

GREAT BRITISH ENERGY BILL

Memorandum from the Department of Energy Security and Net Zero to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Great British Energy Bill (“the Bill”). The Bill was introduced in the House of Commons on 25 July 2024. This memorandum identifies the provisions of the Bill that confer powers to make directions and prepare strategic plans/statements. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The purpose of this Bill is to enable the Secretary of State to designate a company as Great British Energy (GBE) and place it on a statutory footing. GBE will be an operationally independent company wholly owned by the government. Its objects are set out at clause 3 and GBE must secure that its articles of association contain a statement of those objects. GBE will be a company limited by shares and wholly owned by the Secretary of State.
3. The Bill allows the Secretary of State to provide financial assistance to GBE. It also requires the Secretary of State to give strategic vision to GBE by preparing a statement of strategic priorities and also allows for directions to be given by the Secretary of State to GBE.

C. DELEGATED POWERS

4. The Bill does not contain any delegated legislative powers exercisable by statutory instrument. The Bill provides that the Secretary of State must prepare and lay before Parliament a statement of strategic priorities for GBE (Clause 5); and enables the Secretary of State to give specific or general directions to GBE, with which it must comply, and which must be published (Clause 6). These measures will provide some scope for the Secretary of State to steer and direct GBE’s operations and arguably have some degree of legislative character in view of their potential legal effects in relation to GBE’s activities.

Clause 5: Duty to prepare strategic statement

Power conferred on: The Secretary of State

Power exercised by: preparing and laying a statement before Parliament;

Parliamentary Procedure: none

Context and Purpose

5. The Government’s policy is that GBE will be operationally independent.

6. However, given GBE's broad and potentially shifting responsibilities over time it is considered necessary that the Secretary of State has a mechanism through which to guide the strategic direction of GBE in line with government policy. Clause 5, together with the power to direct GBE at clause 6, provides this appropriate mechanism.
7. Clause 5 requires the Secretary of State to prepare and lay before Parliament a statement of strategic priorities for GBE. Such a statement may be revised or replaced by the Secretary of State. The policy intention is that the statement will provide GBE with a steer on where in the Government's view GBE should prioritise and focus its activities.
8. Clause 5 also requires GBE to secure that its articles of association provide for it to publish and act in accordance with strategic plans, which must reflect the Secretary of State's strategic statement; and for GBE to update those plans whenever the Secretary of State's strategic statement is revised or replaced.
9. This power arguably has some degree of legislative character in that it will operate so as to require GBE to amend its articles of association in the case of a strategic statement.

Justification for taking the power

10. GBE will be a government-owned company and as such will have broad general powers under the Companies Act 2006. The Bill sets out GBE's objects which will limit the scope of the activities which GBE is able to undertake.
11. The specific nature and scope GBE's activities may change over time and is designed to be a flexible to undertake different activities and assume and relinquish responsibilities over time.
12. Therefore, instead of including specific functions, powers, duties and objectives for GBE on the face of the Bill, the power in clause 5 enables the Secretary of State to have a degree of influence over the strategic direction of GBE, which can be adapted over time. The flexible nature of the strategic statement, and Secretary of State's ability to revise it, ensures that the strategic priorities of GBE are appropriate and able to evolve.
13. The strategic statement duty will enable an appropriate allocation of responsibility and accountability as between the Secretary of State and GBE as regards strategic and operational matters. GBE will be required, in its articles of association, to act in accordance with the Secretary of State's strategic plans. Within this framework GBE will be able to make operational decisions at its own discretion.
14. The Government considers this provision provides for the appropriate level of oversight and influence over GBE's activities while still allowing GBE to operate independently.

15. The Bill also provides that the Secretary of State must consult with the devolved administrations when the subject matter of the statement would be within the legislative competence of those administrations (as provided at clauses 5(4) – (6)) which provides further transparency.

Justification for the procedure

16. As is usual, no Parliamentary procedure is considered necessary in respect of issuing a strategic statement. The Department considers that the preparation of a strategic statement would be an executive, rather than legislative, function and is not the type of document suited to a formal use of Parliament's time. However, strategic statements will be laid before Parliament and published for transparency. This will enable Parliament to be appraised of the Government's intentions for the strategic direction of GBE, and any updates to it and to engage with the Statement as it considers necessary.

Clauses 6: Power to give directions to GBE

Power conferred on: The Secretary of State

Power exercised by: publishing and laying a direction before Parliament

Parliamentary Procedure: none

Context and Purpose

17. The context and purpose set out in paragraphs 5-6 above also applies to this clause 6.
18. Clause 6 of the Bill gives the Secretary of State the power to give directions to GBE of a specific or general nature. GBE is required by subsection (2) to comply with such a direction. The Secretary of State is not able to give a direction until it has consulted with GBE, and such other persons as the Secretary of State considers appropriate. Any direction given must be published by the Secretary of State and laid before Parliament.
19. Similar powers have been taken elsewhere in legislation. For example, the Treasury has a power to direct the Bank of England (except for with regard to monetary policy) following consultation with the Governor (provided by the Bank of England Act 1946) and the UK Infrastructure Bank following consultation with the Bank's directors (provided by the Infrastructure Bank Act 2023) and the Secretary of State may direct Great British Nuclear following consultation with Great British Nuclear and other persons the Secretary of State considers appropriate (provided by Chapter 4 of Part 14 of the Energy Act 2023).

Justification for taking the power

20. While the Secretary of State will use the strategic statement under clause 5 to influence the strategic direction of GBE, this power of direction over GBE

complements the general oversight of GBE. It is not envisaged that directions will be issued regularly by the Secretary of the State but the power will allow the Secretary of State flexibility to set direction and, where necessary, influence GBE. This supports the Secretary of State in the democratic oversight of GBE. This is also important given the broad objects of GBE. Given the public policy nature of the objects of GBE it is important to ensure that the Secretary of State can easily and dynamically influence GBE, taking into account related policies which the Government may be pursuing. The use of directions is also a transparent means through which the Secretary of State can focus GBE on its activities.

21. The power to give a direction will also create clear lines of responsibility and accountability as between the Secretary of State and GBE. Such directions will enable the Secretary of State and GBE to respond to situations as they may arise. Matters addressed in such directions would not be suitable for inclusion on the face of the Bill as, by their nature, are reactive to the situation being dealt with.
22. In terms of transparency, the Secretary of State must publish and lay before Parliament any directions given to GBE under clause 6. In addition, the clause requires prior consultation with GBE and any other person the Secretary of State considers appropriate, before a direction can be issued. These steps will ensure that GBE will be in a position to make any representations it thinks appropriate before a direction can be given. The relative degree of accountability as between GBE and the Secretary of State for any subsequent decisions or actions can be easily established by Parliament and members of the public.

Justification for the procedure

23. In keeping with the approach to other direction making powers, no Parliamentary procedure is considered necessary.

Department for Energy Security and Net Zero
25 July 2024