



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Gillian Martin MSP

Cabinet Secretary for Cabinet Secretary for Climate Action and Energy

29 October 2025

Dear Cabinet Secretary,

Biodiversity Beyond National Jurisdiction Bill Legislative Consent Memorandum

The Delegated Powers and Law Reform Committee considered the Legislative Consent Memorandum (“LCM”) and powers to make subordinate legislation within devolved competence in the above Bill at its meeting on 28 October 2025. It agreed to write to the Scottish Government and UK Government in relation to a number of powers in the Bill.

The Committee noted that the Scottish Government has stated in its LCM that it has not reached a position on whether to recommend that the Parliament consents to several provisions, many of which include a relevant delegated power, in the Bill.

The Committee also noted that, in general, the UK Government’s rationale for including each delegated power in the Bill is broadly consistent: the powers are needed to implement future decisions made at the international level, where there will be limited scope for domestic policy discretion when exercising those powers.

In relation to the following powers, which are conferred on the Secretary of State:

- Clause 9(2)(a) to (f),
- Clause 11(2),
- Clause 21 and
- Clause 25(2) and (4)

The Committee agreed to ask the Scottish Government:

1. **To set out in full its concerns with the provisions it has not yet reached a position on.**
2. **Why it might be considered appropriate for the powers to be exercisable by the Secretary of State within legislative competence, and not by the Scottish Ministers?**

Contact: Delegated Powers and Law Reform Committee, The Scottish Parliament, Edinburgh, EH99 1SP.

Email: dplr.committee@parliament.scot.

We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

3. What consideration has been given to:

- (i) **Conferring such powers on the Scottish Ministers (solely or concurrently), or**
- (ii) **Requiring the consent of the Scottish Ministers before the powers may be exercised by the Secretary of State within legislative competence, or**
- (iii) **Requiring a consultation with the Scottish Ministers before the powers may be exercised by the Secretary of State within legislative competence?**

4. **How the Scottish Government intends to facilitate scrutiny by the Scottish Parliament of the exercise of the powers within legislative competence by the Secretary of State?**

It also agreed to ask similar questions to the UK Government in relation to these powers.

In relation to the following powers, which are conferred on the Secretary of State:

- Clause 14 subsections (2) and (3)

The Committee agreed to ask the Scottish Government to set out in full its concerns with these provisions, which it has not yet reached a position on.

In relation to the following powers, which are conferred on the Scottish Ministers:

- Clause 17(2) and
- Clause 18(1):

The Committee agreed to ask the Scottish Government whether it considers it would be appropriate to include a requirement for the Scottish Ministers to consult before exercising these powers, particularly in light of the similar power already contained at Section 32(5) of the Marine (Scotland) Act 2010, which requires the Scottish Ministers to consult when making an order to exempt an activity from requiring a marine licence.

In relation to the following power:

- Clause 19: Amendment to the existing regulation-making powers in Part 6 of the Levelling Up and Regeneration Act 2023 (“the 2023 Act”) relating to Environmental Outcome Reports (“EORs”) so that EOR regulations can be used to make provision in relation to licensable marine activities in ABNJ.

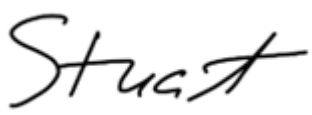
which is conferred on “an appropriate authority” (the Secretary of State, a devolved authority, or the Secretary of State acting jointly with one or more devolved authorities). Section 158 and Schedule 13 of the 2023 Act set out restrictions on the exercise of the powers under Part 6 of the 2023 Act by devolved authorities.

The Secretary of State retains the power to act alone in exercising the power, but where that is the case in relation to matters within the legislative competence of the Scottish Parliament, they must obtain the consent of the Scottish Ministers.

The Committee agreed to ask the Scottish Government how it intends to facilitate scrutiny of any exercise of the power by the Secretary of State with the consent of the Scottish Ministers.

The Committee requests a response by **Friday 7 November**.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Stuart', enclosed within a thin black rectangular border.

Stuart McMillan MSP
Convener