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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum: delegated powers relevant to Scotland in the Energy Bill



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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

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

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

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

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Committee Membership



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Membership changes

1. The following changes to Committee membership occurred during the course of the Committee's scrutiny of the delegated powers relevant to Scotland in the Energy Bill:
 - on 19 January 2023, Carol Mochan MSP replaced Paul Sweeney MSP.

Introduction

2. At its meetings on 15 November 2022 and 7 February 2023, the Delegated Powers and Law Reform Committee considered the delegated powers that are exercisable within devolved competence in the [Energy Bill](#) (“the Bill”).
3. With one exception, all the delegated powers in the Bill are conferred upon UK Ministers. The Committee considered these powers under its wider remit, in Rule 6.11.1(b) and (c) of Standing Orders, which includes considering and reporting on proposed powers to make subordinate legislation in particular bills or other proposed legislation; and general questions relating to powers to make subordinate legislation.
4. One delegated power (in clause 243) is exercisable by Scottish Ministers. It engages the Committee’s remit under paragraph 6 of Rule 9B.3 of the Parliament’s Standing Orders which provides that where the Bill that is the subject of an LCM containing provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions.

Background to the Bill

5. The Bill is a UK Government Bill which was introduced in the House of Lords on 6 July 2022.
6. The Bill contains 270 clauses and 20 schedules, divided into 13 parts, each of which regulates disparate areas of the law connected to energy provision. It seeks to implement a range of policy objectives, following various consultation exercises and reports in recent years.
7. According to the [Explanatory Notes](#), the aim of the Bill is to *“help increase the resilience and reliability of energy systems across the UK, support the delivery of the UK’s climate change commitments and reform the UK’s energy system while minimising costs to consumers and protecting them from unfair pricing”*.

Legislative consent

8. Most of the provisions of the Bill extend to England, Scotland, and Wales, with some also extending to Northern Ireland. Energy is, for the most part, a reserved matter under the Scotland Act 1998, schedule 5, Part II, Head D. However, aspects of the Bill fall within the legislative competence of the Scottish Parliament. The UK Government acknowledges this and has undertaken to seek the consent of the Scottish Ministers for the provisions that engage the Legislative Consent Motion process.ⁱ
9. The Scottish Government lodged a [Legislative Consent Memorandum](#) ("LCM") on 28 September 2022. To take account of amendments to the Bill which were made at Committee Stage in the House of Lords, the Scottish Government lodged a [Supplementary Legislative Consent Memorandum](#) on 25 January 2023.
10. As is usual for UK Bills, the Scottish Government has not published a delegated powers memorandum. Its views on the relevant powers are set out in the LCMs.
11. The lead committee for the LCMs is the Net Zero, Energy and Transport Committee, to which this Committee directs its report.
12. The Bill creates several delegated powers in devolved areas. The Sewel convention does not apply to delegated legislation, which means that UK Ministers are not required by convention to seek the consent of the Scottish Parliament in respect of delegated legislation that affects devolved matters
13. In areas where competence overlaps between the UK Parliament and Scottish Parliament, the Bill requires UK Ministers to give notice to the Scottish Ministers in relation to certain powers exercisable by the UK Government, while others are subject to a requirement to consult Scottish Ministers. However, none of those powers is subject to a requirement for the Secretary of State to obtain the Scottish Ministers' consent before exercising them.
14. In its LCM, the Scottish Government explains that it has written to UK Government and "made it clear...that the requirement to consult with Scottish Ministers over any secondary regulations to deliver the mechanisms should, in view of the devolved competences and interest in play, be amended to a requirement to secure Scottish Ministers' consent."
15. The Scottish Government is seeking amendments to the Bill to this effect. In the interim, it is recommending that consent be withheld for clauses which delegate powers to UK Ministers to legislate in devolved areas but granted in relation to other parts of the Bill. In its Supplementary LCM the Scottish Government recommends withholding consent to clauses 240 – 245, which concern offshore wind electricity generation, and which were inserted at Committee Stage in the House of Lords, and to clause 174 (Heat Networks: enforcement in Scotland).

ⁱ Paragraph 103 of the Explanatory Notes.

Delegated Powers

16. The UK Government has published a [Delegated Powers Memorandum](#) to accompany the Bill (the “UK DPM”) and two supplementary memoranda. As is normal for UK bills, the Scottish Government has not published a delegated powers memorandum. The Scottish Government’s view on the relevant clauses is set out in the LCMs.
17. There is no requirement in the Bill that UK Ministers obtain or seek the consent of the Scottish Parliament or Scottish Government before exercising the powers in devolved areas.

