



**ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE**

**AGENDA**

**3rd Meeting, 2004 (Session 2)**

**Wednesday 28 January 2004**

The Committee will meet at 10.00 am in Committee Room 2.

1. **Subordinate legislation:** The Committee will consider the following negative instrument—

the Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment (No.3) Order 2003, (SSI 2003/623).

2. **UK Energy Bill:** Rob Gibson MSP will provide the Committee with an update on the Enterprise and Culture Committee's consideration of a Sewel Motion in relation to this Bill.
3. **Renewable energy in Scotland:** The Committee will consider a paper providing further information on the Enterprise and Culture Committee's inquiry into renewable energy in Scotland.
4. **Nature Conservation (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).

**Tracey Hawe**

Clerk to the Committee  
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The following papers are attached:

<p><u>Agenda Item 1</u></p> <p><a href="#">the Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment (No.3) Order 2003, (SSI 2003/623).</a></p>	ERD/S2/04/03/1a
<p><u>Agenda Item 2</u></p> <p>A SPICe briefing on the UK Energy Bill is attached</p> <p>A Scottish Executive Memorandum is attached</p>	<p><a href="#">ERD/S2/04/03/2a</a></p> <p><a href="#">ERD/S2/04/03/2b</a></p>
<p><u>Agenda Item 3</u></p> <p>A paper from the Clerk is attached</p> <p><a href="#">SPICe briefing on Renewable Energy</a></p>	<p><a href="#">ERD/S2/04/03/3a</a></p> <p>ERD/S2/04/03/3b</p>
<p><u>Agenda Item 4</u></p> <p>Members are reminded to bring with them copies of the <a href="#">Nature Conservation (Scotland) Bill</a>.</p> <p>The Marshalled List of amendments will be published on Tuesday. The groupings will be available from document supply on Wednesday morning and will also be available at the meeting.</p>	

# UK ENERGY BILL

GRAEME COOK

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

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# SPICe briefing

22 January 2004

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The Scottish  
Parliament

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## **BACKGROUND**

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

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

The Bill aims to:

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

## **DETAIL OF THE BILL**

The Bill comprises three parts:

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

### **PART 1 – THE CIVIL NUCLEAR INDUSTRY**

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

Part 1 of the Bill will establish the Nuclear Decommissioning Authority (NDA) as a new public body to ensure the decommissioning and cleanup of Britain's civil public sector nuclear sites. It is hoped that the NDA will be established by April 2005.

Currently, UKAEA (United Kingdom Atomic Energy Authority) has responsibility for decommissioning and restoring sites at Dounreay, Windscale, Harwell and Winfrith, whilst BNFL run the older Magnox nuclear power stations, including Chapelcross. NDA will have responsibility for decommissioning the UKAEA and BNFL sites. UKAEA have welcomed the proposals in the Energy Bill, which will see their status change to that of a contractor for the management of sites. UKAEA will be given the opportunity to illustrate that it can be the preferred contractor (UKAEA 2003). BNFL has been given a new strategic direction (BNFL 2003) which includes:

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

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

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

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

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

SEPA's response to the draft Nuclear Sites and Radioactive Substances Bill, where initial proposals were floated, indicated that it would value the chance to comment on an amended text which reflected the fact that there will be devolved aspects to the legislation. At this time SEPA was also of the view that as radioactive waste policy was last updated in 1995, it was time for a review.

SEPA's response to the preceding Government White Paper 'Managing the Nuclear Legacy' (DTI 2002) stated, amongst other things that SEPA (DTI 2002a):

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

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

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

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

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

## **PART 2 – RENEWABLE ENERGY SOURCES**

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

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

The limits of the REZs will be set out in an Order in Council<sup>1</sup> with Scottish Ministers consulted.

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<sup>1</sup> Issued by the Privy Council and relating to regulation of professional bodies, or the transfer of responsibilities between government departments, 'Orders in Council' are classified as secondary legislation. Normally alterations to legislation are made using statutory instruments, but where this is inappropriate Orders in Council are used.

