

LEGISLATIVE CONSENT MEMORANDUM

ENERGY BILL

- 1) This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
- 2) The Energy Bill (“the Bill”) was introduced in the House of Lords on 6 July 2022. The Bill can be found at: [Energy Bill \[HL\] - Parliamentary Bills - UK Parliament](#). The passage of the Bill was stalled for a period before resuming its passage in the latter part of 2022. The Bill is broad in its scope, complex and introduces into legislation a number of significant regulatory regimes, particularly in the fields of carbon dioxide transport and storage and hydrogen. This has resulted in the need for lengthy and in-depth analysis of the policy and constitutional position.

Policy Objective(s)

- 3) The UK Government sets out the purpose and main functions of the Bill in the accompanying Explanatory Notes¹. The UK Government’s stated policy objectives are to help increase the resilience and reliability of energy systems across the UK, support the delivery of the UK’s climate change commitments and reform the UK’s energy system while minimising costs to consumers and protecting them from unfair pricing.

Summary of the Bill

- 4) The Bill is sponsored by the Department for Energy Security and Net Zero.
- 5) The Bill is structured around three pillars: Leveraging investment in clean technologies; reforming the UK’s energy system and protecting customers; and maintaining the safety, security and resilience of the energy system across the UK.
- 6) In respect of leveraging investment in new technologies, Parts 1, 2 and 3 of the Bill include provisions to ensure the development of a low carbon energy system, to reduce emissions from industry, transport and potentially heat, and provide low carbon power. These measures include:

¹ [Energy Bill \[HL\] publications - Parliamentary Bills - UK Parliament](#)

- a) Establishing an economic regulation and licensing regime for CO₂ transport and storage with the Office of Gas and Electricity Markets (Ofgem) as the economic regulator.
 - b) Enabling the Government to implement and administer hydrogen and carbon capture business models including introducing a new hydrogen levy.
 - c) Enabling the establishment of a market-based mechanism for low-carbon heat.
 - d) Enabling the effective and safe delivery of a large village hydrogen heating trial.
 - e) Excluding fusion energy facilities from nuclear site licensing requirements under the Nuclear Installations Act 1965 (NIA 1965).
- 7) In respect of system reform and consumer protection, Parts 4 – 9 of the Bill include provisions to ensure market frameworks and governance arrangements are geared towards strengthening energy security and becoming a net zero energy system while minimising costs to consumers. These measures include:
- a) Establishing an Independent System Operator and Planner, an independent body acting as a trusted voice at the heart of the energy sector.
 - b) Reforming the current energy code governance framework including granting Ofgem new functions to provide strategic direction and oversight on codes and creating a new class of more independent code managers to deliver an improved system for consumers and competition.
 - c) Enabling competitive tenders in onshore electricity networks.
 - d) Enabling the Competition and Markets Authority (CMA) to investigate more effectively the impacts of mergers between energy companies.
 - e) Introducing a definition of multi-purpose interconnectors from which a new licensing and economic regime can be developed.
 - f) Maintaining the existing energy price cap beyond 2023.
 - g) Clarifying electricity storage as a distinct subset of generation in the 1989 Electricity Act.
 - h) Removing obligation thresholds under the Energy Company Obligation scheme.
 - i) Driving the rollout of smart meters across Great Britain.
 - j) Regulating the heat network market.
 - k) Introducing heat network zoning in areas where they are the most viable solution for decarbonising heat.
 - l) Setting regulatory requirements for Energy Smart Appliances including enabling mandatory functionality for electric heating appliances and electric vehicle (EV) charge points and establishing a new regulatory framework for actors who control these devices.
 - m) Ensuring the energy performance of premises regime is fit for purpose and reflects the UK's ambitions on climate change, including to support achieving the UK's target for net-zero greenhouse gas emissions by 2050.

- 8) In respect of the safety, security, and resilience of the UK energy system, Parts 10, 11 and 12 of the Bill include provisions related to a secure and resilient supply of core fuels for the UK, to ensure that the UK is a responsible nuclear state and take essential action in protecting the UK Continental Shelf while transitioning to net zero. These measures include:
- a) Reducing the risk of fuel supply disruption and improve fuel supply resilience in the core fuels sector.
 - b) Ensuring that the offshore oil and gas environmental regulatory regime continues to be effective, to maintain current levels of environmental standards and facilitate the offshore oil and gas industry's transition to net zero.
 - c) Amending the Petroleum Act 1998 to change the fee regime and cost recovery mechanism for the regulation and offshore decommissioning activities of oil and gas producers.
 - d) Granting the North Sea Transition Authority (also known as the Oil and Gas Authority or OGA) additional powers to ensure the UK's oil and gas and carbon storage infrastructure remains in the hands of companies best able to operate or decommission it.
 - e) Make expressly clear that certain nuclear sites located wholly or partly in or under the territorial sea adjacent to the UK require a licence and are regulated by the Office for Nuclear Regulation (ONR).
 - f) Amending the regulatory framework for the final stages of nuclear decommissioning including bringing the UK into alignment with internationally agreed recommendations for ending nuclear third-party liability and allowing former nuclear sites to be delicensed earlier than at present.
 - g) Enhancing the UK's nuclear third party liability regime by enabling the UK's accession to the Convention on Supplementary Compensation for Nuclear Damage through amendments to the Nuclear Installations Act 1965.
 - h) Amending the remit and powers of the Civil Nuclear Constabulary to ensure that the constabulary can support other critical infrastructure sites and assist other policy forces.
- 9) Welsh Government were not involved in the development of the Bill before its introduction. Some engagement occurred as a result of policy development, for instance through past consultations on several policies. Some clauses were shared in draft, however the full legal text was not available for review until hours before its introduction into the House of Lords.
- 10) A wide range of different pieces of legislation currently govern the UK's energy system and a number of these are amended by the Bill. These include the Energy Act 2008, The Gas Act 1986, The Electricity Act 1989, The Petroleum Act 1998 and The Climate Change Act 2008. Changes to legislation are included in the Explanatory Notes which can be found here: [Energy Bill \[HL\] publications - Parliamentary Bills - UK Parliament](#)