Questions asked of the Scottish Government

18. As part of the Committee's consideration of the LCM on the Bill, the Committee agreed to write to both the UK and Scottish Governments requesting further explanation in relation to the powers that are exercisable within devolved competence. The Committee accordingly [wrote](#) to the Cabinet Secretary for Net Zero, Energy and Transport and [to the Secretary of State for Business, Energy and Industrial Strategy](#) on 24 November 2022.
19. Responses were requested by 7 December 2022. The Committee received a [response](#) from the Cabinet Secretary for Net Zero, Energy and Transport on 8 December 2022 and a [response](#) from the Secretary of State on 31 January.

Committee consideration

20. The Committee's consideration of the delegated powers in the Bill is set out below in three parts. Parts 1 and 2 deal with the first LCM and the powers in the Bill at introduction. Part 1 makes recommendations that relate to individual relevant powers. Part 2 makes recommendations which are applicable to all regulation-making powers conferred on UK Ministers in devolved areas. Part 3 deals with the Supplementary LCM which concerns two delegated powers added to the Bill since introduction.

Part 1: First LCM - Individual powers

Clauses 173 and 174 (previously 171 and 172) - Amendment of the Heat Networks (Scotland) Act 2021

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Negative procedure

Provisions

21. Section 173 amends section 4 of the Heat Networks (Scotland) Act 2021 ("2021 Act") to the effect that the licensing authority for the purposes of the Act may be the Gas and Electricity Markets Authority (GEMA), if that authority is so designated by regulations made by the Secretary of State under clause 173.
22. Clause 174 enables the Secretary of State by regulations to amend the 2021 Act to make provision about monitoring compliance with, or enforcement of, conditions of heat network licences issued under that Act. In particular, it allows the Secretary of State to give the licensing authority described in clause 173 above the same enforcement powers as those being provided to the heat networks regulator through regulations.

Committee consideration

23. Both powers will allow the Secretary of State to amend legislation which has only recently been enacted by the Scottish Parliament, and yet neither are subject to a requirement on the Secretary of State to obtain the consent of the Scottish Ministers.
24. The powers conferred by clause 173 are subject to the negative resolution procedure. According to the DPM, the powers conferred by clause 174 are also intended to be subject to the negative procedure, however this has not been set out on the face of the Bill. Both powers are Henry VIII powers, since they allow the amendment of primary legislation. Such clauses merit careful consideration since they represent a shift in power from the legislature to the executive. For this reason, they are normally subject to the affirmative procedure. The reason given in the DPM (see paragraphs 553 and 557) for the choice of negative procedure is that the provision to be made has been agreed (clause 173) or will be agreed (clause 174) with the Scottish Government.

25. In its LCM, the Scottish Government recommends consent to both clauses 173 and 174 on the basis that it has agreed to the appointment of GEMA as the licensing authority and has “welcomed the provision of additional enforcement powers for the licensing authority”. Nevertheless, there is no requirement on the face of the Bill requiring the Secretary of State to obtain the consent of the Scottish Ministers before exercising either of these powers.
26. In its letter of 24 November, the Committee asked the Cabinet Secretary why he has not requested an amendment to the Bill to provide that the exercise of these delegated powers is subject to Scottish Ministers’ consent, given that it has done so in relation to other clauses in the Bill.

Clause 173

27. In his response, the Cabinet Secretary explained that:
- Clause 173 confers a power on the Secretary of State to appoint Ofgem (which acts on behalf of GEMA) as the licensing authority for heat networks in Scotland by means of amending the Heat Networks (Scotland) Act 2021.
 - The power to appoint and remove functions from Ofgem is a wholly reserved matter.
 - Scottish Ministers have agreed to the appointment of Ofgem as licensing authority and the mechanism for appointment.
 - There is currently no existing devolved body in Scotland well-placed to take on the role of licensing authority.
 - Whilst it is technically possible to establish a new regulatory body for heat networks in Scotland, the Scottish Government considers that the costs to set up a new body would be disproportionate and could take more than three years.
 - Ofgem has established energy regulatory expertise, including in terms of consumer protection which is reserved to the UK Government.
 - The UK and Scottish Governments are in the process of setting up a Memorandum of Understanding confirming that the Secretary of State will unappoint Ofgem from its role as Scottish licensing authority should Scottish Ministers wish to appoint another body as the licensing authority.