There are further measures in the Bill which relate to devolved matters in the REZs, including:

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

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

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

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

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

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

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

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

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

- A common set of trading rules so that electricity can be traded freely across Great Britain
- A common set of rules for access to, and charging for the use of, the transmission network
- A GB system operator, independent of generation and demand interests, so that those seeking to use the system and access the market can be confident there will be no limitation to access.



Ofgem indicate that their consultation measures on BETTA in Scotland were the same as on other Ofgem consultations, i.e. document publication followed by a period of response time.

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

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

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

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

According to the DTI (2003):

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

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

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

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

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

*providing research and information services to the Scottish Parliament*

In written evidence to the same meeting Scottish and Southern Energy said:

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

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

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

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

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

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

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

**S20-1048 - Christine May (Central Fife) (Lab) :** To ask the Scottish Executive what steps are being taken to allow monies collected by Ofgem under the fossil fuel levy to be made available to the Scottish Consolidated Fund and what steps it will take to ensure that any such monies are used for the purpose of promoting renewable energy.

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

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

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## MEMORANDUM

### ENERGY BILL

#### Motion

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

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

#### Background

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

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

#### Content of the Bill

4. The Bill deals with a range of issues related to the energy and nuclear industry, some of which are reserved and some of which are devolved. Primarily,
  - The establishment of the Nuclear Decommissioning Authority (NDA), a UK-wide Non-Departmental Public Body with a specific remit to ensure the nuclear legacy is cleaned up safely, securely, cost effectively and in ways which protect the environment for the benefit of current and future generations.
  - Amendments to the Radioactive Substance Act 1993, (RSA 93). The main amendment allows for "fast-track" transfers of authorisations, issued by SEPA to nuclear site operators, for the disposal of radioactive waste.
  - Provisions to separate the UK Atomic Energy Authority (UKAEA) Constabulary from UKAEA and reconstitute it as the Civil Nuclear Constabulary (CNC) under a statutory Police Authority (the Civil Nuclear Police Authority).
  - The creation of a Renewable Energy Zone (REZ), which will permit HM Government to extend regulation of offshore renewable energy activities beyond territorial waters. The

regulatory proposals associated with the creation of the REZ mean that police powers, and the jurisdiction of criminal and civil law will be extended into the REZ.

- The designation of safety zones around offshore wind farms. A safety zone would allow the Secretary of State to regulate shipping movements and activity in the immediate area. The Bill also provides for the Secretary of State and the Scottish Ministers to approve an application to extinguish the public right of navigation around a wind farm.
- Provision that all offshore renewable energy facilities should be subject to a requirement that ministerial approval will be required for decommissioning proposals.
- Provision to amend the Electricity Act 1989 so that the renewable energy obligations can be met from electricity generated in Northern Ireland.
- Allowing the Scottish Ministers to direct Ofgem to pay surplus Fossil Fuel monies into the Scottish consolidated fund. The Bill also provides that Scottish Ministers will make provision in budget proposals to the Scottish Parliament that these sums are used to promote renewable energy in Scotland.

