

HOUSE OF LORDS

Select Committee on the Constitution

4th Report of Session 2024–25

Great British Energy Bill

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Select Committee on the Constitution

The Constitution Committee is appointed by the House of Lords in each session “to examine the constitutional implications of public bills coming before the House and to keep under review the operation of the constitution and the constitutional aspects of devolution”.

Membership

The Members of the Constitution Committee are:

<u>Lord Anderson of Ipswich</u>	<u>Baroness Finn</u>
<u>Baroness Andrews</u>	<u>Lord Foulkes of Cumnock</u>
<u>Lord Beith</u>	<u>Baroness Goldie</u>
<u>Lord Burnett of Maldon</u>	<u>Lord Keen of Elie</u>
<u>Baroness Drake</u> (Chair)	<u>Lord Strathclyde</u>
<u>Lord Falconer of Thoroton</u>	<u>Lord Thomas of Gresford</u>

Declaration of interests

See Appendix 1.

A full list of Members’ interests can be found in the Register of Lords’ Interests:

<https://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

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Committee staff

The current staff of the committee are Kate Wallis (Clerk), Alice Edmonston (Policy Analyst) and Samuel Smith (Committee Operations Officer).

Professor Stephen Tierney and Professor Roger Masterman are the legal advisers to the Committee.

Contact details

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Great British Energy Bill

Introduction

1. The Great British Energy Bill was introduced in the House of Lords on 30 October 2024 having completed its House of Commons stages without amendment. Second reading took place on 18 November. Committee Stage is scheduled to begin on 3 December 2024.
2. The Government has established a company—owned solely by the Secretary of State—which is intended to be designated as ‘Great British Energy’ (GBE) under the powers in the Bill. The Government intends for Great British Energy to promote clean energy and boost the UK’s “energy independence” by working collaboratively with industry and the public sector to invest in and develop clean and renewable energy projects.¹

Disguised legislation

3. Clause 5 requires the Secretary of State to prepare a statement of strategic priorities for Great British Energy, which may be revised or replaced. The Secretary of State must consult with the devolved governments in preparation, or revision, of such a statement. The Secretary of State must lay any such statement before Parliament, though parliamentary approval is not required.
4. Great British Energy must ensure that its strategic plans are in accordance with the Secretary of State’s statement under clause 5. They must also update those plans in the event that the Secretary of State revises or replaces the statement.
5. Clause 6 enables the Secretary of State to issue directions to Great British Energy. Before issuing directions, the Secretary of State must consult with Great British Energy and other persons as considered appropriate. The Secretary of State must then publish and lay before Parliament any directions under this provision, though parliamentary approval is not required. Great British Energy “must comply” with any directions issued under clause 6.
6. In the Bill’s delegated powers memorandum, the Government describes the power in clauses 5 and 6 as having “some degree of legislative character” in that they will provide scope for the Secretary of State to steer and direct Great British Energy’s operations.² While the Government notes that, as the only shareholder of the company, the Secretary of State could influence the activities of Great British Energy under “normal principles of company law”³, in the light of the centrality of Great British Energy to the delivery of a significant policy initiative, **we are concerned that clauses 5 and 6 amount to ‘disguised legislation’**.⁴
7. This is of constitutional concern because there is no parliamentary oversight over the making of the statement of strategic priorities or the directions to

1 [Explanatory Notes to the Great British Energy Bill](#) [Bill 43 (2024–25)-EN], para 3

2 [Delegated Powers Memorandum to the Great British Energy Bill](#) [Bill 43 (2024–25)], para 9

3 [Explanatory Notes to the Great British Energy Bill](#) [Bill 43 (2024–25)-EN], para 20

4 The Delegated Powers and Regulatory Reform Committee has defined ‘disguised legislation’ as “instruments which are legislative in effect but often not subject to parliamentary oversight”. Delegated Powers and Regulatory Reform Committee, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive* (12th Report, Session 2021–22, HL Paper 106), para 89

Great British Energy. The constitutional impact is further exacerbated due to several factors. First, Great British Energy must ensure its strategic plans are in accordance with the Secretary of State's statement under clause 5 and "must comply" with any directions issued under clause 6. The powers of the Secretary of State under both provisions will therefore have legal consequences.⁵ Second, the statement of strategic priorities or directions to Great British Energy could be used to impact significant policy decisions, particularly in a field in which devolved and reserved powers intersect. Third, the statement of strategic priorities or directions to Great British Energy may include substantive, as opposed to minor procedural or technical, provisions with significant effects on its public policy objectives.

8. **We are concerned that clauses 5 and 6 do not offer an adequate degree of parliamentary oversight. *The House may wish to examine further the Secretary of State's powers in these clauses and consider whether they should be subject to parliamentary scrutiny.***

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Anderson of Ipswich
Baroness Andrews
Lord Beith
Lord Burnett of Maldon
Baroness Drake (Chair)
Lord Falconer of Thoroton
Baroness Finn
Lord Foulkes of Cumnock
Baroness Goldie
Lord Keen of Elie
Lord Strathclyde
Lord Thomas of Gresford

Declarations of interest

Lord Anderson of Ipswich
No interests declared
Baroness Andrews
No interests declared
Lord Beith
No interests declared
Lord Burnett of Maldon
No interests declared
Baroness Drake (Chair)
No interests declared
Lord Falconer of Thoroton
No interests declared
Baroness Finn
No interests declared
Lord Foulkes of Cumnock
No interests declared
Baroness Goldie
No interests declared
Lord Keen of Elie
No interests declared
Lord Strathclyde
No interests declared
Lord Thomas of Gresford
No interests declared

A full list of members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

Professor Stephen Tierney, University of Edinburgh, and Professor Roger Masterman, University of Durham, acted as legal advisers to the Committee. They declared no relevant interests.