Provisions in the Bill for which consent is required

- 11) I consider that consent is required in relation to provisions identified below in so far as they are “relevant provision” for the purposes of SO29. Please note all clause numbers relate to the Bill as introduced.
- 12) A large number of levers relating to energy policy are reserved. However, given the complexity in reserved and devolved powers, legislative consent will be required in a number of areas. Welsh Ministers have written to the UK Government to raise concerns that the Bill as drafted does not respect the legislative competence of the Senedd nor the devolved responsibilities of Welsh Ministers and that the UK Government should seek Welsh Ministers’ consent to any secondary legislation which impacts devolved competence. The Welsh Government recommends withholding consent to the relevant clauses at this time.
- 13) The Welsh Government will continue to work with the UK Government to secure an approach to the provisions which require amendments. The Welsh Government may bring forward a supplementary memorandum and motion later in the Bill’s passage through the UK Parliament.

Provisions for which the Welsh Government recommends consent

- 14) The provisions which the Welsh Government recommends that the Senedd **consent** to are summarised below.

a) Part 1: Licensing of Carbon Dioxide Transport and Storage

This Part establishes the duties and functions for Ofgem to act as economic regulator of CO₂ transport and storage and a framework for the economic licensing of CO₂ transport and storage activities. A UK-wide approach is being taken to ensure a consistent regulatory framework across the UK, where CO₂ transport and storage networks are expected to cross territorial boundaries. It also sets out broad powers for the Secretary of State to make regulations, take decisions and provide direction to Ofgem with regard to its regulation of CO₂ transport and storage activities.

An LCM is required for the provisions referred to below as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.

Chapter 1 – clauses 20 – 25

These clauses establish that a licence holder, or a transport and storage network user whose interests are materially affected by a decision by the economic regulator to modify a licence condition, has a right to appeal a licence modification decision to the Competition and

Markets Authority (CMA). It sets out the procedure and the power of the CMA.

This is intended to ensure due process and that there are sufficient safeguards for investors whose rights may be interfered with by a proposed licence modification during the term of the licence.

The Welsh Government has no concerns with these clauses, agrees they are required and recommends consent is granted.

b) Part 2: Carbon dioxide capture, storage etc. and hydrogen production

An LCM is required for the provisions listed below as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.

Chapter 4 – Clauses 92 –95 and Schedule 5

These clauses introduce new ex-ante powers for the Oil and Gas Authority regarding the change of control of a company in relation to all Carbon Storage Licensees and makes it an offence to change control without prior consent of the Oil and Gas Authority.

There is overlap between their geographic scope and the territory over which the Senedd has competence under section 108A of the Government of Wales Act.

It is important that licences are not subject to undesirable change of control and consequently the Welsh Government recommend consent is granted.

Chapter 5 – Clause 97

Clause 97 makes provision for SoS to incur expenditure and provide financial assistance for the purpose of encouraging, supporting or facilitating the transport and storage of CO₂, carbon capture facilities which operate in association with transport and storage, low carbon hydrogen production and transport and storage of hydrogen.

Financial support will be required to scale up the deployment of this technology. Therefore, the Welsh Government recommend consent is granted.

c) Part 3: New technology

An LCM is required for the provision listed below as they concern the matters of environmental protection and waste, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.

Clause 111

This clause alters the definition of “UK removals” in section 29(1)(b) of the Climate Change Act 2008 so that in relation to greenhouse gas it means “removals of that gas from the atmosphere due to processes, mechanisms or activities”.

The previous definition of “UK removals” in the Climate Change Act 2008 referenced only removals of greenhouse gases from the atmosphere due to land use, land-use change or forestry activities in the United Kingdom. By altering the definition through this Bill, engineered removals will also fall within the definition.

The Welsh Government consider this appropriate and recommend consent is granted.

d) Part 7: Heat Networks

Clause 168(1)(b) and (2); and paragraphs 33(1) and (3)(a) and (d) of Schedule 15

Clause 168(1)(b)

This provision enables the Secretary of State to make provision by regulations for the purposes of conferring powers in relation to the development or maintenance of relevant heat networks.

Paragraph 101 of Schedule 7A to the Government of Wales Act 2006 provides for a reservation in respect of “Production, distribution and supply of heat and cooling”. However, it also provides for an exception to that reservation, in respect of “Heat and cooling networks, but not the regulation of them”. The provision (s. 168(1)(b)) falls within the exception to the reservation, relating as it does to the development and maintenance of heat and cooling networks.

Clause 168(2) and paragraphs 33(1) and paragraphs 33(1) and (3)(a) and (d) of Schedule 15

Clause 168(2) provides that Schedule 15 contains further provision about the powers to make regulations under clause 168.

