



The Scottish Parliament
Pàrlamaid na h-Alba

Net Zero, Energy and Transport Committee

Clare Adamson MSP
Convener
Constitution, Europe, External Affairs and Culture Committee

22 April 2025

Dear Clare

Legislative Consent Memorandum (LCM) on the Great British Energy Bill

I am writing to you following the Committee's recent scrutiny of the Legislative Consent Memorandum (LCM) and three supplementary LCMs on the Great British Energy Bill. The Committee found aspects of this process frustrating and, as a committee that has scrutinised a number of LCMs in this session, it concerns us that this is representative of a more general trend of the Parliament not playing the role it should do during the legislative consent process.

The original LCM was lodged on 8 August 2024, less than 3 weeks after its first reading at Westminster. Whilst it was on the face of it welcome to have relatively prompt sight of an LCM, it was of limited use. It did not go into detail about provisions the Scottish Government considered affected devolved competence and did not express a view on consent. It was, in effect, merely a "holding LCM" as it itself acknowledged by stating that a supplementary LCM would be lodged following "a full analysis" of the Bill. It said this would likely be lodged by the end of September, based on current timescales for the Bill's second reading.

In the event, no supplementary LCM was lodged and on 3 December I wrote to the Acting Cabinet Secretary for Net Zero and Energy, expressing concern about the delay and asking when we might receive it. Her reply was that "once an amendment can be tabled that would trigger the requirement for a supplementary LCM, we will take that forward as quickly as possible". This was at odds with the position set out in the LCM. Furthermore, the letter did not specify what amendment the Scottish Government was seeking, nor which clause the amendment related to.

The detail of amendments the Scottish Government was seeking was not set out until the Committee's evidence session with the Acting Cabinet Secretary for Net Zero and Energy on 7 January, by which time the Bill was already in the Committee Stage in the House of Lords (the second house).

Contact: Net Zero, Energy and Transport Committee, The Scottish Parliament, Edinburgh, EH99 1SP. Email netzero@parliament.scot. We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

A supplementary LCM, setting out a more substantive position, was eventually lodged on 28 January, shortly after the tabling of the amendment for which the Scottish Government had been pressing. By this point, however, the Committee had already completed its two sessions of evidence-taking in relation to the Bill, in order to report timeously to Parliament. Our report on the LCM and supplementary LCM was published on 4 February. We commented:

45. The Committee is concerned about how this LCM has been handled. The Committee welcomes positive intergovernmental relations, as seem to have been demonstrated on this Bill. However, if the LCM process is made beholden to intergovernmental discussions, there is a risk of the Parliament becoming more of a bystander to the consent process than a participant. This is not the process envisaged in the Parliament's Standing Orders. This has been ameliorated in the present case by the Committee's decision to take evidence before a substantive LCM was provided. However, the Parliament will be left with little time to reflect on this report before the consent motion is taken.
46. The Committee recommends that if LCMs setting out "holding positions" are lodged, a more substantive LCM must be lodged as soon as possible – not after particular amendments sought by the Scottish Government are tabled. This will make it easier for committees to take the evidence they need and make an informed recommendation about consent in a report to Parliament, and for that report to be submitted in enough time for the Parliament to reflect on it before the relevant motion is taken.

This did not turn out to be the end of the process, however, for on 17 February, a second supplementary LCM was lodged. This was in response to UK Government amendments agreed to on 11 February which the Scottish Government considered re-triggered the consent process. The only way for the Committee to report to the Parliament within what was communicated to us as the necessary timeframe was to hold an additional meeting on Wednesday 19 February. At this meeting, we agreed a short report with no evidence having been taken on the new amendments. In the report we commented that the process of agreeing it “amounts therefore to an almost literal case of a committee going through the motions in order to meet a formal requirement of the Scottish Parliament's Standing Orders”. We added that—

The Committee's 4 February report on the LCM and first supplementary LCM for the GB Energy Bill highlighted concerns about the LCM process and the risk of the Scottish Parliament being left as a "bystander" to the legislative consent process for UK Bills. In relation to this second supplementary LCM concerning late amendments to the Bill, the Committee and Parliament have again been left sidelined, with the Committee unable to offer an informed contribution to the forthcoming Chamber debate on consent.

Finally, on 24 February, a third supplementary LCM was lodged, once again in response to a late UK Government amendment. In order to avoid being what felt like the increasingly absurd position of having to agree yet another report that could make no substantive comment on the matter in hand (because the Committee had no time to take evidence on it), the Committee agreed that the least bad outcome

would be for the Parliament to agree to a suspension of Rule 9B.3.5 of Standing Orders. This was communicated to the Bureau and duly happened.

In the Committee's view, the above indicates at least three different ways in which the Parliament is often being let down by current LCM processes:

1. The Parliament being treated as a bystander to intergovernmental negotiations about consent issues, and effectively left out of the conversation until very late in the consent process.
2. The risk of late amendments at Westminster that the Scottish Parliament is not given adequate time to consider, further undermining the consent process by making it literally impossible for the lead Committee to make an informed report to Parliament;
3. A lack of clarity as to timings and backstops. In the present case, the Committee's first report was produced on 4 February, on the understanding that this was extremely close to the backstop date for being able to report meaningfully and usefully. It only became apparent, after the event, that more time would have been available. It is hard to think of any other area of Parliamentary procedure where not knowing key deadlines would be considered normal and acceptable.

The Committee is aware that some of the issues we raise in this letter the CEEAC Committee itself reflected upon with concern in your 2022 report, the Impact of Brexit on Devolution and your 2023 report, How Devolution is Changing Post-EU. We therefore share this case study with you, which is copied to the Convener of the Standards, Procedures and Public Appointments Committee, in case it is of assistance in your Committee's further deliberations on legislative consent and in the preparation of your legacy report. But any views you may wish to share in response are welcome.

In relation to the second of the three bullet points above, I will also be writing to the Leader of the House of Commons to highlight the difficulty late amendments pose to the consent process and propose to copy you into that letter.

Yours sincerely,

Edward Mountain MSP

Convener

Net Zero, Energy and Transport Committee