TRANSPORT, INFRASTRUCTURE AND CLIMATE CHANGE COMMITTEE MEETING

AGENDA

13th Meeting, 2007 (Session 3)
Tuesday 4 December 2007

The Committee will meet at 2.00 pm in Committee Room 2.

1. **Decisions on taking business in private:** The Committee will consider whether to take agenda item 5 in private.

2. **Budget Process 2008/09:** The Committee will take evidence on Budget Process 2008/09 from—
   
   John Swinney MSP, Cabinet Secretary for Finance and Sustainable Growth; Malcolm Reed, Chief Executive, Transport Scotland; and John Mason, Director of Climate Change and Water Industry Directorate, John Ewing, Director of Transport Directorate, and David Reid, Deputy Director of Finance, Scottish Government.

3. **Legislative Consent Memorandum on the Climate Change 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) 4.1), and take evidence from—
   
   Stewart Stevenson MSP, Minister for Transport, Infrastructure and Climate Change; and Philip Wright, Deputy Director of Climate Change, Elizabeth Baird, Head of UK Climate Change Branch, and Rosemary Whaley, Principal Legal Officer, Scottish Government.

4. **Abolition of Bridge Tolls (Scotland) Bill:** The Committee will consider the Bill at Stage 2.

5. **Budget Process 2008/09:** The Committee will consider its approach to its report on the Budget Process 2008/09.
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The papers for this meeting are as follows:

**Agenda Item 2**

Private briefing paper  
TIC/S3/07/13/1(P)

**Agenda Item 3**

Briefing paper  
TIC/S3/07/13/2

Private briefing paper  
TIC/S3/07/13/3(P)
Background

1. The UK Climate Change Bill was introduced to the House of Lords on 14 November. The Climate Change Bill sets out plans to introduce legally binding targets for reducing carbon dioxide emissions in the UK by at least 60% by 2050 with an interim target of 26-32% reduction by 2020. It also proposes a new independent expert Committee on Climate Change to advise on the best way to achieve these targets.

2. As elements of the Bill relate to devolved matters, a Legislative Consent Memorandum (LCM(S3) 4.1) has been lodged by the Cabinet Secretary for Finance and Sustainable Development for consideration by the Parliament under rule 9B.3.1(a) of the standing orders. The Transport, Infrastructure and Climate Change Committee has been designated by the Parliamentary Bureau as lead committee to consider the LCM.

3. A copy of the LCM is attached at Annex A. A SPICe briefing note which provides further, detailed information on the LCM has been circulated to members with the meeting papers.

4. The Subordinate Legislation Committee has considered the provisions in the Climate Change Bill which confers on the Scottish Ministers powers to make subordinate legislation. A copy of the SLC’s report is attached at Annex B.

5. The Minister for Transport, Infrastructure and Climate Change will attend the meeting to give evidence on the memorandum.

Procedure for dealing with legislative consent memoranda

6. Chapter 9B of Standing Orders sets out the procedures for the consideration of a LCM. 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, a Scottish Minister shall lodge a motion (legislative consent motion) seeking the consent of the Scottish Parliament for the relevant provisions in the relevant Bill.

7. The Scottish Ministers must lodge a LCM which sets out a draft legislative consent motion and explains the background to the relevant bill. The Parliamentary Bureau refers the memorandum to the relevant lead Committee and, if the relevant bill makes provisions for subordinate legislation, to the Subordinate Legislation Committee.
8. The lead Committee must consider the legislative consent memorandum and make a report on its views to the Parliament no later than 5 sitting days before the Parliament considers the legislative consent motion.

**Action**

9. After hearing evidence from the Minister, the Committee is invited to consider whether there are any issues it wishes to raise in its report on the Legislative Consent Memorandum.

