



The Scottish Parliament
Pàrlamaid na h-Alba

Published 4 February 2025
SP Paper 736
2nd report, 2025 (Session 6)

Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee Report on the Legislative Consent Memorandum and supplementary Legislative Consent Memorandum on the Great British Energy Bill



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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 Transport and the Cabinet Secretary for Net Zero and Energy, with the exception of matters relating to just transition; and 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.



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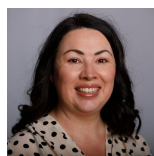
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Introduction

1. Introduced in the House of Commons on 25 July, the purpose of [the Great British Energy Bill](#) is to enable the Secretary of State for Energy Security and Net Zero to designate a company as Great British Energy and place it on a statutory footing. Great British Energy will be an operationally independent company wholly owned by the Government. Its objectives will be to facilitate, encourage and participate in the production, distribution, storage and supply of clean energy; the reduction of greenhouse gas emissions from energy produced from fossil fuels; improvements in energy efficiency; and measures for ensuring energy security.ⁱ

Legislative Consent Memorandum

2. The Scottish Government lodged a [Legislative Consent Memorandum](#) (LCM) on the Great British Energy Bill on 8 August 2024. This was subsequently referred to the Net Zero, Energy and Transport Committee as lead committee for considering the LCM. The Committee must therefore consider the LCM and report to the Parliament on it. In doing so the Committee should consider whether it is appropriate that consent should be given to the UK Parliament legislating in this area. It should also highlight any policy issues that it considers the Parliament should be aware of before reaching a view on consent.
3. The LCM states that the consent of the Scottish Parliament is required as the Bill “contains provisions which apply to Scotland and are for purposes which do not relate to reserved matters and are within the legislative competence of the Scottish Parliament”.
4. The LCM did not set out a position on consent and was missing detail in several places as the Scottish Government had not yet carried out an analysis. It stated:

” the Scottish Government is presently of the view that a number of the Bill’s provisions relate to devolved matters. There has so far been limited time for engagement with the UK Government on the detail of these matters prior to the Bill’s introduction and as a consequence the Scottish Government is not presently in a position to make any recommendation to the Scottish Parliament as to consent. It is anticipated that the supplementary LCM will be lodged following further discussions with the UK Government, outlining the Scottish Government’s recommendations on consent. A full analysis is pending and the outcome of that analysis will be covered in the supplementary LCM. This is likely to be lodged by the end of September, based on current timescales for the second reading of the Great British Energy Bill.
5. On 3 December, having received no further information about the Bill since the LCM was lodged in early August, the Convener [wrote](#) to the Acting Cabinet Secretary for Net Zero and Energy. The letter asked for an update on the supplementary LCM and for further details on which Bill provisions the UK and Scottish Governments were discussing.
6. The Acting Cabinet Secretary’s [response dated 11 December](#) (received 16

ⁱ [Great British Energy Bill, Explanatory Notes](#)

December) said there had been constructive discussions with the UK Government, with the UK Government expected to bring forward amendments the Scottish Government had asked for. It did not provide any details on what the amendments related to or when the analysis referred to in the LCM had been, or would be, undertaken. The letter added that “Once an amendment can be tabled that would trigger the requirement for a supplementary LCM, we will take that forward as quickly as possible.” As noted above, the LCM had indicated that a supplementary LCM would be lodged on the completion of further analysis, not that its being lodged was conditional on the lodging of particular amendments.

7. Following a request at official level for more information, the Scottish Government provided a further [letter on 19 December](#) which explained that the amendments that had been requested related to clause 5. Clause 5 requires the UK Government to consult the Scottish Ministers (and the other devolved governments) before including any matters within devolved competence in a “statement of strategic priorities” for Great British Energy. The letter said:

” “Recognising previous Scottish Parliamentary interest in the mechanisms for scrutiny of UK Ministers exercising functions in devolved areas, the Scottish Government has been exploring potential changes to this provision. Following constructive discussions and agreement, we now expect the UK Government to lodge such an amendment.”

