



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 7 January 2026  
SP Paper 951  
1st Report, 2026 (Session 6)

## **Net Zero, Energy and Transport Committee**

# **Net Zero, Energy and Transport Committee Report on the Legislative Consent Memorandum on the Biodiversity Beyond National Jurisdiction Bill**



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# Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Transport and the Cabinet Secretary for Climate Action and Energy, with the exception of matters relating to just transition; and on matters relating to land reform, natural resources and peatland, Scottish Land Commission, Crown Estate Scotland and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands.



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# Introduction

1. The [Biodiversity Beyond National Jurisdiction Bill](#) was introduced by the UK Government in the House of Commons on 10 September 2025. On 25 September 2025, the Scottish Government lodged a [Legislative Consent Memorandum \(LCM\)](#) on the Bill. The LCM was subsequently referred to the Net Zero, Energy and Transport Committee, meaning it must report to the Scottish Parliament on it.
2. A [supplementary LCM](#) was lodged on 22 December. It is expected this will also be referred to the Committee.
3. According to the Bill's explanatory notes, the Bill is intended to enable the UK to implement an international obligation – “Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction” (the BBNJ Agreement). The UK signed the BBNJ Agreement on 20 September 2023.
4. The overall objective of the BBNJ agreement is:
  - ” to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.<sup>i</sup>
5. Around two-thirds of the world's oceans are considered to be international waters (referred to in the BBNJ agreement as ‘areas beyond national jurisdiction’ but also known as the ‘high seas’). In these areas, all countries have a right to fish, ship and do research. However, it's estimated only about 1% of these waters have been protected<sup>ii</sup> leaving the marine environment in the vast majority of these waters vulnerable to exploitation and threats such as overfishing.

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i [BBNJ Agreement | Agreement on Marine Biological Diversity of Areas beyond National Jurisdiction](#)

ii [What is the UN High Seas Treaty and why is it needed? - BBC News](#)

# Content of the LCM and supplementary LCM

6. The LCM sets out that the consent of the Scottish Parliament is being sought for:
  1. Clauses 2-9: implementation of Part II of the BBNJ Agreement. These clauses establish obligations to share the benefits of research into, and utilisation of, Marine Genetic Resources and associated Digital Sequence Information from areas beyond national jurisdiction. They include requirements for notification pre- and post-collection, storage, access, and reporting.
  2. Clauses 11 and 13: implementation of Part III of the BBNJ Agreement. These clauses grant powers to the Secretary of State to implement decisions by the BBNJ conference of the parties to establish, manage and enforce area-based management tools for the purpose of protecting the marine environment in areas beyond national jurisdiction.
  3. Clauses 14-19: implementation of Part IV of the BBNJ Agreement.
    - a. Clauses 14-16 amend the Marine and Coastal Access Act 2009 to provide for powers to align the marine licensing regime with the BBNJ process in respect of activities in or impacting areas beyond national jurisdiction.
    - b. Clauses 17 and 18 amend the Marine (Scotland) Act 2010 to provide the Scottish Ministers with powers to amend the Scottish marine licensing regime as required to align with the BBNJ requirements in respect of activities in or impacting areas beyond national jurisdiction with a nexus to Scotland.
    - c. Clause 19 amends the Levelling-up and Regeneration Act 2023 to ensure that Environmental Outcome Reports, if implemented in the future, have sufficient territorial scope to apply to planned marine activities in areas beyond national jurisdiction.
7. The Scottish Government also considers that clause 10 requires legislative consent. Clause 10 places an obligation on the Secretary of State to publish guidance, approved by the UK Parliament, relating to Part 2 of the Bill (on Marine Genetic Resources). The LCM states that “the Scottish Government will work with the UK Government to understand why it considers that consent is not required for this provision”.
8. The Scottish Government recommends consent to clauses 15 to 19. On the other clauses, the Scottish Government “takes no position”. The LCM states that:

” the remaining clauses that engage legislative consent require a longer timeframe to work through to assess their implications and refine policy options. The Scottish Government will continue to work with the UK Government to fully assess the devolved aspects of the Bill and identify any necessary amendments during the passage of the Bill.
9. The LCM says that a supplementary LCM will be lodged updating on these

provisions “when the Scottish Government has reached a position”.

