

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 4)

ENERGY BILL

1. This legislative consent memorandum (LCM) is laid under Standing Order (SO) 29.2. SO29 prescribes that an LCM 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 UK Parliament, the House of Lords, on 6 July 2022. The passage of the Bill was stalled for a period before resuming its passage in the latter part of 2022. I laid an LCM on 29 June 2023 on the Bill as introduced, which includes a summary of the Bill.
3. I laid a supplementary LCM (sLCM) on 25 July 2023 concerning amendments to the Bill, tabled in the House of Lords on 9 January 2023 and during the House of Commons Committee Stage on 7 June 2023, known as the Offshore Wind Environmental Improvement Package clauses (“OWEIP” and “OWEIP clauses”) that form Chapter 1 of Part 13 of the Bill (OWEIP sLCM).
4. I laid a supplementary LCM (sLCM) on 4 September covering the other amendments to the Bill since introduction and covered the Bill as it left the House of Commons Committee Stage as published on 11 July 2023.
5. The Bill completed House of Commons Report Stage on 5 September 2023. This sLCM covers the agreement amendments following Report Stage.
6. The latest version of the Bill as amended following the House of Commons Committee Stage can be found at <https://publications.parliament.uk/pa/bills/cbill/58-03/0340/220340.pdf>.

Policy Objective

7. The UK Government sets out the purpose and main functions of the Bill in the accompanying Explanatory Notes¹ (the latest version of which are dated 25 April 2023). 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.

¹ <https://publications.parliament.uk/pa/bills/cbill/58-03/0295/en/220295en.pdf> Energy (parliament.uk)

Update on position since I laid the LCM and sLCMs before the Senedd

8. I laid an LCM on 29 June 2023, based on the Bill as introduced into the UK Parliament (House of Lords) on 6 July 2022. That LCM stated it was the view of the Welsh Government that it is appropriate to deal with the provisions in the 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 appropriately introduced at a pan-UK level, given the cross-border territorial nature of the activities being regulated.
9. There were a significant number of matters of concern with the Bill as introduced. My key concern was a failure of the Bill 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. As a consequence, I recommended the Senedd withheld consent to the Bill.
10. I laid the OWEIP sLCM on 25 July 2023. In my view the OWEIP clauses as introduced failed to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence. Given those concerns, I recommended the Senedd withheld consent to the OWEIP clauses in the Bill.
11. I laid a sLCM on 4 September covering the other amendments made to the Bill up to and including House of Commons Committee Stage. The Welsh Government welcomed a number of the amendments to the Bill as they provide useful clarifications and additional detail on how the measures first introduced in the Bill will operate. However, as with the Bill as introduced, in a number of areas, the amendments made to the Bill do not sufficiently respect the competence of the Senedd. Given those concerns, I recommended the Senedd withheld consent to the Bill.
12. There has been continued discussions with the UK Government on the Bill where I have repeated my position that where regulations are to be introduced that impact on devolved matters the consent of Welsh Ministers needs to be sought. The UK Government has maintained their position that a process of consultation is sufficient. A process of consultation is not a satisfactory safeguard from a constitutional perspective.
13. The House of commons Report Stage of the Bill was completed on 5 September 2023. This sLCM covers the agreed amendments that make relevant provision within the Senedd's legislative competence or modifies the competence of the Senedd.

Summary of the changes to the Bill at Report Stage

Part 1 Licensing of Carbon Dioxide Transport and Storage: Chapter 1 Licensing of Activities

14. The LCM set out the Welsh Ministers' view that clauses within Chapter 1 of Part 1 of the Bill were within the Senedd's legislative competence because they made provision in the devolved area of carbon dioxide 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 to the Government of Wales Act 2006 (GOWA). The clauses outlined below have been amended at House of Commons Report Stage, and still make provision within the legislative competence of the Senedd. Therefore, an sLCM is required for the amendments to these clauses, which are summarised below.
15. Clause 2 (Prohibition on unlicensed activities) includes a new subclause (7A) which provides that regulations made by the Secretary of State by virtue of subclause (7)(a) cannot make provision that amends an Act of the Senedd (or regulations made under an Act of the Senedd) without the consent of the Welsh Ministers. Clause 2 introduces an offence for persons to carry on an activity of operating a site for disposal of carbon dioxide by way of geographical storage and/or providing a service of transportation carbon dioxide unless the person is authorised to do so by licence.
16. The new subclause (7A) requires the Secretary of State to obtain the Welsh Ministers' consent before it can make regulations amending Senedd legislation, or subordinate legislation made under Senedd legislation. I believe the requirement for consent of Welsh Ministers should also apply in relation to all provision generally having a purpose within legislative competence. As such I recommend the Senedd withhold consent to clause 2.
17. Clause 6 (Revocation or withdrawal of exemption) includes a new subclause (b) requiring the Secretary of State to consider any representations made in accordance with subsection (4) which requires the Secretary of State to give notice before the Secretary of State may by regulations revoke or withdraw an exemption from the prohibition on licensed activity. This amendment does not materially change clause 6 as it relates to Welsh devolved competence. As set out in the LCM laid on 29 June 2023. I recommend the Senedd withhold consent to clause 6 and that remains the position of Welsh Ministers.
18. Clause 8 (Power to create licence types) includes a new subclause (2a) which requires the Secretary of State to consult the relevant devolved authorities before making regulations under this clause that would deal with devolved matters. Clause 8 allows for the Secretary of State to

regulate to provide for difference types of licence in respect of different activities.