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LEGISLATIVE CONSENT MEMORANDUM

CLIMATE CHANGE BILL

Legislative Consent Motion

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

Background

1. This memorandum has been lodged by John Swinney, Cabinet Secretary for Finance and Sustainable Growth, under rule 9B.3.1(a) of the Parliament’s standing orders. The UK Climate Change Bill was introduced in the UK Parliament in the House of Lords on 14 November. The Bill can be found at:
   http://services.parliament.uk/bills/2007-08/climatechangehl.html

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

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

Provisions which relate to Scotland

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

LCM(S3) 4.1 Session 3, 2007
1. In summary, the UK Climate Change Bill will:

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

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

Proposal

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

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

Targets and Carbon Budgets

5. The UK Bill places a duty on the Secretary of State to ensure that net UK carbon dioxide emissions in the year 2020 are 26-32% lower, and in 2050 are at
least 60% lower, than in 1990; and to set carbon budgets for successive five-year periods. The Secretary of State would be accountable to Westminster for achieving the UK-wide targets and carbon budgets. In setting any separate Scottish emissions targets, which would contribute towards achieving the UK targets, the Scottish Ministers would be accountable to the Scottish Parliament. The UK Bill specifies that the powers to amend targets and to set and amend carbon budgets may be exercised by the Secretary of State only after consulting the Devolved Administrations and requires the Secretary of State to publish a statement setting out how he has taken their views into account.

Committee on Climate Change

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

Enabling powers for emissions trading schemes

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

Requirement to report on impact of climate change

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

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

Financial Implications

10. The direct cost of measures contained in the Bill is relatively small. The Bill sets a framework in place. The costs relate mainly to the Committee on Climate Change, estimated at around £3 million a year to which the Scottish Government would contribute.

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

SCOTTISH GOVERNMENT
November 2007
ANNEX A

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

Background

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

Targets and carbon budgets

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

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

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

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

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

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

Committee on Climate Change

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

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

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

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

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

Enabling powers for emissions trading schemes
11. The Bill provides enabling powers to allow future trading schemes relating to greenhouse gas emissions to be set up without the need for further primary legislation. The powers provide a framework for establishing such schemes and are expressed in such terms as to allow flexibility to accommodate a range of possible schemes over many years. Schemes would be introduced by secondary legislation and would be subject to consultation on the detail. An early use of the Bill’s powers will be to establish the Carbon Reduction Commitment, a trading scheme involving large, non energy intensive users such as local authorities, hospitals and retail. The opportunity of this Bill is taken to amend the Energy Act 2004 to introduce similar features into the framework contained in that Act for the imposition of Renewable Transport Fuel Obligations.

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

- The Secretary of State would have the power in relation to England-only schemes or to schemes involving reserved matters.

- The Devolved Administrations would be able to establish schemes covering devolved aspects in their own territories. The Bill gives the Scottish Ministers the power to establish devolved, Scotland-only schemes. These powers may be complementary or in addition to any powers that may be included in any future Scottish Bill.

- Schemes could be established involving more than one administration. This might be done by parallel regulations in the countries concerned. Alternatively it might be done by means of a single instrument which would be considered by the legislatures of the participating countries. Where Scotland is a party to the scheme it will be made in an Order in Council.

Other provisions about climate change

13. The Bill requires the Secretary of State to provide to the UK Parliament:
- an assessment of the risks of climate change;
- a programme of action to adapt to the risks; and
- an assessment of progress towards adaptation.

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

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

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

13th Report, 2007 (Session 3)

Legislative Consent Memorandum on the Climate Change Bill

The Committee reports to the Parliament as follows—

Introduction

1. At its meeting on 27 November 2007, the Committee considered provisions in the Climate Change Bill which confers on the Scottish Ministers powers to make subordinate legislation. The Committee submits this report to the Transport, Infrastructure and Climate Change Committee under Rule 9B.3.6 of Standing Orders.

2. The Scottish Government provided the Parliament with a legislative consent memorandum¹.

Delegated Powers Provisions

Regulations

Clause 36: Trading schemes

1. This clause provides the relevant national authority (defined in clause 39 as the Secretary of State, the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department) with the power to set up trading schemes relating to greenhouse gas emissions, by subordinate legislation. The Explanatory Note (paragraph 156) gives the Carbon Reduction Commitment as an example of a trading scheme, described in the Legislative Consent Memorandum (referred to in this Report as “LCM”) as “involving large, non energy intensive users such as local authorities, hospitals and retail.”

2. Clause 36(2) defines a “trading scheme”, and clause 37 defines (very widely) activities that are regarded as directly or indirectly causing or contributing to greenhouse gas emissions, for the purposes of the definition of “trading scheme”. Essentially, a trading scheme either operates to limit or encourage limitation of activities that cause greenhouse gas emissions, or encourage activities that directly or indirectly contribute to reductions in emissions. (“Greenhouse gas” is also defined by clause 64 of the Bill.)