Paragraphs 33(1) and (3)(a) and (d), taken together, require the Secretary of State to set out in such regulations the rights relating to land that are capable of being conferred on a person by an installation and maintenance license, which may include a right to apply to the

Secretary of State to make a compulsory acquisition of an easement or other right over land by the creation of a new right for the purpose of installing or maintaining works and apparatus relating to a heat network; and a right to undertake works of a specified description without being required to obtain planning permission.

Paragraph 184 of Schedule 7A to the Government of Wales Act 2006 provides for a reservation in relation to “Planning...”, but one which is limited to certain matters, none of which is relevant. The provision is therefore within the Senedd’s competence in respect of planning more broadly.

The Welsh Government are content that the rights and powers are appropriate and is consistent with other energy infrastructure. Therefore, we recommend consent is granted.

Provisions for which the Welsh Government recommends the Senedd withhold consent

- 15) The provisions to which the Welsh Government recommends the Senedd **withhold consent** are summarised below.

Clauses – Brief description	Why an LCM is required	Consent recommended / not recommended and why
Part 1: Licensing of carbon dioxide transport and storage		
<p>This Part establishes the duties and functions for Ofgem to act as economic regulator of CO2 transport and storage and a framework for the economic licensing of CO2 transport and storage activities. A UK-wide approach is being taken to ensure a consistent regulatory framework across the UK, where CO2 transport and storage networks are expected to cross territorial boundaries.</p>		
<p>Chapter 1 – Licensing of activities</p> <p>Chapter 1 relates to the licensing of activities including the operation of carbon dioxide storage and transportation of CO2. It establishes Ofgem as the economic regulator for CO2 transport and storage, prohibits transportation of CO2 by pipeline or operating a site for the geological storage of CO2 without a licence and enables the Secretary of State (SoS) to regulate other means of CO2 transport in the future.</p>	<p>LCM required for clauses 1-19, 26-35 and Schedule 1.</p> <p>An LCM is required for these provisions as they legislate in the devolved area of carbon dioxide storage.</p> <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p> <p>Clause 1 sets the principal objectives and general duties</p>	<p>The Welsh Government recommends withholding consent for clauses 1-19, 26- 35 and Schedule 1 as amendments or clarifications are recommended.</p> <p>The Welsh Government are requesting amendments as follows:</p> <p>Clause 1 – An amendment to include contributing to UK and Devolved Governments’ climate targets as a principal objective of the economic regulator..</p> <p>Clauses 2 and 3 – As clause 2(3)(b) gives the Secretary of State powers to make regulations specifying other means of transportation of gas which are to be a “licensable means of transportation”, request that the requirement in clause 3 for the Secretary of State to give notice to the Welsh Ministers if the regulations contain provision that would be within devolved competence be strengthened to a requirement to obtain the consent of Welsh Ministers. Furthermore, clause 2(7) provides for the SoS to also modify and/or repeal provision of this Act or other enactments, and thereby modify licence model clauses. This broad power could result in the SoS creating economic licence conditions that conflict with</p>

