

Net Zero, Energy and Transport Committee
Tuesday 9 December 2025
37th Meeting, 2025 (Session 6)

Legislative Consent Memorandum on the Biodiversity Beyond National Jurisdiction Bill

Background

1. The [Biodiversity Beyond National Jurisdiction Bill](#) was introduced to the House of Commons on 10 September 2025. The Scottish Government lodged a [Legislative Consent Memorandum](#) (LCM) on 25 September.
2. According to the Bill's explanatory notes, the Bill is intended to enable the UK to implement an international obligation – “Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction” (the BBNJ Agreement). The UK signed the BBNJ Agreement on 20 September 2023.
3. [The overall objective of the BBNJ agreement](#) is:

“to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.”
4. Around two-thirds of the world's oceans are considered to be international waters (referred to in the BBNJ agreement as ‘areas beyond national jurisdiction’ but also known as the ‘high seas’). In these areas, all countries have a right to fish, ship and do research. However, [it's estimated only about 1% of these waters have been protected](#) leaving the marine environment in the vast majority of these waters vulnerable to exploitation and threats such as overfishing.
5. The LCM has been referred to the Net Zero Energy and Transport Committee, meaning it must report to the Scottish Parliament on it.
6. The Bill is awaiting Committee Stage in the House of Lords. It will then move to Report Stage, which is the final stage where substantive amendments can be tabled. The Bill has to be in force by January to comply with the BBNJ agreement.

Consent process for UK Bills affecting devolved matters

7. Chapter 9B of the Scottish Parliament's Standing Orders sets out a formal process to give the Scottish Parliament the opportunity to consent (or not) to UK legislation making provision in relation to devolved matters. An LCM lodged by the Scottish Government must —

- summarise what the Bill does and its policy objectives;
 - specify the extent to which the Bill makes provision about devolved matters;
 - explain why the Scottish Government considers it appropriate that consent is given or refused.
8. A motion on legislative consent is a motion seeking consent to relevant provisions in a UK Bill, or seeking refusal of the Scottish Parliament's consent. A UK Bill considered to trigger a need for an LCM may affect devolved competence in more than one way. A motion may therefore propose consent to some of these elements but non-consent to others. Standing Orders specifies that a motion (whether consenting, refusing consent, or a mixture of both) should normally be lodged. If the Scottish Government does not intend to lodge a motion at the time of lodging the memorandum the LCM should explain why not.

Content of the LCM and further correspondence

9. The consent of the Scottish Parliament is being sought for:
- a. Clauses 2-9: relating to the implementation of Part II of the BBNJ Agreement. They establish obligations to share the benefits of research into, and utilisation of, Marine Genetic Resources and associated Digital Sequence Information from Areas Beyond National Jurisdiction (ABNJ). They include requirements for notification pre- and post-collection, storage, access, and reporting.
 - b. Clauses 11 and 13: relating to the implementation of Part III of the BBNJ Agreement. They grant powers to the Secretary of State to implement decisions by the BBNJ Conference of the Parties to establish, manage and enforce Area-Based Management Tools for the purpose of protecting the marine environment in ABNJ.
 - c. Clauses 14-19: relating to the implementation of Part IV of the BBNJ Agreement.
 - i. Clauses 14-16: amend the Marine and Coastal Access Act 2009 to provide for powers to align the marine licensing regime with the BBNJ process in respect of activities in or impacting ABNJ.
 - ii. Clauses 17 and 18: amend the Marine (Scotland) Act 2010 to provide the Scottish Ministers with powers to amend the Scottish marine licensing regime as required to align with the BBNJ requirements in respect of activities in or impacting ABNJ with a nexus to Scotland.
 - iii. Clause 19: amend the Levelling-up and Regeneration Act 2023 to ensure that Environmental Outcome Reports, if implemented in the future, have sufficient territorial scope to apply to planned marine activities in ABNJ.
10. The Scottish Government also considers that clause 10 requires legislative consent. Clause 10 places an obligation on the Secretary of State to publish guidance, approved by the UK Parliament, relating to Part 2 of the Bill (on Marine Genetic Resources). The LCM states that "the Scottish Government will work with the UK Government to understand why it considers that consent is not required for this provision".

11. The Scottish Government recommends consent to clauses 15 to 19. On the other clauses, the Scottish Government “takes no position”. The LCM states that:

“the remaining clauses that engage legislative consent require a longer timeframe to work through to assess their implications and refine policy options. The Scottish Government will continue to work with the UK Government to fully assess the devolved aspects of the Bill and identify any necessary amendments during the passage of the Bill”.
12. The LCM says that a supplementary LCM will be lodged updating on these provisions “when the Scottish Government has reached a position”.
13. The [Committee wrote to Gillian Martin MSP, Cabinet Secretary for Climate Action and Energy](#) on 29 October requesting an update on the remaining clauses. A [response was received on 7 November](#). It set out that intergovernmental negotiations were ongoing, that certain assurances were being sought and that amendments may be required in a number of areas. It said any such amendments should be lodged by early December, with a corresponding supplementary LCM then lodged in mid-December. It said that the timetable for consideration of the supplementary LCM would be tight as the Bill has to be in force by January to comply with the BBNJ agreement.
14. The Committee then [wrote to the Cabinet Secretary](#) again on 18 November with specific questions on some of the delegated powers provisions in the Bill. A [response](#) was received on 26 November. The Cabinet Secretary said: “I am not currently able to say more beyond the positions set out in my original letter regarding clauses 9, 11 and 13 of the Bill.” The letter also updates on the timing of the Bill, with the consent of the Scottish Parliament now required in early January, rather than late December.

9 December evidence session and next steps

15. The Committee will take evidence on 9 December from the Cabinet Secretary, and supporting officials.
16. After this, the Committee will discuss what further action to take in relation to the LCM, including whether more evidence or information is necessary, taking account of the UK Parliamentary timetable. The Committee is likely to agree a short report on the LCM at a meeting in the near future.

Clerks

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