

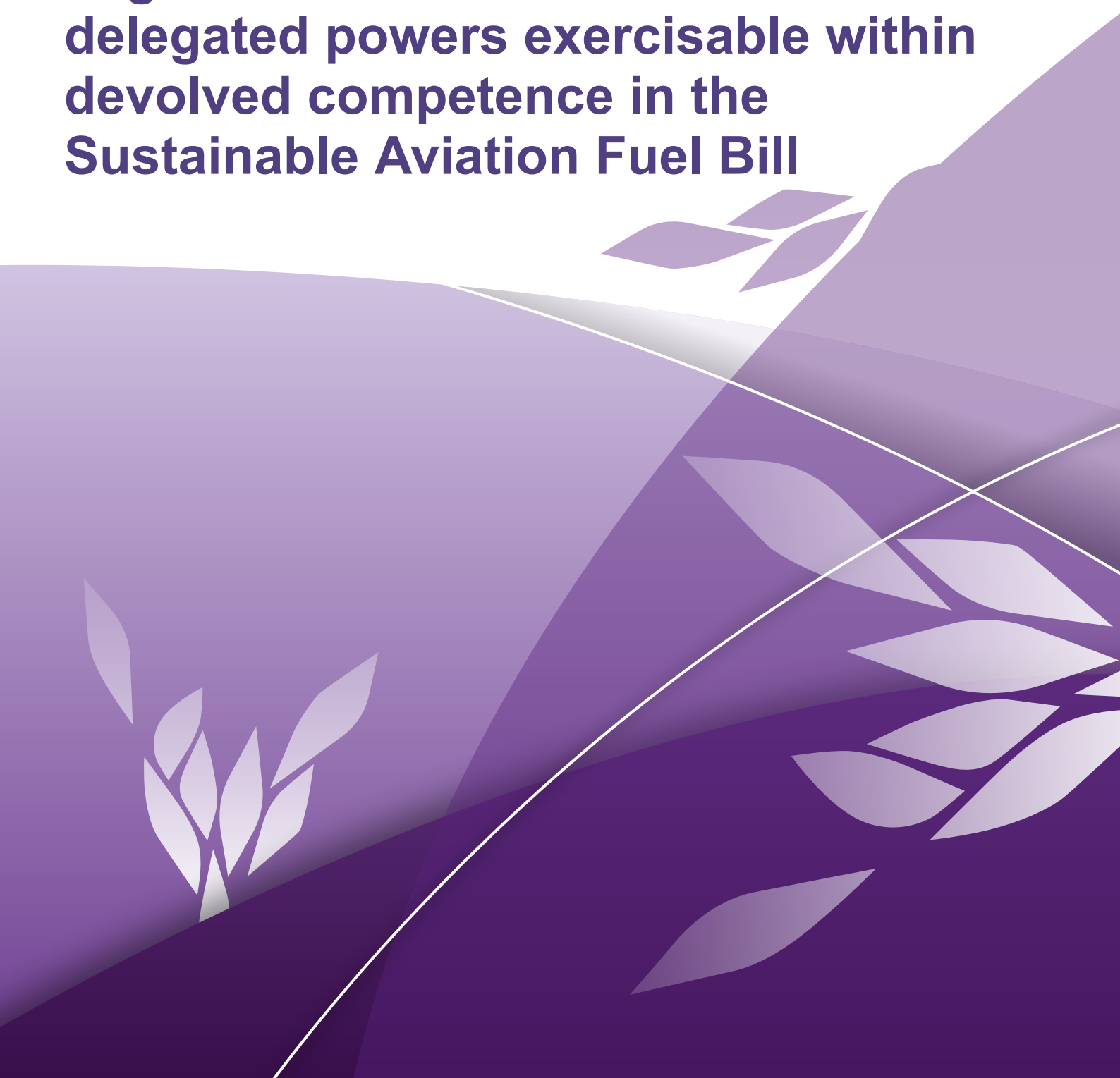


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Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum: delegated powers exercisable within devolved competence in the Sustainable Aviation Fuel Bill



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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. The purpose of this paper is to consider the delegated powers that are exercisable within devolved competence in the [Sustainable Aviation Fuel Bill](#) (“the Bill”).
2. The Bill confers powers on UK Ministers to make subordinate legislation in devolved areas. Therefore, the LCM is being considered in terms of the Committee’s wider remit, contained in Rule 6.11.1(b) of the Standing Orders, which provides that the remit of the Committee includes considering and reporting on proposed powers to make subordinate legislation in particular bills “or other proposed legislation.” The Committee and its predecessor Committee have considered powers conferred on UK Ministers in devolved areas in various Bills over the course of sessions 5 and 6.
3. The Committee considered the LCM at its meetings on 16 September and 7 October 2025.ⁱ

ⁱ Stuart McMillan MSP, Roz McCall MSP and Jeremy Balfour MSP submitted apologies for the meeting of 7 October 2025. Rona Mackay MSP substituted for Stuart McMillan MSP, and Oliver Mundell MSP substituted for Roz McCall MSP.