	<p>of the Secretary of State and economic regulator.</p> <p>Clauses 2 - 6 relate to licensable activities: Clause 2 introduces an offence for unlicensed activities. Clause 3 relates to the requirements for the SoS to consult on proposals for additional activities to become licensable Clause 4 sets out the territorial scope of prohibition Clause 5 provides for the Secretary of State to regulate to grant exemption from the prohibition. Clause 6 provides for the Secretary of State to revoke regulations by which an exemption from the prohibition was granted.</p> <p>Clauses 7 – 16 relate to the granting of licences and licence conditions: Clause 7 allows for the economic regulator to grant licenses for the transport and storage of CO2</p>	<p>Welsh Government licensing and environmental executive functions. The Welsh Government request amendments to clarify the extent of these powers.</p> <p>Clause 5 – Request that when the Secretary of State is granting exemptions from the prohibition on carrying out activity in clause 2(1) without a licence, the requirement to notify Welsh Ministers be changed to a requirement for consent of Welsh Ministers.</p> <p>Clause 6 – Request that when the Secretary of State is revoking or withdrawing an exemption, the requirement to notify Welsh Ministers be changed to a requirement for consent of Welsh Ministers.</p> <p>Clause 7 – request that an amendment be introduced to require the economic regulator have due regard to the climate change targets of the Welsh Government and the associated statutory plans.</p> <p>Clause 8 – Request that when the Secretary of State is making regulations providing for different types of licence in respect of the different activities set out in clause 2(1), consent from Welsh Ministers should be requirement if the regulations contain provision that would be within devolved competence.</p> <p>Clause 9 – Request that when the Secretary of State (or the economic regulator with the approval of the SoS) make regulations about how licences are applied for and the fee, the requirement to consult Welsh Ministers be changed to a requirement for consent of Welsh Ministers.</p> <p>Clause 10 – Request that when the Secretary of State is making regulations for determinations on competitive basis for awarding licences, the requirement to consult Welsh</p>
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	<p>Clause 8 allows for the Secretary of State to regulate to provide for difference types of licence in respect of different activities.</p> <p>Clause 9 gives the Secretary of State powers to regulate for the procedure for licence applications. There is provision to extend some of these powers to the economic regulator with the approval of the Secretary of State.</p> <p>Clause 10 provides for the Secretary of State to make regulations to introduce competition into the tenders for licences.</p> <p>Clause 11-15 contains provisions for the Secretary of State to determine conditions of licences, including general and standard conditions and the modification of conditions.</p> <p>Clause 16 and Schedule 1 make provisions about the powers of the Secretary of State to grant licenses during an interim period.</p> <p>Clauses 17 – sets out the responsibilities of the economic</p>	<p>Ministers be changed to a requirement for consent of Welsh Ministers.</p> <p>Clause 11 – The revenue calculations will consider decommissioning costs. Certain emissions in the Welsh Territorial Waters are the responsibility of the Welsh Ministers. Therefore, consideration of decommissioning costs must consider fully the Welsh Ministers’ views on what would comprise an adequate decommission.</p> <p>Clauses 12-15 – An amendment so that the requirement to consult Welsh Ministers is changed to a requirement for consent of Welsh Ministers. It is important that the consent of Welsh Ministers is given to all licence clauses where such licences are within the Welsh Land or Territorial Waters. This is especially important as the revenue generated will be linked to decommissioning, which is arguably an environmental concern.</p> <p>Clause 16 – there should be a limit or timescale within which the SoS must transfer its powers to grant licences to the economic regulator. The SoS should notify the Welsh Ministers of this transfer in any scenario.</p> <p>Schedule 1 – there is provision to notify the Welsh Ministers of the issuing of a licence during the interim period. We request this be changed to a requirement for consent of Welsh Ministers.</p> <p>Clause 17 – An amendment to give Welsh Ministers input into licence termination decisions where they impact areas of devolved powers (as the current requirement is for notification only).</p>
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	<p>regulator with regard to the termination of licences.</p> <p>Clauses 18 and 19 establish that licences can be transferred and the consent required prior to transfer.</p> <p>Clause 26-29 make provision for information sharing. Clause 26 allows the economic regulator to request and provide information from or to relevant persons, including Welsh Ministers and Natural Resources Wales. Clause 27 gives power to the Secretary of State to request information directly from a licence holder as required for the purpose of the Secretary of State's functions. Clause 28 places an obligation on the economic regulator to monitor the state of the market, and to share the information it gathers with the Secretary of State or the CMA as requested. Clause 29 provides for the economic regulator to request</p>	<p>Clauses 18 & 19 – An amendment to ensure Welsh Ministers are notified where any transfer involves a licence on Welsh land or in Welsh territorial waters.</p> <p>Clause 32 – Request that when the Secretary of State is making regulations for the enforcement of licence conditions, consent from Welsh Ministers should be requirement if the regulations contain provision that would be within devolved competence.</p> <p>The Welsh Government also request clarifications as follows:</p> <p>General clarification - The Economic Licence, and therefore the Economic Regulator and SoS would have executive functions on Welsh Land and Welsh Territorial Waters where the Welsh Ministers are the CCS Licensing Authority under the Energy Act 2008 (i.e. Welsh Ministers license the geological storage of CO2, but SoS and Economic Regulator licence economic issues). This could cause conflicting executive functions should the Welsh Ministers look to amend the current Energy Act 2008 Model Clauses. Further clarity is needed on how the new economic licensing regime will sit alongside and interact with the licensing regime of the Energy Act 2008 under which the Welsh Ministers are the licensing authority.</p> <p>Clause 4 – clarity is required on the territorial extent of these provisions in this Bill as compared to the territorial scope of licensing powers in the Energy Act 2008.</p>
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	<p>relevant information from licence holders in order to allow it to monitor the market. It also establishes an offence where the licence holder does not comply with a request for relevant information.</p> <p>Clause 30 places a duty on the economic regulator to carry out an impact assessment where it is minded to pursue a proposal which could have a significant impact.</p> <p>Clause 31 requires the Secretary of State or the economic regulator to give reasons for their decisions and determinations in relation to the revocation or modification of a licence, the giving of any directions or consent in pursuance of a condition included in a licence, the determination of a question referred in pursuance of a condition included in a licence and the making of a final order, the making or confirmation of a provisional 5 order or the</p>	<p>Clause 5 & 6 - Further clarification required on the parameters within which exceptions will be granted.</p> <p>Clause 26 – The information sharing requirement is broad. Further details on when and why this would apply are needed.</p> <p>Clause 30 – the Welsh Government are requesting information on how the impact assessment would be conducted, with specific regards to devolved environmental issues and the role of Welsh Ministers.</p>
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	<p>revocation of a final order or of a provisional order which has been confirmed.</p> <p>Clauses 32 – 35 relate to enforcement: Clause 32 provide for the Secretary of State to regulate for the enforcement of licence conditions and other requirements imposed on licence holders. Clause 33 makes it an offense to give false statements in relation to any provision in this Part. Clause 34 sets out the liability of officers or entities. Clause 35 sets out the criminal proceedings in relation to the offences.</p>	
<p>Chapter 3 – Reporting requirements</p>	<p>LCM required for clauses 39 - 41.</p>	<p>The Welsh Government recommends withholding consent as amendments are requested.</p>

