



Delegated Powers and Law Reform Committee

The Rt Hon Grant Shapps
Secretary of State for Business, Energy and
Industrial Strategy
By email

T1.01
Chamber Office
EDINBURGH
EH99 1SP

Direct Tel: 0131-348-5212
(RNID Typetalk calls welcome)
(Central) Textphone: 0131-348-
5415
DPLR.Committee@parliament.scot

24 November 2022

Dear Secretary of State

Energy Bill

On 15 November the Scottish Parliament's Delegated Powers and Law Reform Committee's ("DPLRC") considered the [Legislative Consent Memorandum](#) ("the LCM") for the [Energy Bill](#) ("the Bill").

The remit of the Committee, under [rule 6.11.1\(b\) and \(c\)](#) of the Scottish Parliament's Standing Orders, includes considering and reporting on proposed powers to make subordinate legislation in particular bills or other proposed legislation.

The Committee considered the delegated powers in the Bill that are exercisable within devolved competence and agreed to ask the questions set out below.

Clauses 171 and 172 – Amendment of the Heat Networks (Scotland) Act 2021

The Committee noted that clauses 171 and 172 enable the Secretary of State by regulations to amend primary legislation recently enacted by the Scottish Parliament (the Heat Networks (Scotland Act 2021)). However, there is no statutory requirement for the Secretary of State to obtain the Scottish Ministers' consent before exercising the powers. The Committee would be grateful for an explanation as to **why the UK Government considers it appropriate that clauses 171 and 172 confer powers on the Secretary of State to amend Scottish primary legislation without a requirement to obtain the consent of the Scottish Ministers.**

Clause 238 - Power to make consequential provision etc.

The Committee noted that this power is capable of being exercised for purposes within the legislative competence of the Scottish Parliament but is not subject to a requirement to obtain Scottish Ministers' consent when so exercised. The Committee also noted that the power is framed in unusually broad terms for a consequential provision. The Committee would be grateful for an explanation as to:

- (a) why the UK Government considers it appropriate that the power has been conferred so that it is exercisable by the Secretary of State in relation to devolved matters and when amending devolved legislation;**
- (b) why the UK Government considers it appropriate that when the power is exercised by the Secretary of State in relation to devolved matters or to amend devolved legislation, there is no requirement to obtain the consent of the Scottish Ministers;**
- (c) whether the UK Government intends to amend the Bill to either ensure the power is conferred solely on the Scottish Ministers in relation to Scotland, or to require UK Ministers, when exercising the power in relation to devolved matters, to obtain the consent of the Scottish Ministers; and**
- (d) why the UK Government considers it appropriate for a consequential provision to be cast in such unusually broad terms.**

Miscellaneous delegated powers

Finally, there are several other clauses which contain delegated powers which touch upon areas of devolved competence, namely:

- Clause 2(3) (Licensable means of transportation)
- Clause 5 (Exemption from prohibition)
- Clause 6 (Revocation or withdrawal of exemption)
- Clause 8 (Power to create licence types)
- Clause 9 (Procedure for licence applications)
- Clause 10 (Competitive tender for licences)
- Clause 12 (Standard conditions of licences)
- Clause 32 (Enforcement of obligations of licence holders)
- Clause 50 and 51 (Transfer schemes)
- Clauses 57, 71, 72, 73, 74 and 78 (Revenue support contracts)
- Clause 68 and 69 (Allocation bodies and revenue support contracts)
- Clauses 82 and 83 (Financing of costs of decommissioning etc.)
- Clauses 90 and 91 (CCUS strategy and policy statement)
- Clause 96 (Access to infrastructure)
- Clause 168(7) (Heat networks regulation)

The Committee would be grateful for an explanation as to:

- (a) why the UK Government considers it appropriate that these powers have been conferred so that they are exercisable by the Secretary of State in relation to devolved matters;**
- (b) why the UK Government considers it appropriate that when these powers are exercised by the Secretary of State in relation to devolved matters there is no requirement to obtain the consent of the Scottish Ministers; and**
- (c) whether the UK Government intends to amend the Bill to either ensure the powers are conferred solely on the Scottish Ministers in relation to Scotland, or to require UK Ministers when exercising the power in devolved areas to obtain the consent of the Scottish Ministers.**

I should be grateful if you would respond by **Wednesday, 7 December 2022** to allow the Committee to report on the LCM prior to any final consideration by the Scottish Parliament.

I am copying this letter to Michael Matheson MSP, Cabinet Secretary for Net Zero, Energy and Transport.

I look forward to hearing from you.

Yours sincerely

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee