature or operation of the Home Civil Service. The Bill also contains provisions relating to the code of conduct and appointment of Special Advisers.

6. The Bill includes the following general provisions on the Civil Service:

- the establishment of the Civil Service Commission as a statutory NDPB, with responsibility for upholding core values in the context of recruitment, appointments, audit, appeals, etc;
• an obligation on UK Ministers (namely, the Prime Minister & Foreign Secretary) to publish codes upholding the core civil service values for application in the Home Civil Service and Diplomatic Service;

• a discretionary power which enables a separate code of conduct to be published for Special Advisors who serve the Scottish Government

• appointment arrangements for Special Advisers;

• a general power for UK Ministers (the Prime Minister & Foreign Secretary) to manage the Civil and Diplomatic Services on the basis of a Civil Service Management Code; and

• Civil Service recruitment and appointment arrangements.

7. The Bill introduces time limits for human rights actions against Northern Ireland Ministers and Welsh Ministers. An amendment has been tabled introducing consistent protection for Scottish Ministers.

Reasons for seeking a Legislative Consent Motion

8. There are various reasons for seeking a Legislative Consent Motion as opposed to legislation in the Scottish Parliament.

8.1 First, the Government supports the general principle of putting the Civil Service on a statutory footing; and supports that aspect of the Constitutional Reform and Governance Bill.

8.2 Second, the Government is committed to the establishment of a separate Scottish Civil Service; but has concluded that the Constitutional Reform and Governance Bill is not the best vehicle for promoting such proposals. Substantive change in this area is a complex and long-term project, which the Government continues to pursue separately with the UK Government.

8.3 Third, the Civil Service is a reserved matter and the Bill will not alter the current practical arrangements under which the Civil Service in Scotland works for the Scottish Government under management arrangements largely delegated to the Permanent Secretary.

8.4 Fourth, the Legislative Consent Motion is required because the Bill would impose certain duties on Scottish Ministers, as detailed below; and those duties are of a routine nature.

8.5 Fifth, the Legislative Consent Motion is required because the Bill will revoke the Convention Rights Proceedings (Amendment) (Scotland) Act 2009 and amend s100 of the Scotland Act.

9. As discussed in more detail at Annex A, the duties would relate to (i) certain functions of the Civil Service Commission and (ii) Special Advisers. Some of the legal judgements are finely balanced; but we think there are 6 provisions that require a Legislative Consent Motion. All of these relate to the attribution of new functions to Scottish Ministers. In summary:
• The Minister for the Civil Service must consult the First Minister before publishing a separate code of conduct for civil servants who serve the Scottish Government and there is a duty on the First Minister to lay this code before the Scottish Parliament. (Clause 5(6))

• The Minister for the Civil Service must consult the First Minister before publishing a separate code of conduct relating to Special Advisers who serve the Scottish Executive and there is a duty on the First Minister to lay this code before the Scottish Parliament (Clause 8(6))

• A requirement that the First Minister personally selects for appointment those to be appointed as Special Advisers (the policy intention is to enable the First Minister to appoint without the need for a delegation such as exists at the moment) (Clause 15(1) Scottish Executive part)

• The First Minister is required to prepare an annual report on the number and costs of Special Advisers and there is a duty on the First Minister to lay this annual report before the Scottish Parliament. (Clause 16(2)(a)&(b))

• Provision which enables Minister for Civil Service & The Commission to agree to the Commission carrying out additional functions in relation to the Civil Service and for any civil service management authority to provide the Commission with any information it reasonable requires. (Clause 17(3))

• A duty on the First Minister to lay before Parliament a copy of the annual report of the Civil Service Commission (Schedule 1, para 17(5))

10. These provisions are not contentious and, in isolation, would not merit legislation in the Scottish Parliament. The Government therefore considers that the Parliament should agree to the provisions being enacted via the UK Constitutional Reform and Governance Bill.

Consultation

11. There have been calls for some time to bring forward legislation for the Civil Service. In 2003, the House of Commons Public Administration Select Committee published a draft Civil Service Bill and, building on this, the UK Government launched a consultation “A draft Civil Service Bill – A Consultation Document”. (CM 6373, November 2004).

12. Against this background, The Governance of Britain Green Paper (CM 7170), published on 3 July 2007, proposed that the governance of the Civil Service, currently based on the royal prerogative, and the fundamental values of the Civil Service – impartiality, integrity, honesty and objectivity – should be set out in statute. That principle has won widespread support.

13. The Scottish Government has, in the context of its White Paper on Scotland’s Constitutional Future, argued that future of the Civil Service in Scotland is an area that could be devolved to the Scottish Parliament and Scottish Government.
Financial Implications

14. The statutory provisions mirror administrative arrangements already in place. The Financial Memorandum for the Bill indicates that no additional financial demands are expected as a result of the civil service provisions of the Bill.

Conclusion

15. The Constitutional Reform and Governance Bill does not address the question of how best to develop the Civil Service in Scotland over time; but nor does it preclude that discussion in future. It simply puts current arrangements on a statutory footing. In that context, the Legislative Consent Motion concerns 6 relatively minor and uncontroversial provisions in the Bill, which would not on their own merit separate Scottish legislation.

Human Resources & Corporate Service Directorate
November 2009
Appendix 1

UK CONSTITUTIONAL REFORM AND GOVERNANCE BILL (CR&GB)
LEGISLATIVE CONSENT MEMORANDUM

1. This annex outlines provisions in the UK Constitutional Reform and Governance Bill related to the Civil Service on which a Legislative Consent Motion (LCM) in the Scottish Parliament is required.

Background

2. There are 6 draft clauses in the Constitutional Reform and Governance Bill that are relevant:

- The Minister for the Civil Service must consult the First Minister before publishing a separate code of conduct for civil servants who serve the Scottish Government and there is a duty on the First Minister to lay this code before the Scottish Parliament. (Clause 5(6))

- The Minister for the Civil Service must consult the First Minister before publishing a separate code of conduct for Special Advisers who serve the Scottish Executive and there is a duty on the First Minister to lay this code before the Scottish Parliament. (Clause 8(6))

- A requirement that the First Minister personally selects for appointment those to be appointed as Special Advisers. (Clause 15(1) Scottish Executive part)

- The First Minister is required to prepare an annual report on the number and costs of Special Advisers and there is a duty on the First Minister to lay this annual report before the Scottish Parliament his annual report. (Clause 16(2)(a)&(b))

- Provision enables Minister for Civil Service & the Commission to agree to the Commission carrying out additional functions in relation to the Civil Service and for any civil service management authority to provide the Commission with any information it reasonable requires. (Clause 17(3))

- A duty on the First Minister to lay before Parliament a copy of the annual report of the Civil Service Commission (Schedule 1, para 17(5))

Discussion

3. There is nothing novel or contentious in these provisions.

Special Advisers

4. In relation to Special Advisers, the current arrangements for selection and annual reporting rest on administrative delegation of powers from the Prime Minister to the First Minister. These would be formalised by the Bill, including through the new provision of a code of conduct for special advisors to the Scottish Executive. In addition, the current limit of 12 advisers would be removed, and an annual report to Parliament would be
required in the interests of full transparency. These do not introduce any fundamental changes to existing arrangements. The Bill:

- provides for the appointment of Special Advisers by the First Minister (when read alongside s51 of the Scotland Act 1998);
- provides that the appointment must end no later than the time of the appointing Minister's term of office ends;
- exempts Special Advisers from the principle of selection on merit on the grounds that they are personal appointees of Ministers and takes account of the personal and temporary nature of their work;
- gives a discretionary power to the Minister for the Civil Service to publish a separate code of conduct for special advisors serving the Scottish Executive and requires the FM to lay this code before the Scottish Parliament;
- exempts Special Advisers from the provisions on impartiality and objectivity under the civil service code, recognising their political allegiance to the Government of the day; and
- requires the First Minister to prepare an annual report about Special Advisers appointed by Scottish Ministers and to lay that report before the Scottish Parliament.

5. The Constitutional Reform and Governance Bill no longer sets an upper cap on the number of Special Adviser appointments. In part, this is because greater transparency and accountability are to be ensured through the publication of an annual report on the number and costs of Special Advisers.

Civil Service Commission

6. The Civil Service Commissioners contribute to the development of an effective and impartial Civil Service and support its core values of honesty, integrity, objectivity and Impartiality, by giving an assurance that appointments are made on merit on the basis of ‘Fair and Open’ competition.

7. Current arrangements already involve them in appointments to the Civil Service in Scotland, and in annual monitoring/reporting of associated procedures and practice. What changes as a result of the Bill is the independence and perceived independence of the new Civil Service Commission from government, in line with the general principle of a statutory Civil Service.

8. Scottish interests are safeguarded in relation to the appointment of the First Civil Service Commissioner (on which the First Minister will be consulted) and via the transparency implicit in the laying of an annual report before the Scottish Parliament.

9. The Constitutional Reform and Governance Bill would not materially change the role of the Civil Service Commissioners. Where the need for a LCM arises is in relation to the requirement for Scottish ministers to provide any information it reasonably requires to carry out the additional functions the Minister for the Civil Service might require them of them (investigation of issues). This could nominally involve hitherto
unforeseen requirements for participation and provision of information by the Scottish Government. The Bill would:

- establish the Civil Service Commission (CSC) as a statutory NDPB independent of Government;
- require the CSC to publish recruitment principles;
- require the First Civil Service Commissioner to be appointed by the Queen on the recommendation of the Prime Minister following consultation with the devolved administrations and the main opposition parties;
- provide for the CSC to undertake an audit function and to report annually (with reports laid before the UK and Scottish Parliaments and the National Assembly for Wales); and
- provide for the CSC to hear complaints and appeals.

Human Rights Claims against Devolved Administrations


Conclusion

11. The duties imposed on Scottish Ministers by the Constitutional Reform and Governance Bill and covered by the proposed LCM are neither contentious nor high profile, nor is the proposed amendment to Part 5 of the Bill. If anything, they protect Scottish interests, albeit at the margins of the Bill, by delivering legal formality and transparency in the context of Special Advisers and the Civil Service Commission.

Human Resources & Corporate Services Directorate
November 2009
Economy, Energy and Tourism Committee

2nd Meeting, 2010 (Session 3), Wednesday, 13 January, 2010

The way forward for Scotland’s banking, building society and financial services sector

Background

1. The Committee received two written submissions from today’s witnesses Standard Life and the Association of British Insurers in response to the Committee’s call for evidence in September.

2. The submissions are attached in the annexe to this paper and Members are invited to take them into account in their deliberations when questioning today’s witness.

Stephen Imrie
Clerk to the Committee
January 2010
SUBMISSION FROM STANDARD LIFE PLC

1. We are grateful to the Committee for this opportunity to provide a response to this important inquiry on the impact of the financial crisis. There have, of course, been a number of inquiries and reviews, both public and private, into the dramatic events of 2007-09. However from Standard Life’s point of view there are two key messages that we would like to highlight.

1. The importance of Scotland remaining a competitive place to do business.
2. Additionally that there continues to be a close and continuous dialogue with other governments and organisations to ensure that there is a coordinated approach to building a new framework for financial services.

Questions
2. The inquiry seeks to answer the following key questions:

Q1. What is your view on the cause, nature and impact of the recent difficulties in the financial sector in Scotland?

3. These issues have been well examined in numerous official reports from many arms of government and academia. In the broadest terms, mistakes were made by – not necessarily in order of importance - policymakers, governments, regulators, central bankers, credit rating agencies, senior management at financial institutions, economists, institutional and retail investors, about the nature of the major innovations seen, and the correct pricing of various risks, in financial, housing and property markets in the past decade, especially the inter-linked nature of many sectors.

4. It is also essential to clearly differentiate between banking and other 'financial services' like insurance and fund management. While banking in Scotland has faced its challenges, both insurance and fund management organisations in Scotland have fared well compared with competitors. Lessons can be learned from these parts of the sector, for example there is a much lower appetite for risk both in terms of the products insurance companies write and the assets they hold.

Q2. What evidence do you have on the issue of the availability and the cost of credit and what effect have the initiatives undertaken by the banks, government bodies, regulators and others had?

5. Over recent months we have observed a number of market developments in relation to the extension of credit, such as the effective closure of the wholesale loan market during late 2008 and restricted activity in the wholesale markets. This in turn has meant that the cost of funding for all banks has been much higher than was historically the case. Market difficulties were driven by a mixture of events - illiquidity in the US Dollar and Sterling markets, concerns over hidden problems in the balance sheets of financial institutions
and increased credit concerns over the wider economic outlook. This meant that lenders reassessed their true cost of funds and thus their ability to maintain sufficient liquidity to support their lending book, resulting in many lending banks being capital constrained as to future lending capacity and raising the all-in cost of debt to borrowers through increases to the margin, commitment fees and upfront fees. Banks focused on prioritising what capital they could deploy to key relationships, explicitly linking lending to reciprocal business. Numerous overseas lenders exited the UK loan and wholesale markets. As a result we have noted that some financial institutions have been unable to refinance maturing debt facilities and in the loan markets we have noted that the term of available lending has generally reduced.