10. The supplementary LCM relates to an amendment made at Westminster that insert a new clause after clause 17 and consequential amendments to clause 18 (which the Scottish Government already recommended should be consented to in the original LCM). The new clause amends the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017. These regulations set out the Environmental Impact Assessment process for marine licences issued by the Scottish Ministers. The amendments to the regulations align this process with those that apply to activities in ABNJ under Part IV of the BBNJ Agreement. This could have been done under the power provided in clause 18, but is now being done on the face of the Bill instead. The LCM states that the amendments were tabled with the agreement of the Scottish Government as it "will ensure that the necessary changes are in place to support timely ratification of the BBNJ Agreement by the UK". The Scottish Government therefore recommends consent to the new clause, and continues to recommend consent to clause 18. This supplementary does not update on any other clause.
11. The Committee received a letter from the Cabinet Secretary on 31 December stating that intergovernmental agreement on the remaining clauses had been reached. It states that the Scottish Government intends to lodge a supplementary LCM in early January recommending that the Scottish Parliament gives consent to the whole Bill. However, the letter states that "The final content of the next LCM is still subject to confirmation that amendments are tabled as expected, and to approval by my ministerial colleagues in the Scottish Government".

# Net Zero, Energy and Transport Committee Consideration

12. Given the passage of time, the Committee [wrote to Gillian Martin MSP, Cabinet Secretary for Climate Action and Energy on 29 October](#) requesting an update on the clauses in relation to which the Scottish Government had not set out its position in the 25 September LCM. [A response was received on 7 November](#). It set out that intergovernmental negotiations were ongoing, that certain assurances were being sought, and that amendments may be required in a number of areas. It said any such amendments should be lodged by early December, with a corresponding supplementary LCM then lodged in mid-December. This timetable subsequently slipped and at the time of writing the amendments have not been tabled, meaning no further supplementary LCM setting out a concluded position on the whole Bill has been lodged.
13. The Committee [wrote to the Cabinet Secretary again on 18 November](#) with specific questions on some of the provisions in the Bill, specifically in clauses 9, 11 and 13. [A response was received on 26 November](#). The Cabinet Secretary said: "I am not currently able to say more beyond the positions set out in my original letter regarding clauses 9, 11 and 13 of the Bill."
14. The Cabinet Secretary and supporting officials [gave evidence](#) on 9 December.
15. A summary of key dates is set out below:
  - 10 September 2025 - Bill introduced at Westminster
  - 25 September 2025 - LCM lodged by the Scottish Government (taking no position on certain clauses)
  - 29 October 2025 - the Committee wrote to the Cabinet Secretary requesting an update
  - 7 November - response from Cabinet Secretary received (continuing to take no position)
  - 18 November - the Committee wrote to the Cabinet Secretary with questions on specific clauses
  - 26 November - response from the Cabinet Secretary received (saying nothing more on those clauses)
  - 8 December - amendments tabled triggering the requirement for a supplementary LCM
  - **9 December 2025 - evidence session with the Cabinet Secretary**
  - 22 December 2025 - supplementary LCM lodged relating to 8 December amendments
  - 31 December 2025 - letter from the Cabinet Secretary confirming intergovernmental agreement had been reached on the remaining clauses

- 6 January 2026 - amendments tabled giving effect to the intergovernmental agreement
- "Early January" (after the publication of this report) - supplementary LCM expected relating to the 6 January amendments
- 12 January 2026 (after the publication of this report) - last amending stage at Westminster scheduled to begin

## Overall position

16. The Cabinet Secretary stated in her opening remarks on 9 December that the Scottish Government supports the aims of the Bill and "we are keen to ensure that, with the Parliament's consent, the UK can ratify the agreement in time for it to take place at the first conference of the parties." However, she stated that the Scottish Government's support for the Bill as introduced is "not straightforward" due to the "difficult timeline" and the "complex mix of devolved and reserved competences covering a wide range of policy areas, which was not reflected in its initial drafting".