The Bill

4. The Bill was introduced on 15 May 2025 and is currently at report stage in the House of Commons, where it originated. As the Bill is still progressing through the UK Parliament, it is subject to amendment.
5. This is a short Bill comprising 19 clauses. The Bill aims to reduce revenue risk in relation to the production of sustainable aviation fuel (SAF) and support SAF production in the UK, leading to a reduction in aviation emissions.
6. The Bill seeks to achieve this by:
 - introducing legislative measures to implement a revenue certainty mechanism to support sustainable aviation fuel (SAF) production in the UK.
 - enabling the Secretary of State to designate a counterparty that is wholly owned by government and direct them to enter into private law contracts with SAF producers, guaranteeing a price for the sale of eligible SAF over a period.
 - enabling the Secretary of State to make regulations imposing a levy on suppliers of aviation fuel in the UK, to fund the revenue certainty mechanism. This will allow the counterparty to collect a levy to cover the costs of issuing payments under contracts and administering the scheme.
7. The Scottish Government lodged an [LCM for the Bill](#) on 24 July 2025 because the Bill makes provision applying to Scotland for purposes within the legislative competence of the Parliament. The Scottish Government considers that the purpose of clauses 1 to 5, 10, 11(2) to (5), and 12 to 19 is to reduce aviation emissions by incentivising SAF production. As such, these clauses relate to the environment and economic development, which are matters within the legislative competence of the Scottish Parliament
8. The Scottish Government supports the overall aims of the Bill and is recommending consent to clauses 2, 4, 5, and 12 to 19 of the Bill. However, the Scottish Government is still to reach a position on consent in relation to clauses 1, 3, 10, 11 and the schedule as far as they relate to devolved matters. These provisions are subject to ongoing discussion with the UK Government and will be the subject of a supplementary legislative consent motion, which the Committee may need to consider in due course.
9. The lead committee for the LCM is the Net Zero, Energy and Transport Committee.

Delegated Powers

10. The UK Government has not yet published a Delegated Powers Memorandum (“DPM”) to accompany the Bill. The Committee therefore does not have an explanation as to the purpose of each power, why a delegated power is appropriate, and the parliamentary procedure that has been selected.
11. As is standard practice for UK bills, the Scottish Government has not published a delegated powers memorandum. Its position on the relevant clauses is set out in the LCM.
12. At its meeting on 16 September 2025, the Committee agreed to write to the UK Government and the Scottish Government regarding the delegated powers in sections 1(6) and 10(1) of the Bill. The Committee was content with the remaining delegated powers in the Bill.
13. The Committee wrote [to the UK Government](#) and [to the Scottish Government](#) on 18 September 2025. The Committee received a [response from the UK Government](#) on 25 September 2025. The Committee received a [response from the Scottish Government](#) on 30 September 2025.

Powers exercised by UK Ministers within devolved competence

14. The provisions discussed in this report confer powers on UK Ministers which may be exercisable within the Scottish Parliament’s legislative competence. The Committee’s position in relation to such powers has been that, in general:
 - a) The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
 - b) Where such powers are exercised by the Secretary of State in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.
 - c) If such powers contain a requirement for the Scottish Ministers’ consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers’ consent decision.

The Committee will scrutinise powers conferred on UK Ministers not subject to a requirement for Scottish Ministers’ consent and may suggest matters for the lead committee to consider.

- d) As a minimum, powers when exercised by the Secretary of State in devolved areas should be subject to the process set out in the [SI Protocol 2](#) where the powers is within the scope of that protocol.

Review of relevant powers

Clause 1(6) power to extend the period during which a direction may be given by up to 5 years at a time

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative procedure

Provision

15. This clause enables the Secretary of State to direct a designated counterparty to enter into a revenue certainty contract with a SAF producer on terms determined by the Secretary of State. The period during which the Secretary of State may direct the designated counterparty is initially limited to 10 years under subsection (5), but that period may be extended by regulations made under subsection (6).

