

Parliamentary Bureau - Legislative Consent Memorandum

Introduction

1. Under Rule 9B.3.5, the Parliamentary Bureau is required to refer any legislative consent memorandum (LCM) that has been lodged with the Parliament to the committee within whose remit the subject matter of the relevant provision falls.

Finance (No.2) Bill (UK Legislation)

2. The Finance (No. 2) Bill was introduced by the UK Government in the House of Commons on 2 December 2025.
3. An LCM was lodged by Shona Robison MSP, Cabinet Secretary for Finance and Local Government, on 7 January 2026.
4. The LCM states that a Finance Bill “is usually presented to Parliament each year. It enacts the proposals for taxation made by the Chancellor of the Exchequer in the UK Budget statement and brings them into law. The Finance (No. 2) Bill brings into law the proposals announced in the Budget on 26 November 2025. There are over 100 resolutions made as part of the UK Budget that make changes across a wide range of taxes including income tax, corporation tax, VAT, vehicle excise duty, duties on alcohol and tobacco products, vehicle excise duties, landfill tax and aggregates levy.”
5. In particular, “the Bill contains provisions to allow the Scottish Parliament the ability to set separate rates of income tax for income from property from April 2027.”
6. The Scottish Government has indicated that it intends to lodge a motion seeking the Parliament’s consent to the relevant provisions of the Bill relating to clause 8 (Scottish and Welsh property rates set by Scottish Parliament and Senedd), and Schedule 2, Part 1 (Scotland), so far as these matters pursue a devolved purpose and alter the executive competence of the Scottish Ministers.
7. With regard to consideration of the Bill in the UK Parliament, it is understood that the final amending stage will be the Report Stage in the House of Commons.

Parliamentary consideration

8. The relevant provisions in the Bill appear to fall within the remit of the Finance and Public Administration Committee.
9. The Committee’s remit includes (among other things) considering and reporting on “any report or other document containing proposals for, or budgets of, public revenue or expenditure or proposals for the making of a Scottish rate resolution” and “any other matter relating to or affecting the revenue or expenditure of the Scottish Administration or other monies payable into or expenditure payable out of the Scottish Consolidated Fund.”

10. The LCM therefore appears to fall within the remit of the Finance and Public Administration Committee.

11. The LCM will also be considered by the Delegated Powers and Law Reform Committee in relation to any provisions in the Bill conferring powers to make subordinate legislation in areas of devolved competence.

Recommendation

12. The Bureau is invited to refer, under Rule 9B.3.5, the LCM to the Finance and Public Administration Committee as lead committee.

The Cyber Security and Resilience (Network and Information Systems) Bill

13. This LCM was lodged by Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs, on 6 January 2026, under Rule 9B.3.1(a) of the Parliament's Standing Orders.

14. The Bill makes provision about the security and resilience of network and information systems which are used by or relied on for critical services in the UK. Its intention is to strengthen the UK's defences against the growing threat of cyber attacks and the associated disruption to critical services which could occur as a result.

15. Currently, the main legislative scheme in this area is contained in the Network and Information Systems Regulations 2018 ("the NIS Regulations"), which set out a regulatory regime for the "essential services" of transport, energy, drinking water, health and digital infrastructure. It seeks to ensure that persons providing those services have adequate cyber security measures in place.

16. The NIS Regulations designate "competent authorities" which are responsible for regulating specific sectors. In Scotland, the Scottish Ministers are designated as the competent authority for the health sector and the Drinking Water Quality Regulator for Scotland is designated as the competent authority for the drinking water supply and distribution sector.

17. The Bill makes provision, including provision amending the NIS Regulations, about the security and resilience of network and information systems used or relied on in connection with the carrying on of essential activities.

18. The NIS Regulations apply to energy, transport, water and healthcare, online marketplaces, search engines and Cloud computing services. The regulations require:

- designated competent authorities to regulate specific sectors. This includes the Scottish Ministers as the designated competent authority in Scotland for the health sector and the Drinking Water Quality Regulator as the designated competent authority for the drinking water sector;

- relevant operators to take appropriate security measures and report incidents that significantly impact the continuity of their services.

19. The Bill's provisions relate to matters which are reserved under schedule 5 of the Scotland Act 1998: national security (Head B8) and wireless telegraphy (Head C10). It is not within the legislative competence of the Scottish Parliament to make provision for the purpose of those reserved matters.

20. However, the Bill also alters the executive competence of the Scottish Ministers in their role as a designated competent authority under the NIS Regulations. This includes new powers, the expansion of existing powers and also new legal duties with which the Scottish Ministers would have to comply.

21. The Scottish Government considers that legislative consent is required in relation to clauses 12, 15, 17-23, 25-35, 38, 40, 41, 45-52, 56, schedule 1 and schedule 2 of the Bill.

22. As set out in the LCM, the Scottish Government supports the overall aims of the Bill which should help to improve the cyber security and resilience of essential services in Scotland. The Scottish Government is therefore recommending consent to clauses 12, 15, 17-23, 33, 38, 40, 46-52, 56 and Schedules 1 and 2 of the Bill. The LCM includes a draft motion on legislative consent to this effect.

23. However, the LCM sets out that the Scottish Government is still to reach a position on consent in relation to clauses 25-32, 34, 35, 41 and 45 as far as they relate to devolved matters, pending further discussions with the UK Government. It is expected that a supplementary LCM will be lodged once those discussions have concluded.

Designation of lead committee

24. This LCM engages the following committees' remits:

- **Economy and Fair Work Committee:** whose remit is to consider and report on matters within the responsibility of the Deputy First Minister and Cabinet Secretary for Economy and Gaelic, with the exception of Gaelic; and on matters relating to just transition. The Deputy First Minister and Cabinet Secretary is supported by the Minister for Business and Employment, whose responsibilities include digital matters.
- **Net Zero, Energy and Transport Committee:** whose remit is (among other things) to consider and report on matters falling within the responsibility of the Cabinet Secretary for Transport and the Cabinet Secretary for Climate Action and Energy, with the exception of matters relating to just transition. The Cabinet Secretary for Climate Action and Energy is responsible, among other things, for drinking water quality and regulator.
- **Health, Social Care and Sport Committee:** whose remit is to consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Social Care. The Cabinet Secretary's responsibilities include the NHS estate and NHS performance, and eHealth.

- **Criminal Justice Committee:** whose remit is to consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Home Affairs, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland. The Cabinet Secretary is responsible, among other things, for security and resilience (including cyber resilience).

25. Consideration of which committee's remit is most engaged is finely balanced. Although the LCM has been lodged by the Cabinet Secretary for Justice and Home Affairs, on the basis, we understand, of her responsibility for security and resilience (including cyber resilience), it is not considered that this is a matter relating to criminal justice. As such, it is considered that, of the committees set out above, the Criminal Justice Committee's remit is the least engaged.

26. Several of the relevant provisions in the Bill relate specifically to cyber security measures within the drinking water sector, which is a sector that falls within the remit of the Net Zero, Energy and Transport (NZET) Committee. On the basis of this sectoral interest, it is considered that the NZET Committee's remit is partially engaged.

27. Similarly, some relevant provisions relate to cyber security within the health sector. Therefore, the Health, Social Care and Sport Committee is also considered to have a sectoral interest in the LCM, and its remit is partially engaged.

28. Considering the cross-cutting nature of the Bill and its relevant provisions, it is not considered that taking a sectoral, subject-matter approach to designating a lead committee would be the best option for parliamentary scrutiny of this LCM. Given the Economy and Fair Work Committee's overarching interest in digital issues, it is proposed that its remit is the one most engaged by this LCM, albeit this is a decision which is finely balanced.

29. It is therefore recommended that the Economy and Fair Work Committee be designated as lead committee in consideration of this LCM. This does not prevent the other committees mentioned above from considering any matters raised by the LCM in which they have a sectoral interest and reporting to the lead committee as a secondary committee.

30. The Delegated Powers and Law Reform Committee may also consider and report on the LCM in relation to any provisions in the Bill conferring powers on the Scottish Ministers to make subordinate legislation.

Recommendation

31. The Bureau is invited to consider recommending to the Parliament by motion that the Economy and Fair Work Committee be designated as lead committee in consideration of the LCM relating to the Cyber Security and Resilience (Network and Information Systems) Bill.

32. A draft motion is provided below:

“That the Parliament agrees that the Economy and Fair Work Committee be designated as the lead committee in consideration of the legislative consent memorandum on the Cyber Security and Resilience (Network and Information Systems) Bill.”

Biodiversity Beyond National Jurisdiction Bill

33. An LCM was lodged on 25 September 2025 by Gillian Martin MSP, Cabinet Secretary for Climate Action and Energy, in accordance with Rule 9.B.3.1(a).

34. This Bill was introduced in the House of Commons on 10 September 2025.

35. The Bill’s main purpose is to implement the UK’s obligations under the *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction* (BBNJ Agreement). The agreement aims to ensure the conservation and sustainable use of marine resources in areas beyond national jurisdiction (ABNJ) (i.e. beyond 200 nautical miles (nm)). Implementing obligations under the BBNJ Agreement through this Bill will enable the UK to ratify the BBNJ Agreement. The Bill extends across the UK, including Scotland, Wales, and Northern Ireland, and the UK Government has requested legislative consent for the relevant provisions.