<sup>1</sup> On the "difficult timeline" Cabinet Secretary stated: "We were not afforded sufficient time prior to introduction to engage with the devolved aspects, which meant that, although we managed to secure rapid amendment to certain clauses for introduction, the remainder have had to be analysed and negotiated in parallel with the Bill's passage". She said this was why the LCM reserved its position on certain clauses and described her "deep disappointment and frustration that the timeline has been so tight, and that I have not been able to provide a full LCM to the Committee". <sup>2</sup>

## Position on remaining clauses

17. The Cabinet Secretary set out in her opening remarks that she was able to speak to the LCM and the amendments to clause 18 that had been lodged. On the remaining clauses she stated: "where we are still engaged in intensive negotiation, I can speak to our general approach to robustly protecting devolution". <sup>3</sup> Therefore, in line with her previous responses to the Committee's letters, she did not outline specific concerns on a clause by clause basis, or state what amendments the Scottish Government were seeking. In terms of a "general approach", she stated that:

” We are negotiating sufficient protections. A number of protections are on the table, which means that they are matters of discussion between me and the UK Government Minister right now. I said that I would try my best to let the Committee know the outcome of those negotiations, so that you will have notice of what we have agreed to. However, while those negotiations are on-going, you will have to forgive me if I do not run through a list of potential protections that we would or would not seek to have in the Bill, because those are still being negotiated. I hope that you will respect that. <sup>4</sup>

18. However, in the discussion that followed, clauses 9, 11 and 13 were highlighted as being subject to negotiation. These are the same clauses that the Committee requested further information on in its correspondence with the Cabinet Secretary. Clauses 9 and 11 (as well as clauses 21 and 25) were also highlighted in the Delegated Powers and Law Reform Committee [report](#), which asks the Scottish Government to set out in its supplementary LCM:

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.
19. Clause 9 sits within a part of the Bill imposing obligations relating to the collection and utilisation of marine genetic resources. It provides a power for the Secretary of State to make regulations in relation to marine genetic resources, "including benefit sharing, enforcement and conflict avoidance". The Cabinet Secretary indicated that for this clause she would like to see a mechanism for the Secretary of State to seek the consent of the Scottish Ministers before exercising this power in devolved areas. She did not expect that this would impact on a lot of activities but stated: "the fundamental bedrock is to ensure that the UK Government does not act in a way that overrides devolved competence, so that is what we are seeking".<sup>5</sup>
20. Clause 11 enables the Secretary of State to implement the area-based management tools through regulations. A Scottish Government official set out a similar concern as for clause 9:
- ” The particular concern for the Scottish Government is to make sure that, for any area-based management tools, Scottish Ministers have an appropriate oversight role and input regarding the impact on Scottish actors. That could take the form of consent or, as the Cabinet Secretary has explained, it could be concurrent powers or some other approach. We are considering all options, and that is the subject of on-going negotiations.<sup>6</sup>
21. Clause 13 contains a power for the Secretary of State to give directions in emergency situations. The Cabinet Secretary said this was "probably a more straightforward area of negotiation" but that "we need to make sure that, even in emergency situations, we are aware of what is happening and that we are involved when the Secretary of State takes action".<sup>7</sup> She stated that: "In reality, most of the actions that are associated with the Bill will be exercised by UK Government Ministers. We do not have any problem with that. It is just a case of them having our consent to do so".<sup>8</sup>
22. The Cabinet Secretary confirmed that, as things currently stood, she was opposed to consent being given for clauses 11 and 13.<sup>9</sup> An official stated that in respect of these clauses "we have been exploring legislative and non-legislative means to protect devolution and ensure that Scottish Ministers and institutions have their right and proper place".<sup>10</sup> Non-legislative agreements were confirmed to be expected, potentially alongside changes to the Bill.
23. Because the position was often set out in general terms rather than on a clause by clause basis, it is not entirely clear for which of those clauses mentioned in the LCM the Scottish Ministers are seeking a consent mechanism, concurrent powers, or

non-legislative commitments from the UK Government. However, one option that the Cabinet Secretary stated was "not worth pursuing" was requiring that the Scottish Ministers be consulted before powers are exercised by the Secretary of State: "We could just be told what is happening quite quickly before something is agreed, or whatever. With the BBNJ Bill, you can see how late it was when we were able to find out that devolved competences were being looked at".<sup>11</sup>