## Proposals

### **5. Nuclear Decommissioning Authority (Part 1: Chapter1)**

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

#### **(a) Consultation**

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

#### **(b) Background**

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

**(c) Content**

- (i) Chapter 1, and Schedules 1, 2 and 3 of the Bill will give effect to the White Paper proposals with provisions to establish the NDA, its constitution, staffing, core functions, duties and powers, reporting requirements, financial and accounting arrangements. The NDA will have functions that relate to both reserved and devolved matters and so will be similar to cross-border authorities designated under section 88 of the Scotland Act 1998. The Bill provides for the Secretary of State to act jointly or in consultation with the Scottish Ministers subject to circumstances described. It also provides for reporting arrangements to the Scottish Parliament. It is proposed that the NDA will be obliged to have particular regard to relevant Government policy including that of the Scottish Executive and the other devolved administrations.
- (ii) The Scottish Ministers will be involved in the approval processes for appointments to the NDA and for its strategy and annual plans. NDA reports and accounts and directions made jointly by the Secretary of State and the Scottish Ministers will be laid before the Scottish Parliament. The NDA will have the function of providing advice in or as regards Scotland to the Scottish Ministers either on request or on its own initiative.
- (iii) The Secretary of State will act in consultation with the Scottish Ministers when making the appointment of the Chairperson and non-executive members or approving the appointment of the chief executive of the NDA and will also consult the Scottish Ministers before removing any appointees from office. The Secretary of State and the Scottish Ministers will jointly make directions which confer responsibilities on the NDA in relation to the disposal of hazardous materials (including radioactive waste) and the operation of disposal facilities on any nuclear site in Scotland. Directions will also be made jointly concerning the cleaning-up, decommissioning, treatment and storage of hazardous materials on certain principle nuclear sites in Scotland. The Secretary of State will consult the Scottish Ministers for directions which give the NDA responsibility for the operation of treatment and storage facilities on licensed, Crown or nuclear research sites before such a direction is made. Consultation will not apply where the facility to be operated is for the processing or reprocessing of spent (or irradiated) nuclear fuel.
- (iv) Chapter 1 also provides that, before making an order to modify certain provisions the Secretary of State will consult the Scottish Ministers and seek their consent, should the order modify any of their functions in particular. Schedule 1 transposes sections 23(2)(b), 70(6) and 91(3)(d) of the Scotland Act 1998, to have effect as if the NDA were a cross-border public authority.

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

Chapter 3 of Part 1 of the Bill seeks to modernise and strengthen the independence of the policing arrangements for civil licensed nuclear sites by the removal of the UK Atomic Energy Authority (UKAEA) Constabulary from UKAEA and for its reconstitution as the

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

**(a) Jurisdiction of the CNC**

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

**(b) Inspection of the CNC**

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

**(c) Collaboration agreements between Scottish forces and the CNC**



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

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

## **7. Authorisations relating to radioactive waste (Part1: Chapter 4)**

### **(a) Purpose**

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

### **(b) Consultation**

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

### **(c) Content**

- (i) The Bill proposes inserting a new section 16A into RSA93 to allow for "fast-track" transfers of authorisations, for the disposal of radioactive waste from nuclear sites, from one nuclear site operator to another. At present, RSA93 does not allow the transfer of authorisations. Rather, any new operator must apply for a new authorisation and the authorising authority, in Scotland the Scottish Environment Protection Agency (SEPA), will then go through its full determination process which, on nuclear sites, tends to be protracted and resource intensive. "Fast-track" transfer will be allowed when there is a new operator for a nuclear site, but there is otherwise no need for the existing limitations and conditions of authorisation to change. Such a transfer may be deemed necessary if the Nuclear Decommissioning Authority (as proposed in Chapter 1 of the Bill) is to be able to award management contracts to new site operators, for example, in the event of under performance by an existing site operator.
- (ii) In addition, it is proposed that the process of variation of the conditions attached to any RSA93 authorisations be changed, with the insertion of new provisions within section 17 of the Act. At present, only SEPA can initiate the variation of an authorisation. Currently if an operator wants any change to its authorisation, it requires the full process of a new application, whereas, under the proposed new section, operators will be able to apply for a variation to their authorisations.

- (iii) A new section 17A is to be inserted in RSA93 to provide for the periodic review of the limits and conditions of authorisations granted under sections 13 or 14 of RSA93, whether on nuclear sites or other premises. In addition, the authorising authorities will have a discretionary power to carry out such additional reviews, as they consider necessary. This replaces the existing administrative procedure whereby the authorising authorities undertake periodic reviews of authorisations.
- (iv) Schedule 15 details the consequential amendments required to RSA93.

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

### **(a) Background**

- (i) Although energy is a reserved matter, the Scottish Ministers have certain powers under Executive Devolution Orders to promote renewable energy in Scotland and to consider applications for consent under the Electricity Act 1989. The proposals to create the REZ, although mainly concerned with waters beyond the territorial sea, and therefore not in Scotland, also affect renewable energy developments in coastal and territorial waters. They also contain measures affecting public rights of navigation; the establishment of Safety Zones in and around offshore renewable energy installations; and the jurisdiction of the police. These proposals therefore affect devolved powers.
- (ii) Sections 76 and 78 allow for Scottish ministers to be consulted prior to an Order in Council applying criminal and civil law in the REZ. Agreement has also been reached that the existing executively devolved powers for Scottish Ministers to consent to electricity generating stations in Scotland will be extended to the Scottish part of the REZ.

