

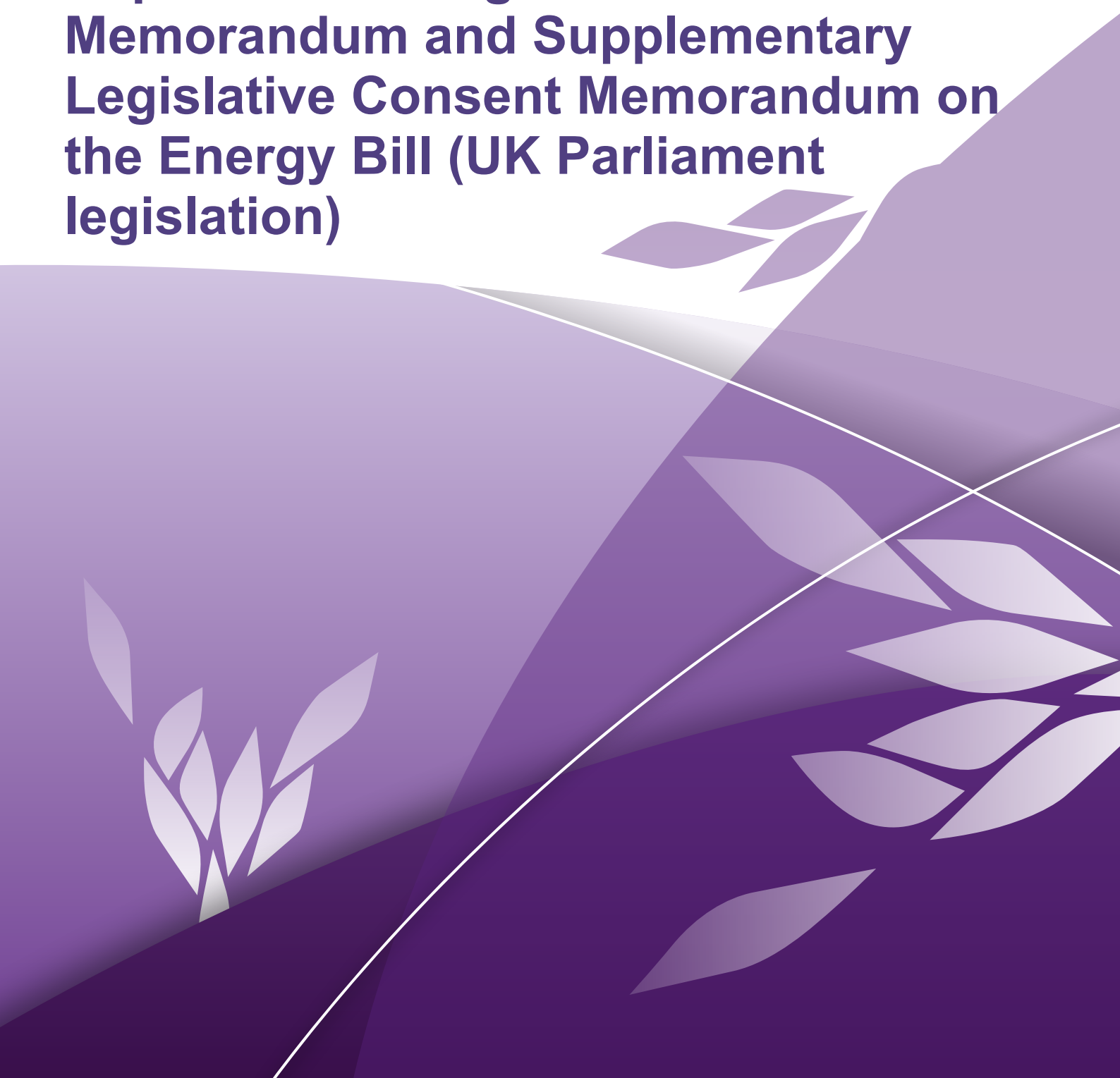


The Scottish Parliament
Pàrlamaid na h-Alba

Published 17 March 2023
SP Paper 340
5th Report, 2023 (Session 6)

Net Zero, Energy and Transport Committee

Report on the Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum on the Energy Bill (UK Parliament legislation)



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
[http://www.parliament.scot/abouttheparliament/
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Introduction	1
Net Zero, Energy and Transport Committee consideration	2
General Scottish Government position on the UK Bill	2
Scrutiny of the supplementary LCM	3
Delegated Powers and Law Reform Committee scrutiny	4
Specific provisions in relation to which the Scottish Government recommends withholding consent	6
Regulatory and licensing framework for carbon dioxide transport, storage and hydrogen production	6
New technology	7
Heat networks	7
Oil and gas	8
Other matters	8
Offshore Wind Environmental Improvement Package and habitats assessment processes for offshore wind projects	10
Conclusions and recommendations	13

Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero, Energy and Transport, with the exception of matters relating to rural land use, wildlife crime and animal welfare.



netzero.committee@parliament.scot

Committee Membership



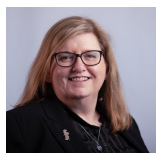
Convener

Edward Mountain
Scottish Conservative
and Unionist Party



Deputy Convener

Fiona Hyslop
Scottish National Party



Jackie Dunbar
Scottish National Party



Liam Kerr
Scottish Conservative
and Unionist Party



Monica Lennon
Scottish Labour



Ash Regan
Scottish National Party



Mark Ruskell
Scottish Green Party

Introduction

1. The [Energy Bill](#) (the UK Bill) was introduced in the House of Lords on 6 July 2022 and aims to—
 - increase the resilience and reliability of energy systems across the UK;
 - support the delivery of the UK's climate change commitments; and
 - introduce reforms to the UK's energy systems whilst minimising the cost to consumers and protecting them from unfair pricing.
2. A [Legislative Consent Memorandum](#) (LCM) on the UK Bill was lodged by the Scottish Government on 28 September 2022. The Scottish Parliament subsequently agreed to designate the Net Zero, Energy and Transport Committee as lead committee for considering the LCM.
3. As the Scottish Government notes in the LCM, energy matters are generally reserved and, as such, all the general provisions in the UK Bill extend to Scotland. However, given the complex interplay of reserved and devolved powers in this area, legislative consent will be required in several areas of the UK Bill that touch on devolved competence.
4. As set out in the LCM, the Scottish Government supports the UK Government legislating in some devolved areas, but not others. The former areas comprise amendments to the Nuclear Installations Act 1965, market reform and consumer protection, the regulation of heat networks (with some exceptions, as discussed below) and the civil nuclear sector.ⁱ These provisions are not discussed further in detail in this report.
5. On 25 January 2023, a [supplementary LCM](#) was lodged by the Scottish Government and this too was referred to the NZET Committee as lead committee. The supplementary LCM arises from:
 1. a number of amendments tabled in the House of Lords on 9 January which relate to the Offshore Wind Environmental Improvement Package (OWEIP) and habitats assessment processes for offshore wind projects, and
 2. the Scottish Government reconsidering its position on clause 172 concerning heat networks; enforcement in Scotland, in the light of scrutiny by the Delegated Powers and Law Reform (DPLR) Committee. It now recommends withholding consent to this provision.
6. As currently amended, the UK Bill consists of 270 clauses and 20 schedules. In some cases, clause numbers have subsequently changed due to amendments made at committee stage. References in the report to numbered clauses in the UK Act are to those in the version of the Bill as it was first introduced.
7. This is a report to the Scottish Parliament on both the LCM and the supplementary LCM.

ⁱ Net Zero, Energy and Transport Committee, [Official Report](#), 24 January 2023, Col 3.

Net Zero, Energy and Transport Committee consideration

8. The NZET Committee first considered the LCM on 6 September. On 20 September, we agreed to seek written submissions from selected stakeholders. Two responses were received—
 - [Scottish Renewables](#) (received 31 October); and
 - [Friends of the Earth Scotland](#) (received 3 November)
9. Neither response discusses in detail provisions in the UK Bill highlighted in the LCM. They both make only general comment. The short submission from Scottish Renewables was supportive of the Scottish Government's arguments for withholding consent which, they said, aligns with the objective of growing the renewable energy sector and sustaining its position at the "forefront" of the global clean energy industry.
10. Friends of the Earth said they did not have a view on whether consent should be withheld on the basis of arguments put forward in the LCM by the Scottish Government. They said the Scottish Parliament should oppose the provisions in the UK Bill on principle, on the basis that they do not align with legally binding climate change targets. In relation to provisions in the Bill on carbon capture and storage (CCS), they queried whether this technology was consistent with climate change commitments. They said that diverting investment and resources away from proven methods into what it called the unproven method of CCS would maintain a reliance on the continued use of fossil fuels.
11. Having noted these responses as well as the stated position of the Scottish Government, the Committee agreed to invite the Cabinet Secretary, for Net Zero Energy and Transport, Michael Matheson MSP to give evidence on the LCM. In doing so, we also invited him to provide an update on the Scottish Government's position on the UK Bill, including any discussions with the UK Government.