Clause 174

28. With respect to clause 174, the Cabinet Secretary has confirmed that, in consequence of the Committee bringing this matter to his attention, the Scottish Government has further reviewed this clause, is changing position, and now recommends that the Scottish Parliament withhold consent to clause 174. The recommendation to now withhold consent to clause 174 is on the basis that the exercise of the powers in that clause by the Secretary of State should be subject to the consent of the Scottish Ministers. This change of position is reflected in the Supplementary LCM.

29. In light of the Cabinet Secretary's response, the Committee:

- notes that clauses 173 and 174 enable the Secretary of State by regulations to amend primary legislation recently enacted by the Scottish Parliament (the Heat Networks (Scotland) Act 2021);
 - notes that there is no statutory requirement for the Secretary of State to obtain the Scottish Ministers' consent before exercising these powers;
 - reiterates the position that the Committee agreed at its meeting on 22 November 2022 in relation to powers in UK bills conferred on UK Ministers in devolved areas, namely:
 - (a) The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
 - (b) Where such powers are exercised by the Secretary of State in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.
 - (c) If such powers contain a requirement for the Scottish Ministers' consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers' consent decision.
- The Committee will scrutinise powers conferred on UK Ministers not subject to a requirement for Scottish Ministers' consent and may suggest matters for the lead committee to consider.
- (d) As a minimum, powers when exercised by the Secretary of State in devolved areas should be subject to the process set out in the SI Protocol 2 where the power is within the scope of that protocol.

30. With regard to clause 173, the Committee:

- considers, in light of the explanation provided by the Cabinet Secretary, that it would not be appropriate or proportionate for the power in clause 173 to be made subject to a requirement to obtain Scottish Ministers' consent;
- accepts the power in principle but finds that the affirmative procedure should apply on account that it is a Henry VIII power.

31. With regard to clause 174, the Committee:

- draws to the lead committee's attention that there is no requirement on the Secretary of State to obtain the consent of the Scottish Ministers before exercising this power to amend the Heat Networks (Scotland) Act 2021.

Clause 265 - Power to make consequential provision etc.**Power conferred on: Secretary of State****Power exercisable by: Regulations****Parliamentary procedure: affirmative where regulations amend or repeal primary legislation, otherwise negative***Provision*

32. Clause 265 confers a regulation-making power on the Secretary of State to make such provision as the Secretary of State considers appropriate in consequence of, or in connection with, the Bill or any provision made under the Bill.

Committee consideration

33. Clause 265 allows the Secretary of State by regulations to make consequential provision. While this power, as a consequential provision, is constrained by context, it is framed in broad terms, allowing the Secretary of State to make provision, not only in consequence of, but also “in connection with” the Bill, or any provision made under the Bill, as the Secretary of State “considers appropriate.”
34. Regulations made under this power may amend or repeal primary legislation, including Acts of the Scottish Parliament. The affirmative resolution procedure will apply to such regulations if they repeal primary legislation.
35. The DPM does not include any explanation for the power.
36. According to Annex A of the Explanatory Notes, the UK Government does not consider that this clause requires the legislative consent of the Scottish Parliament. The Scottish Government disagrees. In its LCM it expresses concern at the width of the power and the fact that it extends beyond implementation of the Bill as enacted. It recommends that the Scottish Parliament withholds consent to the clause as it is currently drafted and advises that discussions with UK Government are ongoing.
37. In its letter to the Secretary of State, the Committee asked for an explanation as to:
- why the UK Government considers it appropriate that the power has been conferred so that it is exercisable by the Secretary of State in relation to devolved matters and when amending devolved legislation;
 - why the UK Government considers it appropriate that when the power is exercised by the Secretary of State in relation to devolved matters or to amend devolved legislation, there is no requirement to obtain the consent of the Scottish Ministers; and
 - whether the UK Government intends to amend the Bill to either ensure the power is conferred solely on the Scottish Ministers in relation to Scotland, or to require UK Ministers, when exercising the power in relation to devolved matters, to obtain the consent of the Scottish Ministers; and
 - why the UK Government considers it appropriate for a consequential provision to be cast in such unusually broad terms.