<p>Requires the economic regulator to provide an annual report which the SoS must lay before the Houses of Parliament and the Welsh Ministers must also lay before the Senedd.</p>	<p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p> <p>Clause 41 imposes functions on the Welsh Ministers. The Welsh Ministers must lay a copy of the SoS' annual report in the Senedd.</p>	<p>The Welsh Government are requesting amendments as follows: Clause 39 – amendment for Welsh Ministers to be consulted on draft programmes. Clause 40 – amendment for the work programme of the economic regulator to have due regard to the policies of the devolved Governments. Clause 41 – The annual report should include a requirement to report on progress in Wales (if not already included).</p>
<p>Chapter 4 – Special administration regime</p> <p>Provides for the application of a Special Administration Regime (SAR) in the event of a CO2 transport and storage company insolvency</p>	<p>LCM required for clause 46.</p> <p>Whilst chapter 4 relates mainly to insolvency, clause 46 provides that the Secretary of State may amend licences. Welsh Ministers are the licensing authority for some licenses within the potential scope of this clause.</p> <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide transport and storage, and do not</p>	<p>The Welsh Government recommends withholding consent for clause 46 in case further amendments or clarifications are identified following further review.</p> <p>Clause 46 itself recognises that the powers used could be within the legislative competence of the Senedd. Subsections (3) and (6) provide that if provision making the modification would be within the legislative competence of the Senedd if it were contained in an Act of the Senedd then there is a requirement for consultation.</p>

	not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.	
<p>Chapter 5 – Transfer Schemes</p> <p>This Chapter provides for the transfer of property, rights or liabilities when a licence is terminated. This may be required to allow the network to continue operating, or to ensure the safety and security of a network if it ceases operation.</p>	<p>Clauses 50-52 and Schedule 3 These clauses provide for the Secretary of State to make a statutory transfer scheme under which certain property, rights or liabilities of a licence holder can be transferred either to an appropriate body or to the Secretary of State. It includes provisions regarding consultation and conduct.</p> <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p>	<p>The Welsh Government recommends withholding consent for clauses 50-52 and Schedule 3 and we request amendments are made to ensure Welsh Ministers consent to the transfer for licences.</p>
<p>Chapter 6 – Miscellaneous and general</p>	<p>LCM required for clauses 53 – 54 and Schedule 4</p>	<p>The Welsh Government recommends withholding consent for clauses 53-54 and Schedule 4.</p>

	<p>The provision concerns the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p> <p>Clause 53 Modifies the Energy Act 2008 to provide for cooperation and information-sharing between the economic regulator and the relevant CO2 storage licensing authority, which would be Welsh Ministers in some instances.</p> <p>Clause 54 and Schedule 4 set out the consequential amendments to existing legislation related to this Part.</p> <p>Co-operation and information sharing requirements apply to Welsh Ministers.</p>	<p>Welsh Government seek an amendment requiring the economic regulator to share relevant information with a licensing authority i.e. a reciprocal arrangement to that currently provided for.</p>
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Part 2: Carbon dioxide capture storage etc. and hydrogen production

This Part establishes a mechanism for providing revenue support and other financial assistance to CO2 transport and storage companies, low carbon hydrogen producers and carbon capture entities. It also includes powers to establish and administer a levy on electricity suppliers, gas suppliers, and/or gas shippers for the purpose of providing support for low carbon hydrogen production.

A UK-wide approach is being taken to support the contribution of these low carbon technologies to decarbonisation across the UK and to mitigate the specific risks faced by infrastructure developers during technology commercialisation and roll-out and secure investor confidence.

Chapter 1 - Revenue Support Contracts

The provisions contained in Chapter 1 provide delegated powers to establish the detailed framework for business models, including the designation and duties of a counterparty to enter into and manage business model contracts with carbon entities, CO2 transport and storage companies, and low carbon hydrogen producers and an allocation body for future competitive allocation processes.

LCM required for clauses 56-60, 63-64 and 68-81 in so far as they relate to carbon dioxide capture, transport and storage.

The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.

Clauses 56 – provides the meanings and definitions of various terms used in Chapter 1

The Welsh Government recommends withholding consent for clauses 56-60, 63-64 and 68-81 as amendments are requested.

The Welsh Government is requesting amendments as follows:

Clause 57 – According to subsection (7), revenue support regulations may confer any function on any person. Amend language to narrow the scope of this.

Clauses 57, 71, 72, 73, 74 and 78 – As these clauses give power to the Secretary of State to make regulations about revenue support contracts, request that the requirement to consult Welsh Ministers be amended to require the consent of Welsh Ministers.

Clause 68 – Request that when the Secretary of State is making regulations under this section (e.g. to appoint a person to carry out functions in connection with the allocation of hydrogen production revenue support contracts, and a person to carry out functions in connection with the allocation of carbon capture revenue support contracts), consent from

