

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Great British Energy Bill

February 2025



1. Background

The Great British Energy Bill

1. The Great British Energy Bill¹ (the Bill) was introduced in the House of Commons and had its First Reading on 25 July 2024. It is sponsored by the Department for Energy Security and Net Zero.

2. The long title to the Bill states that it is a Bill to:

“Make provision about Great British Energy.”²

3. The Explanatory Notes to the Bill as introduced state that:

“The purpose of this 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 objects 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.”³

4. The Bill had its First Reading in the House of Lords on 30 October 2024 and received its Second Reading on 18 November 2024. Committee Stage in the House of Lords was completed 22 January 2025. At the time this report was agreed, Report Stage proceedings in the House of Lords were scheduled to begin on 11 February 2025.

The Welsh Government's Legislative Consent Memorandum

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales that has regard to devolved matters.

¹ Great British Energy Bill, as introduced

² Great British Energy Bill, as introduced, page 1

³ Explanatory Notes to the Great British Energy Bill, as introduced, paragraph 1

6. On 8 August 2024, Ken Skates MS, the then Cabinet Secretary for Economy, Transport and North Wales, laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁴
7. Following a reshuffle of the Welsh Government Cabinet on 11 September 2024, Rebecca Evans MS, the Cabinet Secretary for Economy, Energy and Planning (the Cabinet Secretary), took over responsibility for the Memorandum.
8. We took evidence from the Cabinet Secretary on the Memorandum on 4 November 2024.⁵
9. We reported on the Memorandum on 2 December 2024 (our first report).⁶
10. Paragraphs 10 and 11 of our first report set out the provisions of the Bill which, at the time, the Welsh Government considered to require the Senedd's consent.
11. Paragraphs 14 to 18 of our first report set out the Welsh Government's position on the Bill, as set out in the Memorandum.
12. Paragraphs 19 to 41 of our first report highlight the evidence we took from the Cabinet Secretary on the Memorandum.
13. Our first report contained six conclusions and four recommendations.
14. The Cabinet Secretary responded to our first report on 23 January 2025.⁷

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2)

15. The Cabinet Secretary laid a Supplementary Legislative Consent Memorandum in respect of the Bill on 24 January 2025.⁸
16. Memorandum No. 2 relates to amendments to clause 5 of the Bill which were tabled on 23 January 2025 for Report Stage in the House of Lords.

⁴ Welsh Government, Legislative Consent Memorandum, Great British Energy Bill, 8 August 2024

⁵ Legislation, Justice and Constitution Committee, 4 November 2024

⁶ Legislation, Justice and Constitution Committee, Report on the Welsh Government's Legislative Consent Memorandum on the Great British Energy Bill, 2 December 2024

⁷ Letter from the Cabinet Secretary for Economy, Energy and Planning, 23 January 2025

⁸ Welsh Government, Supplementary Legislative Consent Memorandum, Great British Energy Bill, 24 January 2025

17. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Climate Change, Environment and Infrastructure Committee should report on Memorandum No. 2 by 3 February 2025.⁹

Update on the position since the publication of the Memorandum, and provisions for which the Senedd's consent is required

18. The Welsh Government's view set out in the Memorandum (laid in August 2024) was that the Senedd's consent was required for clause 5 in the Bill (as introduced).

19. Memorandum No. 2 does not expressly state whether the amendment described to clause 5 requires the consent of the Senedd.

20. At paragraphs 8 to 10 of Memorandum No. 2, the Cabinet Secretary states:

"The UK Government has laid one amendment to the Bill and has not accepted any other amendments proposed for the Bill to date.