General Scottish Government position on the UK Bill

12. The [Cabinet Secretary replied on 16 January](#). He said the Scottish Government was continuing to recommend withholding consent in respect of a number of provisions but that this would be negated if amendments the Scottish Government had requested in these areas were agreed to.
13. There is more detailed discussion of the content of the letter below. But the Committee notes that a common thread to most of the requested amendments is that the Scottish Government is asking the UK Government to convert a requirement to consult the Scottish Ministers before using a power in a devolved area into a requirement to seek their consent.
14. In oral evidence to the Committee, the Cabinet Secretary said that many of the Scottish Government's objections to the UK Bill were "straightforward" and could be

resolved by making this change in areas where it had been requested.ⁱⁱ He said it was his view that a requirement for consent rather than consultation in relation to such provisions was “pretty standard”.ⁱⁱⁱ In this connection, a [9 February](#) letter to the Committee from Deputy First Minister, John Swinney MSP states:

” ...we are emphasising that any regulation making provision for UK Ministers that extends to areas of devolved or executively devolved competence in Scotland should require the consent of the Scottish Ministers.”

15. During the session, the Cabinet Secretary explained that the Scottish Government had sought to raise concerns about the UK Bill early on in the process, before the UK Bill was formally introduced. He said he had first written to the UK Government in August 2022, setting out initial concerns and proposing a number of changes to mitigate against impinging on the decision-making powers of Scottish Ministers. He advised the Committee that he was yet to receive any response to the matters raised in the correspondence, despite having received indications that a response would be forthcoming ahead of this evidence with the Committee.^{iv}
16. On the general question of whether the UK Bill would complement the Scottish Government’s energy plans, the Cabinet Secretary said that there were aspects that could potentially be beneficial. However, in his view, a number of provisions could create confusion around the regulatory process and negatively impact the roll-out of offshore wind installations^v (as discussed in more detail below).

Scrutiny of the supplementary LCM

17. The NZET Committee’s evidence session with the Cabinet Secretary and officials took place on 24 January, prior to the lodging of the supplementary LCM. However, the Cabinet Secretary made clear that the Committee should expect a supplementary LCM in relation to the amendments lodged by the UK Government on 9 January. The Scottish Government’s change of position on clause 172, and the likelihood of this being raised in a supplementary LCM was also discussed during the session. Finally, and as discussed immediately below, both these issues were taken account of by the DPLR Committee in its scrutiny.
18. Accordingly, the Committee is satisfied that it has taken sufficient evidence on the subject matter of the supplementary LCM to now report on it, alongside reporting on the original LCM.

ii Net Zero, Energy and Transport Committee, [Official Report](#), 24 January 2023, Col 8.

iii Net Zero, Energy and Transport Committee, [Official Report](#), 24 January 2023, Col 7.

iv Net Zero, Energy and Transport Committee, [Official Report](#), 24 January 2023, Col 4.

v Net Zero, Energy and Transport Committee, [Official Report](#), 24 January 2023, Col 5.

Delegated Powers and Law Reform

Committee scrutiny

19. The Delegated Powers and Law Reform Committee considered the LCM at its meeting on 15 November 2022 and the Supplementary LCM on 7 February 2023. [It reported on both on 10 February](#) and the NZET Committee has taken account of its views in preparing this report.
20. The UK Bill now contains one clause that confers regulation-making powers on the Scottish Ministers. This is clause 243,^{vi} which confers powers on the Scottish Ministers to adopt new regulations to assess the environmental effects of relevant offshore wind projects and environmental compensation in the Scottish inshore region. These provisions allow limited powers to disapply or modify primary legislation but require that their use is subject to consultation with the Secretary of State.
21. The DPLR Committee said it accepted the principles of this power and is content that, when exercised, it will be subject to the affirmative procedure. The NZET Committee's notes, however, that this power is within an overall package of measures relating to OWEIP and habitats assessment processes for offshore wind projects with which the Scottish Government has concerns.
22. In relation to the various provisions in the Bill which would enable the UK Government to legislate within devolved areas, and require them to consult, but not seek the consent of, the Scottish Ministers, the DPLR Committee's report makes the general point that:

” “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.”
23. It further notes that it has previously written to the UK Government to highlight the issue of UK Bills which confer delegated powers on UK Ministers and are exercisable for Scotland but which fall within the legislative competence of the Scottish Parliament. It notes that in response, the [then Secretary of State for Levelling Up, Housing and Communities](#) stated that:

” “the UK Government takes into account a wide variety of factors when seeking delegated powers in devolved areas’ and further states that ‘...whether or not to include statutory consent requirements is considered on a case by case basis”.
24. In its report, the DPLR Committee, as a general recommendation about the number of powers within the UK Bill that are within this category:

^{vi} NB: In their report the DPLR Committee refer to clauses by their most recent numbering, as at time of publication of the Committee's report, rather than on introduction. Clause 243 is a new clause introduced by amendment.

” “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.”

25. In respect specifically to clause 172,^{vii} the DPLR Committee noted from the UK Government’s Delegated Powers Memorandum accompanying the Bill that regulations under this power are intended to be subject to the negative procedure, but that this has not been set out on the face of the Bill.
26. The DPLR Committee report also notes that it wrote to the Scottish Government seeking clarification as to why it was recommending that the Scottish Parliament give consent to clause 172 and was not asking for it to be amended so as to require the consent of the Scottish Ministers.
27. In his response, the Cabinet Secretary confirmed that, after having reviewed this clause, the Scottish Government had changed its position and now recommended that consent be withheld.

^{vii} The DPLR Committee refers to it in its report as Clause 174, its current numbering following the agreement of amendments in the House of Lords.

Specific provisions in relation to which the Scottish Government recommends withholding consent

28. This section summarises the specific subject areas in relation to which the Scottish Government has set out its objections in the LCM. Unless otherwise stated, references in this section to the views of the Scottish Government are references to its views as set out in the LCM addendum.

Regulatory and licensing framework for carbon dioxide transport, storage and hydrogen production

29. Section 1 of the UK Bill seeks to establish the Office of Gas and Electricity Markets (Ofgem) as the UK-wide economic regulator for the licensing framework for the transport and storage of carbon dioxide and makes provision for its associated functions, powers and duties.
30. In his 16 January letter to this Committee and in his oral evidence, the Cabinet Secretary explained that the Scottish Government's position was that consent should be withheld to a number of clauses within this section of the UK Bill. He said the Scottish Government had proposed an amendment which would require Ofgem and the Secretary of State for Scotland to give consideration to Scottish statutory emissions targets when exercising their functions.^{viii}
31. The Cabinet Secretary's letter also explained the Scottish Government was recommending withholding consent for Clause 2, which seeks to prohibit unlicensed activities. This is also as a result of a proposed amendment that would require the Secretary of State to obtain consent from Scottish Ministers in instances where regulations contain provisions that would be within the competence of the Scottish Government.
32. A further recommendation is to withhold consent to multiple clauses to enable an amendment to Clause 57 which seeks to narrow its scope so that revenue support regulations may only be conferred on any 'relevant' function or person.
33. As a consequence of the Scottish Government's position on these three matters, it also recommends that consent is withheld to a number of clauses contained within chapters 1 to 6 of the UK Bill since they are consequential to the amendments outlined above, and will ensure that its text remains meaningful.
34. The Cabinet Secretary said that the Part 1 powers were "broad" and would be exercisable by the Secretary of State. Therefore the proposed amendments seek to require consent to be obtained from Scottish Ministers when impacting devolved competence, rather than merely requiring consultation to take place.^{ix}

viii Net Zero, Energy and Transport Committee, [Official Report](#), 24 January 2023, Col 3.

New technology

35. Part 3 of the UK Bill seeks to establish mechanisms to make provisions for the establishment and operation of low-carbon heat schemes.
36. The Scottish Government recommends that consent is withheld to clauses 98-107 of Part 3 of the UK Bill due to further amendments being sought but has undertaken to provide an updated recommendation to the Scottish Parliament upon the conclusion of ongoing discussions with the UK Government.
37. These amendments aim to include provision to require:
 - consent by Scottish Ministers to any secondary legislation falling within devolved powers,
 - the Scottish Ministers to be given powers to amend or revoke the functioning of the scheme when falling within devolved competence;
 - the Secretary of State to appoint Scottish Ministers as scheme administrators should a request by a Scottish Minister be made.
38. The Scottish Government's view is that these amendments will ensure that they have a role in determining whether any future secondary legislation aligns with the aims and objectives of the Scottish Government and to minimise the risk of uncertainty to future projects.