## **Consultation**

24. The Committee also raised with the Cabinet Secretary questions about potential impacts of the Bill on marine licensable activities, particularly fishing, and whether there had been consultation and engagement with those potentially affected. The Cabinet Secretary responded: "That discussion might more be one to have with the UK Government, but Scottish institutions are included in the explanatory notes for the Bill".<sup>12</sup> She went on to say that the Scottish Government wants to ensure it has engaged with all stakeholders that might be affected as the guidance is developed after the Bill is passed. She highlighted a UK Government consultation, running from 21 November to 19 December "on the implementation of part 4 of the BBNJ agreement, as it relates to licensable marine activities".<sup>13</sup> She described this as a "joint consultation" as the Scottish Government were involved in its preparation. She said that this consultation would be useful in understanding what activities are currently taking place beyond national jurisdictions: "I have given the convener a few instances of things that we know with regard to marine research and whatever, but, through the consultation, we hope to have a better understanding of who is carrying out what activities, and what the connection is to both the UK and Scotland".<sup>14</sup>

## **Enforcement**

25. The Committee also questioned potential issues with enforcement given only certain nations are signatories to the BBNJ agreement. The Cabinet Secretary highlighted that Scotland is not a signatory to the BBNJ agreement as a nation state, so it is for the UK Government to establish how the agreement will be enforced.<sup>15</sup> An official added that the agreement does rely on state parties enforcing it against their own nationals and that there are various civil and criminal sanctions provided for in the Bill. She agreed that enforcement on the high seas is a challenge but highlighted methods such as remote surveillance. She also highlighted an investment risk for people acting illegally in the high seas. When the Committee highlighted that these actions would only be illegal if the nation has signed up to the agreement the official replied that: "Our focus is on ensuring standards for Scottish actors".<sup>16</sup>

## **Scotland and the Convention**

26. The Committee also discussed with the Cabinet Secretary the manner in which the Scottish Government is able to input into decision making, in absence of being a direct party to the Convention. An official said:

” we expect that the BBNJ agreement conference of the parties will follow the concordat on international relations, which is part of the memorandum of understanding between the UK Government and the devolved Administrations. It stipulates that we will be consulted on matters to be decided at the conference of the parties should they have devolved impacts. We are exploring that with the UK Government, but we expect there to be quite weighty involvement when there are devolved matters.<sup>17</sup>

27. The Cabinet Secretary added: "I was not at the negotiations on the BBNJ. We do not have a seat at the table of the conference of the parties. We rely on the UK Government to give us information about how it is negotiating and what it is negotiating about". She stated that she had "no issues with the BBNJ agreement" but because it is being enacted by the UK Government she wants to ensure Scottish Ministers have consent to matters in devolved areas.<sup>18</sup>

### LCM Procedure

28. The LCM procedure in Standing Orders is intended to ensure that the lead Committee has sufficient information from the Scottish Government, and sufficient time to reflect on it (including taking such evidence as it considers necessary) to make a report that will help the Scottish Parliament take an informed decision on consent.
29. The Committee welcomes the Scottish Government alerting the Parliament to the UK Bill in good time. But the LCM lodged for this Bill on 25 September lacked the detail required for the Committee to undertake effective scrutiny. In cases where an LCM effectively sets out a holding position on any significant matter, there is an expectation that the Scottish Government will provide such additional information to enable that deliberation before the Bill is at too advanced a stage at Westminster. This is irrespective of whether particular amendments that the Scottish Government considers key have been tabled or agreed to.
30. The detail of the amendments the Scottish Government is seeking, or other reassurances from the UK Government, have still not been set out clearly and were not outlined at all until the 9 December evidence session. At this point, the Bill was already at the Committee Stage in the House of Lords and we understand that consent is required in January in order for the Bill to be passed in time to comply with the BBNJ agreement. This leaves no time for the Committee to scrutinise the respective positions of the Scottish and UK governments.
31. The Committee accepts that the Scottish Government may have been motivated in this case to seek to provide the Parliament with an informed view on whether consent should be granted, and considered that it would be best to do so only following the conclusion of discussions with the UK Government about certain provisions in the Bill. However, it is doubtful whether this is in keeping with either the spirit or the letter of Chapter 9B of Standing Orders.
32. Had the Committee received sufficiently detailed information on the Scottish Government's concerns earlier in the process, it would have been able to report in good time to inform these discussions. A short report could then have been produced when amendments were lodged, the Committee having already set out previously its substantive views on the Bill. This would have allowed MSPs

contributing to the debate on the legislative consent motion the advantage of time to read the Committee's views, and would have allowed the Committee the opportunity to potentially use its scrutiny to inform the Bill.