19. As set out in the LCM laid on 29 June 2023 we recommend the Senedd withhold consent to clause 8 as the Secretary of State should seek the consent of Welsh Ministers before making regulations under clause 8. It remains the position of Welsh Ministers that the Senedd should withhold consent to clause 8.
20. Clause 9 (Procedure for licence applications) includes a new subclause which requires the Gas and Electricity Markets Authority to notify the relevant devolved authorities where it proposes to grant a licence authorising activities that are within devolved competence. 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.
21. As set out in the LCM laid on 29 June 2023 we recommend the Senedd withhold consent to clause 9 as the Secretary of State should seek the consent of Welsh Ministers before making regulations under clause 9. The amendment only relates to a process of notification from the economic regulator (the Gas and electricity Markets Authority) where it proposes to grant a licence authorising activities that are within devolved competence. It remains the position of Welsh Ministers that the Senedd should withhold consent to clause 9.
22. Clause 10 (Competitive tenders for licenses) includes a new subclause which impose additional requirements on consultation with the economic regulator (the Gas and Electricity Markets Authority) and the devolved administrations before making regulations under clause 10. Clause 10 provides for the Secretary of State to make regulations to introduce competition into the tenders for licences.
23. As set out in the LCM laid on 29 June 2023 we recommend the Senedd withhold consent to clause 10 as the Secretary of State should seek the consent of Welsh Ministers before making regulations under clause 10. The amendment only provides for additional requirements to consult with Welsh Ministers. It remains the position of Welsh Ministers that the Senedd should withhold consent to clause 10.
24. Clause 13 (Modification of conditions of licenses) includes a new subclause which impose additional requirements on consultation with the devolved administrations before making regulations under clause 13 in cases where proposed licence modifications are within devolved competence. Clause 13 provides for the economic regulator (the Gas and Electricity Markets Authority) may make regulations to modify the conditions of licenses.
25. As set out in the LCM laid on 29 June 2023 we recommend the Senedd withhold consent to clause 13 as the Secretary of State should seek the

consent of Welsh Ministers before making regulations under clause 13. The amendment only provides for additional requirements to consult with Welsh Ministers. It remains the position of Welsh Ministers that the Senedd should withhold consent to clause 13.

26. Clause 19 (Consenting to transfer) includes a new subclause which impose additional requirements on the economic regulator (the Gas and Electricity Markets Authority) to notify the devolved administrations before giving consent to the transfer of a licence which authorises activities that are within devolved competence. Clause 19 establishes that licences can be transferred.
27. As set out in the LCM laid on 29 June 2023 we recommend the Senedd withhold consent to clause 19 as the consent of Welsh Ministers should be sought before the economic regulator should give consent to the transfer of a licence under clause 19. The amendment only provides for additional requirements to notify Welsh Ministers. It remains the position of Welsh Ministers that the Senedd should withhold consent to clause 19.
28. Clause 39 (Forward work programmes) includes a new subclause which impose additional requirements on the economic regulator (the Gas and Electricity Markets Authority) to draw the work programme to the attention of the devolved administrations. Clause 39 requires that the economic regulator must publish a document containing a general description of the relevant projects which it plans to undertake in relation to the transport and storage of carbon dioxide.
29. As set out in the LCM laid on 29 June 2023 we recommend the Senedd withhold consent to clause 39 as Welsh Ministers should be consulted on the draft work programme. The amendment only provides for additional requirements for the economic regulator to draw the work programme to the attention of Welsh Ministers. It remains the position of Welsh Ministers that the Senedd should withhold consent to clause 39.

Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production:

Chapter 1 Revenue Support Contracts

30. The amendments to Chapter 1 of Part 2 summarised below make relevant provision as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required in so far as these amended clauses make provision in respect of carbon dioxide capture, transport and storage.
 - 30.1. Clause 68 (Direction to offer contract) has been amended so that regulations made by the Secretary of State under this clause that define “eligible” in relation to a carbon capture entity may make reference to documents external to the regulations, as the documents have effect from time to time.

- 30.2. Clause 76 (Allocation of contracts) amendment to subclause (4) makes it clear that provision in an allocation framework (which are rules made by the Secretary of State) may relate to published standards or other published documents as they have effect from time to time.
- 30.3. Clause 85 (Consultation) includes a new subclauses which impose additional requirements on consultation with the devolved administrations before making regulations under clause 73(1) or publishing standard terms under clause 74. Clause 73 enables the Secretary of State to appoint, by regulations, persons to carry out functions in connection with the allocation of hydrogen production revenue support contracts and carbon capture revenue support contracts. Clause 74 grants the Secretary of State power to issue standard terms and conditions of Carbon capture revenue support contracts.
31. As set out in the LCM laid on 29 June 2023 we recommend the Senedd withhold consent to clauses 68, 76, and 85 as the Secretary of State should seek the consent of Welsh Ministers before making regulations in this Part. The amendments only provide for additional requirements to consult with Welsh Ministers. It remains the position of Welsh Ministers that the Senedd should withhold consent to clauses 68, 76, and 85.

**Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production:
Chapter 3 Decommissioning of carbon storage installations**

32. The amendments to Chapter 3 of Part 2 summarised below make relevant provision as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do not relate to any reservation in Schedule 7A to GOWA. Therefore, an SLCM is required in so far as these amendments make provision in respect of carbon dioxide capture, transport and storage.
- 32.1. Clause 92 (Financing of costs of decommissioning etc) is amended to add the definition of “carbon storage installation” (which has the same meaning as s. 30 Energy Act 2008) to subclause (11).
- 32.2. A New clause [Gov NC64] (Regulations under section 92(1): procedure with devolved authorities) has been inserted after clause 92, which provides a consultation procedure before the Secretary of State makes regulations under clause 92(1). The Secretary of State must give notice to each devolved administration and consult for no less than 28 days where regulations contain provision within the legislative competence of the Senedd, and the Secretary of State must consider any representations made in that period.

32.3. Clause 94 (Application of Part 4 of Petroleum Act 1998 in relation to carbon storage installations) has had minor amendments to the proposed amendments to section 30(5) of the Energy Act 2008.

33. As set out in the LCM laid on 29 June 2023 we recommend the Senedd withhold consent to clause 92 as the Secretary of State should seek the consent of Welsh Ministers before making regulations in this Part. The amendments only provide for additional requirements to consult with Welsh Ministers. It remains the position of Welsh Ministers that the Senedd should withhold consent to clause 92.

Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production: Chapter 3 Strategy and policy statement

34. Clause 100 (Review) includes a new subclause which requires that when the Secretary of State proposes a review of the Carbon Capture, Usage and Storage strategy and policy statement the Secretary of State must allow at least 28 days for representations to be made by the Welsh Ministers and must consider any representations that are properly made.

35. The amendments to this clause make relevant provision as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required.

36. As set out in the LCM laid on 29 June 2023 we recommend the Senedd withhold consent to clause 100 as the Secretary of State should seek the consent of Welsh Ministers insofar as the strategy and policy statement relates to Wales. As the amendment only provides for a requirement to consider representations, it remains the position of Welsh Ministers that the Senedd should withhold consent to clause 100.

Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production: Chapter 5 Carbon storage information and samples

37. Paragraph 5 of Schedule 8 (inserted by clause 124 (Appeals)) has been amended to introduce a right of appeal against a decision to terminate a carbon storage licence.

38. The amendments to this clause make relevant provision as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required.

39. As set out in the sLCM laid on 4 September, it is important that licensed activity have common requirements on information and samples for an efficient system across Great Britain. I sought amendment to this Chapter

to include licenses issued by Welsh Ministers with a process of consent sought should the regulations impact on areas of devolved competence. As this amendment has not been made, we recommend the Senedd withholds consent to clauses 124.

Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production: Chapter 6 General

40. The amendments to Chapter 6 of Part 2 summarised below make relevant provision as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do not relate to any reservation in Schedule 7A to GOWA. Therefore, an SLCM is required in so far as these amendments make provision in respect of carbon dioxide capture, transport and storage.
- 40.1. Clause 127 (Access to infrastructure): the amendment to subclause (6) requires the Secretary of State to allow 28 days for representations to be made about proposed regulations under this clause and imposes a duty to consider representations that are properly made when consulting the Welsh Ministers.
- 40.2. Clause 128 (Financial assistance) the amendments to this clause aim to provide clarity over the financial assistance the Secretary of State may provide, clarifying that it is for either or both of transport and storage of carbon dioxide. The clarifications are aimed at both carbon storage and hydrogen.
41. Before making regulations under this part the Secretary of State must consult with Welsh Ministers if the regulations contain provisions that would be within the legislative competence of the Senedd. The requirement to consult should be amended to a requirement to seek the consent of Welsh Ministers so I recommend the Senedd withholds consent to clauses 127 and 128.

Part 4 New Technology: Chapter 1 Low carbon heat schemes

42. Clause 150 (Scheme regulations: procedure etc) includes new subclauses which require the Secretary of State to consult with the devolved administrations so far as regulations under clause 142(1) apply in relation to Scotland, Wales or Northern Ireland. The Secretary of State must allow at least 28 days for representations to be made and if requested must give a statement setting out whether and how representations made by a devolved administration have been taken into account in the regulations.
43. Clause 142 enables the Secretary of State to make provision, by regulations, for the establishment and operation of low-carbon heat schemes (i.e. schemes encouraging the supply or installation of certain heating appliances through the imposition of low-carbon targets). Paragraph 101 of Schedule 7A to GoWA 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”. We consider the clause to be within that exception, and as such within the legislative competence of the Senedd.