*Clause 5 ('Strategic priorities and plans') provides for the Secretary of State to make statements of strategic priorities which Great British Energy must provide in its articles of association that it will act in accordance with. In the Bill as introduced Clause 5 stated that before making a statement of strategic priorities, the Secretary of State must **consult** with the devolved governments to the extent that the statement concerns a subject matter in relation to which the respective devolved legislatures could legislate.*

*The UK Government has laid an amendment to Clause 5. The amendment requires that the Secretary of State must not, without the **consent** of the Welsh Ministers, include in a statement under clause 5 anything which concerns a subject matter provision about which would be within the legislative competence of Senedd Cymru, if contained in an Act of the Senedd." (Emphasis in the text made by the Welsh Government in Memorandum No. 2)*

⁹ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Great British Energy Bill, January 2025

21. The Cabinet Secretary later adds:

"I have had several discussions with the lead UK Government Minister, the Parliamentary Under-Secretary of State at the Department for Energy Security and Net Zero, Minister Shanks. Those discussions have focussed on Clause 5 ('Strategic priorities and plans') of the Bill, where we have been discussing how this could be strengthened with respect to the role of Welsh Ministers.

"The amendment laid by the UK Government strengthens the Bill in an appropriate way requiring the Secretary of State to seek the consent of Welsh Ministers rather than consulting with Welsh Ministers should the Secretary of State include in a statement under Clause 5 anything which concerns a subject matter provision about which would be within the legislative competence of Senedd Cymru, if contained in an Act of the Senedd."¹⁰

22. In conclusion, at paragraph 16 of Memorandum No. 2 the Cabinet Secretary states:

"The amendment proposed by the UK Government with respect to Clause 5 enables me to recommend to the Senedd to consent to the Great British Energy Bill."

2. Committee Consideration

23. We considered Memorandum No. 2 at our meetings on 27 January and 3 February 2025¹¹ and, given the reporting deadline set by the Business Committee, we also agreed our report on 3 February.

Our view

24. We note that the Welsh Government's view as set out in the Memorandum laid in August 2024 was that the Senedd's consent was required for clause 5 in the Bill (as introduced). We note that Memorandum No. 2 does not expressly state

¹⁰ Memorandum No. 2, paragraphs 12 and 13

¹¹ ~~Legislation, Justice and Constitution Committee~~, 27 January 2025, and ~~Legislation, Justice and Constitution Committee~~, 3 February 2025

whether the amendment described to clause 5 requires the consent of the Senedd.

25. On the basis that the Cabinet Secretary has laid Memorandum No. 2 in respect of the amendment to clause 5 to remove the requirement to consult the Welsh Ministers and replace it with a stronger requirement to seek the consent of Welsh Ministers, we infer that the Welsh Government remains of the view that the Senedd's consent is required for clause 5.

26. It is also our understanding that a further amendment to clause 5 of the Bill was also tabled by the UK Government and which is not outlined in Memorandum No. 2.¹² This amendment would omit the word "*subject*" from clause 5(5) of the Bill. The combined effects of the two tabled amendments will mean that the Secretary of State will be required to obtain the consent of the Welsh Ministers before including in a statement of strategic priorities anything which concerns a matter provision about which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.

Conclusion 1. We continue to agree with the Welsh Government that clause 5 of the Bill requires the consent of the Senedd in accordance with Standing Order 29.

The Welsh Government's position, including its continued engagement with the UK Government and the overlap between Great British Energy and Trydan Gwyrdd Cymru

27. We note that the Cabinet Secretary has "had several discussions" with the Parliamentary Under-Secretary of State at the Department for Energy Security and Net Zero which focused on how clause 5 of the Bill "could be strengthened with respect to the role of Welsh Ministers".

28. We also note that the Cabinet Secretary considers that the change to clause 5, requiring the Secretary of State to seek the consent of Welsh Ministers rather than consulting with Welsh Ministers, "strengthens the Bill in an appropriate way".

Conclusion 2. While a consenting role for the Welsh Ministers is a marked improvement to the requirements of clause 5 of the Bill, as we highlight in our first report on the Memorandum, a role solely for the Welsh Ministers in the exercise of delegated powers affecting devolved interests would still mean that the Senedd would be bypassed in these matters.

