

Legislative Consent Memorandum

Energy Prices Bill

Background

1. This memorandum has been lodged by Michael Matheson, Cabinet Secretary for Net Zero, Energy and Transport, under Rule 9B.3.1(a) of the Parliament's standing orders. The Energy Prices Bill was introduced in the House of Commons on 12 October 2022. The Bill can be found at Energy Prices Bill publications - Parliamentary Bills - UK Parliament.

Content of the Energy Prices Bill

2. The Explanatory Notes accompanying the Bill set out the UK Government's view of its purposes and main functions. The UK Government describes the principal aim of the Bill as being to make provisions for controlling energy prices, to encourage the efficient use and supply of energy; and for other purposes connected to the energy crisis.

Provisions which relate to Scotland

3. The Bill contains provisions on the following themes:
- Reduction of domestic energy bills
 - Reduction of non-domestic energy bills
 - Support for meeting energy costs
 - Reducing the price of electricity
 - Passing on the benefits of reductions and other support
 - The domestic energy tariff cap
 - Regulation of energy markets

Reasons for seeking a legislative consent motion

4. The Bill is a relevant Bill under Rule 9B 1.1 of the Standing Orders as it makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament. The particular clauses of the Bill that the Scottish Government considers require the consent of the Scottish Parliament are:

- **Support for meeting energy costs (clause 13)**

Clause 13 concerns support for meeting energy costs. It empowers the Secretary of State to take such steps as they consider appropriate to provide support for meeting costs related to the use of energy; enable or encourage the efficient use of energy; provide support for meeting costs related to the supply of energy; and enable or encourage the supply of energy. It also empowers the Secretary of State to take any other steps considered appropriate in response to the energy crisis. Steps could include giving financial assistance; and acquiring, making available or enabling access to energy or relevant infrastructure.

The power is an extremely broad one, and the form of support could conceivably take many different forms, making it impossible to exclude the possibility that this power might be exercised in such a way as to relate to a devolved purpose. For example, providing financial or other assistance for the purposes of meeting or reducing expenses for heating in cold weather is explicitly devolved as an exception to the reservation of social security schemes (Head F1 of Schedule 5 of the Scotland Act 1998), so to the extent that any assistance was for that purpose, it would relate to a devolved matter in more than a merely consequential way.

- **Procedure and reporting in connection with clause 13 (clause 14)**

Clause 14 relates to procedure and reporting in relation to the support outlined in clause 13 and could similarly be used for devolved purposes.

- **Role of other bodies in giving support for meeting energy costs etc (clause 15)**

Clause 15 relates to action by local authorities and other designated bodies in implementing any financial assistance with meeting energy costs that may be provided under clause 13. As noted, the power in clause 13 could be used for devolved purposes and, in that event, any implementation would similarly be for a devolved purpose. In addition, matters concerning the control and functions of local authorities are generally a devolved matter.

- **Requirement to pass on energy support to end users (clause 19)**

Clause 19 empowers the Secretary of State by regulations to impose pass-through requirements on persons to whom energy price support is provided, so as to secure that the benefit of energy price support provided to an intermediary is passed on to end users. As those pass-through requirements could potentially apply in relation to devolved elements of broader financial support under clause 13, clause 19 could potentially also relate to devolved matters.

- **Power of Secretary of State to issue direction (clause 22)**

Clause 22 empowers the Secretary of State to give directions to the Northern Ireland Authority for Utility Regulation and/or any energy licence holder, where they consider it appropriate to do so in response to the energy crisis, or in connection with the Bill, regulations made under it, a domestic energy price reduction scheme, or anything done or proposed to be done under, or given effect by, clause 13 (support for meeting energy costs etc.). The directions may be of a general or specific character.

Although the direction-giving power only relates to energy licence holders, the power is not expressly limited to the activities of licence holders in reserved areas. It could conceivably be used in relation to devolved matters such as planning, if that was considered appropriate by the Secretary of State as a response to the energy crisis or otherwise in connection with the energy price reduction measures in the Bill. The possibility that the power might be exercised in such a way as to relate to a devolved purpose cannot therefore be excluded.

