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Net Zero, Energy and Transport Committee

Report on the supplementary Legislative Consent Memorandum for the Energy Bill (UK Parliament Legislation)



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Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero and Just Transition, with the exception of matters relating to just transition; on matters relating to land reform, natural resources and peatland, Scottish Land Commission; Crown Estate Scotland, and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands; and on matters relating to energy within the responsibility of the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy.



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Introduction

1. At its meeting on Tuesday 26 September 2023, the Net Zero, Energy and Transport Committee considered a supplementary Legislative Consent Memorandum ("LCM") from the Scottish Government on the [Energy Bill](#) (UK Parliament legislation). This is the second supplementary LCM for this Bill and can be found [here](#). The original LCM can be found [here](#) and the first supplementary LCM can be found [here](#).
2. The Energy Bill ("the Bill") was introduced in the House of Lords on 6 July 2022. It 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.
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. The Committee has previously considered the Bill and the issue of consent and published its [report](#) on the LCM and the first supplementary LCM in March 2023.
5. Further amendments to the Bill have subsequently been lodged in the UK Parliament which engage devolved matters. Consequently, the Scottish Government has lodged a second supplementary LCM which addresses these amendments. This second supplementary LCM now recommends that, in light of these further amendments, the Scottish Parliament gives its consent to the Bill.

Consideration by the Committee and recommendation

6. The Committee considered the supplementary LCM at its meeting on 26 September 2023.
7. Due to the limited time available before the Bill is expected to be passed in the UK Parliament, the Committee has been unable to take any further evidence on the Bill in light of the supplementary LCM. However, the Committee would like to highlight a number of matters in relation to the LCM to help inform the Parliament's consideration.
8. Amendments to the Bill were lodged which impose an express mandate on Ofgem to support the achievement of net zero. There was widespread support for this during the Committee's inquiry [Electricity infrastructure: inhibitor or enabler of our energy ambitions?](#)
9. We would also like to highlight amendments in relation to Offshore Wind Environmental Improvement Package and habitats assessment processes for offshore wind projects. We raised particular concerns about the impact of this Bill on future offshore wind developments in Scottish waters. The Committee's report stated:
 - ” 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.
10. The Scottish Government now recommends consent to these provisions, with a number of amendments having been agreed to them. The Scottish Government states that the amendments it has negotiated with the UK Government have “helped address several concerns about the impact on devolved functions” and “broadly address previous concerns about the regulation making powers, including limiting the Secretary of State’s ability to amend currently devolved functions through regulations”.
11. In relation to requested amendments to include a requirement for statutory consent from Scottish Ministers in all areas where it is taking powers to make secondary legislation in devolved areas, the Committee notes that amendments have not been agreed. We also note concerns raised by the Scottish Government:

” ... about the UK Government’s negotiating approach to this Bill. The UK Government made tabling amendments agreed between the governments conditional on the Scottish Government recommending consent to the whole Bill. This is the reverse of the Sewel Convention, under which the UK Government should amend the Bill to reflect the views of the Scottish Parliament, not threaten to revert to a less acceptable version if consent is not forthcoming. The Scottish Government has made clear to the UK Government that this is an unacceptable approach to negotiations and the Sewel Convention.

12. In our we report on the LCM and first supplementary LCM we said 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.

13. **The Committee welcomes that our recommendation that both Governments seek resolution has been acted upon and that a resolution has been reached, though we are unable in the timeframe to comment on the substance of the amendments that have been agreed.**

14. **In particular, the Committee welcomes the amendments agreed between the Scottish Government and UK Government about Offshore Wind Environmental Improvement Package and habitats assessment processes for offshore wind projects.**

15. **We also welcome amendments to the Bill which impose an express mandate on Ofgem to support the achievement of net zero. There was widespread support for this during the Committee's electricity infrastructure inquiry.**

16. **However, the Committee notes that in some areas (most notably, in relation to statutory consent for powers to make secondary legislation in devolved areas) amendments have not been made.**

Consideration by the Delegated Powers and Law Reform Committee

17. The Delegated Powers and Law Reform Committee will consider the supplementary LCM at its planned meeting of Tuesday 26 September.