44. As set out in the LCM laid on 29 June 2023 we recommend the Senedd withhold consent to clause 142 as the Secretary of State should seek the consent of Welsh Ministers insofar as regulations relate to matters within devolved competence. It remains the position of Welsh Ministers that the Senedd should withhold consent to clause 150 relating to the procedure for scheme regulations in clause 142 to take effect.
45. A new clause [Gov NC52] (Revenue certainty scheme for sustainable aviation fuel producers: consultation and report) has been inserted after clause 156. This new clause requires the Secretary of State to commence, within 6 months from the date the Bill is passed, a public consultation to design and implement a “sustainable aviation fuel revenue certainty scheme”. We consider this new clause makes provision within the exception to the reserved matter at paragraph 125 of Schedule 7A to GOWA (Aviation, air transport, airports and aerodromes), in that it concerns financial assistance to providers or proposed providers of air transport services. Therefore, this clause makes provision within the legislative competence of the Senedd and requires an LCM.
46. We recognise the importance of sustainable aviation fuel in support industry to achieve net zero. We welcome the introduction of a requirement to commence a consultation, so recommend the Senedd consent to this new clause.

Part 5 Independent System Operator and Planner

47. Paragraph 9 of Schedule 9 (inserted by clause 171 (Transfers) has been amended to remove reference to “land transaction tax” as a relevant tax within that paragraph. In the LCM laid on 29 June 2023, the Welsh Ministers noted we would write to the UK Government to request the removal of land transaction tax from the list of taxes. This amendment follows that request. This paragraph no longer falls within the legislative competence of the Senedd but this amendment is noted due to the earlier inclusion of this paragraph within the LCM of 29 June 2023.

Part 8 Heat Networks: Chapter 1 Regulation of Heat Networks

48. A New Clause (Regulations made by Secretary of State: consultation with devolved authorities) has been introduced after clause 216 which requires the relevant devolved authorities to be consulted so far as regulations under clause 216 make provision within Welsh legislative competence. Clause 216 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.

49. 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 in this clause falls within the exception to the reservation, relating as it does to the development and maintenance of heat and cooling networks. As set out in the LCM laid on 29 June 2023, the Welsh Government are content that the rights and powers are appropriate and is consistent with other energy infrastructure. We welcome the addition of consultation in this instance.

Part 11 Energy Savings Opportunity Schemes (ESOS)

50. Clause 259 (ESOS regulations; Procedure etc) has been amended to introduce a requirement for the Secretary of State to consult with devolved administrations so far as ESOS regulations make provision within Welsh legislative competence.

51. As set out in the LCM laid on 04 September where ESOS regulations contain provisions within the devolved competence of the Senedd the Secretary of State must seek the consent of Welsh Ministers before making regulations. The amendments do not introduce a requirement to seek the consent of Welsh Ministers and so I recommend the Senedd withholds consent to clause 259.

Part 13 Offshore Wind Electricity Generation, Oil and Gas: Chapter 1 Offshore Wind Electricity Generation

52. Clause 288 (marine recovery fund) has been amended as follows:

- to provide that regulations under clause 288 may enable a determination to be made, by the person who imposed a compensation condition (as defined by clause 288(5)), of the extent to which a payment into a recovery fund discharges the condition.
- to make it clear that only functions of the Secretary of State that relate to the operation or management of a marine recovery fund are capable of being delegated to, for example, the Welsh Ministers.
- to provide that regulations under clause 288 that make provision for delegation of functions to a Scottish, Welsh or Northern Ireland public authority must require the consent of the relevant devolved administration.
- to impose a consultation requirement on the Secretary of State before making regulations under clause 288 (including a requirement to consult the devolved administrations to the extent that the regulations relate to activities in their areas).

53. Clause 289 (assessment of environmental effects etc) has been amended as follows:

- to impose a consultation requirement on the Secretary of State before making regulations under clause 288 (including a requirement to

consult the devolved administrations to the extent that the regulations relate to activities in their areas).

- to clarify that regulations made under clause 289 by the Secretary of State may not abolish functions that are exercisable by a Scottish, Welsh or Northern Ireland public authority or provide for such functions to be exercisable concurrently by another person.
- to enable regulations under clause 289 to authorise the giving of directions by a person specified in the regulations (as well as by the appropriate authority). The regulations could, for example, authorise the giving of directions by the person carrying out an environmental assessment or by a devolved administration.
- to prevent regulations under clause 289 authorising the giving of a direction to a Scottish or Welsh public authority by a person other than (as the case may be) the Scottish Ministers or the Welsh Ministers.
- remove the ability for regulations under clause 289(1) to disapply or modify rights arising under the Habitats Directive. This is because of section 2 of the Retained EU Law (Revocation and Reform) Act 2023, as a result of which such rights will cease to be recognised or enforceable in domestic law.

54. While these amendments are welcome and improve the OWEIP clauses as were introduced, and meet some of the requests as set out in the LCM of 25 July 2023, there are several outstanding issues as follows:

- The amendments do not provide a regulation making power for the Welsh Ministers to establish and operate a Marine Recovery Fund where they are currently the appropriate authority with a duty to secure compensatory measures for protected European marine sites.
- Regulations to establish a marine recovery fund which would apply in the Welsh inshore region for activities 350MW and below should only be made with the consent of Welsh Ministers. A provision for this has not been forthcoming.
- The reference to the 'qualifying Secretary of State functions' in subclause 2(b) remains.