6. The developments in loan markets have been echoed in the money markets, where concerns over counterparty risk of default and liquidity take precedence over yield, with a noticeable flight to quality assets such as Treasury Bills and the placing of deposits at the Bank of England Money Market Reserve Account. Other markets such as Securitisation, previously very active, have been closed to all but self-retained transactions for use in secured financing, typically with central banks. Throughout this period Standard life had relatively modest refinancing requirements, which it was able to meet comfortably, albeit at increased cost, with the support of a wide range of relationship banks.

7. The initiatives of the tri-partite regime such as the Credit Guarantee and Special Liquidity Schemes have been very much welcomed by the market as a whole as a means to address the dislocation described above. Indeed, it is probable that without these steps many more financial institutions would have had severe liquidity issues and may not have survived.

8. Larger companies in particular have been able to access the corporate bond market, which saw large volumes of new issues in the first half of 2009. However, the cost of that credit remains high by historical standards.

Q3. What changes can be expected as part of the ongoing and future restructuring plans in the financial services sector within Scotland?

9. It is too soon to tell. Most businesses in the financial services sector in Scotland have reported that they are surviving the recession in a relatively good state. In some areas competition has increased, in other areas it has decreased. The outlook will partly depend on the new regulatory environment. The Walker review, Solvency II and the Retail Distribution Review will all undoubtedly have a significant impact on the insurance sector. In particular the role of Europe in influencing / driving forward regulatory reform should not be underestimated. For example the Solvency II Framework Directive (adopted by the European Parliament in April) aims to provide a single set of supervisory requirements for insurers across the EU. By introducing a more risk sensitive approach to setting capital requirements, it is hoped that a more market consistent valuation of the solvency of insurance organisations will be achieved. However the challenge remains in ensuring proportionate implementation of these measures. Clearly in responding to the financial crisis
it will be very important that there is strong co-ordination and cooperation across countries/jurisdictions

10. Additionally, the savings market, which forms a central pillar of the Scottish financial services industry is being detrimentally affected by the tax uncertainty created by recent government positions in respect of pension contributions. This cannot be remedied at a devolved government level but it is important to be aware of this issue.

Q4. How might these changes affect the business and retail banking market in Scotland, access to project finance, a reduction in competition on the ‘high street’ for lending, the plans for the retention of functions and ‘headquartering’ etc and what can the public sector in Scotland do to ensure the best possible result for Scotland?

11. The changes to the regulatory, capital and tax regime are not necessarily negative but there is the possibility that they will introduce uncertainty and could undermine competitiveness.

Q5. What are the current employment levels and skills base in the financial sector in Scotland and how may these change? Additionally, what are the types of jobs that might be expected to be lost as part of any restructuring plans?

12. At Standard Life we are working towards becoming a world class asset managing business, while internationalising our outlook. In order to do this we have adopted an integrated and individualised approach to talent management in order to attract, develop and engage the talent required to support our growth.

13. We will remain active in the graduate market and will continue to proactively develop our talent base of experienced professionals as defined by our group-wide strategy.

Q6. How are employment levels in the financial sector calculated at present, under what definitions and how do these relate to ONS figures? What changes are required to make employment figures more meaningful and comparable with other financial centres?

14. We currently calculate our employment levels based upon a number of employee categories, namely: direct, indirect, outsourced and joint ventures.

All are recorded on a FTE and headcount basis by business unit, geography, job function/capabilities and level (grade).

15. Future changes will include a greater degree of sophistication in relation to the analysis and benchmarking of our data together with greater clarity of skill sets and leadership capabilities.
16. This is an issue which has also been considered by such organisations as Scottish Financial Enterprise and the Fraser of Allander Institute.

Q7. What are your views on the current efforts across the public sector in Scotland to respond to the recent difficulties in the financial sector in Scotland and what, if anything, needs to change in the future as the situation develops?

17. Public bodies have a vital role to play in helping to ensure that Scotland continues to be a good place to do business. The development of the infrastructure, for example the continual enhancement of transport links and the university sector will play a key part in this.

18. On the financial services front the Financial Services Board (FiSAB) is a significant body that is well positioned to help respond to the recent difficulties. It has already carried out a host of positive projects promoting financial education and Scotland as a global financial centre, innovation and employment.