Correspondence

16. In light of the Committee's general position on UK Government powers exercisable within devolved competence, the Committee asked the UK Government:

1. why it considers it appropriate to confer powers on the Secretary of State that are exercisable within devolved competence without requiring the consent of the Scottish Ministers; and
2. whether it intends to amend the Bill to provide that UK Ministers must obtain the consent of the Scottish Ministers before exercising these powers in devolved areas.

17. The UK Government responded as follows:

” Clause 1(6) allows the Secretary of State, by regulations, to extend the period during which a direction may be given to the counterparty to enter into contracts with a SAF producer. These regulations would be made through the affirmative procedure. We do not believe that a consent mechanism is suitable for this clause. If there were a consent mechanism and Scottish Ministers at the time did not consent to regulations made under this clause, it could lead to a situation where the UK government would be unable to enter into revenue certainty mechanism contracts with Scottish SAF producers, while still funding any contracts in England, Wales and Northern Ireland through a UK-wide levy. This could result in aviation fuel suppliers in Scotland paying the costs of the scheme, but SAF producers in Scotland not receiving any benefits.

18. The Committee asked the Scottish Government:

1. whether it intends to seek an amendment to the Bill to require that the exercise of this power be subject to the consent of the Scottish Ministers; and
2. how it proposes to ensure that the Scottish Parliament is able to effectively scrutinise the exercise of this power by the Secretary of State.

19. The Scottish Government’s response did not specifically address Clause 1(6). However, it reiterated its position that Scottish Ministers should have a formal role in any regulation-making powers that touch on devolved matters. The response further advises that the Scottish Government “intends to continue our discussions with the UK Government on the Bill, to reiterate the Scottish Government’s concerns, and to explore whether amendments can be made to better reflect devolved responsibilities.”

Committee consideration

20. As the UK Government points out, some of the clauses in the Bill relate to reserved matters and some to devolved matters. Although this particular power is exercisable within devolved competence because its purpose is to reduce pollution and protect the environment, the key power in the Bill—without which the proposed scheme could not operate—is Clause 6, which enables the Secretary of State to make regulations imposing a levy on suppliers of aviation fuel in the UK to fund the revenue certainty mechanism. This is wholly reserved because the taxation of aviation fuel is a reserved matter under Head A1 of Schedule 5 of the Scotland Act 1998 (which reserves fiscal, economic and monetary policy). It would therefore not be possible for the Scottish Parliament to legislate to create a Scotland-only sustainable aviation fuel levy scheme.
21. Given that the power is minor and technical, and that requiring consent could delay implementation and risk excluding Scottish producers from the scheme, the Committee considers the absence of a consent mechanism to be reasonable in the circumstances. The power to extend the direction period does not alter the scope or substance of the scheme, and its exercise is unlikely to have significant policy implications for devolved areas. Accordingly, the Committee is content with the power as drafted.
22. The Committee also notes the Scottish Government’s view that, as a matter of principle that Scottish Ministers should have a formal role in any regulation-making powers that touch on devolved matters, and notes that discussion with the UK Government are ongoing.

23. **Given the specific circumstances in relation to this power, the Committee:**
- **is content with the power in principle and that it is subject to the affirmative procedure; and**
 - **notes that the power is exercisable by the Secretary of State within the Scottish Parliament’s legislative competence, is not subject to any requirement to consult or obtain the consent of the Scottish Ministers before being exercised and does not fall within the scope of SI Protocol 2.**

Clause 3(1) power to make regulations requiring the registration and publication of contracts

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Negative procedure

Provision

24. This clause enables the Secretary of State to make regulations requiring the designated counterparty to maintain a register of revenue certainty contracts and setting out the information that the counterparty must include in the register. It also enables the Secretary of State to make regulations requiring the counterparty to publish revenue certainty contracts, subject to any redactions permitted by the regulations.

Committee consideration

25. The power in clause 3(1) is limited in scope, administrative and technical in nature and does not enable substantive provision to be made within legislative competence. The Committee is therefore content with this power.