Supplementary LCM

8. A [supplementary LCM](#) was lodged on 27 January 2025. The supplementary LCM confirms that the Bill as a whole extends to Scotland. It provides greater detail on the extent to which the consent of the Scottish Parliament is required, and on what basis. According to the supplementary LCM, each clause in the Bill requires consent, though some are seen as more consequential in relation to devolved matters than others.
9. Clauses 1, 2, 7 and 8 are described as “ancillary to or related to the purposes of designation of Great British Energy”. The LCM considers that these only require consent to the extent that similar provision could be made in Scotland or, in respect of clause 8, insofar as linked to other clauses for which consent is sought.
10. Clauses 3, 4, 5 and 6 are considered more substantive by the Scottish Government and require consent due to provision being made in devolved areas - though these provisions relate to both devolved and reserved matters and, the Scottish Government considers, consent is required in each case only in respect of the devolved matters.
11. The supplementary LCM confirmed, as the Cabinet Secretary had outlined in her evidence to the Committee (see further detail below), that inter-governmental discussions had focussed on clauses 5 and 6. It stated that amendments had now been lodged to clause 5, and reassurances given on clause 6, with which the Scottish Government was content.

Scottish Government recommendation on consent

12. The Scottish Government recommends in the supplementary LCM that the Scottish Parliament consents to the Great British Energy Bill in its amended form. It states that the Bill is “in line with the policy aims and objectives of the Scottish Ministers,

most notably tackling the climate emergency and growing our economy". It also states that if legislative consent was not given and the Bill was amended to exclude Scotland, "Scotland could miss out on a substantial number of opportunities provided by future GB Energy funding".

13. The supplementary LCM concludes:

” The Scottish Government is supportive of the UK Government’s stated ambitions for GB Energy. Additionally, the Scottish Government is pleased that amendments have been made to Clause 5(4) meaning that the UK Government cannot include in a statement of strategic priorities anything within devolved legislative competence without the consent of Scottish ministers. Overall, engagement with the UK Government has been positive and the Scottish Government looks forward to further discussions with the UK Government on Great British Energy, to ensure that it delivers for Scotland.

Net Zero, Energy and Transport Committee's consideration

14. The Committee took evidence on the LCM from the Acting Cabinet Secretary for Net Zero and Energy on [7 January](#) and from the UK Government on [21 January](#) i.e. before the supplementary LCM was lodged. This meant taking evidence without the benefit of an LCM making substantive comment on where the Bill was felt to cross over into devolved areas, and the Scottish Government's response to this. This was unfortunate. On the other hand, the Acting Cabinet Secretary's 19 December letter was of some help in setting out a position on some of those matters.
15. Scrutiny was mainly of clauses 5 and 6 of the Bill but the Committee took the opportunity to pose some wider questions about intergovernmental cooperation on energy policy and the role of Great British Energy within that.

Clause 5 – Strategic Priorities

16. Clause 5 of the Bill requires the Secretary of State to prepare a statement of strategic priorities for Great British Energy. In the Bill as introduced, this clause required the UK Secretary of State to consult Scottish Ministers before including anything in a statement which concerns devolved matters. The Scottish Government considered that, instead, the *consent* of the Scottish Ministers should be required and it sought amendments to reflect this.
17. The Acting Cabinet Secretary told the Committee: "I am keen to ensure that the bill contains proper recognition of devolved interests and that the Scottish Parliament has opportunities to scrutinise matters within its competence".ⁱⁱ She mentioned "constructive engagement" with the UK Government and an exchange of letters indicating that these concerns were being dealt with.ⁱⁱⁱ
18. The UK Minister for Energy confirmed to the Committee that an amendment would be forthcoming and would be supported by the UK Government. He explained that: "There is very little, if any, previous legislation that we have been able to identify that has a consent clause in such a section, so our default was to put a consult clause in there"^{iv} but that after conversations with devolved Governments "we have come to a position now where we agree that, in fact, where clause 5 impacts on devolved areas, there should be a consent clause".^v
19. The Acting Cabinet Secretary was asked to provide practical examples of policy implications if clause 5 was not changed from a requirement to consult to a requirement for consent in areas of devolved competence. She stated:

ii Net Zero, Energy and Transport Committee, [Official Report, 7 January 2025](#), Col: 41

iii Net Zero, Energy and Transport Committee, [Official Report, 7 January 2025](#), Col: 42

iv Net Zero, Energy and Transport Committee, [Official Report, 21 January 2025](#), Col: 43

v Net Zero, Energy and Transport Committee, [Official Report, 21 January 2025](#), Col: 44