### **(b) Proposals**

- (i) Chapter 1 creates a legal framework for offshore renewable energy developments beyond territorial waters based on the rights available to the UK as a contracting party to the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The UK Government published proposals to establish a Renewable Energy Zone under UNCLOS in its Energy White Paper and Chapter 1 implements these proposals. The limits of the REZ will be set out in an Order in Council and the Scottish Ministers will be consulted about how these limits will apply in waters adjacent to Scotland.
- (ii) Chapter 1 also augments the existing framework of law, which applies to offshore renewable energy developments in territorial and internal waters. The effect is to create a common legal regime for all offshore renewable energy developments whether they are located in internal waters, territorial waters or a Renewable Energy Zone.

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

- (i) Chapter 1 of part 2 of the Bill provides for the extension of the powers of the police to investigate alleged offences in the REZ. This touches on a devolved area, hence the

need for a Sewel motion. An Order in Council power is to be allocated to the Scottish Ministers to provide that a constable is to have on, under or above a renewable energy installation situated in all Scottish waters to which this section applies (internal, territorial and within the REZ) and within 500 metres of a renewable energy installation, all the powers, protection and privileges that s/he has in the area of the force of which s/he is a member, in circumstances in which they are conferred on her/him apart from the Order in Council.

- (ii) Renewable energy installations will typically be unmanned – other than pre-construction, during construction or immediately post-construction. Staffing levels then will vary, but could be simply one boat/small ship and during construction perhaps a handful of craft each with a small crew. Given that installations that do come into being will be unmanned the policing commitment is never likely to be high and the need for the police to become involved in policing installations in the REZ is likely only to occur very rarely. The financial implications of this part of the Bill are likely to be minimal.

**(d) Maritime Safety**

- (i) Clauses 82-87 deal with the maritime safety aspects of offshore renewable installations. They provide for safety zones to be established and for public rights of navigation to be extinguished around these installations. The Executive supports the objective of ensuring the safe operation of vessels and crew working on or around these installations, and agrees that maritime activities around them should be properly regulated.
- (ii) Under clauses 82-85 a safety zone may be established around an installation in waters out to the 12 mile territorial sea limits around Great Britain, and also beyond that in the Renewable Energy Zone (REZ), which may extend out to the 200 mile limit. The Scottish Executive has agreed with the Department of Trade and Industry (DTI) that, in relation to Scotland, approval of a safety zone should fall to the Secretary of State, but would be subject to consultation with Scottish Ministers as provided for in Clause 82(4) of the Bill. Scottish Ministers, therefore, will be consulted about cases arising within the 12 mile territorial sea limit adjacent to Scotland, and also for cases beyond that, in the “Scottish part” of the REZ as provided for in Clause 75(5) of the Bill.
- (iii) Clauses 86-87 provide for the public right of navigation to be extinguished around an offshore installation. They apply only out to the territorial sea limit (12 miles). A public right of navigation exists in the sea within territorial waters, rivers, lochs and the foreshore. These provisions address the possibility of a development being either a public nuisance or a potential cause of damage. The provisions, therefore, also support the objective of ensuring maritime safety around an offshore renewable installation.
- (iv) The procedure for implementing this provision will fall to Scottish Ministers. The public right of navigation falls within devolved competence, since it is a Crown property right but exempted from the Crown reservation in the Scotland Act 1998 (para 1 (a) Part 1 of Schedule 5 to the Scotland Act 1998). The procedure involved is built into the legislation for administering consents under section 36 of the Electricity Act 1989.

- (v) These provisions confirm the commitments made to the Parliament during the final stage debate on the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill.

