

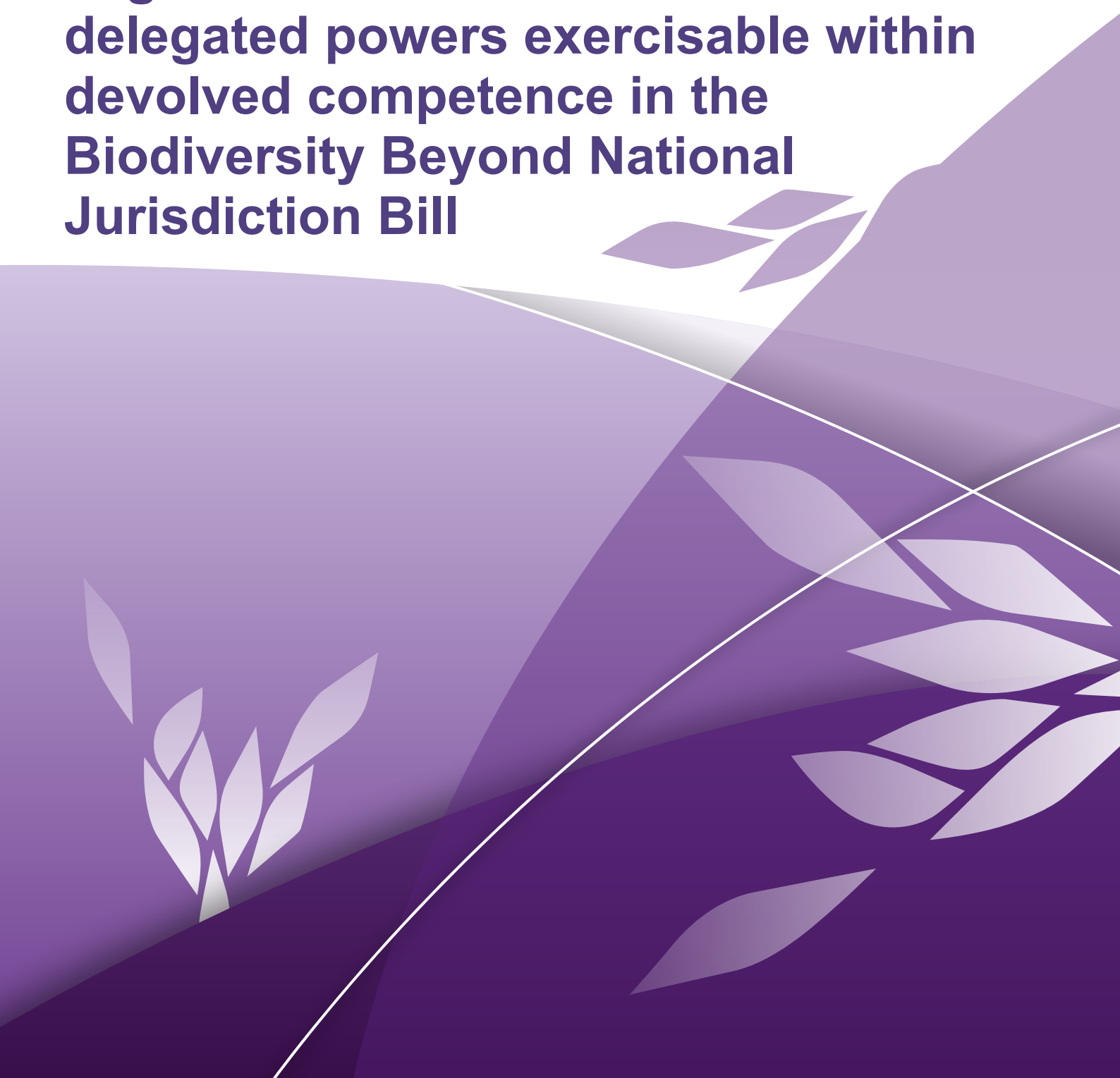


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Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum: delegated powers exercisable within devolved competence in the Biodiversity Beyond National Jurisdiction 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.