” I am keen that we are an equal partner in the strategic actions that GB Energy takes. It is not there as a competitor to other operations; it must add to what we already have in Scotland... For example, I am keen that whatever GB Energy is doing in the community energy space does not reinvent the wheel. We already have Local Energy Scotland, which is an organisation that was set up by the Scottish Government. I do not want to see another body—it would be confusing for the public and I do not think that there is any need for it.”^{vi}

20. The Cabinet Secretary added that she was hopeful that Great British Energy could support wave and tidal energy as they develop as commercially viable sectors. She explained:

” ... there is a real opportunity for Scotland to concentrate on areas that we would expect a public body to lift up and assist to reach commercial maturity, in the way that wind has been assisted.”^{vii}

21. The Acting Cabinet Secretary also commented that:

” Scotland is so far ahead in the renewables sector and in the work that the Scottish Government has done that we know where the gaps are and where we need added value. We can therefore work as an equal partner in helping GB Energy to set out its strategic priorities when it is operating in Scotland.”^{viii}

22. The supplementary LCM now states that clause 5(4) has been amended^{ix} to require the consent of Scottish Ministers to any statement under clause 5, insofar as it relates to devolved matters.

23. The Committee supports the amendment to clause 5 of the Bill to require the consent of Scottish Ministers, rather than only consulting them, when setting strategic priorities relating to devolved matters. This is a better reflection of the extent to which devolved and reserved energy responsibilities are intertwined and interdependent, and should hopefully make it more likely that Great British Energy's and the Scottish Government's objectives are aligned and complementary.

Clause 6 – Direction-Making Powers

24. Clause 6 grants the Secretary of State power to issue directions to Great British Energy, with which Great British Energy must comply. Before giving directions the Secretary of State must consult Great British Energy, and "such other persons as the Secretary of State considers appropriate".

25. The Acting Cabinet Secretary said she had asked for an assurance that the Scottish Government would be expressly identified as among such "persons" and that this

^{vi} Net Zero, Energy and Transport Committee, [Official Report, 7 January 2025](#), Col: 41

^{vii} Net Zero, Energy and Transport Committee, [Official Report, 7 January 2025](#), Col: 46

^{viii} Net Zero, Energy and Transport Committee, [Official Report, 7 January 2025](#), Col: 46

^{ix} At the time of writing the Bill had not yet been amended but the relevant amendment has been tabled and is expected to be accepted.

was "another area where we have reached agreement".^x She later commented that "we have sought agreement from the UK Government on the wording of clause 6. Discussions on that are still taking place but are very positive".^{xi}

26. The UK Minister for Energy said the UK Government had agreed with the Scottish Government and other relevant devolved Governments that they would be consulted any time a direction is given. He said he would set out in writing the process for this consultation. The supplementary LCM confirms that the UK Government has provided "written assurances that consultation with the Scottish Government will be included under Clause 6".
27. The Committee probed both Ministers on whether consultation would be sufficient for clause 6, or whether, as with clause 5, consent would be better. The Acting Cabinet Secretary responded:
- ” "We have concentrated on the areas that have devolved implications, particularly in clause 5, but not so much in clause 6, which is about the company more generally, rather than about acting in the Scottish space. We have had those discussions. Clause 5 is the one that we really had to get "consent" into, because that makes the most material difference in terms of things happening in the devolved space."^{xii}
28. The UK Energy Minister said:
- ” "Clause 5 gives the secretary of state the power to set the strategic priorities of Great British Energy. We see that as not a regular statement but something that will happen more than once in time. That requires engagement with all parts of the UK. We have now come to the view, in agreement with the devolved Governments, that that should include the ability of those Governments to consent. Clause 6 is quite different. It gives a power of direction in very limited circumstances. A number of bills include such a clause giving the secretary of state a power, on very rare occasions, to direct in a particular way. It is not a day-to-day operational power."^{xiii}
29. The Minister added that the same power in other bills has been used "very rarely and usually only in circumstances where there is an immediate need to give a direction—for example, in a matter of health and safety or in national security."^{xiv} He considered that to require consent would negate the urgency that is required in these cases. He described the power as "very narrow" and stated that, "it is not a direction in terms of the operation of the organisation".^{xv}
30. The Minister agreed to provide written assurances to the Committee on how and when this power can be used. A letter was received on [31 January](#) stating:

x Net Zero, Energy and Transport Committee, [Official Report, 7 January 2025](#), Col: 47

xi Net Zero, Energy and Transport Committee, [Official Report, 7 January 2025](#), Col: 48

xii Net Zero, Energy and Transport Committee, [Official Report, 7 January 2025](#), Col: 48

xiii Net Zero, Energy and Transport Committee, [Official Report, 21 January 2025](#), Col: 44

xiv Net Zero, Energy and Transport Committee, [Official Report, 21 January 2025](#), Col: 45

xv Net Zero, Energy and Transport Committee, [Official Report, 21 January 2025](#), Col:45

” the intention is that the power will be used rarely and only when it is really needed... For example, the clause could be used if the Secretary of State considers that they need to give Great British Energy a direction that is in the interests of national security or otherwise in the public interest. This power is about being prepared for all eventualities, as a responsible government should.

31. The Minister provided an example of when a similar power (in the Energy Act 2016) had been used to issue a direction to the Oil and Gas Authority in 2017 "to ensure that operators of wells that were drilled prior to the 2015 Infrastructure Act meet the updated standards of those drilled after the Act came into force".

32. Prior to having received the UK Minister's response, the Committee had followed up by [writing](#) to the Acting Cabinet Secretary asking her to clarify further the circumstances in which, as she understood it, clause 6 could be used, and to share any reassurances she had received on this point. She responded on [28 January](#) stating:

” "As the UK Minister for Energy indicated at his committee appearance on 21 January, the UK Government has said that clause 6 would be used in limited circumstances, such as a health and safety risk or a national security issue. The Scottish Government has not received any additional assurances outwith those provided by Minister Shanks to the committee."

33. The supplementary LCM now says:

” "the UK Government have indicated that the clause is expected only to be used in limited circumstances such as a health and safety risk or national security. This is in line with a number of other Acts with a similar clause such as the UK Infrastructure Bank Act 2023 and Energy Act 2023 for Great British Nuclear."

34. The clause itself provides no qualification to its use:

” 6 Directions

(1) The Secretary of State may give specific or general directions to Great British Energy.

(2) Great British Energy must comply with the directions.

(3) Before giving a direction the Secretary of State must consult—

(a) Great British Energy, and

(b) such other persons as the Secretary of State considers appropriate.

(4) The Secretary of State must publish and lay before Parliament any directions given to Great British Energy under this section.

35. The Committee notes that the Scottish Government has received assurances from the UK Government (with which it is satisfied) that the clause 6 power would only be used in "limited circumstances". However, the Committee notes with concern the seemingly broad nature of the power. Clause 6 as currently drafted

does not explicitly limit its use to exceptional circumstances, or appear to preclude its use in relation to standard operational matters.

36. The Committee also notes that it is in the nature of such assurances that they are of uncertain duration and that a future government may not feel bound by them.
37. If there is intergovernmental consensus that consultation with devolved governments is an essential part of the operation of clause 6, this should be reflected on the face of the Bill. The Committee asks the Scottish Government to make representations to the UK Government requesting this change.