55. Given these concerns, I recommend the Senedd continues to withhold consent to the OWEIP clauses and in this SLCM withhold consent to the amendments to clauses 288 and 289.

Part 13 Offshore Wind Electricity Generation, Oil and Gas: Chapter 2 Oil and Gas

56. A New Clause (Regulations under section 292 and 293: procedure with devolved authorities) has been introduced after clause 293. For clause 292 regulations, it requires the Secretary of State to give notice to Welsh Ministers and consider any representations made and not withdrawn before making regulations under section 292 that contain provision within devolved competence. Clause 292 enables the Secretary of State to make regulations requiring a person responsible for certain specified infrastructure to have emergency plan arrangements for responding to marine oil pollution.

57. This is placing into domestic law powers that were previously derived through EU Law and the 1972 Act 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. 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.
58. We welcome the amendments to clause 292 and agree that a UK-wide approach to emergency plan arrangements for responding to marine oil pollution is required. The proposed process fits well with existing notification provisions on marine pollution.
59. For clause 293 regulations, the amendment requires the Secretary of State to obtain the consent of the Welsh Ministers before it makes regulations under section 293 containing provision within Welsh devolved competence. Clause 293 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.
60. 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 and therefore an SLCM is required.
61. We welcome the amendments to clause 293 requiring the consent of Welsh Ministers before the Secretary of State may make provisions under Clause 293.

UK Government view on the need for consent

62. The UK Government agrees that Senedd consent is required. Specifically, the UK Government have concluded that:
- 62.1. 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.
- 62.2. 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 GOWA 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.

62.3. For Part 4 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.

62.4. For Part 8 the LCM process is engaged in Wales as while 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, in respect of “Heat and cooling networks, but not the regulation of them”. We consider that clauses within Part 8 to be within that exception, and as such within the legislative competence of the Senedd.

62.5. For Part 11 on ESOS the UK Government have deemed that the LCM process is engaged in for this Part but does not provide any specific details as to individual clauses.

62.6. For Part 13 Offshore wind electricity generation, oil and gas, the LCM process will be engaged for the following reasons. The OWEIP clauses (286-291) on the basis that they alter Welsh Ministers’ executive competence or have the potential to be exercised to alter the existing executive of Welsh Ministers. For arrangements for responding to marine oil pollution (clause 292) and reducing effects of offshore oil or gas activities (clause 293), 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.

Welsh Government position on the changes to the Energy Bill at Report Stage

63. I laid an LCM on 29 June 2023 on the Bill as introduced. The amendments made to the Bill since introduction including at House of Commons Report Stage do not change my position contained within that LCM.

64. It remains the position of the Welsh Government that the Bill contains essential provisions to help support the transition of the UK towards net zero.

65. As with the Bill as introduced, in a number of areas, the amendments made to the Bill do not sufficiently respect the competence of the Senedd. The following table summarises my position.

Table 1: Summary Welsh Government position on consent

Clauses as amended – Energy Bill 11 July 2023	
Recommend the Senedd consent	Recommend the Senedd withholds consent.
	Part 1: 2, 6, 8, 9, 10, 13, 19, 39
	Part 2: 68, 76, 85, 92 100, 124, 127, 128
Part 4: NC52	Part 4: 150
Part 8: 216	
	Part 11: 259
	Part 13: 288,289
Part 13: 292, 293	

Financial implications

66. There may be 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

67. 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
11 September 2023

Annex 1:

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
Part 1 – Licensing of Carbon Dioxide Transport and Storage		
1	Principal objectives and general duties of Secretary of State and economic regulator	1
2	Prohibition on unlicensed activities	2
3	Consultation on proposals for additional activities to become licensable	3
4	Territorial scope of prohibition	4
5	Exemption from prohibition	5
6	Revocation or withdrawal of exemption	6
7	Power to grant licences	7
8	Power to create licence types	8
9	Procedure for licence applications	9
10	Competitive tenders for licences	10
11	Conditions of licences: general	11
12	Standard conditions of licences	12
13	Modification of conditions of licences	13
14	Modification of conditions under section 13: supplementary	14
15	Modification by order under other enactments	15
16	Interim power of Secretary of State to grant licences	16
17	Termination of licence	17

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
18	Transfer of licences	18
19	Consenting to transfer	19
20	Appeal to the CMA	20
21	Procedure on appeal to CMA	21
22	Determination by CMA of appeal	22
23	CMA's powers on allowing appeal	23
24	Time limits for CMA to determine an appeal	24
25	Determination of appeal by CMA: supplementary	25
26	Provision of information to or by the economic regulator	26
27	Power of Secretary of State to require information	27
28	Monitoring, information gathering etc	28
29	Power to require information for purposes of monitoring	29
30	Duty to carry out impact assessment	30
31	Reasons for decisions	31
32	Enforcement of obligations of licence holders	32
33	Making of false statements etc	33
34	Liability of officers of entities	34
35	Criminal proceedings	35
36	Functions under the Enterprise Act 2002	36
37	Functions under the Competition Act 1998	37
38	Sections 36 and 37: supplementary	38
39	Forward work programmes	39