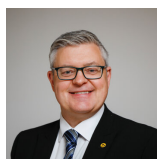


DPLR.Committee@parliament.scot



0131 348 5974

Committee Membership



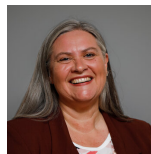
Convener
Stuart McMillan
Scottish National Party



Deputy Convener
Bill Kidd
Scottish National Party



Katy Clark
Scottish Labour



Roz McCall
Scottish Conservative
and Unionist Party



Jeremy Balfour
Independent

Introduction

1. The purpose of this report is to consider the delegated powers that are exercisable within devolved competence in the [Biodiversity Beyond National Jurisdiction Bill](#) (“the Bill”).
2. The Committee is considering the Legislative Consent Memorandum (“LCM”) for the Bill by virtue of Rule 9B.3.6 of the Parliament’s Standing Orders. Paragraph 6 of Rule 9B.3 provides that where the Bill that is the subject of an LCM contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee (“DPLRC”) shall consider and may report to the lead committee on those provisions.
3. The LCM is also 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.
4. The Committee considered the LCM at its meetings on 28 Octoberⁱ and 2 December 2025.
5. At its meeting on 28 October, the Committee agreed to write to the UK Government and the Scottish Government regarding the delegated powers in clauses 9, 11, 14, 17(2), 18, 19, 21 and 25. The Committee was content with the delegated powers in clauses 16 and 17(3).
6. On 29 October, the Committee wrote to the [UK Government](#) and the [Scottish Government](#). The Committee received a [response from the Scottish Government](#) on 7 November. No response was received from the UK Government.
7. The Scottish Government has caveated much of its response to the Committee by noting that negotiations with the UK Government are still ongoing, and as a result, it has not been able to provide significant additional detail. It has also confirmed that a Supplementary LCM will be lodged mid-December to take account of amendments that it expects to be tabled, however it has not provided an indication of what those amendments are likely to be. The recommendations in this report take account of those circumstances.

ⁱ Katy Clark MSP submitted her apologies for this meeting.

The Bill

8. The Bill was introduced by the UK Government in the House of Commons on 10 September 2025. Second Reading in the House of Commons took place on 16 October 2025, and the Bill is now at Committee Stage. The Bill is therefore subject to amendment, and the Scottish Government has not reached a position on several of the clauses in the Bill. A supplementary Legislative Consent Memorandum will be required when the Scottish Government reaches a position in relation to those clauses.
9. The Bill is made up of 5 parts (26 clauses) and a schedule. Its provisions extend to England, Wales and Scotland, excluding sections 17 and 18 which only extend to Scotland.
10. The stated purpose of the Bill is to enable the UK to implement the Agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (the “BBNJ Agreement”). The BBNJ Agreement was adopted by consensus at the United Nations (UN) on 19 June 2023 and the UK signed the Agreement when it opened for signature on 20 September 2023.
11. The BBNJ Agreement aims to protect marine biodiversity in the high seas, which are areas of the ocean beyond any country's national jurisdiction. It establishes rules for the conservation, sustainable use, and fair sharing of benefits from marine genetic resources (“MGR”) and digital sequence information (“DSI”) on those MGR, while also requiring environmental impact assessments and promoting international cooperation and capacity-building.
12. The Scottish Government states in its LCM that the BBNJ Agreement will enter into force on 17 January 2026. The BBNJ Agreement establishes the Conference of the Parties (“CoP”), made up of the countries that have ratified the BBNJ Agreement, and who will make decisions and recommendations to ensure that the treaty is properly implemented. The first CoP must take place within a year of entry into force and is expected to take place in August 2026. The LCM states that as only parties to the BBNJ Agreement will be able to participate in CoP decision making, the UK must ratify at least 30 days before the CoP and therefore the Bill must be finalised by the end of April 2026.
13. The lead committee in respect of the LCM is the Net Zero, Energy and Transport Committee.

Delegated Powers

14. The UK Government has published a [Delegated Powers Memorandum](#) (“DPM”) to accompany the Bill. It explains in each case the purpose of the power, why a delegated power is appropriate, and the parliamentary procedure that has been selected. The Committee has therefore relied on the explanation provided in the DPM and in the Scottish Government’s LCM in considering the powers.
15. As is normal for UK bills, the Scottish Government has not published a delegated powers memorandum. The Scottish Government’s current view on the relevant

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powers are set out in the LCM.