The role of Great British Energy

38. Given the broad remit that Great British Energy will have, and given the extent to which devolved and reserved powers in energy are intertwined, the Committee has made use of the limited opportunity this LCM scrutiny process afforded to reflect on some wider issues about the new company's future role in the devolved-reserved space:
 - It remains unclear where Great British Energy will fit into the existing energy landscape in Scotland, and what distinct role it will play that adds value for Scotland.
 - Governance and independence: as noted earlier, Great British Energy is to be an independent body that is subject to Ministerial direction. Transparency on its accountability structure will be vital to build and retain confidence in the new body.
 - There has been some uncertainty in the public domain as to how many jobs will be created at the new company's headquarters in Aberdeen. Just as important, in the longer term, is the number of new jobs Great British Energy will help create, and how this impact will be measured, especially in north-east Scotland, where the need for a just energy transition is most urgent.
 - Greater clarity is also needed in relation to Great British Energy's role in relation to community energy, including capacity building, and on how it can add value without duplicating existing effort in this area.
 - How Great British Energy will work with Crown Estate Scotland, including consideration of whether any changes need to be made to the latter body to ensure it can make the most of the working relationship.
 - The importance of ensuring that a fair distribution of investment funding, based on both capacity and need, is baked into Great British Energy's working practices.
39. These are all issues the Committee would wish to revisit further with Great British Energy once it is fully operational, and which the successor committee may wish to scrutinise in the next Parliamentary session.

LCM Procedure

40. The LCM procedure in Standing Orders is intended to ensure that the lead Committee has sufficient information from the Scottish Government, and sufficient time to reflect on it (including taking such evidence as it considers necessary) to make a report that will help the Scottish Parliament take an informed decision on consent.
41. The Committee welcomes the Scottish Government alerting the Parliament to the UK Bill in good time. But the LCM lodged for this Bill on 8 August lacked the detail required for the Committee to undertake effective scrutiny. In cases where an LCM effectively sets out a holding position on any significant matter, there is an expectation that the Scottish Government will provide such additional information in a supplementary LCM to enable that deliberation before the Bill is at too advanced a stage at Westminster. The Scottish Government's own stated position in this LCM reflected that understanding.
42. The detail of the amendments the Scottish Government had sought, and other reassurances it had received from the UK Government, were not set out until the 7 January evidence session. At this point, the Bill was already at the Committee Stage in the House of Lords. This left little time for further scrutiny.
43. The Committee accepts that the Scottish Government may have been motivated in this case to seek to provide the Parliament with an informed view on whether consent should be granted, and considered that it would be best to do so only following the conclusion of discussions with the UK Government about certain provisions in the Bill. However, it is doubtful whether this is in keeping with either the spirit or the letter of Chapter 9B of Standing Orders. This approach risks leaving the Committee – and the Parliament – in the limited role of being a last-minute “rubber stamp” (or not) in relation to an agreement or understanding reached – or indeed not reached – between the two governments, rather than an active participant in the legislative consent process, which was surely what the Parliament intended when Chapter 9B was agreed to.
44. Had the Committee received a supplementary LCM with real information on the Bill earlier in the process, it would have been able to report in good time to inform these discussions. A short report could then have been produced when amendments were lodged, the Committee having already set out previously its substantive views on the Bill. This would have allowed MSPs contributing to the debate the advantage of time to read the Committee's views, and would have allowed the Committee the opportunity to potentially use its scrutiny to inform the Bill.
45. The Committee is concerned about how this LCM has been handled. The Committee welcomes positive intergovernmental relations, as seem to have been demonstrated on this Bill. However, if the LCM process is made beholden to intergovernmental discussions, there is a risk of the Parliament becoming more of a bystander to the consent process than a participant. This is not the process envisaged in the Parliament's Standing Orders. This has been ameliorated in the present case by the Committee's decision to take evidence before a substantive LCM was provided. However, the Parliament will be left with little time to reflect on this report before the consent motion is taken.
46. The Committee recommends that if LCMs setting out “holding positions” are

lodged, a more substantive LCM must be lodged as soon as possible – not after particular amendments sought by the Scottish Government are tabled. This will make it easier for committees to take the evidence they need and make an informed recommendation about consent in a report to Parliament, and for that report to be submitted in enough time for the Parliament to reflect on it before the relevant motion is taken.

Conclusion

The Committee recommends by majority^{xvi} that the Scottish Parliament give its consent to the UK Parliament legislating in this area, as proposed in the Scottish Government's draft motion whilst asking the Scottish and UK Governments to note its reservations concerning clause 6.

^{xvi} **Yes: Bob Doris, Mark Ruskell, Monica Lennon, Michael Matheson, Kevin Stewart.
No: Douglas Lumsden. Abstain: Edward Mountain**