¹² Great British Energy Bill, [Running list of all amendments on Report](#), Tabled up to and including 23 January 2025

29. In our first report we expressed concern with the Welsh Government's view (as set out in the Memorandum) that "it is difficult to determine what the impact may be in terms of the operational application of GBE as a company and potential conflicts of competition with Trydan Gwyrdd Cymru or other aspects of Welsh Government energy delivery functions".

30. Given that view expressed by the Welsh Government, conclusions 2 and 3 in our first report stated:

"Conclusion 2. We are concerned that the Senedd will likely be asked to make a decision on whether or not to consent to the Bill without knowing sufficient details about the planned operation of Great British Energy and therefore its potential impact on Trydan Gwyrdd Cymru.

Conclusion 3. In our view, understanding how Great British Energy will work alongside the already established Trydan Gwyrdd Cymru is a crucial factor in the decision-making process as to whether the Senedd should give its consent to the Bill."

31. We are disappointed with the Cabinet Secretary's response to these conclusions. Despite the Welsh Government's admission that it was difficult to determine the impact Great British Energy may have on Trydan Gwyrdd Cymru, the Cabinet Secretary told us that she did not consider that a further understanding of how Great British Energy will work alongside Trydan Gwyrdd Cymru is required in relation to consenting to the Bill.¹³

32. We are also not convinced by the Cabinet Secretary's comments that she sees "opportunities to work in partnership with Great British Energy once established which will help to avoid duplication [with Trydan Gwyrdd Cymru]."¹⁴

Conclusion 3. Our role is not to focus on the policy merits (or otherwise) of the establishment of Great British Energy. However, legislating where there is known potential for conflict with devolved Welsh interests is a matter which the Senedd must be fully cognisant of before it is asked to vote on whether legislative consent should be given to the UK Parliament.

Conclusion 4. While we accept that Memorandum No. 2 was laid swiftly by the Cabinet Secretary, that should not disguise the intergovernmental difficulties that

¹³ Letter from the Cabinet for Economy, Energy and Planning, 23 January 2025

¹⁴ Letter from the Cabinet for Economy, Energy and Planning, 23 January 2025

appear to have caused a delay in an amendment being tabled to clause 5 of the Bill. It is therefore regrettable that the Welsh Government has not been able to give the Senedd adequate time to consider in sufficient detail the issues raised in Memorandum No. 2.

Delegated powers in the Bill

33. In our first report we also expressed concern with the fact that clause 6 of the Bill confers wide-ranging powers of direction on the Secretary of State, and that these directions could have a direct impact on devolved areas. While the Cabinet Secretary told us that the Welsh Government has received assurances from the UK Government that it will be consulted before directions under clause 6 are given, we made the point that assurances do not bind the UK Government, and only a provision in the Bill would ensure a formal role for the Welsh Ministers. As such, conclusions 4 and 5 in our first report stated:

“Conclusion 4. Enabling the UK Government to issue directions in Wales relating to devolved areas without any requirement for consent from the Senedd or the Welsh Government is inappropriate. As such, we are concerned at the breadth of power clause 6 of the Bill offers to UK Government Ministers.

Conclusion 5. We welcome the Cabinet Secretary's statements that she is negotiating with the UK Government a change to the Bill so that the Welsh Ministers' consent must be obtained before clause 6 directions may be given.”

34. Furthermore, and linked to our concerns about the unknown impact that Great British Energy may have on the Welsh Government's energy delivery functions, in our first report we also concluded:

“Conclusion 6. Given that the Senedd may be required to make its consent decision in the absence of important information and given the uncertainty about the impact of Great British Energy, we believe that the Bill should be amended to include a formal role for the Senedd in connection with the exercise of any delegated powers under the Bill by the Secretary of State.”

35. In response to conclusions 4 and 5 in our first report, the Cabinet Secretary told us that, following the amendment to clause 5 providing a consenting role to the Welsh Ministers, “the effective scope of the direction-making power in clause 6 would necessarily be restricted to activities that would be in accordance with

strategic statements agreed by the Welsh Ministers". The Cabinet Secretary also reiterated a point that she has sought assurances from the UK Government that Welsh Ministers would be consulted under clause 6(3)(b) of the Bill should any direction interact with clause 5 on issues within the competence of Welsh Ministers or the Senedd. We are, again, not convinced by these responses.