Review of relevant powers

Overview

16. This is a complex and technical Bill designed to implement, and enable the implementation of, an international treaty. It contains numerous delegated powers, most of which may be exercised within devolved competence. Both the UK and Scottish Governments have agreed that these powers may be exercised within devolved areas. However, in most cases, the powers have been conferred solely on the Secretary of State.
17. The LCM sets out, at paragraph 12, those aspects of the implementation of the BBNJ Agreement that are within the legislative competence of the Scottish Parliament. Those are:
 - the marine environment in the Areas Beyond National Jurisdiction (“ABNJ”) and Biodiversity Beyond National Jurisdiction (“BBNJ”) activities to the extent that there is some connection or nexus with Scotland; and
 - the observation and implementation of international obligations.
18. The LCM also explains that the Scottish Ministers exercise executive functions in relation to marine environmental protection within what is commonly known as the Scottish offshore region, and that these powers are impacted by the Bill. Those powers originate from the Marine and Coastal Access Act 2009 (“the 2009 Act”), and relate to marine licensing, marine planning and marine protection in the Scottish offshore region, which forms part of the high seas and is therefore subject to the BBNJ Agreement.
19. As noted above, 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. It states that there has not been sufficient time for effective scrutiny to consider both policy and legal implications, as well as the need for any amendments to safeguard the integrity of the devolution settlement. The Scottish Government also states that it is continuing to work with the UK Government to assess the devolved aspects of the Bill.
20. 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.
21. It is not explained in the documents accompanying the Bill or in the LCM why powers which may be exercised within devolved competence are being conferred solely on the Secretary of State, with no requirement to consult with or obtain the consent of the Scottish Ministers.

Clauses 9-11, 21 and 25

22. At its meeting on 28 October, the Committee agreed to ask the same questions regarding the proposed powers in clauses 9-11, 21 and 25 of the Bill, which the

Scottish Government had not yet reached a position on. Those powers raised similar issues, in that they are all exercisable by the Secretary of State within devolved competence and exercised by regulations. At this stage, should the powers be exercised within devolved competence, this Parliament would not have an opportunity to scrutinise the measures implemented by any resulting regulations.

23. Those questions were:

” 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?
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?

24. The Scottish Government has provided broadly the same response in respect of each power, so these clauses have been addressed together, as set out below.

25. All of the powers under clause 9 are subject to the limitation that such regulations are to be made for the purposes of implementing the United Kingdom's obligations under Part 2 of the BBNJ Agreement.

The powers are as follows:

Clause 9(2)(a): Power to ensure that the UK complies with Part II of the Agreement in a way that is consistent with Article 5(2) of the Agreement (relationship between the Agreement and other instruments etc.) so far as it applies to the UK in relation to any international agreement or arrangement to which the UK is a party

Parliamentary Procedure: negative procedure, unless it is used to amend or repeal a provision of an Act of Parliament in which case affirmative procedure applies

Provision

26. Clause 9(2)(a) provides that the Secretary of State may make regulations to ensure that the United Kingdom complies with Part 2 of the BBNJ Agreement in a way that is consistent with Article 5(2) of that Agreement, so far as it applies to the United Kingdom in relation to any other international agreement or arrangement to which

the United Kingdom is a party.

27. Article 5(2) provides that countries must ensure that any laws or regulations they adopt to implement the BBNJ agreement do not conflict with existing international obligations and are harmonised with other treaties that they are a party to.
28. Regulations made under this power are subject to the negative procedure, unless it is used to amend or repeal a provision of an Act of Parliament, in which case affirmative procedure will apply.

Clause 9(2)(b): Power to implement a decision by the Conference of the Parties to change the modalities for the sharing of monetary benefits

Provision

29. Clause 9(2)(b) provides that the Secretary of State may make regulations to enable or facilitate the implementation of a decision of the CoP under Article 14(7) of the Agreement, including by imposing requirements to disclose information relevant to the calculation of payments and/or to make payments.
30. Article 14 provides for the sharing of monetary benefits from the utilisation of MGR and DSI on that MGR and provides that on entry into force of the BBNJ Agreement, developed State Parties are to make an annual payment into the Special Fund established by the Agreement. Those payments are to continue unless and until the CoP takes a decision on an alternative method for the sharing of monetary benefits.
31. Regulations made under this power are subject to the affirmative procedure.

Clause 9(2)(c): Power to make changes to Part 2 of the Bill that are necessary in consequence of any decision made by the Conference of the Parties about the operation of the Clearing-House Mechanism

Parliamentary Procedure: affirmative procedure

Provision

32. Clause 9(2)(c) provides that the Secretary of State may make regulations to enable or facilitate the implementation of a decision of the CoP in accordance with Article 51(2) of the Agreement about the operation of the Clearing-House Mechanism established by Article 51(1) of the BBNJ Agreement.
33. The Clearing-House Mechanism is a central online system established by the BBNJ Agreement to keep track of who is collecting and using MGR to facilitate the sharing of information and the coordination of research. Article 51(2) provides that specific modalities for the operation of the Clearing-House Mechanism are to be determined by the CoP.
34. Regulations made under this power are subject to the affirmative procedure.

