

Energy Bill

Supplementary Delegated Powers Memorandum

Introduction

1. This Memorandum has been prepared by the Department for Energy Security and Net Zero (“the Department”) to assist with scrutiny of the Energy Bill (“the Bill”). The section of this Memorandum relating to the amendments which insert new clauses on energy-intensive industries has been prepared jointly with the Department for Business and Trade.
2. This Memorandum describes powers in the Bill conferring power to make subordinate legislation and other delegated powers which were added or amended at the Committee stage in the House of Commons (second House).
3. This Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced and supplementary Delegated Powers Memoranda on amendments to the Bill in the House of Lords.

Amendments to Part 13: Civil Nuclear Sector

New clause (Chapter 1 – Civil Nuclear Sites): Further provision relating to the Convention on Supplementary Compensation for Nuclear Damage

Power conferred on: Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Affirmative (Henry VIII in respect of amendments to the Nuclear Installations Act and other primary legislation)

Context and purpose

4. The UK’s participation in international Nuclear Third-Party Liability (NTPL) regimes is crucial to ensuring potential victims have compensation available in the highly unlikely event on a nuclear incident. Additionally, it is important for building investor confidence in new nuclear as such regimes ensure channelling of liabilities to the nuclear operator and place limits on their liability.
5. The UK is currently party to the Paris Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention) and the Brussels Convention Supplementary to the Paris Convention on Third Party Liability in the Field of Nuclear Energy (Brussels Supplementary Convention). These conventions are implemented domestically in the Nuclear Installations Act 1965 (NIA). The UK is seeking to enhance its nuclear third party regime by seeking accession to the Convention on Supplementary Compensation for Nuclear Damage (CSC).

6. The new clause gives the Secretary of State the power to make regulations in connection with the CSC, including provision for the purpose of facilitating the UK's accession to the CSC. The power can only be used to amend Schedule 20 of the Bill (before it enters into force), the NIA and any other enactments having effect in relation to a matter to which the CSC relates. As this power would enable amendments to primary legislation via regulations, it could be considered a Henry VIII power. This power will be subject to the affirmative procedure to ensure the opportunity for Parliamentary scrutiny.
7. Subsection (1) of the new clause sets out the purposes that the power to make regulations may be used for. These are, firstly, to ensure that the UK can implement the requirements of the CSC into UK domestic law. For example, this could involve making any further changes that are needed to facilitate the UK's accession to the CSC. Or, once the UK has acceded, it would enable the UK to adopt future amendments to the CSC or to exercise any of the optional provisions under the CSC.
8. The other aspect is to deal with any other matters arising out of, or related to, the CSC. For example, this might mean consequential changes that are needed in order to ensure the effective operation of the CSC – such as the way in which the international pooled funds work. It might be needed to ensure the CSC operates alongside the other NTPL conventions that the UK is (or may become in the future) party to. NTPL conventions evolve over time, and it is important for the UK to ensure smooth operation of the conventions it is party in order to remove barriers to investment and safeguard the interests of potential victims.
9. Regulations may amend the NIA and any other enactments having effect in relation to a matter to which the CSC relates. Subsection (3)(a) also enables Schedule 20 of the Bill to be amended, for example if any further changes are needed to ensure the UK's accession to the CSC following further engagement with international partners and industry - so prior to the commencement of clause 259 and Schedule 20, which commence on the coming into force of the CSC in respect of the UK.
10. As the UK is the first Paris Convention country to seek CSC accession, it is imperative that there is the ability to amend the domestic implementing legislation, if needed, to ensure that the UK can comply with its international obligations under both the CSC and other international NTPL conventions it is party to.

Justification for the power

11. A delegated power is necessary so that the Secretary of State can amend the domestic implementing legislation, if needed, to ensure that the UK can comply with its international obligations. In particular, the Department wants to ensure that the UK can accede to the CSC and respond to treaty changes or other issues in relation to the CSC, should they arise in future.
12. Given the complexities of the NTPL international conventions and the fact the UK is the first country in the world to accede to the CSC as well as being a Paris

Convention country, the Department considers that it would be prudent to have the ability to make amendments by secondary legislation.

13. The use of the power will be limited to certain purposes. Those purposes are, firstly, to implement the CSC into UK domestic law, for example to enable UK accession to the CSC or to respond to future treaty changes. It is common for NTPL treaties to evolve over time and be subject to change by the contracting parties. This power is therefore necessary to implement future treaty changes into domestic law, as needed.
14. As with other international NTPL treaties, the CSC also has optional provisions that the contracting parties may exercise. As such, the UK may need to further amend its implementing legislation in order to exercise an optional provision. This is particularly important in relation to the operation of the CSC shared international fund.
15. The second purpose is to deal with any other matters arising out of, or related to, the CSC. This is to enable the Department to respond to issues that come up in the future operation of the CSC, including consequential matters. For example, if a decision was taken in the future to increase the liability limits, this might have implications for the provision of the international pooled funds. The Department also needs to ensure that the CSC can operate effectively alongside the UK's other NTPL regimes. Additionally, as NTPL conventions evolve over time the Department needs to be able to respond to these changes to ensure the smooth operation of the conventions to safeguard the interests of potential victims and maintain confidence of industry.
16. The power can only be used to amend Section 20 of the Bill (before it enters into force), the NIA and any other enactments having effect in relation to a matter to which the CSC relates. There is precedent for a power of this nature. The UK is currently party to the Paris Convention and Brussels Supplementary Convention, and a similar delegated power exists in relation to these conventions in Section 76 of the Energy Act 2004. This power was used to make the Nuclear Installations (Liability for Damage) Order 2016 to amend the NIA in order to implement changes brought in by the 2004 protocols to the Paris and Brussels Conventions. The power in Section 76 also covers amendments to give effect to the and the Paris Convention and the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention.