3. Initially, the power to make regulations is drafted so as to be exercisable independently by a relevant national authority, permitting different forms of trading schemes to operate in each jurisdiction (so that Scottish Ministers can make trading

schemes by regulations, so far as that is within the scope of their executive competence and the legislative competence of the Parliament.)

4. Neither the Explanatory Notes to the Bill, nor the LCM, explain why it is considered useful or appropriate to have this provision enabling differences in forms of trading schemes in relation to greenhouse gas emissions, between Scotland and the other jurisdictions.

5. The Committee invites the lead committee to raise the following issues with the Scottish Government—

(a) the absence of justification and reasons expressed within the LCM for regulation-making powers that enable different trading schemes to operate over different parts of the UK;

(b) the way the powers are proposed to be used for Scotland; and

(c) how it is intended that regulations made under this Bill will interact with the proposed Scottish Climate Change Bill.

Clause 38 and Schedule 2: Matters that may or must be provided for in regulations

6. Section 38(1) and (2) introduce Schedule 2, which gives further details of the various matters that regulations on trading schemes either may or must include. Section 38(3) enables the regulations also to make provision about their application to the Crown.

7. Trading schemes can either be under Part 1 or Part 2 of Schedule 2. Part 3 deals with administration and enforcement of schemes. Part 1 schemes will operate by limiting or encouraging limitation of activities that result in greenhouse gas emissions. Part 2 schemes will operate by encouraging activities that result in reductions or removal of greenhouse gas emissions. Schemes can be made that operate to achieve results by combining different elements of Parts 1 and 2.

8. Paragraphs 157 to 170 of the Explanatory Notes to the Bill usefully explain further the various matters that may or must be included in a trading scheme, and the further provisions for administration, provision of information for, and enforcement of schemes, in Part 3. In short summary, schemes may include provisions for trading periods, activities and scheme “units”, participants, allowances (but not in return for payment), purchase of credits which may off-set activities, trading in allowances or credits, including with non-participants; (Part 2) targets, certificates to confirm activities trading in certificates, circumstances in which trading operates.

9. It is evident to the Committee that—

(a) these are very important provisions which will enable regulations to regulate activities which will either limit or encourage the limitation of the emission of greenhouse gas, or that cause or contribute to emissions (directly or
indirectly), or which will encourage reductions in greenhouse gas emissions or removal of such gas from the atmosphere. The regulations would also establish a trading system in “allowances” or “credits” (including payments for these), to regulate activities;

(b) while some elements where contained in regulations shall be mandatory, the whole contents, requirements and limitations of trading schemes shall be left to the regulations made by the national authorities under the Bill.

10. Further, in relation to the activities that may be regulated, the Committee notes that this is a very wide power, given the definition in clause 37 of activities regarded as indirectly causing or contributing to greenhouse gas emissions: including the consumption of energy, and use of materials in whose production energy was consumed. This appears to encompass, potentially, any forms of activity at all.

11. The Committee has two areas of concern in relation to these regulation powers. First, the LCM does not offer justification why these extremely wide powers are warranted, depending on what schemes and restrictions are intended. It may be claimed that flexibility is required through regulations for the proper operation and effectiveness of trading schemes, taking into account that schemes will contain measures to control greenhouse gases in new and developing areas of science, and also perhaps to avoid schemes becoming outdated, with the flexibility to adapt to other jurisdictions. On the other hand, the types of controls which can be included in regulations, and the potential areas of activities and industries regulated are extremely wide indeed.

12. Second, it is unclear how proposed regulations for Scotland under the Bill will interact with future provisions in any Scottish Climate Change Bill. There appears to be at least a potential for conflict between overlapping schemes or regulation of activities, depending on what the policy intentions of the Scottish Government are.

13. Taking into account that the LCM and the Explanatory Note to the Bill highlight that the UK Government envisages the Carbon Reduction Commitment as a Part 1, Schedule 2, scheme, it may have been possible for the Bill to have taken the approach of specifying the scheme or schemes envisaged in more detail, for example, by specifying the participants in the scheme, the regulated activities, the allowances or credit limits applying, etc. It may have been possible to have proposed that regulations may be passed by the national authorities where it was sought to vary the particulars of such scheme or schemes as set out in more detail initially in the Bill.

14. The Committee considers that it is also not clear on the face of the Bill in relation to trading schemes, or further explained in the LCM or the Explanatory Note, which schemes (and activities to which they apply) may be the subject of regulations made by the Scottish Ministers, as being matters within the legislative competence of the Parliament.