Clause 9(2)(d) Power to limit the application of Part 2 of the Bill in accordance with Article 51(6) of the Agreement

Parliamentary Procedure: affirmative procedure if the regulations amend an Act of Parliament; negative procedure otherwise

Provision

35. Clause 9(2)(d) provides that the Secretary of State may make regulations to limit the application of Part 2 of the Bill in accordance with Article 51(6) of the Agreement (protection from disclosure).
36. Article 51(6) provides that the Agreement does not require the sharing of information that is protected from disclosure under the domestic law of a Party or other applicable law. Clause 4(3) of this Bill provides that the Secretary of State may not transmit such information where it is protected from disclosure under the National Security Act 2023, or where the Secretary of State does not consider the Agreement requires such disclosure.
37. Regulations made under this power are subject to the affirmative procedure if the regulations amend an Act of Parliament, and otherwise negative procedure will apply.

Clause 9(2)(e) Power to make provision to ensure that no person is required to comply both with a provision of or under Part 2 of the Bill and with a corresponding provision of the law of another State that is a party to the Agreement.

Parliamentary Procedure: negative procedure, unless amending or repealing an Act of Parliament

Provision

38. Clause 9(2)(e) provides that the Secretary of State may make regulations to secure that no person is required to comply both with a provision of or under Part 2 of the Bill and with a corresponding provision of the law of another State that is a party to the BBNJ Agreement.
39. Regulations made under this power are subject to the negative procedure, unless amending or repealing an Act of Parliament.

Clause 9(2)(f) Power to make provision about enforcement of obligations imposed by Part 2 of the Bill

Parliamentary Procedure: affirmative procedure

Provision

40. Clause 9(2)(f) provides that the Secretary of State may make regulations to make provision about the enforcement of requirements imposed by or under Part 2 of the Bill.
41. The obligations under Part 2 of the Bill are those which require notification to the UK BBNJ National Focal Point in relation to the collection of MGR from a UK craft and the accessing and utilisation of MGR or DSI generated on MGR in the UK.
42. Regulations made under this power are subject to the affirmative procedure.

Clause 11(2): power to make regulations for the purpose of giving effect to an obligation of the UK under Article 25(1) of the BBNJ Agreement as it applies to a decision of the Conference of the Parties under Article 22(1) (a) or (b), or Article 24 of that Agreement (ABMTs and emergency measures).

Parliamentary procedure: negative, affirmative or made affirmative procedure**Provision**

43. Clause 11 provides that the Secretary of State may make regulations to make such provision they consider appropriate for the purpose of meeting the obligations of the United Kingdom under Article 25(1) of the Agreement, which requires that States implement the decisions made by the CoP under Articles 22 and 24.
44. Article 22(1)(a) enables decisions to be taken about creating area-based management tools (ABMTs) such as Marine Protected Areas, and Article 22(1)(b) enables decisions to be taken to ensure that the BBNJ Agreement fits with other international laws and agreements. Article 24(1) enables emergency decisions to be taken where urgent action is needed.
45. Regulations made under this power are subject to the affirmative procedure where they amend or repeal an Act of Parliament, create a civil sanction or vary the maximum amount of any monetary penalty, or create a criminal offence. Regulations which include such provision mentioned above but which the Secretary of State considers require to be made urgently are subject to the made affirmative procedure. Otherwise, negative procedure applies.

Clause 21: Power to make provisions consequential on this Act**Parliamentary Procedure: affirmative where amending or repealing primary legislation, negative where amending secondary legislation****Provision**

46. Clause 21 provides a power for the Secretary of State to make provision, by regulations, that is consequential on the provisions in this Bill.
47. The power is subject to the affirmative procedure where amending or repealing primary legislation, and otherwise negative procedure applies.

Clause 25(2) and (4) Commencement provisions**Parliamentary Procedure: none****Provision**

48. Clause 25 provides the Secretary of State with the power to bring provisions of the Bill into force by commencement regulations.
49. The power includes provision to make transitional and savings provision in connection with the coming into force of any provision of the Bill.
50. Regulations made under this power will not be subject to any parliamentary procedure.