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

### **(a) Background**

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

### **(b) Proposals**

- (i) The Bill gives powers to the Secretary of State to give notice to developers that they are required to prepare, for the approval of the Secretary of State, a programme for the decommissioning of all offshore renewable energy installations.
- (ii) The Bill also gives powers to the Secretary of State to require the developer to put in place financial security to cover the cost of these decommissioning programmes and to review this security as necessary.
- (iii) The Bill contains provisions (Section 92) for Scottish Ministers to be consulted prior to the notice being served and in advance of the approval, or rejection, of proposals in respect of a development within territorial waters adjacent to Scotland and in the Renewable Energy Zone adjacent to Scotland. These consultation requirements are similar to those that apply under the Petroleum Act in respect of the decommissioning of offshore oil and gas installations

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

### **(a) Background**

- (i) Under the Electricity Act 1989 (c.29) and the Renewables Obligation (Scotland) Order 2002 (S.S.I. 2002/163) electricity suppliers in Scotland have a “renewables obligation” to produce to the Gas and Electricity Markets Authority (“GEMA”) certain evidence regarding the supply to customers in Great Britain of electricity generated by using renewable sources. The evidence required is Renewables Obligation Certificates (“ROCs”) issued by the industry regulator. Electricity suppliers in England & Wales have a similar renewables obligation under the Renewables Obligation Order 2002 (S.I. 2002/914). These are known as the Renewables Obligations.
- (iv) The provision in the Electricity Act that provided for the creation of these Renewable Obligations did not extend to Northern Ireland. This means that renewable energy generated in Northern Ireland does not meet the requirements of the renewables Obligations and vice versa. The establishment of the electricity interconnector between Scotland and Northern Ireland now makes it possible for renewable energy to

be traded between GB and Northern Ireland and the proposal is to empower secondary legislation so that the ROCs can similarly be traded.

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

**(b) Proposals**

- (i) This Chapter provides for the recognition in Great Britain of Renewables Obligation Certificates issued in Northern Ireland. This will allow reciprocal arrangements to come into force from the outset of the renewables obligation for Northern Ireland. The Northern Ireland Order, which will allow reciprocal arrangements, is expected to come into force on 1 April 2005.
- (ii) These provisions will require secondary legislation to amend the Renewables Obligation (Scotland) Order 2002 (S.S.I. 2002/163).

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

**(a) Background**

- (i) The price paid by electricity suppliers for electricity generated under Scottish Renewable Obligation (SRO) contracts was above the market price for electricity. Suppliers were compensated for their additional costs by payments made out of the Fossil Fuel Levy. Under subsequent arrangements introduced to encourage renewable energy generation, Renewable Obligation Certificates (ROCs) associated with electricity generated under the SRO arrangements can be sold, and the proceeds used to meet the additional costs incurred by suppliers under the SRO contracts. In practice, the proceeds realised have been sufficient to meet costs incurred and collection of the Fossil Fuel Levy has therefore ceased.
- (ii) However, before Levy collection ceased, a surplus accumulated in the Levy fund. This was due to two factors; a slowing down in development and subsequent over collection of levy payments by the regulator, Ofgem, and secondly, the sale of ROCs generating more in revenue than it cost suppliers to generate the electricity. The Scottish Executive understands from Ofgem that the current **total** surplus in the Fund is likely to be of the order of £8-10 million.
- (iii) Although existing legislation allows for collection of the levy by Ofgem, no powers exist to give that body any authority to do anything with the accumulated surplus.
- (iv) The necessary powers to release the surplus need to be conferred under section 33 of the Electricity Act. Although the existing section 33 powers are executively devolved, the further amendment has to be made at Westminster since it amends the Act in a way that is not consistent with the Executive’s limited devolved power to amend section 33 of that Act.

(b) **Proposals**

- (i) Section 135 of the Bill proposes giving Scottish Ministers the power to direct Ofgem to pay into the Scottish Consolidated Fund monies from funds paid to Ofgem under the Fossil Fuel Levy arrangements and arising from the auctioning of electricity generated under SRO contracts. It also proposes a corresponding duty on Scottish Ministers to include in budget proposals to the Scottish Parliament that monies thus raised shall be used to promote the use of energy from renewable sources. Renewable energy will be defined as sources of energy other than fossil fuel or nuclear fuel.
- (ii) This provision will enable the Scottish Executive to provide the additional support necessary to meet its commitment to increasing the amount of renewable energy produced in Scotland. Similar powers were obtained by the DTI Secretary of State through a recent Private Members Bill at Westminster.