5. For these reasons, the Scottish Government considers that the consent of the Scottish Parliament to these bill provisions is required.

Recommendation on legislative consent

6. Given the urgency of the energy crisis that demands a coordinated and prompt response, the Scottish Government recommends that the Parliament consent to the Bill.

7. Although the powers in Clause 13 (and related clauses 14, 15 and 19) could be used in such a manner as to relate in part to devolved purposes, with time being of the essence in getting financial support to people and businesses, carving out certain aspects of support for separate provision by the Scottish Government would not be practicable or appropriate.

8. We have sought reassurance from the UK Government that the direction-giving power in Clause 22 will not be used to cut across devolved competences such as planning and have been assured that the power is limited by virtue of the fact that the Secretary of State may only exercise the power where they consider it appropriate to do so “in response to the energy crisis” or in connection with the Bill (or regulations made under it, a domestic energy price reduction scheme, or any support measures under Clause 13). As such, the power is tied to the immediate energy crisis and to a response to changes in the price of energy and so could not properly be used to cut across longer term devolved matters such as planning consents for particular energy generation projects. Most of the powers in the Bill are also time limited by virtue of Clause 25 and Schedule 6 of the Bill, with energy price reduction schemes only capable of being made for a two year period (extendable by six months) and the financial support powers only having a duration of 3 and a half years (extendable by 6 months).

9. Based on the above, the recommendation of the Scottish Government is that the Scottish Parliament should consent to the Bill by passing a legislative consent motion. Consenting will allow for the prompt provision of support for domestic and non-domestic consumers in Scotland who are struggling to pay their energy bills. This legislation will also allow consumers who previously did not receive support through the Energy Bills Relief Scheme to receive equivalent support. Many of these consumers, such as those living in rural areas who rely upon alternative fuels for heating, are already contending with higher living costs than those who live in more central areas.

10. Consenting to the UK Government legislating within these devolved areas will allow for the maximum number of those who are eligible for financial assistance to receive it. Recommending refusal of consent would jeopardise the prompt provision of support, heightening the risk that many domestic consumers in Scotland will enter fuel poverty and opt to choose self-disconnection from their energy supply to try and cope with the cost of living crisis. The risk also applies to non-domestic consumers who, without receipt of the Energy Bills Relief Scheme, will trade with reduced confidence and in some cases may no longer be able to trade at all.

11. Giving a role to designated bodies such as local authorities that sit within a devolved area, with access to the relevant data, to administer and deliver the scheme, as envisaged by Clause 15 of the Bill, will help ensure that fraud is also kept to a minimum, and is something that the Scottish Government supports.

Consultation

12. As the Bill has been deemed Emergency legislation, the Scottish Government has not been able to undertake any consultation. The Scottish Government did not see the Bill until the day of its introduction to the House of Commons. The Scottish Government has, however, facilitated early engagement between BEIS and COSLA to discuss practicalities and implications with regards to the role Scottish local authorities could play in the administration and delivery of the necessary support for meeting energy costs.

Financial implications

13. While this Bill does not raise any direct financial implications for the Scottish Government as a devolved authority, the Scottish Government will continue to seek reassurance that any ask of local authorities to play a role in delivering support for energy costs will receive the financial resource to enable them to do so.

Conclusion

14. Allowing the UK Government to introduce this legislation will be the most efficient way to ensure that both domestic and non-domestic consumers in Scotland receive the support necessary to mitigate the impact of the energy price crisis.

15. The Scottish Government recommends consent to all of the relevant clauses:

- Clause 13
- Clause 14
- Clause 15
- Clause 19
- Clause 22

Draft Legislative Consent Motion

16. The draft motion, which will be lodged by the Cabinet Secretary for Net Zero, Energy and Transport, is:

“That the Parliament agrees that the relevant provisions of the UK Energy Prices Bill, introduced in the House of Commons on 12 October 2022, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
October 2022

This Legislative Consent Memorandum relates to the Energy Prices Bill (UK legislation) and was lodged with the Scottish Parliament on 20 October 2022

Energy Prices Bill – Legislative Consent Memorandum

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at: www.parliament.scot/documents