Committee consideration of clauses 9-11, 21 and 25

51. The Scottish Government stated in its LCM that it had not yet reached a view on whether to recommend that the Parliament gives its consent to clauses 9-11, 21 and 25. This was on the basis that it was continuing to work with the UK

Government to fully assess the devolved aspects of the Bill, and to identify any necessary amendments during the passage of the Bill.

52. In its response to the Committee, the Scottish Government reiterated that the provisions required further work both within the Scottish Government and through engagement with the UK Government to fully understand how they will operate in practice and what the likely impacts will be upon Scottish devolved competence, both in respect of matters which are within the legislative competence of the Parliament and the executive competence of the Scottish Ministers. The response states that the Scottish Government's concerns are varied and developing, and although it is now further on in that process, its position is still subject to ongoing analysis, engagement and negotiation between the two governments.
53. The Scottish Government also states in its response that there may be cases where it is appropriate and proportionate for powers to make provision within devolved competence to be exercised at a UK level, provided that there is sufficient involvement for Scottish Ministers.
54. The Committee asked whether consideration had been given to:
 1. conferring equivalent powers on the Scottish Ministers (solely or concurrently);
 2. requiring the consent of the Scottish Ministers before the powers may be exercised by the Secretary of State within legislative competence; and
 3. requiring a consultation with the Scottish Ministers before the powers may be exercisable by the Secretary of State within legislative competence.
55. The Scottish Government confirmed that all of the above options are under active consideration, and states that where the Scottish Government identifies that decisions will impact on devolved matters to such a degree that it considers Scottish Ministers must be involved and able to intervene, it is exploring a range of protections. This ranges from formal amendment of the Bill to more informal underpinning intergovernmental agreements. The Scottish Government does not confirm which powers it considers should be subject to formal amendment on the face of the Bill and which of those should be subject to intergovernmental agreement, however it does indicate that clause 11 may be formally amended.
56. In response to the Committee's question about how the Scottish Government intends to facilitate scrutiny by the Scottish Parliament of the exercise of the powers within devolved competence by the Secretary of State, the Scottish Government states that it is cognisant of the importance of appropriate scrutiny by the Scottish Parliament and that it will ensure that the Supplementary LCM addresses this issue.
57. In its [letter to the Net Zero, Energy and Transport Committee dated 26 November](#), the Scottish Government confirmed that a Supplementary LCM will be prepared following the tabling of amendments which will provide a detailed explanation of the rationale which underpins the final positions reached, including amendments agreed and government to government assurances provided. That letter states that the Scottish Government remains committed to facilitating discussion and information exchange with the Scottish Parliament.
58. In light of the lack of any further detailed information from the UK and Scottish

Governments about the potential impact on matters within the legislative competence of the Scottish Parliament, and the fact that a Supplementary LCM is incoming, the Committee does not consider it possible to come to a view on the proposed powers in clause 9-11, 21 and 25.

59. Instead, the Committee calls on the Scottish Government to set out, in relation to clauses 9-11, 21 and 25, in its Supplementary LCM, why the agreed mechanism, if any such mechanism is added by amendment, has been deemed appropriate in light of the other options set out at paragraph 54 above, and how it will facilitate scrutiny of the exercise of each power within devolved competence where such exercise is not by the Scottish Ministers.

60. **The Committee calls on the Scottish Government to set out in its Supplementary LCM, in relation to clauses 9-11, 21 and 25:**
1. **whether these clauses have been amended to confer equivalent powers on the Scottish Ministers, or to add a mechanism requiring the consent of or consultation with the Scottish Ministers;**
 2. **why the particular mechanism, if any, has been deemed appropriate, in light of the other options available; and**
 3. **where the powers are exercised within devolved competence by the Secretary of State, how it intends to facilitate parliamentary scrutiny of the exercise of the power.**

Clauses 14(2) and (3)

61. In relation to the following clauses 14(2) and (3) the powers are exercisable by the Secretary of State within devolved competence and exercised by Order.

Clause 14 subsection (2): Amendment to the existing order-making power in section 66 of the 2009 Act (power to add/remove licensable marine activities to the list in section 66(1)) to enable the Secretary of State to make consequential etc. provision amending primary or secondary legislation (whenever passed or made) where an order designates a new licensable marine activity in ABNJ as an activity added in contemplation of the UK's obligations under Part III ("ABMTs") or, in respect of activities in ABNJ, under Part IV ("EIA") of the BBNJ Agreement (see new section 66(3A)).