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
40	Information in relation to CCUS strategy and policy statement	40
41	Annual report on transport and storage licensing functions	41
42	Transport and storage administration orders	42
43	Objective of a transport and storage administration	43
44	Application of certain provisions of the Energy Act 2004	44
45	Conduct of administration, transfer schemes etc	45
46	Modification of conditions of licences	46
47	Modification under the Enterprise Act 2002	47
48	Power to make further modifications of insolvency legislation	48
49	Interpretation of Chapter 4	49
50	Transfer schemes	50
51	Consultation in relation to transfers	51
52	Conduct of transfer schemes	52
53	Cooperation of storage licensing authority with economic regulator	53
54	Amendments related to Part 1	54
55	Interpretation of Part 1	55
Part 2 – Carbon Dioxide Capture, Storage ETC and Hydrogen Production		
56	Chapter 1: interpretation	56
57	Revenue support contracts	57
58	Duties of revenue support counterparty	58
59	Designation of transport and storage counterparty	59

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
60	Direction to offer to contract	60
	Designation of hydrogen transport counterparty	61
	Direction to offer to contract with eligible hydrogen transport provider	62
	Designation of hydrogen storage counterparty	63
	Direction to offer to contract with eligible hydrogen storage provider	64
61	Designation of hydrogen production counterparty	65
62	Direction to offer to contract with eligible hydrogen transport provider	66
63	Designation of carbon capture counterparty	67
64	Direction to offer to contract with eligible hydrogen storage provider	68
65	Appointment of hydrogen levy administrator	69
66	Obligations of relevant market participants	70
	Payments to relevant market participants	71
67	Functions of hydrogen levy administrator	72
68	Power to appoint allocation bodies	73
69	Standard terms of revenue support contracts	74
70	Allocation notifications	75
71	Allocation of contracts	76
72	Duty to offer to contract following allocation	77
73	Modification of standard terms	78

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
74	Sections 75 to 78: supplementary	79
	Licence conditions regarding functions of certain allocation bodies	80
75	Further provision about designations	81
76	Application of sums held by a revenue support counterparty	82
77	Information and advice	83
	Enforcement	84
78	Consultation	85
79	Transfer schemes	86
80	Modification of transfer schemes	87
81	Shadow directors, etc	88
	Modifications of licences etc for purposes relate to levy obligations	89
	Electricity system operator and gas system planner licences: modifications	90
	Sections 89 and 90: Supplementary	91
82	Financing of costs of decommissioning etc	92
83	Section 92: supplementary	93
84	Provisions relating to Part 4 of the Petroleum Act 1998	94
85	Change of use relief: installations	95
86	Change of use relief: carbon storage network pipelines	96
87	Change of use relief: supplementary	97
88	Designation of strategy and policy statement	98
89	Duties with regard to considerations in the statement	99

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
90	Review	100
91	Procedural requirements	101
92	Specified provisions in carbon dioxide storage licences	102
93	Content of storage permits under carbon dioxide storage licences	103
94	Offences relating to carbon dioxide storage licences	104
95	Power of OGA to require information about change in control of licence holder	105
	Key definitions	106
	Retention of information and samples	107
	Preparation and agreement of information and samples plans	108
	Information and samples plans: supplementary	109
	Information and samples: coordinators	110
	Powers of OGA to require information and samples	111
	Prohibition on disclosure of information or samples by OGA	112
	Power of Secretary of State to require information and samples	113
	Power of OGA to give sanction notices	114
	Enforcement notices	115
	Financial penalty notices	116
	Revocation notices	117
	Operator removal notices	118
	Duty of OGA to give sanction warning notices	119
	Publication of details of Sanctions	120
	Subsequent Sanction notices	121

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
	Withdrawal of Sanction notices	122
	Sanctions: Information powers	123
	Appeals	124
	Procedure for enforcement decisions	125
	Interpretation of Chapter 5	126
96	Access to infrastructure	127
97	Financial assistance	128
Part 3 – Licensing of Hydrogen Pipeline projects		
	Key definitions for Part	129
	Designation	130
	Designation: Procedure	131
	Revocation of designation	132
	Grant, extension or restriction of gas transporter licence by Secretary of State	133
	Applications for grant etc of gas transporter licence	134
	Modification of gas transporter licence by Secretary of State	135
	Scope of modification powers under section 135	136
	Procedure etc relating to modifications under section 135	137
	Information and advice	138
	Conditions of gas transporter licences for conveyance of hydrogen	139
	Secretary of State direction to the GEMA	140
	Repeal of Part 3	141
Part 4 – New technology		
98	Low-carbon heat schemes	142
99	Application of scheme	143
100	Setting of targets etc	144
101	Further provision about scheme regulations	145
102	Administration of scheme	146