36. In relation to conclusion 6 in our first report, we are disappointed that the Cabinet Secretary's response does not address the fact that the Senedd will be sidelined during the future exercise of the delegated powers under clauses 5 and 6 of the Bill. In our view the Cabinet Secretary's remarks, that the amendment to clause 5 and assurances received from the UK Government as regards clause 6 "would be sufficient for the Senedd to make a consent decision for the Bill", do not adequately reflect the Senedd as a legitimate democratic legislative body for Wales.

37. The Committee intends to give consideration to the role the Senedd may have in advance of the Welsh Ministers consenting to UK Ministers making regulations in devolved areas.

UK-EU matters

38. We recommended in our first report that the Cabinet Secretary should explain and confirm how the Bill interacts with the obligations of the UK-EU Trade and Cooperation Agreement (TCA). The TCA contains multiple provisions on post-Brexit energy cooperation between the UK and the EU.¹⁵ The Cabinet Secretary responded:

"The aim of the Great British Energy Bill is to set up the company. The Bill is a narrow piece of legislation which makes provision for the designation, status, governance, objects, strategic direction and accountability of Great British Energy (GBE). The functions and operation of the company are not set out in the Bill. It will be up to the Secretary of State for Energy Security and Net Zero, as sole shareholder of Great British Energy to ensure the operation of Great British Energy is compliant with the Trade and Cooperation Agreement. To the limited extent that the Bill confers functions on the Welsh Ministers, the exercise of those functions will be subject to

¹⁵ Legislation, Justice and Constitution Committee, Report on the Welsh Government's Legislative Consent Memorandum on the Great British Energy Bill, recommendation 4

compliance with relevant provisions of the Trade and Cooperation Agreement.”¹⁶

39. We note that energy cooperation remains an important area of cooperation between the UK and the EU. While we welcome the Cabinet Secretary's acknowledgement that the Bill engages the TCA, we are of the view that the legislative consent memoranda should have included an assessment of the TCA in the first instance, in line with previous commitments to do so. We take the opportunity to highlight the comments of a previous First Minister when responding to a recommendation made by the Culture, Communication, Welsh Language, Sport and International Relations Committee, who stated “The example of the potential impact of the Data Protection and Digital Information (No. 2) Bill on the TCA is a very good one for cases where proposed UK legislation needs to take account of the Agreement. I am happy to agree that Welsh Government LCMs on Bills that impact on the TCA should set out our assessment of such an impact.”¹⁷

40. We note also that the Welsh Government continues to attend meetings of the Specialised Committee on Energy, established by the TCA's institutional framework, as observers.¹⁸

Recommendation 1. The Cabinet Secretary should provide an assessment of the Trade and Cooperation Agreement as it relates to the Bill.

Recommendation 2. The Cabinet Secretary should set out the roles and responsibilities of Great British Energy, Trydan Gwyrdd Cymru and Ynni Cymru as they relate to the Trade and Cooperation Agreement, if the Bill is enacted.

Recommendation 3. The Cabinet Secretary should confirm what discussions the Welsh Government has had with the UK Government on UK-EU energy cooperation in the course of this Bill's development. The response should confirm whether the matter has been raised at the Interministerial Group for Net Zero, Energy and Climate Change.

¹⁶ Letter from the Cabinet Secretary for Economy, Energy and Planning, 23 January 2025

¹⁷ ~~Letter from the then First Minister of Wales, the Rt Hon Mark Drakeford MS, to the Culture, Communication, Welsh Language, Sport and International Relations Committee~~, 16 January 2024

¹⁸ ~~EU-United Kingdom Trade and Cooperation Agreement Specialised Committee on Energy:- minutes of the Meeting 7th November 2024~~