Q8. Has Scotland’s reputation as a global financial services centre been detrimentally affected by the global crisis and has this been to any greater extent than the problems felt in other financial centres?

19. All the major financial centres in the world have been affected by the global crisis, some more so than others. However what is clear is that there must be an internationally coordinated approach to rebuild the reputation of financial services and banking.

20. The media attention about the problems facing the Scottish banks does need to be put into context. It is dangerous to rely on anecdotal evidence; instead, we would recommend that the Inquiry should await the next survey of global financial centres carried out by the City of London. The March 2009 survey showed a small fall for both Edinburgh and Glasgow, but smaller than for a number of other centres.


Q9. How should Scotland differentiate itself and promote itself as a financial services centre in the future and what steps are being taken by our competitors in this respect?

21. Financial services is a very competitive industry, and we need to differentiate ourselves from our competitors by providing market leading solutions in a cost effective manner to meet the needs of our clients. We would fully support all the work of Scottish Financial Enterprise, the City of London Corporation, and trade associations such as the ABI and BBA, in promoting financial services in Scotland/UK. In addition as already mentioned, we are also fully supportive of the work of the Financial Services Advisory Board.
22. Beyond Scotland we have built very strong links with organisations such as UK Trade and Investment, who have given us the benefit of their expertise regarding conducting our businesses in Asia.

23. It is similarly important that Scotland is viewed as a broad church, when it comes to its financial services offering. The associations with the semi-nationalised banks will be difficult to displace but it must be remembered that there are other financial institutions like Standard Life that have remained resilient during the crisis.

**Q10. How can we ensure that the Scottish financial sector continues to retain a global perspective and does not retreat into a purely localised lending regime?**

24. The financial sector in Scotland covers far more areas than banking, large though these organisations are. Standard Life is just one example of a firm in Scotland which sees its major markets on a global basis, particularly our new operations in Asia and Europe. We, like other companies, are also well aware that our major competitors are usually multi-national companies looking to expand into the mature UK markets.

It is also essential that while we continue to hugely value and nurture our local roots we remain dedicated to building our global capacity. From Standard Life’s perspective we are aware that we need to get involved in the national and European debates around regulation, tackling key public policy issues like pensions and taking a stand on issues that impact on the broader savings industry.

**Q11. Why are "new" banks choosing to establish themselves in Scotland, what is it that is particularly attractive and how can we build on this and attract additional investment into Scotland?**

25. We would suggest that other companies would be better placed to answer this question.

Standard Life PLC
September 2009
SUBMISSION FOR THE ASSOCIATION OF BRITISH INSURERS (ABI)

1. The Association of British Insurers (ABI) is the voice of the insurance and investment industry. Its members constitute over 90 per cent of the insurance market in the UK and 20 per cent across the EU. They control assets equivalent to a quarter of the UK’s capital. Through the ABI their voice is heard in Government and in public debate on insurance, savings and investment matters.

Overview

2. The ABI welcomes the opportunity to respond to the Committee’s inquiry and the leadership it has shown in this area. This submission focuses on the continued strength of the financial services sector in Scotland despite the problems in banking; distinguishes insurance and other financial services from banking; and encourages Scotland to work together with London to promote the UK as a leading financial services centre with two major hubs complementing rather than competing against each other.

3. As the ABI does not represent banks or building societies we have restricted our submission to answering those questions addressing the financial services sector as a whole.

Strength of the insurance industry in Scotland

- The insurance industry employs some 313,000 in the UK - of whom around 25,000 people are based in Scotland.

- The investment management industry in Scotland directly employs over 3,000 people and has around £580 billion funds under management. These funds represent pensions and savings of many people in Scotland.

- ABI members with investment managers based in Scotland include: Standard Life, Scottish Widows Investment Partnership, Aberdeen Asset Management and AEGON UK.

- In the 2006/07 tax year the UK insurance industry contributed £9.7 billion in taxes, of which £2.9 billion was corporation tax, the third highest of any sector.

Question 1 – What is your view on the cause, nature and impact of the recent difficulties in the financial sector in Scotland?

4. The recent difficulties in the financial sector have focussed on the banking sector in particular. These problems were triggered by defaults on subprime lending in the United States which had a knock-on effect into international capital markets leading to a massive loss of liquidity. The impact has been considerable as a loss of liquidity and substantial increase in risk in the
banking market transferred into a loss of confidence in financial markets as a whole.