## Conclusion

33. **The Committee recommends that the Scottish Parliament give its consent to the UK Parliament legislating in this area in respect of clauses 15 to 19, as proposed in the Scottish Government's draft motion.**
34. **On clauses 2 to 14 the Committee makes no recommendation. While it was useful to receive an update from the Scottish Government on 31 December, not having a clear Scottish Government position on these clauses before then, or details of the issues with which they were concerned, means the Committee is unable to make a recommendation to the Parliament. In addition, even had we had more time to consider the detail of the agreement the Scottish Government considers it has secured from the UK Government on late amendments, we note that this agreement is contingent on the amendments being laid along the lines the Scottish Government expects and then agreed to. This is not a basis on which a parliamentary committee can be expected to reach a concluded and informed position on consent.**
35. **We understand a second supplementary LCM is expected in due course that will set out in detail what the Scottish Government's concerns have been, and what they have negotiated. The Committee is highly unlikely to have time to consider this supplementary LCM given the anticipated timescales at Westminster (which we recognise that the Scottish Government cannot control). The Parliament must therefore take a position on the UK Bill on the basis of the assurances of the Scottish Government in the supplementary LCM and 31 December letter, without any Committee scrutiny of this position. The Committee finds this frustrating; it means we cannot do the job allocated to us by our Standing Orders.**
36. **If the LCM process is made beholden to intergovernmental discussions, there is a risk of the Parliament becoming a bystander to the consent process rather than a participant. An effective process requires committees to be given meaningful information about the Scottish Government's position on UK Bills so that committees are able to bring their own recommendations to the table to inform intergovernmental discussions.**
37. **In particular, the Committee recommends that if LCMs setting out "holding positions" are lodged, more substantive information must be provided as soon as possible – not at the conclusion of intergovernmental discussion. 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. The Committee appreciates that some sensitivity is required around the fact that the Scottish Government is negotiating for changes with the UK Government. However, it is not clear why there should be any particular secrecy around the Scottish Government's general negotiating position, which should be a public matter. Indeed, when giving evidence on 9 December, Scottish**

**Government witnesses were at times able to describe some of their main "asks" in relative detail. The Scottish Government should reflect on the consistency of its approach.**

- 38. Repeated instances of the Committee being left without the ability to produce a meaningful report to aid Parliamentary scrutiny undermines the Sewel Convention, which is based on the principle of *informed* consent. It concerns us that the Parliament is being viewed as the final "rubber-stamp", on intergovernmental negotiations, rather than playing the more meaningful role envisaged for it under the Convention, despite successive governments in London and Edinburgh undertaking to uphold it. We view this as a structural issue that all parties must work to resolve. We urge both the UK and Scottish governments to reflect on this, and each do what they can to ensure this Parliament is respected.**
- 39. This is not the first time the Committee has had to make comments along these lines. We have raised this matter in our reports on the Great British Energy Bill LCM and supplementary LCM, and in correspondence with the Cabinet Secretary, Conveners Group, Standards, Procedures and Public Appointments Committee, Leader of the House of Commons and Speaker of the House of Commons. We have also frequently raised it in evidence sessions and the Convener has sought to highlight it in Chamber speeches made on behalf of the Committee. Action now needs to be taken to address this dysfunctional process.**
- 40. Though unable to make a recommendation to the Parliament on whether to consent to clauses 2-14 for the reasons outlined above, the Committee does highlight the correspondence we have had with the Cabinet Secretary in relation to clauses 9, 11 and 13 and the potential significance of these powers.**
- 41. The Committee also highlights the Delegated Powers and Law Reform Committee's consideration of clauses 9, 11, 21 and 25. We agree with that Committee that the information set out in paragraph 18 should be included in the second supplementary LCM when it is laid.**

- 1 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 7
- 2 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , cols 7-8
- 3 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 8
- 4 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 10
- 5 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 12
- 6 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 13
- 7 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 13
- 8 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 14
- 9 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 12
- 10 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 18
- 11 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 19
- 12 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 15
- 13 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 16
- 14 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 16
- 15 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 21
- 16 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 22
- 17 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , col 18
- 18 Net Zero, Energy and Transport Committee, [Official Report, 9 December 2025](#) , cols 22-23