Justification for the procedure

17. It is appropriate that regulations made under this new clause to amend the domestic legislation implementing the UK's requirements under the CSC are subject to sufficient Parliamentary scrutiny. The Department has therefore concluded that it is appropriate to use the affirmative procedure.

New Chapter: Energy Intensive Industries

New Clause: Electricity support payments for energy-intensive industries

Power conferred on: Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Affirmative

Context and purpose

18. On the 23rd February 2023, HM Government announced the British Industry Supercharger: providing further targeted measures to ensure the energy costs for key UK industries are in line with other major economies around the world – levelling the playing field for British companies across Europe. This is in order to counter the fact that Energy Intensive Industries (EIIs) in the UK have faced the steepest industrial electricity prices in Europe, due in part to Europe’s alternative policy regimes designed to shield industry from high energy costs.
19. One of the measures listed in the package commits HM Government to offer relief to EIIs on their network charging costs. These are the costs for the use of the electricity network.
20. The powers in this clause enable the Secretary of State to make regulations requiring payments (“electricity support payments”) to be made to a person who carries out an energy-intensive activity, for the purpose of alleviating the impact on the person of electricity costs (in particular, network charging costs). The compensation scheme is to be titled the Network Charging Compensation (NCC) Scheme. This power will be exercised by regulations. Through the regulations, the Secretary of State will make provision for determining eligibility and the corresponding application process for the proposed compensation scheme. The Government will make provision for the calculation of compensation payments to designated beneficiaries. The Secretary of State will also make provision for information sharing, enforcement of obligations and dispute resolution.
21. This clause enables the Secretary of State to appoint by regulations and subject to their consent a pre-existing person/persons to carry out functions as administrator with respect to the NCC Scheme.

Justification for the power

22. The Department considers that it is appropriate for the details of the scheme to be implemented via secondary legislation given details of the scheme will be technical in nature. There is an interdependence between the proposed NCC Scheme and the EII Support Levy (which will raise the revenue to fund the NCC Scheme). Therefore, it is considered appropriate that the details of these schemes be set out in regulations given the technical detail of each scheme will affect the other.

23. Finalisation of the policy will require decisions on whether the appointment of an external administrator would be appropriate. The Government will run a public consultation on the details of the mechanism for offering compensation on network charging costs. The consultation will also seek views on the compensation offer to eligible EILs. This consultation is due to commence in June 2023 and conclude in late summer 2023.
24. The Government's current policy proposal does not seek to interfere with the ability of the regulator to independently set network charges. However, the technical detail of the network charging regime may be subject to amendments between introduction of this measure to the Bill and the proposed implementation of the measure in 2025. Implementing the scheme through secondary legislation will enable the Government to take account of views raised during the consultation process, ensuring that the details of the scheme are fit for purpose.

Justification for the procedure

25. It is appropriate that the regulations under this clause to develop a new regime relating to the creation of a new compensation scheme are subject to sufficient Parliamentary scrutiny. The Department has therefore concluded that it is appropriate to use the affirmative procedure.

New Clause: Levy to fund electricity support payments

Power conferred on: Secretary of State

Power exercised by: Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

26. The NCC Scheme is to be funded via a charge on licenced electricity suppliers, who are expected to pass the costs onto their domestic and non-domestic consumers.
27. The powers in this clause enable regulations to be made requiring the payment of a levy (the EIL Support Levy). This will be used to fund the NCC Scheme and any other costs arising by virtue of the NCC Scheme or the EIL Support Levy. The regulations will make provision for the calculation of the levy rate to be applied to individual suppliers and establish the process by which the levy is paid by suppliers. It will also make provision for the sharing of information from suppliers to the administrator of the scheme or the Secretary of State in order to aid the calculation of the levy obligation or to confirm accordance with their obligations.

28. This clause also enables the Secretary of State to appoint by regulations and subject to their consent a person/persons to carry out functions as administrator with respect to the EII Support Levy.

29. The regulations will make provision for managing disputes or defaults on levy obligations from suppliers. They will also make provision for the establishment of the process for managing the risk of default in the event a supplier enters insolvency.

Justification for the power

30. The Department considers it appropriate that these powers are delegated to the Secretary of State and the details of the scheme to be implemented through regulations as they will be technical in nature. A public consultation will need to be undertaken in June 2023 which will seek the view of stakeholders on the details of the levy scheme. The responses to this consultation will help inform the final policy design.. As such it would not be prudent for the Bill to set out details of the levy design on whole range of issues where stakeholder input is critical to the design and successful implementation of the levy scheme.

31. Furthermore, given the interdependence between the proposed EII Support Levy and the NCC Scheme, it is considered appropriate that the details of these schemes be set out through regulations given the technical detail of each scheme will affect the other. For the above reasons, it is more appropriate that the proposed measure be implemented via secondary legislation.

Justification for the procedure

32. It is appropriate that the regulations under this clause to develop a new regime relating to the creation of a new levy are subject to sufficient Parliamentary scrutiny. The Department has therefore concluded that it is appropriate to use the affirmative procedure for regulations made by the Secretary of State under this power.