26. **The Committee is content with the power in principle and that it is subject to the negative procedure.**

Clause 10(1) power to require repayment of surpluses

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative procedure

Provision

27. This clause enables the Secretary of State to make regulations to require the designated counterparty to make payments of any surplus to suppliers of aviation fuel who have paid the levy and how the surplus and payments are to be determined. A surplus may arise where the SAF producers are making payments to the counterparty when the market reference price exceeds the strike price.
28. This clause also provides that regulations may require suppliers who receive such payment to ensure their customers will receive such benefits from the payment in accordance with those regulations.
29. Subsection (4) requires the Secretary of State to consult Scottish Ministers, before making such regulations, if the regulations contain provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of the Scottish Parliament.
30. Although this power is subject to a statutory requirement to consult the Scottish Ministers before being exercised within devolved competence, there is no legal requirement for the Secretary of State to obtain the consent of the Scottish Ministers before doing so.

Correspondence

31. In light of the Committee's general position on UK Government powers exercisable

within devolved competence, the Committee asked the UK Government:

1. why it considers it appropriate to confer powers on the Secretary of State that are exercisable within devolved competence without requiring the consent of the Scottish Ministers; and
2. whether it intends to amend the Bill to provide that UK Ministers must obtain the consent of the Scottish Ministers before exercising these powers in devolved areas.

32. The UK Government responded as follows:

” Clause 10(1) allows the Secretary of State, subject to prior consultation with the Scottish Government, to make regulations which would require the counterparty to pay any surplus it has collected to those who have had to pay the levy, and to require persons who receive a surplus payment to make payments to their customers. This regulation would also be made by the affirmative procedure. A consent mechanism for this clause could lead to a situation where surpluses in Scotland are not paid to levy payers, but they are in England, Wales and Northern Ireland. This would put aviation fuel suppliers in Scotland at a disadvantage.

33. The Committee asked the Scottish Government:

1. whether it intends to seek an amendment to the Bill to require that the exercise of this power be subject to the consent of the Scottish Ministers; and
2. how it proposes to ensure that the Scottish Parliament is able to effectively scrutinise the exercise of this power by the Secretary of State.

34. In its response, the Scottish Government stated that while a consult mechanism is a “welcome step”, for this power it considers a consent mechanism “would provide stronger safeguards and ensure that decisions affecting devolved areas are made with appropriate Scottish input”. As noted above, the Scottish Government also confirmed it is seeking a Ministerial meeting with UK counterparts on this Bill “to explore whether amendments can be made to better reflect devolved responsibilities.”

Committee consideration

35. As with Clause 1(6), while this power is exercisable within devolved competence, the underlying levy mechanism is reserved. The Scottish Parliament would not have the legislative competence to establish a Scotland-only levy scheme, as this would involve taxation of aviation fuel, which is a reserved matter.

36. This power is subject to a statutory consultation requirement, which provides a degree of engagement with the Scottish Government. Given that the power is relatively minor and technical, and that requiring consent could delay implementation and risk disadvantaging Scottish levy payers, the Committee considers a consultation mechanism to be reasonable in the circumstances.

37. Given the specific circumstances in relation to this power, the Committee:

- **is content with the power in principle and that it is subject to the affirmative procedure and a statutory consultation requirement;**
 - **notes that the power is exercisable by the Secretary of State within devolved competence, is not subject to any requirement to obtain the consent of the Scottish Ministers before being exercised and does not fall within the scope of SI Protocol 2.**
38. **The Committee also wishes to welcome the Scottish Government’s undertaking to keep the keep the Committee updated on Ministerial discussions with the UK Government.**
39. **The Committee calls upon the Scottish Government, once those discussions are complete, to set out how it will facilitate scrutiny by the Scottish Parliament of:**
1. **any proposals by the Secretary of State to make regulations under these powers containing provision within legislative competence, and**
 2. **the Scottish Ministers’ consultation response in respect of such proposals.**

Clause 11(4) power to amend amount of financial penalties

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative procedure

Provision

40. Clause 11 enables the Secretary of State to impose a financial penalty on a person that fails to comply with levy regulations or fails to comply with requirements under regulations made under clause 10. The amount of such a penalty must not exceed the lesser of £100,000 or an amount equal to 10% of a person’s turnover. The procedures for issuing, appealing and recovering a financial penalty are set out in the Schedule, and all penalties received must be paid into the Consolidated Fund. Clause 11(4) gives the Secretary of State the power, by regulations, to increase the maximum penalty amount in line with inflation and set out how a person’s turnover is determined.

Committee consideration

41. The power in clause 11(4) is limited in scope, administrative and technical in nature and does not enable substantive provision to be made within legislative competence. The Committee is content with this power.

42. **The Committee is content with the power in principle and that it is subject to the affirmative procedure.**