38. The Secretary of State responded:

” The UK Government maintains that Clause 238 does not engage the LCM process. The Committee suggests that Clause 238 of the Bill is “framed in unusually broad terms” but this is not an accurate characterisation of the power. This clause provides for a power to amend primary and secondary legislation in consequence of (or in connection with) the Bill once enacted. It can therefore only be used in the context of substantive provisions of the Act (and provisions made under the Act) which are either reserved matters or already subject to scrutiny through the LCM process. The power can only be used to amend primary legislation passed before or in the same session as the proposed Energy Act (or in the case of secondary legislation, legislation made under powers in such primary legislation). The power is not therefore an open-ended one to amend any legislation whenever passed or made. Consequential amendment powers are a standard feature within other Bills and Acts of Parliament and simply make sure that new and existing legislation works effectively. Any changes will be minor or technical in nature and any amendment to primary legislation would be subject to a vote in both Houses of Parliament. The UK Government will, of course, engage with the Scottish Government before making any consequential amendments to devolved legislation.

39. The clause applies to Scotland and the power it contains is capable of being exercised for purposes within the legislative competence of the Scottish Parliament. Furthermore, it either foresees or intends that regulations made under it will change devolved legislation. In our view, therefore, it requires the legislative consent of the Scottish Parliament.

40. Regulations under this clause will be laid in the UK Parliament only, even if they legislate in devolved areas or amend devolved legislation. Furthermore, the power is very wide and is capable of being exercised in ways that could not currently be anticipated by the Scottish Parliament. Should that happen, there will be no opportunity for Parliamentary oversight within the Scottish Parliament as there is no requirement for the Scottish Ministers to consent to the exercise of the power within devolved competence.

41. **In light of this response, the Committee draws the lead committee’s attention to the following:**

- **this is a broad power which allows the Secretary of State to make provision, not only in consequence of, but also “in connection with” the Bill, or any provision made under the Bill, as the Secretary of State “considers appropriate”;**
- **regulations made under this power may amend or repeal primary legislation, including Acts of the Scottish Parliament. As the scope of the Bill is wide, the scope of the devolved legislation which could be amended or repealed is similarly wide;**
- **if this power were to be exercised by the Secretary of State in devolved areas, there would be no formal means by which the Scottish**

Parliament could scrutinise such regulations or be notified that they had been laid before the UK Parliament.

Part 2: First LCM - recommendations applicable to all regulation-making powers conferred on UK Ministers in devolved areas (clauses 173, 174, 242, 265, and all powers listed in the Annex).

Powers for UK Ministers within devolved competence

42. In the Annex to the LCM, the Scottish Government identifies several clauses which contain delegated powers which are capable of being exercised within devolved competence. Most of these clauses fall within Part 1 (licensing of carbon dioxide transport and storage) and Part 2 (carbon dioxide capture, storage etc and hydrogen production) of the Bill. A summary of the clauses is set out in the Annex to this paper.
43. The delegated powers conferred by those clauses are exercisable by UK Ministers only. Regulations would be laid in the UK Parliament only, giving no opportunity for scrutiny by the Scottish Parliament. There is also no requirement in the Bill that UK Ministers obtain the consent of the Scottish Ministers before exercising the power within devolved competence. There does not appear to be any political commitment in the accompanying documents that UK Ministers will seek/obtain the consent of the devolved authorities when exercising the delegated powers within devolved competence. [SI Protocol 2](#), which can give the Scottish Parliament a scrutiny role, will not operate effectively in relation to these powers because of the absence of a consent requirement.
44. The Scottish Government explains in its LCM that it is recommending that consent to these clauses (other than clause 173) be withheld unless and until their exercise is made subject to a requirement for the Secretary of State to obtain the Scottish Ministers' consent when exercising the powers within devolved areas.
45. The Committee [wrote](#) to the UK Government on 12 July 2022 regarding the scrutiny of delegated powers in UK Parliament bills conferred on UK Ministers in devolved areas and the application or otherwise of SI Protocol 2. The Secretary of State for Levelling Up, Housing and Communities [responded](#) on 14 August indicating that the "UK Government takes into account a variety of factors when seeking delegated powers in devolved areas." He also indicated that "[w]hether or not to include statutory consent requirements is considered on a case-by-case basis as each policy area has a different legislative context."
46. The Committee drew this correspondence to the attention of the Secretary of State in its letter of 24 November, and asked for an explanation, in relation to each of these powers, as to:
 - (a) why the UK Government considers it appropriate that these powers have been conferred so that they are exercisable by the Secretary of State in relation to devolved matters;
 - (b) why the UK Government considers it appropriate that when these powers are exercised by the Secretary of State in relation to devolved matters there is no

requirement to obtain the consent of the Scottish Ministers; and

(c) whether the UK Government intends to amend the Bill to either ensure the powers are conferred solely on the Scottish Ministers in relation to Scotland, or to require UK Ministers when exercising the power in devolved areas to obtain the consent of the Scottish Ministers.