	<p>Clause 57 gives power to the Secretary of State to regulate for revenue support contracts.</p> <p>Clause 58 sets out the duties of the revenue support counterparty.</p> <p>Clause 59 provides for the Secretary of State to designate a counterparty for CO2 transport and storage revenue support contracts.</p> <p>Clause 60 provides for the Secretary of State to direct a transport and storage counterparty to offer to contract with an eligible person (a licence holder).</p> <p>Clause 63 provides for the Secretary of State to designate a counterparty for Carbon Capture.</p> <p>Clause 64 provides for the Secretary of State to direct a Carbon Capture counterparty to offer to contract with an eligible person.</p> <p>Clauses 68 – 74 relate to the allocation of contracts:</p> <p>Clause 68 provides for the Secretary of State, through</p>	<p>Welsh Ministers should be required if the regulations contain provision that would be within devolved competence.</p> <p>Clause 69 – Request that consent from Welsh Ministers should be a requirement.</p>
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	<p>regulation, to appoint a person to allocate contracts.</p> <p>Clause 69 provides for the Secretary of State to issue standard terms and conditions of contracts.</p> <p>Clause 70 relates to allocation notifications.</p> <p>Clause 71 allows for regulations to set out how the allocation of contracts will be determined.</p> <p>Clause 72 sets a duty to offer a contract following allocation and allows for terms and conditions on offers.</p> <p>Section 73 allows for the modification of standard terms and clause 74 contains supplementary provisions.</p> <p>Clauses 75 - 76 contain provisions about counterparties.</p> <p>Clause 75 allows for the Secretary of State to revoke a counterparty designation notice.</p> <p>Clause 76 relates to provisions for the apportioning of sums to revenue support counterparties</p>	
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	<p>where liabilities under the contract are not fully met.</p> <p>Clauses 77 sets out that revenue support regulations may make provisions about information and advice.</p> <p>Clause 78 requires the Secretary of State to undertake consultation, including with Welsh Ministers, before making revenue support regulations.</p> <p>Clause 79 gives power to the Secretary of State to make schemes for the transfer of designated property, rights or liabilities including in relation to revenue support counterparties and allocation parties.</p> <p>Clause 80 provides for the modification of transfer schemes.</p> <p>Clause 81 contains general provisions in relation to chapter 1.</p>	
<p>Chapter 2 – Decommissioning of carbon storage installations</p>	<p>LCM required for clauses 82-84</p> <p>Chapter 2 relates to decommissioning of carbon</p>	<p>The Welsh Government recommends withholding consent for clauses 82-84 for which amendments are recommended.</p>

<p>Gives the SoS powers to make and modify regulations to implement a funded offshore CCUS decommissioning regime.</p>	<p>storage installations, including the power to make regulations about financial support for the costs of decommissioning. The clauses are therefore legislating in a devolved area.</p> <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p> <p>Clause 82 and 83 gives the Secretary of State power to make regulations about the financing of decommissioning and legacy costs incurred in relation to carbon storage installations.</p> <p>Clause 84 applies Part 4 of the Petroleum Act 1998 in relation to the abandonment of carbon storage installations.</p>	<p>The Welsh Government is requesting amendments as follows:</p> <p>Clause 82 – There should be a requirement to require consent from Welsh Ministers on any secondary regulations arising from this Bill and in any instances in this Part where consultation of Welsh Ministers is the current proposal.</p> <p>Clauses 82 and 83 – Request that when the Secretary of State is making regulations under this section, consent from Welsh Ministers should be requirement if the regulations contain provision that would be within devolved competence.</p> <p>The Welsh Government recommends withholding consent for all of the above clauses for which amendments are sought.</p>
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<p>Chapter 3 – Strategy and Policy Statement</p> <p>Enables the SoS to designate a strategy and policy statement for CCUS that would need to be considered by the SoS and economic regulator when carrying out Part 1 (Licensing of carbon dioxide transport and storage) functions, and set out the process and timeframes for preparing and reviewing this statement.</p>	<p>LCM required for clauses 88-91</p> <p>This statement on policy is for the whole of the UK. Chapter 3 relates to the requirement of the SoS to publish a CCUS strategy and policy statement. This statement on policy is for the whole of the UK, i.e. including Wales. There is a requirement to consult the Welsh Ministers, but Welsh Government recommend that this should be the need for consent of the Welsh Ministers insofar as the policy relates to Wales</p> <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p>	<p>The Welsh Government recommends withholding consent for clauses 88-91 for which amendments or clarifications are recommended. The Welsh Government is requesting amendments as follows: Clause 90 & 91 – Request that the requirement to consult Welsh Ministers is changed to a requirement to obtain the consent of Welsh Ministers. Clause 91 – Request that there is a requirement to consult publicly on a draft policy statement.</p> <p>The Welsh Government also recommends withholding consent for clause 88 in case further amendments or clarifications are identified following further review.</p>

<p>Chapter 5 – General</p> <p>Chapter 5 gives the SoS power to make regulation about the acquisition of rights to use storage facilities and pipes.</p>	<p>LCM required for: clause 96</p> <p>Chapter 5 gives the SoS power to make regulation about the acquisition of rights to use storage facilities and pipes. This is likely to impact on the devolved area of carbon dioxide storage. There is the duty to consult the Welsh Ministers, but this should be the need for consent.</p> <p>The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.</p> <p>Clause 96 enables the SoS to make regulations regarding access to CO2 transport and storage infrastructure.</p>	<p>The Welsh Government recommends withholding consent for clause 96 as an amendment is requested.</p> <p>The Welsh Government are requesting amendments as follows:</p> <p>Clause 96 – Request that when the Secretary of State is making regulations under this section (e.g. about the acquisition of rights for infrastructure), consent from Welsh Ministers should be requirement if the regulations contain provision that would be within devolved competence.</p>