Parliamentary Procedure: affirmative procedure

Provision

62. Clause 14(2) amends Part 4 of the 2009 Act to provide that an order under section 66(3) may make consequential amendments to primary or secondary legislation when making an order adding a new licensable marine activity in ABNJ which is designated as an activity added in contemplation of the UK's obligations under Part 3 or in respect of an activity in ABNJ under Part 4 of the BBNJ Agreement.
63. Section 66(1) of the 2009 Act lists the activities that require a marine license. Currently, 3 of the listed activities are capable of taking place in ABNJ: scuttling,

deposits and incinerations. Section 66(3) provides a power to add new licensable marine activities by order.

64. Regulations made under this power are subject to the affirmative procedure.

Clause 14 subsection (3): Amendment to the existing order-making power under section 74 of the 2009 Act (the power to make licence exemptions) to enable incidental, consequential, supplemental or transitional provision or savings amending primary or secondary legislation, whenever passed or made, including the 2009 Act itself. The amendment enables such consequential etc. provision to be made where a section 74 order makes exemption provision in relation to a new licensable marine activity in ABNJ designated under section 66(3A).

Parliamentary Procedure: A section 74 order is made under the negative procedure unless it makes consequential etc. provision amending primary legislation in which case it is subject to draft affirmative procedure (see section 316(6)(a) of the 2009 Act)

Provision

65. Clause 14(3) amends the existing order-making power under section 74 of the 2009 Act, which enables the Secretary of State to exempt activities from licensing.

66. Clause 14(3) will enable a section 74 order to make incidental, consequential, supplemental or transitional provision or savings amending primary or secondary legislation (whenever made), where that order applies to a new licensable marine activity in ABNJ designated as an activity added to licensing in contemplation of the UK's obligations under Part 3 or, in respect of an activity in ABNJ, under Part 4 of the BBNJ Agreement. Section 74 orders may be needed to make new exemption provision in relation to such new licensable marine activities in ABNJ to ensure that the marine licensing regime in ABNJ is proportionate while still meeting the requirements of the BBNJ Agreement.

67. Regulations made under this power will be subject to the negative procedure, unless it makes consequential etc provision amending primary legislation in which case affirmative procedure applies.

Committee consideration of clauses 14(2) and (3)

68. At its meeting on 28 October, the Committee acknowledged that the powers in clause 14 are likely to be used in relation to mostly reserved matters, and that equivalent powers have been delegated to Scottish Ministers to make provision in relation to devolved matters, and as such it could likely be content with the powers in principle.

69. However, given that the Scottish Government had not come to a view on those provisions, the Committee asked the Scottish Government to set out in full its concerns with the provisions.

70. The Scottish Government explains in its response that there is currently an overlap in responsibilities between the UK and Scottish Governments regarding licensable marine activities in ABNJ, and that administrative arrangements are currently in place in Scottish secondary legislation to avoid double regulation. Under the Bill, the overlap continues meaning that the powers under the 2009 Act as well as those

under the Marine (Scotland) Act 2010 ("the 2010 Act") could be used to regulate Scottish marine licensable activities in ABNJ.

71. The Scottish Government also explains that it is in the process of engaging with the UK Government to find an appropriate split of responsibilities for the licensing of marine activities in ABNJ. It is proposed that the Scottish Ministers will be the appropriate licensing authority for activities that fall within devolved competence. A Defra/Scottish Government joint consultation was launched on 21 November 2025, which proposes dividing responsibilities for EIA and marine licensing in ABNJ, clarifying which marine activities are under the 2009 Act (administered by the Marine Management Organisation and UK Government) versus those covered by the 2010 Act (administered by Scottish Ministers).
72. The Committee considers that it appears appropriate that a split in responsibilities is being sought based on the devolved/reserved split. Based on that intended approach and given the equivalent powers for Scottish Ministers to make provision within devolved competence, the Committee accepts the powers in principle. However, it calls on the Scottish Government to keep the Parliament updated as to the results of the consultation and the final agreement on the split of responsibilities.