15. The Committee draws the attention of the lead committee to the absence of Justifications or reasons expressed within the LCM for these powers, including the approach taken that further details of trading schemes (and
activities regulated by schemes) shall be left to regulations under the Bill, and the way in which these powers are proposed to be used for Scotland.

16. The Committee invites the lead committee to consider whether clarification should be sought as to which types of schemes, and activities to which they apply, may be the subject of regulations made by the Scottish Ministers.

Clause 40: Procedure for making regulations

17. The Committee is content with this provision.

Clause 41 and Schedule 3: further provisions about regulations

18. The Committee is content with these provisions.

Clause 42 and Schedule 4 (Information)

19. Schedule 4 contains specific provision enabling the regulations under Part 3 of the Bill to include powers to obtain information by the national authorities, the Environment Agency and Scottish Environment Protection Agency, from electricity suppliers and distributors, and potential participants in a trading scheme.

20. Clause 42(2) has a “sunset” provision, that the information –gathering powers (but not the information-sharing powers) in Schedule 4 will cease to have effect on 1st January 2011, when it is anticipated they will no longer be required.

21. Paragraph 182 of the Explanatory Note to the Bill states that the intention behind these specific provisions in the Bill is to allow information to be gathered for the establishment of the Carbon Reduction Commitment scheme.

22. The Committee invites the lead committee to consider whether an explanation should be sought from the Scottish Government on why it has been considered appropriate to set out these provisions specifically in Schedule 4, in relation to a planned Carbon Reduction Commitment scheme (for example in relation to information obtained from electricity suppliers), while the further details of trading schemes are left to the regulations under the Bill.

23. The Committee notes that in so far as it would expect that the provisions set out in Schedule 4 would either be contained in regulations establishing or expanding the requirements of a trading scheme, the regulations would be subject to draft affirmative procedure, and it would agree that this would reflect the potential significance of these provisions.

Clause 46 (powers to make consequential provision)

24. The Committee is content with this provision.
Powers to make directions or guidance

Clause 33 (Powers to give guidance)

25. Clause 33(1) provides that the national authorities, jointly, may give the Committee on Climate Change established by the Bill guidance on the matters it is take into account in the exercise of its functions.

26. The Committee has no particular concerns on this power, but it does wonder why in all cases (except where the Secretary of State issues guidance under clause 33(2)) guidance requires to be jointly issued. Particularly, it is not clear why this should be the case for functions carried out by the Committee on Climate Change in Scotland that may relate to devolved matters.

27. The Committee invites the lead committee to consider whether further explanation should be sought from the Scottish Government on why guidance under this clause requires in all cases to be issued jointly by the national authorities, including in relation to functions of the Committee in Scotland that may concern devolved matters.

Clause 34 – powers to give directions

28. Clause 34(1) provides that the Committee on Climate Change may be given directions on how to carry out its functions. The Committee must comply with directions but cannot be given directions as to the content of any advice or report. Again, any directions on functions generally or its functions set out in Schedule 1 are to be joint from the national authorities.

29. Clause 34(3) provides that directions on the Committee’s duty to provide advice and assistance under clause 30, or on trading schemes under clause 40, is to be given by the national authority seeking the advice or assistance (including the Scottish Ministers).

30. The Committee invites the lead committee to consider whether an explanation should be sought from the Scottish Government on why directions under this clause require to be issued jointly by the national authorities, including in relation to functions of the Committee on Climate Change in Scotland that may concern devolved matters.

Clause 43 – powers to give guidance

31. The Committee is content with this provision.

Clause 44 – powers to give directions

32. By clause 44, the relevant national authority may give directions to the administrator of a trading scheme. The administrator must comply with directions. The Scottish Ministers are the relevant authority in relation to any matters within the legislative competence of the Scottish Parliament. This would appear to depend, therefore on consideration of the subject matter of the directions, of the particular
trading scheme, and whether the matters relate wholly to Scotland. This will include
general and specific directions.

33. This is a wide power to give directions to administrators of trading schemes,
which in relation to Scottish Ministers, is unlimited in relation to subject matter,
except for the directions requiring to relate to matters within legislative competence.

34. The Committee invites the lead committee to consider whether the
Scottish Government should further explain the reasons for this power, and
the way it is proposed to be used.