47. The Secretary of State responded:

” Parts 1 and 2 of the Bill establish a financing and economic regulation framework for carbon capture, transport and storage (‘CCUS’) and low carbon hydrogen production to incentivise and accelerate deployment across the UK.

A coordinated approach to awarding carbon capture and hydrogen production revenue support contracts and economic regulation of transport and storage networks across the UK will give confidence to potential investors by providing a single regulatory framework, particularly for projects or clusters that cross borders or involve locations in Scotland, England, and offshore areas on the continental shelf. Separate regimes would result in a less effective framework, undermine our ability to deliver CCUS and low carbon hydrogen projects across the UK, and result in less efficient outcomes for UK taxpayers and consumers. A coordinated approach will also be administratively efficient, reducing the cost and time to select, fund, deliver and regulate projects in order to meet decarbonisation objectives of both the UK and Scottish governments.

48. The Secretary of State therefore:

” considers that these delegated powers would be most appropriately exercised on a UK-wide basis by the Secretary of State, following consultation with the devolved administrations.

49. **In relation to all regulation-making powers in the Bill which are conferred on UK Ministers and are capable of being exercised within devolved areas, the Committee reiterates the position that it agreed at its meeting on 22 November 2022 (as set out at paragraph 29 above).**

Part 3: Supplementary LCM - new delegated powers

50. The Supplementary LCM concerns new clauses, inserted at Committee Stage in the House of Lords, which relate to the Offshore Wind Environmental Improvement Package (‘OWIEP clauses’) and habitats assessment processes for offshore wind projects. Two of those clauses contain delegated powers. The power in clause 242 (marine recovery fund) is conferred upon UK Ministers whereas clause 243 (assessment of environmental effects etc) confers regulation-making powers on the ‘appropriate authority’ which is the Secretary of State, and the Scottish Ministers in relation to relevant offshore wind projects in the Scottish inshore region.

Clause 242 - Marine Recovery Funds

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary Procedure: Negative Resolution

Provision

51. Clause 242 gives the Secretary of State the power, by regulations, to establish marine recovery funds that could operate in both the Scottish inshore and offshore regions.

Committee consideration

52. This power is exercisable by UK Ministers alone. Regulations would be laid in the UK Parliament only, giving no opportunity for scrutiny by the Scottish Parliament. There is also no requirement in the Bill that UK Ministers obtain the consent of the Scottish Ministers before exercising the power within devolved competence.
53. The Scottish Government is seeking amendments to Clause 242 that require the consent of Scottish Ministers to both the operation of a marine recovery fund in Scottish waters, and any delegation of functions by the Secretary of State.
54. The same considerations set out above in Part 2 regarding powers for UK Ministers within devolved competence apply equally to this clause.

55. **The Committee reiterates the position that it agreed at its meeting on 22 November 2022 in relation to powers in UK bills conferred on UK Ministers in devolved areas (as set out at paragraph 29 above).**

Clause 243 - Assessment of environmental effects etc.

Powers conferred on: Scottish Ministers (in relation to Scottish inshore region), also Secretary of State, Welsh Ministers and Department for Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA)

Powers exercised by: Regulations

Parliamentary Procedure: Affirmative procedure

Provision

56. Clause 243 (Assessment of environmental effects etc) confers powers on Scottish Ministers to adopt new regulations for the assessment of environmental effects of relevant offshore wind projects and about environmental compensation in the Scottish inshore region.

Committee consideration

57. The clause enables 'the appropriate authority' to make regulations in relation to specific offshore wind projects. This is defined to include Scottish Ministers, Welsh Ministers and DAERA in relation to relevant offshore wind projects in the Scottish, Welsh and Northern Irish inshore regions respectively. The clause requires that use of the powers is subject to consultation with the Secretary of State, arms' length bodies, other Devolved Administrations, and such other persons as the regulation-

making authority considers appropriate. The powers will only be exercised after this process of consultation.