- 73. In relation to clauses 14(2) and (3), the Committee accepts the powers in principle and is content with their associated parliamentary procedures. The Committee also calls on the Scottish Government to keep the Parliament updated as to the results of the consultation, and the final agreement on the split of responsibilities.**

Clause 16(1): Power to make regulations for the purpose of implementing any standards or guidelines in respect of EIA that may be adopted by the Conference of the Parties under Article 38 of the BBNJ Agreement

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: draft affirmative where amending primary legislation, negative where amending secondary legislation

Provision

74. Clause 16(1) provides that the Secretary of State may by regulations make such provision in relation to a licensable marine activity as the Secretary of State considers appropriate for the purpose of implementing any Article 38 standards or guidelines. This will enable the UK to align its domestic marine licensing regime with the Environmental Impact Assessment requirements set out in the BBNJ Agreement.
75. Article 38 standards or guidelines are standards or guidelines that may be adopted by the Conference of the Parties from time to time.
76. Regulations made under clause 16(1) are subject to the affirmative procedure where amending primary legislation, negative where amending secondary

legislation.

Committee consideration

77. The UK Government states in its DPM that a delegated power is needed here as the nature of the standards and guidelines that the BBNJ CoP may adopt is currently unknown. It states that in order to ratify the BBNJ Agreement, the UK needs to have measures in place to implement future CoP decisions, to comply with its obligations under the BBNJ Agreement, and that regulations are appropriate as it would be onerous to legislate through primary legislation for new standards and guidelines especially when such changes may need to happen quickly.
78. The Scottish Government is recommending that the Parliament consents to this clause. It states that it is a UK specific clause, which impacts on executive devolved competences of the Scottish Ministers in relation to marine licensing and EIA in the Scottish offshore region under the 2009 Act. The Scottish Government appears to be content that the power is to be exercised by the Secretary of State for the purpose of implementing any standards or guidelines under the BBNJ Agreement.
79. The Committee is content with the power in principle. Although the Scottish Ministers have powers under the 2009 Act, the exercise of which would then be subject to scrutiny in the Scottish Parliament, the 2009 Act predominately deals with reserved matters and as such it seems appropriate to the Committee that the power is conferred on the Secretary of State. This is especially so given that clauses 17 and 18, considered below, confer equivalent powers on the Scottish Ministers in relation to wholly devolved matters.
80. **The Committee accepts the power in principle and is content that the affirmative procedure will apply where the power is exercised to amend primary legislation, and negative procedure will apply where amending secondary legislation.**

Clauses 17(2) and 18(1)

Clause 17(2): Amendment to the existing order-making power in section 21 of the 2010 Act (power to add/remove licensable activities to the list in section 21). The amendment ensures Scottish Ministers can make any incidental, consequential, supplemental or transitional etc. provision amending an enactment whenever passed or made (including the 2010 Act itself) if the new activity has been designated under section 21(3A)

Power conferred on: Scottish Ministers

Power exercised by: Order

Parliamentary Procedure: Affirmative procedure

Provision

81. Clause 17(2) amends the 2010 Act to mirror changes in clause 14(2) of the 2009 Act. It allows section 165(1)(b) of the 2010 Act to be used to amend any enactment

where a section 21 order adds a new licensable marine activity in ABNJ, designated under section 21(3A) as linked to UK obligations under Part 3 or Part 4 of the BBNJ Agreement.

82. Section 21(1) of the 2010 Act lists activities requiring a marine licence, issued by Scottish Ministers. Activities in ABNJ may be added to this list to meet obligations under Part III or Part IV of the BBNJ Agreement.
83. Regulations made under this power are subject to the affirmative procedure.

Clause 18(1): Power for Scottish Ministers to make regulations for the purpose of implementing the UK's obligations under Part IV of the BBNJ Agreement in respect of an activity in ABNJ, including any standards or guidelines in respect of EIA that may be adopted by the Conference of the Parties under Article 38 of the BBNJ Agreement.

Power conferred on: Scottish Ministers

Power exercised by: Regulations

Parliamentary Procedure: affirmative procedure when amending an Act of Parliament or an Act of Scottish Parliament, otherwise the negative procedure

Provision

84. This power will enable the Scottish Ministers, amongst other things, to amend the marine licensing regime in Part 4 of the 2010 Act and the MWR Scotland, and to make consequential, supplementary, incidental, transitional, transitory or saving provision amending or repealing primary or secondary legislation (whenever passed or made).
85. Regulations made under this power are subject to the affirmative procedure when amending an Act of Parliament or an Act of Scottish Parliament, otherwise the negative procedure applies.