Part 3 – New Technology		
<p>Chapter 1 – Low Carbon Heat Schemes</p> <p>Clauses 98-107 The clauses enable an obligation on, for example, gas and oil heating appliance manufacturers to increase sales of low-carbon appliances such as heat pumps.</p>	<p>LCM is required for clauses 98-107</p> <p>Paragraph 101 of Schedule 7A to the Government of Wales Act 2006 provides for a reservation in respect of “Production, distribution and supply of heat and cooling”. It also provides for an exception to that reservation, “Schemes providing incentives to generate or produce, or to facilitate the generation of production of, heat or cooling from sources of energy other than fossil fuel or nuclear fuel”.</p> <p>These clauses are squarely within that exception, and as such within the legislative competence of the Senedd.</p>	<p>The Welsh Government recommends withholding consent to clauses 98-107 as amendments have been requested.</p> <p>The Welsh Government request changes to the clauses to reflect the following: A requirement for Welsh Ministers to consent to any regulations relating to matters within the devolved legislative competence of the Senedd. That the Welsh Ministers are provided powers to alter and/or revoke aspects, or proposed aspects, of the functioning of the scheme in Wales on a case by case basis, where this is within devolved competence. A requirement that the Secretary of State must appoint the Welsh Ministers as scheme administrators following receipt of a request from the Welsh Ministers, within the timeframe requested by the Welsh Ministers. Until a request is made, the Secretary of State would retain the power to appoint the administrator on a UK-wide basis.</p>

	<p>Clause 98 establishes that the Secretary of State may by regulations make provision for the establishment and operation of one or more low-carbon heat schemes.</p> <p>Clause 99 establishes the scope of the regulations.</p> <p>Clause 100 provides for a low-carbon heat target to be set.</p> <p>Clause 101 contains further provisions about scheme regulation including monitoring and compliance.</p> <p>Clause 102 provides for the regulations to appoint an administrator.</p> <p>Clause 103 relates to enforcement, penalties and offences.</p> <p>Clause 104 provides for regulations to make provisions in relation to payments.</p> <p>Clause 105 relates to appeals.</p> <p>Clause 106 relates to scheme regulations including procedures.</p> <p>Clause 107 contains definitions related to this chapter.</p>	
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Part 4 – Independent System Operator and Planner (ISOP)		
<p>This Part provides for the establishment of a new body – the Independent System Operator and Planner (ISOP).</p> <p>The ISOP is to be a public sector body with responsibilities for planning the development of the electricity and gas transmission systems and operation of the electricity transmission system.</p> <p>Many of the functions that the ISOP will undertake are currently carried out by licensed operators owned by National Grid plc and provision is made for the transfer of the whole or parts of these operators out of their current ownership, as part of the establishment of the ISOP</p>	<p>LCM required for clause 125 and paragraph 9 of Schedule 6</p> <p>The provisions referred to below concern a devolved tax, which is within the exception to the reservation in paragraph 15 of Schedule 7A to the Government of Wales Act 2006, and do not relate to any reservation in that Schedule.</p> <p><u>Clause 125 and paragraph 9 of Schedule 6</u></p> <p>Clause 125 introduced Schedule 6, which provides the Secretary of State with the power to make one or more schemes for the transfer of property, rights or liabilities from one person to another person in preparation for or in connection with the designation of a person or for the purpose of enabling the Independent System Operator and Planner to carry out any of its functions.</p>	<p>The Welsh Government recommend withholding consent as the Bill seeks to give a power to HM Treasury to vary the way that land transaction tax operates.</p> <p>It is not appropriate for the power to make changes to rest with UK Ministers and the UK Parliament. The Welsh Ministers and Senedd should determine such matters.</p> <p>The Welsh Government request the removal of land transaction tax from the list of taxes.</p>

	<p>Paragraph 9 of that Schedule confers a power on HM Treasury to make regulations varying the effect of a relevant tax has effect in relation to a transfer scheme. The Treasury may exercise that power to make provision for a tax provision to apply, or to apply with modifications, in relation to anything being transferred; or for anything being transferred to be treated in a specified way for the purposes of a tax provision.</p> <p>A "relevant tax" includes land transaction tax, which is a devolved tax within the meaning of the Government of Wales Act 2006.</p>	
Part 11 – Oil and Gas		
<p>Environmental Protection</p> <p>This is placing into domestic law powers that were previously derived through EU Law and the 1972 Act</p>	<p>LCM required for clauses 225 – 226</p> <p>Clause 225 enables the Secretary of State to make regulations requiring a person</p>	<p>The Welsh Government recommend withholding consent while it seeks clarification regarding interaction with existing systems for notifying and reacting to marine pollution incidents.</p>