**The Scottish Executive  
December 2003**

## **ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE**

### **The Enterprise and Culture Committee's Renewable Energy Inquiry**

#### **Introduction**

1. At its meeting on 14 January 2004, members of the Environment and Rural Development Committee requested information on the Enterprise and Culture Committee's inquiry into renewable energy in Scotland. The remit for the inquiry is attached as Annex A to this paper.
2. The Enterprise and Culture Committee has to date taken oral evidence at its meetings on 6, 13 and 20 January, and has issued a call for written evidence from interested parties. A summary of progress with the inquiry so far is attached as Annex B to this paper.

#### **Background**

3. There has been widespread support in Scotland for developing sources of renewable energy, and Scotland is judged by many commentators to have significant potential in this regard. Scotland already has a relatively high level of electricity generated from renewables due to the historic role of hydro-electric power. Currently approximately 13% of energy generated in Scotland comes from renewable resources.
4. The Scottish Executive has set ambitious targets for increasing the percentage of electricity derived from renewable sources. The targets are 18% of electricity generated in Scotland to be from renewable sources by 2010, and an 'aspirational' target of 40% by 2020. Some commentators have questioned the achievability of these targets under current circumstances. As yet no targets have been set for non-electricity renewables. Further background information on renewable energy can be found in the SPICe paper on Renewable Energy (03/89), which is attached for members information.
5. The Enterprise and Culture Committee is examining the potential economic benefits associated with the development of the Scottish renewable energy market. As part of its inquiry the Committee is considering whether current Scottish Executive policy on renewable energy (including the current targets) creates opportunities or barriers to development. The inquiry will also examine the impacts of current policy on local communities and the wider Scottish economy.

#### **Conclusion**

6. The Environment and Rural Development Committee is invited to note the information contained in this paper. If members wish to monitor the progress of this inquiry, or to raise issues within the remit of this Committee, the following options are suggested to achieve this:

### Option A

7. Towards the end of the inquiry, the Enterprise and Culture Committee will take evidence from the Deputy Minister for Enterprise and Lifelong Learning. The Committee may wish to appoint a reporter to attend that meeting (which is expected to be on Tuesday 30 March), to raise questions of interest to this Committee.

### Option B

8. The Committee may wish to authorise the Convener to write to the Convener of the Enterprise and Culture Committee, drawing attention to any particular issues which the Environment and Rural Development Committee would like to see raised in the course of the inquiry.



## REMIT FOR THE ENTERPRISE AND CULTURE COMMITTEE'S RENEWABLE ENERGY INQUIRY

'To inquire into the development of renewable energy in Scotland. Specifically, the Committee will wish to ask the following questions, which are intended to be illustrative rather than prescriptive:

- **Will the Executive targets be met, under current circumstances, and are they appropriate?**
  - how were they arrived at by the Executive?
  - what is the relationship with UK targets?
  - have assumptions been made about the contributions of different sectors?
  - what are the opportunities and implications for the economy in achieving the targets?
  - what are the implications if the Executive's targets are not met?
  
- **If not, why not? (What are the current barriers, and what action needs to be taken to ensure that the targets are met?)**
  - **global issues**
    - the Renewables Obligation (Scotland) and the UK energy legislative framework
    - the electricity market
    - the transmission network (inc. the Scottish national grid)
  
  - **local issues**
    - What opportunities are there/should there be for local community involvement in, and economic benefit from, renewable energy schemes?
  
  - **examination by sector**
    - onshore wind (inc. planning issues, community development)
    - offshore wind (inc. UK strategy, role for energy ITI?)
    - wave/tidal (inc. technology issues, job potential)
    - hydroelectric
    - biomass
    - other/longer-term (e.g. emerging technology, non-electricity)
  
- **Are there implications for the reliability of supply if the Executive's aspirational target is met?**

**The Enterprise and Culture Committee's Renewable Energy Inquiry  
Evidence to date**

**This paper sets out the evidence received to date, and the forthcoming programme, for the Enterprise and Culture Committee's inquiry into renewable energy.**

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

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

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

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

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

The Committee will shortly consider the themes emerging from the inquiry, and identify particular areas for additional investigation (including any additional oral evidence).

The Committee has provisionally scheduled fact finding visits for early March.

At the time of writing, around 35 written evidence submissions have been received. The deadline for written submissions is 26 January.