58. The enabling power provides limited “Henry VIII powers” to disapply or modify primary legislation only where needed in the waters under each administrations’ control. This is necessary and appropriate because the environmental impacts of offshore windfarm developments are managed under various pieces of legislation, including primary legislation passed by devolved legislatures.
59. When using the delegated power conferred by the clause, DAERA and Scottish Ministers may only make regulations which apply to offshore wind in their inshore regions (to 12 nautical miles). When exercising their powers, Scottish Ministers, Welsh Ministers and DAERA may not modify the functions of the Secretary of State. Otherwise, the Secretary of the State has the power to make regulations which apply to offshore wind in the UK marine area (which is reserved).

60. **The Committee accepts the power in principle is content that its exercise will be subject to the affirmative procedure.**

Annex: further delegated powers in the Bill which are capable of being exercised within devolved areas.

Clauses containing further delegated powers (numbers at introduction)	Scottish Government position
Clause 2(3) (Licensable means of transportation)	As clause 2(3)(b) gives the Secretary of State powers to make regulations specifying other means of transportation of gas which are to be a "licensable means of transportation", SG has requested that the requirement in clause 3 for the Secretary of State to give notice to the Scottish Ministers if the regulations contain provision that would be within devolved competence be changed to a requirement to obtain the consent of Scottish Ministers.
Clause 5 (Exemption from prohibition)	SG has requested that when the Secretary of State is granting exemptions from the prohibition on carrying out activity in 2(1) without a licence, the requirement to notify Scottish Ministers be changed to a requirement to obtain the consent of the Scottish Ministers.
Clause 6 (Revocation or withdrawal of exemption)	SG has requested that when the Secretary of State revokes an exemption, the requirement to notify Scottish Ministers be changed to a requirement to obtain the consent of the Scottish Ministers.
Clause 8 (Power to create licence types)	SG has requested that when the Secretary of State is making regulations providing for different types of licence in respect of the different activities set out in 2(1), consent from Scottish Ministers should be a requirement if the regulations contain provision that would be within devolved competence.
Clause 9 (Procedure for licence applications)	SG has requested that when the Secretary of State (or the economic regulator with the approval of the SoS) makes regulations about how licences are applied for and the fee, there should be a requirement to obtain the consent of the Scottish Ministers.
Clause 10 (Competitive tender for licences)	SG has requested that when the Secretary of State is making regulations for determinations on competitive basis for awarding licences, the requirement to consult Scottish Ministers be changed to a requirement for consent of Scottish Ministers.
Clause 12 (Standard conditions of licences)	SG has requested that clause 12 be amended so that the requirement to consult Scottish Ministers is changed to a requirement to obtain the consent of the Scottish Ministers.
Clause 32 (Enforcement of obligations of licence holders)	SG has requested that when the Secretary of State is making regulations for the enforcement of licence conditions, consent from Scottish Ministers should be a requirement if the regulations contain provision that would be within devolved competence.
Clause 50 and 51 (Transfer schemes)	SG has requested that the requirement to consult Scottish Ministers is changed to a requirement to get consent of Scottish Ministers.
Clauses 57, 71, 72, 73, 74 and 78 (Revenue support contracts)	As these clauses give power to the Secretary of State to make regulations about revenue support contracts, SG has requested that the requirement to consult Scottish Ministers (including in clause 78) be amended to require the consent of Scottish Ministers.
Clause 68 and 69 (Allocation bodies and revenue support contracts)	SG has requested that when the Secretary of State is making regulations under this section (e.g., to appoint a person to carry out functions in connection with the allocation of hydrogen production revenue support contracts, and a person to carry out functions in connection with the allocation of carbon capture revenue support contracts), consent from Scottish Ministers should be required if the regulations contain provision that would be within devolved competence.
Clauses 82 and 83 (Financing of costs of decommissioning etc.)	SG has requested that when the Secretary of State is making regulations under this section (e.g., about the financing of and provision of security in relation to decommissioning and legacy costs that have been or are likely to be incurred in relation to a carbon storage installation), consent from Scottish Ministers should be requirement if the regulations contain provision that would be within devolved competence.
Clauses 90 and 91 (CCUS strategy and policy statement)	SG has requested that the requirement to consult Scottish Ministers is changed to a requirement to get consent of Scottish Ministers.
Clause 96 (Access to	SG has requested that when the Secretary of State is making regulations under this section (e.g., about the acquisition of rights for infrastructure), consent from Scottish Ministers should be a

infrastructure)	requirement if the regulations contain provision that would be within devolved competence.
Clause 168(7) (Heat networks regulation)	SG has requested that clause 168(7) is amended so that the requirement to consult is replaced with a requirement to obtain consent.