5. The UK insurance industry has not been immune from the financial crisis. However, insurance is not banking; it operates on a different business model with a more predictable and longer-term return on investments. Insurance is regulated differently and as a result has emerged relatively unscathed from these recent difficulties. It is important to distinguish between the banks and building societies most affected by these recent difficulties, and the rest of the financial services sector which continues to operate on a sound basis.

Question 2 – What evidence do you have on the issue of the availability and the cost of credit and what effect have the initiatives undertaken by the banks, government bodies, regulators and others had?

6. The recession has seen a tightening of bank credit and has led to a fall in retail sales. Both of these factors mean that the trading environment has been tough, with many large, normally stable, companies becoming higher trading risks.

7. Trade credit insurers continue to work hard to meet the needs of their customers during times of economic turbulence and it is in the interests of both the insurers and their customers for them to preserve long-term relationships. Both trade credit insurers and their customers have the same interests - for buyers to remain in good financial health and for their relationships to continue.

8. The ABI has published a statement of principles for trade credit insurers. The document sets out how insurers will operate with regard to maintenance of cover, assessment of risk and communicating with insured customers on decisions about cover.

Question 3 - What changes can be expected as part of the ongoing and future restructuring plans in the financial services sector within Scotland?

9. The ABI recognises the need for significant regulatory changes to help prevent another banking crisis. But these changes should tackle the problems that arose in the banking sector, not apply a ‘one size fits all’ set of remedies to the whole financial services sector. If this happens, insurance companies will suffer damage to profitability, prosperity and innovation.

Question 5 - What are the current employment levels and skills base in the financial sector in Scotland and how may these change? Additionally, what are the types of jobs that might be expected to be lost as part of any restructuring plans?

10. One of Scotland’s strengths is the quality workforce they produce for the insurance and financial services industry. Scottish Ministers need to maintain investment in education at secondary and tertiary levels to promote insurance
and financial services as career options and equip candidates with the right qualifications and experience.

Question 7 - What are your views on the current efforts across the public sector in Scotland to respond to the recent difficulties in the financial sector in Scotland and what, if anything, needs to change in the future as the situation develops?

11. The public sector in Scotland has responded well to the recent difficulties and this has shown the benefits of the Financial Services Advisory Board and the relationships developed between the Scottish Government's Financial Services team, local authorities, and financial services companies. It is important that these relationships are understood, valued and maintained.

12. ABI Members have benefited from working closely with Scottish Enterprise and Scottish Development International. They have been particularly beneficial to those Members who don't have their headquarters in Scotland but nevertheless have a large presence.

Question 8 – Has Scotland’s reputation as a global financial services sector been detrimentally affected by the global crisis and has this been to any greater extent than the problems felt in other financial centres.

13. There is no evidence to suggest that Scotland’s reputation as a global financial services sector has been disproportionately damaged as a result of the failure in the banking system. Clearly the crisis has not helped.

14. However, the extent of the damage to Scotland as a centre for global financial services must not be exaggerated. Financial services in Scotland extends far beyond just banking. In addition to banks, Scotland is home to insurance companies, fund and asset managers and life assurance companies. Scotland should capitalise on its strength to ensure it is well placed for an eventual upturn. The extent of the damage has been felt no less or no more than in other financial centres.

Question 9 – How should Scotland differentiate itself and promote itself as a financial services sector in the future and what steps are being taken by our competitors in this respect?

15. Despite the crisis, Scotland still remains a strong financial services centre and an attractive place to do business. Along with London, the UK has two leading financial services hubs which places it at an advantage over its international competitor locations. Scotland should continue to exploits its links in London and ensure that the UK offers a competitive and leading financial services sector. There is more benefit to the financial services industry as a whole if Scotland engages with London rather than competes against it.

16. Notwithstanding its strengths, the UK insurance industry does face a number of major challenges and it has been affected by the crisis. The
Insurance Industry Working Group Report *Vision for the insurance industry in 2020* points out that attracting capital, preventing widespread redomiciling and other such evolving changes are just some of these.

17. In the past 12 months, a number of insurers have redomiciled. Governments cannot take for granted the UK’s position as a global leader in insurance. The Scottish Government should do all it can to support efforts to ensure Scotland and the UK are internationally competitive locations. As an example of this approach, the work the Scottish Government has done with Aviva in promoting Perth to become a ‘hub’ for general insurance has been very successful in much the same way that Edinburgh has become a ‘hub’ for life insurance.

Association of British Insurers
10 September 2009