Heat networks

39. Part 7 of the UK Bill contains provisions to define the regulator as the Gas and Electricity Markets Authority (GEMA) in Scotland and establishes powers for the Secretary of State to be able to appoint an alternative body to GEMA to carry out the regulatory functions.
40. Whilst the UK Government considers that clause 166 of Part 7 of the UK Bill does not require legislative consent, the Scottish Government position sets out that, in its view, consent is required as devolved technical standards will be a condition of the authorisation authority and will impact how these standards are administered.
41. Clause 168 of Part 7 of the UK Bill requires that the Secretary of State must consult before making regulations that contain provisions within the devolved competence of Scottish Ministers. However, the Scottish Government recommends withholding consent to this provision, and to Clause 169 due to its linkage. This is on the basis of two amendments being proposed. These are that—
 - Part 6 (Enforcement of Conditions) and Part 10 (Supply to Premises) of Schedule 15 also straddle devolved areas and thus should be similarly quoted in clause 168(7); and
 - To require the Secretary of State to acquire consent when making such

regulations to enable Scottish Ministers to influence any legislative provisions that would impact Scotland.

42. In the course of his evidence, the Cabinet Secretary again affirmed that, as introduced, the UK Bill provides broad regulatory powers exercisable by the Secretary of State and therefore the proposed amendments seek to require consent to be obtained from Scottish Ministers when impacting devolved competence.^x

Oil and gas

43. Part 11 of the UK Bill seeks to enable the Secretary of State to make regulations to require those responsible for specific installations to have an emergency plan for responding to marine oil pollution as well as powers to reduce the effects of offshore oil or gas activities for the protection of natural habitats.
44. In the course of his evidence, the Cabinet Secretary explained that some of the provisions appear to modify devolved competence and could erode extant powers depending on the activity in question.^{xi}
45. Additionally, Clause 226 of Part 11 of the UK Bill relates to the protection of relevant sites and references natural habitats, or habitats of species and would again, in the view of the Scottish Government, appear to erode extant powers of Scottish Ministers, particularly with the provisions contained within subsection (2).
46. This wide provision means that certain activities specified by the Secretary of State can be prohibited without the consent of the Scottish Government. This includes responsibilities in relation to CCS and hydrogen production.
47. In his letter of 16 January, the Cabinet Secretary also highlights that subsection (3) of Clause 226 of the UK Bill, also includes provisions that, subject to regulation, require Scottish Ministers to carry out a specified description of assessment before granting a specified license. In relation to marine licensing, Clause 226 could modify the Marine (Scotland) Act 2010 and alter the executive competence of Scottish Ministers under the Marine and Coastal Access 2009 Act.
48. Subsection (4) of Clause 226 similarly affects the devolved and executively devolved functions of Scottish Ministers, while Clause 227 amends functions in Part 4 of the Petroleum Act 1998 which are exercisable by Scottish Ministers.
49. The Scottish Government considers that the provisions that define the scope of the installations are too broad and is recommending that consent be withheld.

Other matters

50. Clause 238 of the Bill aims to afford powers to the Secretary of State to make

^x Net Zero, Energy and Transport Committee, [Official Report](#), 24 January 2023, Cols 6-7.

^{xi} Net Zero, Energy and Transport Committee, [Official Report](#), 24 January 2023, Col 3.

regulations once the Bill has been enacted.

51. The Scottish Government considers this Clause to be very wide as it is not limited solely to implementation but also enables the Secretary of State to amend, repeal or revoke Acts of the Scottish Parliament without any duty to consult with Scottish Ministers.
52. On the basis of ongoing discussions between the Scottish Government and the UK Government, the Scottish Government recommends that consent is withheld until these discussions have concluded.