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
103	Enforcement, penalties and offences	147
104	Application of sums paid by virtue of section 101(4) or 103(3)	148
105	Appeals	149
106	Scheme regulations: procedure etc	150
107	Interpretation of Chapter 1	151
Chapter 2		
108	Modifications of the gas code	152
109	Regulations for protection of consumers	153
	Power to modify Gas Act 1986 in relation to hydrogen	154
Chapter 3		
110	Fusion energy facilities: nuclear site licence not required	155
	Treatment of recycled carbon fuel and nuclear-derived fuel as renewable transport fuel	156
111	Climate Change Act 2008: meaning of “UK removals”	157
Part 5 – Independent System Operator and Planner		
112	The Independent System Operator and Planner (“the ISOP”)	158
113	Designation etc	159
114	Duty to promote particular objectives	160
115	Duty to have regard to particular matters	161
116	Duty to have regard to strategy and policy statement	162
117	Licensing of electricity system operator activity	163
118	Direction for transmission licence to have effect as	164

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
	electricity system operator licence	
119	Licensing of gas system planning activity	165
120	Modification of licences etc	166
121	Procedure relating to modifications under section 166	167
122	Provision of advice, analysis or information	168
123	Power to require information from regulated persons etc	169
124	Duty to keep developments in energy sector under review	170
125	Transfers	171
126	Pension arrangements	172
127	Financial assistance for the ISOP	173
128	Cross-sectoral funding	174
129	Principal objective and general duties of Secretary of State and GEMA under Part 5	175
130	Minor and consequential amendments	176
131	Interpretation of Part 5	177
132	Regulations under Part 5	178
Part 6 – Governance of Gas and Electricity Industry Codes		
133	Designation of codes etc	179
134	Meaning of “code manager” and “code manager licence”	180
135	Designation of central systems	181
136	Licence under Gas Act 1986 for performance of code management function	182
137	Licence under Electricity Act 1989 for performance of code management function	183

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
138	Selection of code manager	184
139	Selection on a non-competitive basis	185
140	Selection on a competitive basis	186
141	Strategic direction statement	187
142	Transfer of functions under section 187 to Independent System Operator and Planner	188
143	Modification of designated documents by GEMA	189
144	Modification under section 189	190
145	Directions relating to designated central systems	191
146	Directions under section 191	192
147	Principal objective and general duties of Secretary of State and GEMA under Part 6	193
148	GEMA's annual report to cover matters relating to designated documents	194
149	Regulations under Part 6	195
150	Interpretation of Part 6	196
151	Transitional provision and pension arrangements	197
152	Minor and consequential amendments	198
Part 7 – Market Reform and Consumer Protection		
	Principal objections of Secretary of State and GEMA	199
153	Competitive tenders for electricity projects	200
154	Mergers of energy network enterprises	201
155	Licence required for operation of multi-purpose interconnector	202

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
156	Standard conditions for MPI licences	203
157	Operation of multi-purpose interconnectors: independence	204
158	Grant of MPI licences to existing operators	205
159	Power to make consequential etc provision	206
160	Consequential amendments relating to multi-purpose interconnectors	207
	Electricity support payments for energy-intensive industries	208
	Levy to fund electricity support payments	209
161	Extension of domestic gas and electricity tariff cap	
162	Electricity storage	210
163	Payment as alternative to complying with certain energy company obligations	211
164	Smart meters: extension of time for exercise of powers	212
Part 8 – Heat Networks		
165	Relevant heat network	213
166	The Regulator	214
167	Alternative dispute resolution for consumer disputes	215
168	Heat networks regulation	216
169	Heat networks regulation: procedure	217
170	Recovery of costs by GEMA and NIAUR	218
171	Heat networks: licensing authority in Scotland	219
172	Heat networks: enforcement in Scotland	220

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
173	Interpretation of Chapter 1	221
174	Regulations about heat network zones	222
175	Heat Network Zones Authority	223
176	Zone coordinators	224
177	Identification, designation and review of zones	225
178	Zoning methodology	226
179	Requests for information in connection with section 177 or 178	227
180	Heat networks within zones	228
181	Delivery of district heat networks within zones	229
182	Enforcement of heat network zone requirements	230
183	Penalties	231
184	Records, information and reporting	232
185	Interpretation of Chapter 2	233
Part 9 – Energy Smart Appliances and Load Control		
186	Energy smart appliances and load control	234
187	Energy smart regulations	235
188	Prohibitions and requirements: supplemental	236
189	Enforcement	237
190	Sanctions, offences and recovery of costs	238
191	Appeals against enforcement action	239
192	Regulations: procedure and supplemental	240
193	Power to amend licence conditions etc: load control	241
194	Power to amend licence conditions etc: procedure	242