36. The Bill addresses three of the four substantive parts of the BBNJ Agreement: *Part II: Marine Genetic Resources, including the fair and equitable sharing of benefits* (implemented by Part 2 of the Bill – Clauses 2-10); *Part III: Measures such as Area-Based Management Tools, including Marine Protected Areas* (implemented by Part 3 of the Bill – clauses 11 to 13); and, insofar as it relates to marine licensing, *Part IV: Environmental Impact Assessments* (implemented by Part 4 of the Bill – Clauses 14-19). The other parts of the BBNJ Agreement are not specifically covered in this Bill as they do not require legislation for the UK to meet its obligations under the BBNJ Agreement.

37. The initial LCM set out that that both the Scottish and UK governments agree that legislative consent is required for Clauses 2-9, 11 and 13-19 of the Bill. In addition, the Scottish Government considers that clause 10 requires legislative consent. This initial LCM recommended consent to Clauses 15-19 of the Bill and did not take a position on the remaining clauses. It was noted that a supplementary LCM outlining the Scottish Government’s position on consent for remaining clauses would be lodged in due course.

38. A supplementary LCM was lodged by the Cabinet Secretary for Climate Action and Energy on 22 December 2025. It concerned amendments to the Bill tabled on 8 December for the House of Lords committee relating to changes to the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/115) (“2017 Regulations”) and powers for Scottish Ministers to make regulations contained in Clause 18 of the Bill. These amendments were tabled by the UK Government with the agreement of the Scottish Government.

39. At that point, the Scottish Government's discussions with the UK Government on the remaining clauses were ongoing and the supplementary LCM indicated that a further supplementary LCM would be lodged in relation to remaining Bill clauses requiring a consent position once negotiations with the UK Government have concluded.

40. This second supplementary LCM was lodged on 12 January 2026, and follows amendments tabled on 5 January for the House of Lords Report Stage. It provides a recommendation to the Scottish Parliament that it consent to all remaining clauses requiring a consent position (Clauses 2-14, 22 and 26), as well as to new clauses inserted by amendment (as yet unnumbered). The amendments provide for concurrent regulation-making powers for the Scottish Ministers, alongside a duty on the Secretary of State to consult the Scottish Ministers before exercising the powers provided under Clause 9 (Part 2 of the Bill) and Clause 11 (Part 3 of the Bill) where devolved matters are engaged. The amendments also update Clause 26(2) to make provision for commencing the changes to the 2017 Regulations introduced in Clause 18 of the Bill.

Parliamentary consideration

41. The relevant provisions of the Bill fall within the remit of the Net Zero, Energy and Transport (NZET) Committee. The committee's remit is (among other things) to consider and report on matters within the responsibility of the Cabinet Secretary for Climate Action and Energy, with the exception of matters relating to just transition. The Cabinet Secretary has responsibility (among other things) for environmental protection, physical and marine environment, and marine planning.
42. The NZET Committee has considered both the initial and first supplementary LCMs, and published its report on 7 January 2026.
43. Those LCMs were also considered by the Delegated Powers and Law Reform (DPLR) Committee in relation to any provisions in the Bill conferring powers on the Scottish Ministers to make subordinate legislation in areas of devolved competence.
44. In terms of its parliamentary progression, the Bill commenced Report Stage in the House of Lords on 12 January 2026 – the same day that the second supplementary LCM was lodged. This is the final amending stage for the Bill in the UK Parliament before it achieves Royal Assent. Therefore, it is considered that there is not enough time for the second supplementary LCM to go through the typical committee consideration process before the Bill is passed. It is anticipated that the motion on legislative consent will have to be taken in the Chamber in the current week, i.e. the same week the second supplementary LCM is lodged.
45. In order for the motion for legislative consent to be taken in the Chamber this week, it is considered necessary to suspend Rule 9B.3.5 for the purposes of consideration of the second supplementary LCM, in order to bypass the requirement for the LCM to be referred to, considered by and reported on by a lead committee.

46. Rule 9B.3.6 may also need to be suspended to ensure that the DPLR Committee does not need to consider the second supplementary LCM and report to the lead committee in relation to any provisions that confer powers on the Scottish Ministers to make subordinate legislation.

47. A draft motion to suspend Rules 9B.3.5 and 9B.3.6 of Standing Orders, which would allow a motion on legislative consent to go directly to the Chamber without being considered or reported on by the lead committee and the DPLR Committee, is set out below.

Recommendation

48. The Bureau is invited to consider recommending to the Parliament by motion that Rules 9B.3.5 and 9B.3.6 of Standing Orders be suspended for the purposes of consideration of the second supplementary LCM on the Biodiversity Beyond National Jurisdiction Bill.

49. A draft Bureau motion is provided below:

“That the Parliament agrees that, for the purposes of consideration of the second supplementary legislative consent memorandum on the Biodiversity Beyond National Jurisdiction Bill, Rules 9B.3.5 and 9B.3.6 of Standing Orders are suspended.”

Parliamentary Business Team
January 2026