Offshore Wind Environmental Improvement Package and habitats assessment processes for offshore wind projects

53. The supplementary LCM arises mainly from a number of amendments tabled in the House of Lords on 9 January 2023 which primarily relate to OWEIP and the habitats assessments processes for offshore wind projects. Unless otherwise stated, references in this section to views expressed by the Scottish Government on these new clauses are to views set out in the supplementary LCM.
54. The OWEIP clauses relate to the Habitats Regulation Appraisal (HRA) processes for offshore wind projects. This operates on the basis that if a plan or project might have significant effects on the protected features of a habitat site or species, then an appropriate assessment must be undertaken prior to the responsible authority determining whether to proceed.
55. If the conclusion of this assessment is negative, the responsible authority may choose to go through the derogation provisions which require that certain conditions are satisfied. These are—
- that there is no alternative to the plan or project;
 - there are Imperative Reasons of Overriding Public Interest (known as “IROPI”) for it to proceed, despite the environmental damage; and
 - compensatory measures to address the damage can be secured.

The focus of the OWEIP clauses is on the third of these derogation provisions, namely the compensation obligation.

56. In its [policy statement](#) on another current UK Bill; the Energy Security Bill, the UK Government sets out the purpose of the OWEIP clauses in the Energy Bill as being

“to enable—

- making of regulations about the assessment of the environmental effects on protected sites of offshore wind developments’ marine infrastructure, and about compensatory measures for adverse environmental effects;
- strategic compensatory measures to be taken or secured; and
- making regulations to introduce one or more Marine Recovery Funds, and to allow for delegation of the operation and management of the Funds to other bodies.”

57. The Scottish Ministers are currently the sole planning, licensing, consenting, and decommissioning authority for offshore wind projects in Scottish waters (inshore and offshore), with certain powers and functions either fully devolved or executively

devolved.

58. The marine planning and licensing regimes for the Scottish inshore region (from 0-12 nautical miles) are within devolved legislative competence and operated under the Marine (Scotland) Act 2010.
59. Marine planning and licensing in the Scottish offshore region (beyond 12 nautical miles) has been executively devolved under the Marine and Coastal Access Act 2009.
60. The consenting regime for electricity generating stations in Scottish waters under the Electricity Act 1989 and the decommissioning regime under the Energy Act 2004 are also executively devolved in the Scottish inshore and offshore regions.
61. The Scottish Government's position is that the current set-up, with HRA functions sitting with the Scottish Ministers, ensures a coherent licensing and consenting regime, including compensatory obligations in relation to offshore wind under the HRA process where the derogation provisions are satisfied.
62. The Scottish Government recommends that the Scottish Parliament withholds consent to the entire package of OWEIP clauses on the basis that the OWEIP clauses must, at a minimum, not reduce devolved legislative or executive competence. It considers that changes to the arrangements that provide further powers to the UK Secretary of State, such as the inclusion of an additional licensing, consenting and decommissioning authority for offshore wind projects in Scottish waters, could cause significant complexity and delay for offshore wind developers and for the assessment of offshore wind applications, and could potentially frustrate both Scottish and UK offshore wind ambitions at a time when investment must be accelerated.
63. The Scottish Government also considers that clause 241 as introduced, when read alongside Clause 243, does not provide certainty that the Scottish Ministers will continue to be the planning, licensing, consenting, and decommissioning authority for HRA purposes in relation to offshore wind projects in the Scottish offshore region.
64. Clause 242 provides for the Secretary of State to establish marine recovery funds that could operate in both the Scottish inshore and offshore regions but does not provide any mechanism by which the Scottish Ministers could provide input on the remit of any such funds.
65. In his evidence to the Committee, the Cabinet Secretary also said that the Scottish Government had concerns over the uncertain impact of giving the Secretary of State powers to operate a marine recovery fund out to the 200 nautical mile limit. He said it was not clear how offsetting or mitigating measures would apply in the context of the fund being operated within Scottish waters.^{xii} He raised what he stressed was a hypothetical example of a windfarm development off the coast of Wales being mitigated by the closure of a fishery in Scottish waters to protect birdlife. He acknowledged that the example could work the other way, but said that it was more likely to apply as in his example because of the greater scale of development planned for Scottish waters.^{xiii} In this connection, the Committee notes a 9 February letter from the Deputy First Minister confirming that the Scottish Government is continuing to seek an amendment that would require, at a minimum,

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.^{xiv}

66. The Cabinet Secretary was also asked about the potential interaction between mitigation measures potentially relating to devolved matters under the Energy Bill and under the Levelling-up and Regeneration Bill, another Bill going through the UK Parliament in relation to which an LCM was lodged, and on which [this Committee has recently reported](#). The latter Bill makes provisions that appear to have the potential to impact on Scotland's environmental impact assessment (EIA) process. The Minister said that there appeared to be "significant interaction".^{xv} In a [1 February letter](#) following up on his appearance, the Cabinet Secretary elaborated that:

” “EIA and HRA are two separate environmental consenting processes. EIA is an assessment of the likely significant environmental effects arising from a proposed development project, whilst HRA is an assessment of the potential impacts of a plan or project on certain European sites that have been designated under the Habitats Directive to protect important habitats and species. Each process has different legislative requirements, but projects which satisfy these requirements will need to undergo both EIA and HRA processes.