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
195	Load control: supplemental	243
196	Application of general duties to functions relating to load control	244
197	Licensing of activities relating to load control	245
Part 10 – Energy Performance of Premises		
198	Power to make energy performance regulations	246
199	Energy performance regulations relating to new premises	247
200	Sanctions	248
201	Regulations under this Part 10	249
Part 11 – Energy Savings Opportunity Schemes		
	Energy Savings opportunity schemes	250
	Application of energy savings opportunity schemes	251
	Requirement for assessment of energy consumption	252
	Assessors	253
	ESOS action plans	254
	Action to achieve energy savings or emissions reductions	255
	Scheme administration	256
	Enforcement, penalties and offences	257
	Appeals	258
	ESOS regulations: procedure etc	259
	Directions to scheme administrators	260
	Financial assistance to scheme administrators and participants	261
	Interpretation of Part 11	262
Part 12 – Core Fuel Sector Resilience		
202	General objective	263

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
203	“Core fuel sector activity” and other key concepts	264
204	Directions to particular core fuel sector participants	265
205	Procedure for giving directions	266
206	Offences of failure to comply with a direction	267
207	Corresponding powers to make regulations	268
208	Power to require information	269
209	Duty to report incidents	270
210	Contravention of requirement under section 269 or 270	271
211	Provision of information at specified intervals	272
212	Disclosure of information held by the Secretary of State	273
213	Disclosure of information by HMRC	274
214	Appeal against notice or direction	275
215	False Statements etc	276
216	Offences under regulations	277
217	Proceedings for offences	278
218	Liability of officers and entities	279
219	Enforcement and undertakings	280
220	Guidance: criminal and civil sanctions	281
221	Guidance: Parliamentary scrutiny	282
222	Financial assistance for resilience and continuity purposes	283
223	Power to amend thresholds	284
224	Interpretation of Part 12	285
Part 13 – Offshore Wind Electricity Generation, Oil and Gas		

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
	Meaning of “relevant offshore wind activity”	286
	Strategic compensation for adverse environmental effects	287
	Marine recovery fund	288
	Assessment of environmental effects etc	289
	Regulations under section 289: consultation and procedure	290
	Interpretation of Chapter 1	291
225	Arrangement for responding to marine oil pollution	292
226	Habitats: reducing effects of offshore oil or gas activities etc	293
227	Offshore oil and gas decommissioning: charging schemes	294
228	Model clauses of petroleum licences	295
229	Power of OGA to require information about change in control of licensee	296
Part 14 – Civil Nuclear Sector		
230	Application to the territorial sea of requirement for nuclear site licence	297
231	Decommissioning of nuclear sites etc	298
232	Excluded disposal sites	299
233	Accession to Convention on Supplementary Compensation for Nuclear Damage	300
	Convention on Supplementary Compensation for Nuclear Damage: Implementation power	301

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
234	Provision of additional police services	302
235	Provision of assistance to other forces	303
236	Cross-border enforcement powers	304
237	Publication of three-year strategy plan	305
	Civil nuclear industry: amendment of relevant nuclear pension schemes	306
	Meaning of “relevant nuclear pension scheme”	307
	Information	308
	Further definitions	309
	Application of relevant pensions legislation	310
	Procedure for regulations	311
	Great British Nuclear	312
	Crown status	313
	Great British Nuclear’s objects	314
	Financial assistance	315
	Secretary of State directions and guidance	316
	Annual report	317
	Annual accounts	318
	Transfer schemes	319
	Transfer schemes: compensation	320
	Transfer schemes: taxation	321
	Transfer schemes: provision of information or assistance	322
	Reimbursement and compensation in connection with designation	323
	Pension arrangements in connection with Great British Nuclear	324
Part 15		

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
238	Power to make consequential amendments	325
239	Regulations	326
240	Interpretation	327
241	Extent	328
242	Commencement	329
243	Short title	330
Schedules		
Schedule 1	Interim power of Secretary of State to grant licences	Schedule 1
Schedule 2	Procedure for appeals under section 20	Schedule 2
	Enforcement of obligations of licence holders	Schedule 3
Schedule 3	Transfer schemes	Schedule 4
Schedule 4	Amendments related to Part 1	Schedule 5
Schedule 5	Carbon dioxide storage licences: licence provisions	Schedule 6
	Permitted disclosures of material obtained by OGA	Schedule 7
	Carbon Storage information and samples: appeals	Schedule 8
Schedule 6	Independent System Operator and Planner transfers	Schedule 9
Schedule 7	Independent System Operator and Planner: pensions	Schedule 10
Schedule 8	Minor and Consequential amendments relating to Part 5	Schedule 11
Schedule 9	Governance of gas and electricity industry codes: transitional provision	Schedule 12
Schedule 10	Governance of gas and electricity industry codes: pensions	Schedule 13

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
Schedule 11	Minor and consequential amendments relating to Part 6	Schedule 14
Schedule 12	Competitive tenders for electricity projects	Schedule 15
Schedule 13	Mergers of energy network enterprises	Schedule 16
Schedule 14	Multi-purpose interconnectors: consequential amendments	Schedule 17
Schedule 15	Heat networks regulation	Schedule 18
Schedule 16	Licensing activities relating to load control	Schedule 19
Schedule 17	Enforcement undertakings	Schedule 20
Schedule 18	Petroleum licences: amendments to model clauses	Schedule 21
Schedule 19	Accession to Convention on Supplementary Compensation for Nuclear Damage	Schedule 22