

Legislative Consent Memorandum

Great British Energy Bill

Background

1. This memorandum has been lodged by Gillian Martin MSP, Acting Cabinet Secretary for Net Zero and Energy, in accordance with Rule 9B.3.1(a) of the Parliament's standing orders, and is supported by Acting Minister for Climate Action, Dr Alasdair Allan.

2. The Great British Energy Bill was introduced by the UK Government in the House of Commons on 25 July 2024. The Bill is available on the UK Parliament website via this link: <https://bills.parliament.uk/bills/3738>

Content of the Bill

3. The Bill makes provision for special arrangements in relation to the regulation of a company which is designated by the Secretary of State with the objects of facilitating, encouraging and participating in—

- the production, distribution, storage and supply of clean energy,
- the reduction of greenhouse gas emissions from energy produced from 15 fossil fuels,
- improvements in energy efficiency, and
- measures for ensuring the security of the supply of energy.

Provisions which require the consent of the Scottish Parliament

4. The Bill as a whole extends to Scotland. It is considered that it 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.

5. Clause 1 provides for the designation of a company as “Great British Energy”. The overall effect of this is to attract particular regulatory requirements provided for by the Bill including adjustments to usual regulation of a company. This in particular covers the provisions made by clause 3 which require the company to secure that the object of the company as stated in its articles of association are and are restricted to facilitating, encouraging and participating in—

- (a) the production, distribution, storage and supply of clean energy,

- (b) the reduction of greenhouse gas emissions from energy produced from fossil fuels,
- (c) improvements in energy efficiency, and
- (d) measures for ensuring the security of the supply of energy.

6. These objects are expressed in broad and general terms and may relate both to reserved matters and also to matters which are not reserved but would fall within the legislative competence of the Scottish Parliament. Great British Energy will then be set up so it can operate in devolved areas, including the production of hydrogen, environmental protection from greenhouse gases and improvements in energy efficiency. Clause 5 provides for the preparation of a statement of strategic priorities for Great British Energy, the scope of the company's object in terms of clause 3, means that this may concern subject matter within devolved legislative competence and this is recognised by clause 5(4) which requires the Scottish Ministers to be consulted should the statement include such matters. Clause 6 enables directions to be given to Great British Energy and as the company can operate in devolved areas the direction making powers must also therefore be capable of being exercised in relation to devolved matters. The general powers conferred by clauses 5 and 6 accordingly would be exercisable in relation to devolved matters.

7. Analysis of other clauses will be considered further and, if necessary, discussed in a supplementary LCM.

Reasons for seeking or not seeking legislative consent

8. Section 28(8) of the Scotland Act 1998 recognises that the UK Government will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament. Devolution Guidance Note 10 states that Bills require the consent of the Scottish Parliament if they contain provision applying to Scotland and which are for devolved purposes or if they alter the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers.

9. As described above, 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.

Consultation

10. The UK Government has not consulted on the formation of Great British Energy. However, prior to the General Election, the UK Government sought to advance community and local energy policy by introducing community benefits guidance for upgrades to the GB electricity network, enhanced community benefit guidance for onshore wind in England, and consulting on community energy policy in England. Community stakeholders and wider public response to these consultations underlined strong support for more local democracy and influence in energy projects.

11. In 2023, the Scottish Government consulted on the draft Energy Strategy and Just Transition Plan, setting out its vision for a future net zero energy system. Over 1,500 responses were received to the consultation and independent analysis confirmed broad support for our net zero energy vision and level of ambition.

Financial implications

12. The UK Government announced £8.3 billion of funding for Great British Energy over the course of this UK Parliament, including £3.3 billion for local and community energy.

13. Any implications or additional costs will be highlighted in the supplementary LCM once further analysis of the Bill has been concluded.

Post EU scrutiny

14. The Scottish Government's position on EU alignment will be considered as part of further analysis.

Conclusion

15. While the Scottish Government is broadly supportive of the UK Government's stated ambitions for Great British Energy, it is the view of the Scottish Government that it is preferable that, to the extent that the relevant provisions make provision for a devolved purpose an LCM is lodged without any recommendation on consent at this stage. Full analysis of the Bill from the UK Government is required to enable the Scottish Government to take a view on a consent position.

16. A supplementary LCM will be lodged as soon as possible following the completion of further policy work on the Bill.

Scottish Government
August 2024

This Legislative Consent Memorandum relates to the Great British Energy Bill (UK legislation) and was lodged with the Scottish Parliament on 8 August 2024

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