Committee consideration of clauses 17(2) and 18(1)

86. At its meeting on 28 October, the Committee took the opportunity to ask the Scottish Government whether it considered that a consultation requirement should apply in respect of both powers. This was in light of the consultation requirement attached to the existing power in section 32(5) of the 2010 Act.
87. The Scottish Government's response explains that both powers would be used to implement obligations in the BBNJ agreement. As such, the scope for divergence is expected to be limited, thereby providing consultees with little prospect of exerting meaningful influence on policy direction.
88. The Scottish Government also states that action may require to be taken urgently to remain compliant with obligations under the BBNJ Agreement, and a formal requirement to consult would hinder the ability to do so.
89. In light of the Scottish Government's explanation, the Committee is content with the powers in principle, and their associated parliamentary procedures.

90. The Committee accepts the powers in principle and is content with their associated parliamentary procedures.

Clause 17(3): Amendment to the existing order-making power under section 32 of the 2010 Act (the power to specify licence exemptions) to enable incidental, consequential, supplemental or transitional etc. provision amending an enactment whenever passed or made, including the 2010 Act itself. The amendment enables such consequential etc. provision to be made where a section 32 order makes exemption provision in relation to a new licensable marine activity in ABNJ designated under section 21(3A).

Power conferred on: Scottish Ministers

Power exercised by: Order

Parliamentary Procedure: Affirmative procedure

Provision

91. Clause 17 expands the Scottish Ministers' powers when making an order under section 32 of the 2010 Act to exempt certain marine activities from requiring a marine licence.
92. Specifically, if the exempted activity is one designated under section 21(3A) of the 2010 Act, the Scottish Ministers may also include consequential amendments to other legislation, regardless of when it was enacted, using the power under section 165(1)(b). This ensures that any necessary legal adjustment can be made to support the exemption order effectively.
93. Regulations made under this power are subject to the affirmative procedure.

Committee consideration

94. The UK Government states in its DPM that clause 17(3) makes technical amendments to section 32 of the 2010 Act, similar to those in clause 14(3) for section 74 of the 2009 Act. It explains that it clarifies that where an exemption order under section 32 relates to a newly designated licensable marine activity under section 21(3A), in line with the UK's obligations under Part 3 and Part 4 of the BBNJ agreement, the order may include consequential amendments to other legislation under section 165(1)(b).
95. Part 3 of the BBNJ agreement concerns ABMTs and Part 4 requires regulation of planned activities in ABNJ that may have significant or uncertain effects. To meet these obligations the Scottish Ministers may use this power to designate new licensable activities under section 21 of the 2010 Act and use exemptions to tailor the regime appropriately.
96. The Scottish Government recommends consenting to this clause as it incorporates changes that it had requested pre-introduction to take account of devolved aspects, ensuring effective and coherent implementation of these provisions of the Bill in a Scottish context.

97. The Committee considers that the power is limited in that it may only be used to make necessary provision to ensure the licensing regime functions as intended. Given that the 2010 Act relates to devolved matters, it appears appropriate to the Committee that this power is conferred on the Scottish of Ministers. On that basis, the Committee accepts the power in principle.

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

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 EORs so that EOR regulations can be used to make provision in relation to licensable marine activities in ABNJ.

Power 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.

Power exercised by: Regulations

Parliamentary Procedure: Section 252(10) and Schedule 24 of the 2023 Act set out the requirements for the scrutiny of EOR regulations made by the Secretary of State or a devolved authority acting alone, and for EOR regulations made by the Secretary of State acting jointly with one or more devolved authority. EOR regulations made under section 153 which require EORs in relation to licensable marine activities in ABNJ will be subject to the affirmative procedure in the UK Parliament or the corresponding procedure in the devolved legislatures.

Provision

99. Clause 19 amends section 154 of the 2023 Act to ensure that environmental outcomes reports (“EOR”) regulations, made under Part 6 of the 2023 Act, can make provision about licensable marine activities in the ABNJ, and that Part 4 of the BBNJ Agreement, as it applies to licensable marine activities in ABNJ, can be implemented through any future EORs framework.
100. Regulations made under clause 19 are subject to the affirmative procedure.

Committee consideration

101. At its meeting on 28 October, the Committee agreed to ask the Scottish Government how it intends to facilitate scrutiny of any exercise of the powers in Part 6 of the 2023 Act as amended by clause 19 by the Secretary of State with the consent of the Scottish Ministers.
102. The Scottish Government confirmed in its response that its view is that the powers fall within the scope of SI Protocol 2, and therefore the Parliament will have an opportunity to scrutinise any such decision to consent to regulations made by the Secretary of State.

103. **In light of the above, the Committee is content with the power in principle, and notes the Scottish Government's confirmation that the powers in Part 6 of the 2023 Act as amended by clause 19 fall within the scope of SI Protocol 2.**