EIA and HRA are therefore two interlocking parts of the same overall consenting regime. The interaction between them is critical to ensuring the overall consenting regime is coherent and to reducing complexity. Where these processes are not coordinated, there is a significant risk that delay will be introduced into Scotland's well-understood environmental consenting processes.”

xii Net Zero, Energy and Transport Committee, [Official Report](#), 24 January 2023, Cols 9-10.

xiii Net Zero, Energy and Transport Committee, [Official Report](#), 24 January 2023, Cols 14-15.

xiv Deputy First Minister and Cabinet Secretary for Covid Recovery. Written submission, 9 February 2023. ([Read correspondence](#))

xv Net Zero, Energy and Transport Committee, [Official Report](#), 24 January 2023, Col 14.

Conclusions and recommendations

67. The Committee notes that the Scottish Government first wrote to the UK Government about the then proposed energy bill in August 2022, shortly before its introduction. It is disappointing that when the Committee took evidence from Scottish Government on the Bill in late January 2023, the Scottish Government had yet to receive a formal and substantive response by the UK Government to the issues identified. We ask that the Scottish Government provide an update on any further communication or correspondence received prior to a motion on the LCM and supplementary LCM to the Energy Bill being taken in the Chamber.
68. The Committee also notes that in his evidence to the Committee, the Cabinet Secretary indicated that a copy of the UK Bill had only been received the day prior to publication.^{xvi}
69. The Committee considers that when seeking to legislate on matters of devolved competence, the UK Government should proactively engage with the applicable devolved governments. A collaborative approach should ensure more workable legislation that is fit for purpose, with any unintended consequences, such as apparently contradictory or overlapping legislative regimes operating in parallel, thus avoided.
70. In this connection, the Committee notes that there are aspects of the UK Bill that the Scottish Government welcomes or considers may be potentially useful and consistent with Scottish Government policy aims. With better consultation, there is the potential to build on this.
71. On the other hand, the Committee has particular concerns about the impact the Bill may have on future offshore wind developments in Scottish waters. The combination of the Energy Bill, the Levelling-up and Regeneration Bill, and existing legislation applicable in Scottish waters risks creating an overlapping matrix of rules, obligations and permissions that are so complex as to deter future offshore development. This potential chilling effect on investment must be avoided if Scotland and the UK as a whole are to make the most of the vast renewable energy potential of our coastal waters in order to enable the net zero transition. We call on the Scottish and UK Governments to work urgently together to agree amendments to the Bill that will ensure the law in this area is coherent and clear.
72. The Committee recommends that the Scottish Government engages with the UK Government to identify what scope exists to agree a mechanism that ensures that any matters raised will receive timely and detailed responses from the UK Government when it is seeking to legislate on matters which impinge on matters of devolved competence.
73. The Committee notes that the main area of disagreement between the Scottish and UK Governments in relation to this Bill concern order and

regulation-making powers that are operable in devolved areas. The Scottish Government objects to the UK Secretary of State having to consult rather than seek the consent of the Scottish Ministers. In relation to such powers, the Committee notes the position adopted by the Delegated Powers and Law Reform Committee at its meeting on 22 November 2022 in relation to such provisions, as set out in paragraph 24 above.

74. The Committee is of the view that it is in everyone's interests that the Scottish Parliament can give consent in relation to this UK Energy Bill, but because of the concerns above we do not think we are in a position to do so at this point. We also acknowledge the Scottish Government's and DPLR Committee's concerns that, in important devolved areas, the UK Government has created an order-making power in the UK Bill which requires them to consult the Scottish Ministers rather than seeking their consent. We share these concerns and call on both Governments to seek resolution, and for the Scottish Government to return to the Parliament with a further Supplementary Legislative Consent Memorandum when this is resolved.