<p>which were used to enable the making of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention Regulations 1998 (OPRC)). The powers are wider and allow coverage of carbon dioxide storage and gas unloading and storage as well as hydrogen production and storage.</p> <p>To enable primary powers which would ensure that the offshore oil and gas environmental regulatory regime remains fit for purpose by allowing the future introduction of changes through secondary legislation.</p>	<p>responsible for certain specified infrastructure to have emergency plan arrangements for responding to marine oil pollution.</p> <p>Clause 226 enables the Secretary of State to make provision, by regulations, requiring the Secretary of State to take into account the implications for relevant sites when deciding whether, or how, to carry out a function which relates to offshore oil and gas activities or offshore production or storage of gas.</p> <p>These provisions are concerned with environmental protection, pollution control etc., over which the Senedd has competence. They do not relate to any reservation in Schedule 7A to the Government of Wales Act 2006.</p>	<p>We will confirm our final advice when discussions with the UK Government have concluded.</p>
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<p>Offshore oil and gas decommissioning: charging schemes</p> <p>Creates powers to establish a charging scheme for the recovery of costs related to regulatory functions associated with the decommissioning of offshore oil and gas and carbon storage infrastructure.</p>	<p>LCM required for clause 227</p> <p>Clause 227 amends the Petroleum Act 1998 and makes consequential amendments elsewhere to enable the Secretary of State to make a scheme providing for payment to the Secretary of State in connection with the exercise of the Secretary of State's functions under Part 4 of that Act.</p> <p>Part 4 of that Act is concerned with the abandonment and decommissioning of offshore installations and submarine pipelines.</p> <p>Offshore installations and submarine pipelines (defined in section 44 of that Act) are, broadly are broadly installations and pipelines concerned with the conveyance, etc. of gas (including carbon dioxide) and oil within certain seaward geographic parameters.</p>	<p>The Welsh Government recommend withholding consent while it seeks clarification regarding the extent to which the provision would apply in Welsh territorial waters.</p> <p>We will confirm our final advice when these discussions have concluded.</p>
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	<p>The Welsh Government consider an LCM is required so far as it is concerned with carbon. The Senedd has competence in relation to environmental protection and waste, which include decarbonisation measures such as carbon dioxide transport and storage</p>	
Part 13 - General		
<p>Clause 238 gives the Secretary of State powers to make regulations in connection with the Act or in connection with any provisions made under the Act.</p> <p>The power includes the power to amend, repeal or revoke Acts or Measures of Senedd Cymru.</p>	<p>LCM required for clause 238</p> <p>Clause 238 gives broad powers for the Secretary of State to make regulations and, to the extent that provisions of the Bill relate to devolved matters, this power also relates to devolved matters.</p>	<p>The Welsh Government recommends withholding consent.</p> <p>The Welsh Government are requesting a requirement be introduced for the Secretary of State to require the consent of Welsh Ministers to regulations relating to devolved matters.</p>

UK Government view on the need for consent

- 19) The UK Government agrees that consent is required. Specifically, the UK Government have concluded that:
- a) For Part 1 on Licensing of Carbon Dioxide Transport and Storage, provisions across the Part engage the LCM process. However, there are some provisions related to reserved matters, notably those dealing with functions under competition law and insolvency processes.
 - b) For Part 2 on Carbon Dioxide Capture, Storage etc and Hydrogen Production, provisions across the Part engage the LCM process in so far as carbon capture and the transport and storage of CO₂ are matters that are generally within devolved competence. However, they have concluded that provisions in respect of hydrogen are reserved by virtue of the D2 Oil and Gas reservation in the Government of Wales Act 2006 and are therefore outside devolved competence. Where clauses relate to the hydrogen levy and its administration, the UK Government deem such provision is a reserved matter as relating to a tax for the purposes of the A1 reservation and the LCM process is not engaged. Likewise, provision as to the designation of a carbon capture usage and storage strategy and policy statement by the Secretary of State is outside devolved competence since it concerns only policy for the United Kingdom.
 - c) For Part 3 on New Technology, the LCM process is engaged in Wales as schemes ““providing incentives to generate or produce, or to facilitate the generation or production of, heat or cooling from sources of energy other than fossil fuel or nuclear fuel” are an exception to the reservation for heat policy.
 - d) For Part 7 on Heat Networks, the UK Government have deemed that the LCM is engaged as certain rights and powers granted through the proposed licensing regime fall within the scope of devolved competence so far as they relate to planning and on the basis that they do not fall within the planning reservation in the Government of Wales Act 2006.
 - e) For Part 11 on Oil and Gas, the LCM process will be engaged for the following reasons. For arrangements for responding to marine oil pollution (clause 225) and reducing effects of offshore oil or gas activities (clause 226), the LCM process will be engaged given that, in relation to the territorial seas adjacent to Wales, there is a mixed picture on legislative competence depending on the activity in question. For Offshore oil and gas and carbon dioxide storage decommissioning - cost recovery (clause 227) the LCM process is engaged within the territorial seas as there is a mixed picture on legislative competence depending on the activity on question, with oil and gas being reserved and CO₂ storage being devolved.

Welsh Government position on the Energy Bill

- 20) In my view it is appropriate to deal with these provisions in this UK Bill as an efficient way to introduce legislation extending to Wales, in particular where policy is generally aligned. A number of schemes or regimes are more appropriate introduced at a pan-UK level, given the cross-border territorial nature of the activities being regulated.
- 21) Energy policy is a complex mix of reserved and devolved matters, and the Energy Bill provides a vehicle for a coherent approach to delivery.
- 22) However, there are a significant number of matters of concern which will need to be resolved urgently before consent can be recommended. My key concern is a failure to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence. It is essential to ensure Welsh Ministers can influence pan-UK schemes or policies that impact significant cross-border projects. There are a number of other amendments suggested, as outlined in the table in paragraph 15.

Financial implications

- 23) There may be some financial implications for the Welsh Government which may need to be considered. Were the Bill to introduce any new powers that were to be administered by Welsh Ministers, assurances would need to be sought from the UK Government of corresponding resource being made available.

Conclusion

- 24) Whilst delivery of these provisions in a UK Bill could be an appropriate way to legislate, unless and until the matters of concern have been resolved, I do not recommend the Senedd consents to this Bill.

Julie James MS
Minister for Climate Change
29 June 2023