

Report on the Statutory Instrument Consent Memorandum for the Energy Act 2023 (Consequential Amendments) Regulations 2024

June 2024



1. Background

1. The UK Government laid a draft of the Energy Act 2023 (Consequential Amendments) Regulations 2024¹ (the Regulations) before the UK Parliament on 13 May 2024.
2. Standing Order 30A states that a member of the government must lay a Statutory Instrument Consent Memorandum in relation to any statutory instrument, or a draft statutory instrument, laid before the UK Parliament by UK Ministers which makes provision (“relevant provision”) in relation to Wales amending primary legislation within the legislative competence of the Senedd.
3. On 14 May 2024, Jeremy Miles MS, the Cabinet Secretary for the Economy, Energy and Welsh Language (the Cabinet Secretary), laid before the Senedd a Statutory Instrument Consent Memorandum (the Memorandum)² for the Regulations, in accordance with Standing Order 30A.
4. On 21 May 2024, the Cabinet Secretary wrote to us to notify us of the Memorandum.³
5. On 22 May 2024, the Prime Minister announced that a general election would be held on 4 July 2024. The Leader of the House of Commons subsequently announced that Parliament would be prorogued on 24 May 2024.⁴
6. On 24 May 2024, the draft Regulations were approved by the UK Parliament⁵, and subsequently made into law.⁶

2. The Statutory Instrument Consent Memorandum

7. Part 5 of the *Energy Act 2023* (the 2023 Act) makes provision for the establishment of the National Energy System Operator, an independent, public

¹ [The Energy Act 2023 \(Consequential Amendments\) Regulations 2024 \(draft\)](#)

² Welsh Government, [Statutory Instrument Consent Memorandum: The Energy Act 2023 \(Consequential Amendments\) Regulations 2024](#), 14 May 2024

³ [Cabinet Secretary for Economy, Energy and Welsh Language](#), 21 May 2024

⁴ HC Deb [22 May 2024](#), vol 750, col 991

⁵ HC Deb [24 May 2024](#), vol 750, col 1163

⁶ [The Energy Act 2023 \(Consequential Amendments\) Regulations 2024](#)

corporation responsible for planning Britain's electricity and gas networks and operating the electricity system.

8. The establishment of the National Energy System Operator, and the granting of its licences, gives rise to the need to make consequential amendments to update references in legislation to gas and electricity licence holders.

9. The Regulations make the required consequential amendments; one of which is to section 6 of the *Environment (Wales) Act 2016* (the 2016 Act). Section 6 of the 2016 Act currently places a bio-diversity duty on public authorities in Wales, including on statutory undertakers which include “a gas transporter (within the meaning of Part 1 of the Gas Act 1986)”. As a consequence of the establishment of the National Energy System Operator, and the different licencing framework that now applies, Regulation 22 changes this reference to “a holder of a licence under section 7 or 7AA of the Gas Act 1986”.⁷

10. The Cabinet Secretary states at paragraph 9 of the Memorandum that Regulation 22 makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.

11. At paragraphs 10 and 11 of the Memorandum the Cabinet Secretary explains why, in his view, it is appropriate for the Regulations to make this provision:

“... it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in Wales. The change is noncontentious and technical in nature and makes a singular consequential change to primary legislation with the aim of clarifying which of the National Grid ESO's and National Gas Transmission's powers, rights, and duties the NESO will or will not inherit so that arrangements for the NESO may be commenced.

This UKSI is made under section 330 of the Energy Act 2023 which are powers the Senedd did not consent to. Notwithstanding that, now that these provisions are on the statute book we are committed to ensuring they are exercised responsibly.”

⁷ [The Energy Act 2023 \(Consequential Amendments\) Regulations 2024, regulation 22](#)

12. The Cabinet Secretary also states at paragraph 12 of the Memorandum that including such provision within a Senedd Bill would require Minister of the Crown consent:

“The amendment contained in the Regulations is made in relation to statutory undertakers in the Environment (Wales) Act 2016, which are reserved authorities and if the change were to be implemented by a Senedd Bill would require Minister of the Crown consent. The Regulations are being made using a Secretary of State only power contained in the Energy Act. The Welsh Ministers have no equivalent power in that Act to effect the change.”

3. Committee consideration

13. We considered the Memorandum at our meeting on 3 June 2024.⁸

Our view

14. We note the Memorandum and that there was no time for a consent debate to take place as a result of the calling of a UK general election.

15. There is however one matter we wish to raise. We note, as the Cabinet Secretary states, that the provision subject to the Memorandum would require Minister of the Crown consent if it were included in a Senedd Bill. We therefore believe that the Welsh Government should provide clarity as to its interpretation of Standing Order 30A, including whether it believes the Standing Order captures provision that the Senedd can pass only with the consent of a Minister of the Crown.

Recommendation 1. The Welsh Government should clarify:

- its interpretation of “within the legislative competence of the Senedd” in Standing Order 30A”;
- how its interpretation of Standing Order 30A compares with its interpretation of “for any purpose within the legislative competence of the Senedd” in Standing Order 29;

⁸ [Legislation, Justice and Constitution Committee](#), 3 June 2024

- whether it believes changing the functions of a reserved authority without consent is within legislative competence for the purposes of Standing Order 30A;
- to what extent does it rely on the carve-out in Standing Orders 29 and 30 regarding “incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd”.