

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
(MEMORANDUM NO 3)**

ENERGY BILL

1. This legislative consent memorandum (LCM) is laid under Standing Order (SO) 29.2. SO29 prescribes that an LCM must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies, the legislative competence of the Senedd.
2. The Energy Bill (the Bill) was introduced in the UK Parliament, the House of Lords, on 6 July 2022. The passage of the Bill was stalled for a period before resuming its passage in the latter part of 2022. I laid an LCM on 29 June 2023 on the Bill as introduced, which includes a summary of the Bill.
3. I laid a supplementary LCM (sLCM) on 25 July 2023 concerning amendments to the Bill, tabled in the House of Lords on 9 January 2023 and during the House of Commons Committee Stage on 7 June 2023, known as the Offshore Wind Environmental Improvement Package clauses (“OWEIP” and “OWEIP clauses”) that form Chapter 1 of Part 13 of the Bill (OWEIP sLCM).
4. This LCM covers the other amendments to the Bill since introduction and covers the Bill as it left the House of Commons Committee Stage as published on 11 July 2023. Annex 1 shows the clause numbers in the Bill as introduced, and the clause numbers now in the Bill as at 11 July 2023.
5. I am laying this sLCM during recess as the House of Commons has scheduled Report Stage of the Bill on 5 September 2023.
6. The Bill as amended following the House of Commons Committee Stage can be found at <https://publications.parliament.uk/pa/bills/cbill/58-03/0340/220340.pdf>.

Policy Objective

7. The UK Government sets out the purpose and main functions of the Bill in the accompanying Explanatory Notes¹ (the latest version of which are dated 25 April 2023). The UK Government’s stated policy objectives are to help increase the resilience and reliability of energy systems across the UK, support the delivery of the UK’s climate change commitments and reform the UK’s energy system while minimising costs to consumers and protecting them from unfair pricing.

¹ <https://publications.parliament.uk/pa/bills/cbill/58-03/0295/en/220295en.pdf> Energy (parliament.uk)

Update on position since I laid the LCM and OWEIP sLCM before the Senedd

8. I laid an LCM on 29 June 2023, based on the Bill as introduced into the UK Parliament (House of Lords) on 6 July 2022. That LCM stated it was the view of the Welsh Government that it is appropriate to deal with the provisions in the UK Bill as an efficient way to introduce legislation extending to Wales, in particular where policy is generally aligned. A number of schemes or regimes are more appropriately introduced at a pan-UK level, given the cross-border territorial nature of the activities being regulated.
9. There were a significant number of matters of concern with the Bill as introduced. My key concern was a failure of the Bill to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence. It is essential to ensure Welsh Ministers can influence pan-UK schemes or policies that impact significant cross-border projects. As a consequence, I recommended the Senedd withheld consent to the Bill.
10. I laid the OWEIP sLCM on 25 July 2023. In my view the OWEIP clauses as introduced failed to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence. Given those concerns, I recommended the Senedd withheld consent to the OWEIP clauses in the Bill.
11. There has been continued discussions with the UK Government on the Bill where I have repeated my position that where regulations are to be introduced that impact on devolved matters the consent of Welsh Ministers needs to be sought. The UK Government has maintained their position that a process of consultation is sufficient.
12. I remain of the view that there is no reason why we cannot work together to deliver cross-border regulation in a way that avoids regulatory divergence through a process that requires the consent of Welsh Ministers in areas of devolved competence. A process of consultation is not a satisfactory safeguard from a constitutional perspective.

Summary of the changes to the Bill since introduction

Part 1 Licensing of Carbon Dioxide Transport and Storage:

Chapter 1 Licensing of Activities

13. The LCM set out the Welsh Ministers' view that clauses within Chapter 1 of Part 1 of the Bill were within the Senedd's legislative competence because they made provision in the devolved area of carbon dioxide storage. The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon

dioxide capture transport and storage and do not relate to any reservation in Schedule 7A to the Government of Wales Act 2006 (GOWA). The clauses outlined below have been amended in the version of the Bill at 11 July 2023, and still make provision within the legislative competence of the Senedd. Therefore, an sLCM is required for the amendments to these clauses, which are summarised below.

14. Clause 9 (Procedure for licence applications) includes a new subclause (10) which applies the definition of “appropriate devolved authorities” in section 10(6) to subclause (3) whereby the Secretary of state must consult before making regulations under subclauses (2) or (6). This new subclause is welcome clarification, however, I retain the position that the consent of Welsh Ministers should be sought before the Secretary of State makes regulations under clause 9. As a result, I recommend the Senedd withhold consent to clause 9.
15. Clause 19 (Consenting to transfer) includes new subclauses (4) and (5) that have been redrafted to make it clear on the approach the economic regulator must take in instances where the Secretary of State does not give direction to consent to a transfer of a licence under Clause 18 (transfer of licences). These new subclauses are welcome clarification and I recommend the Senedd consent to clause 19.
16. Clause 29 (Power to require information for the purpose of monitoring) includes new subclauses (5) and (6) which deals with the disclose of information to the economic regulator ensuring disclosure does not contravene the data protection legislation. The Welsh Government support this amendment ensuring any information disclosed does not contravene the data protection legislation and recommends the Senedd gives consent to clause 29.
17. Clause 32 (Enforcement of obligations of licence holders) includes a new Schedule 3 to the Bill which makes provision for the enforcement of conditions of licences and of other requirements imposed on license holders by or under Part 1 of the Bill. Schedule 3 replaces the regulation making power for the Secretary of State as set out in clause 32 in the Bill as introduced. We consider it important that a consistent approach to enforcement is in place and welcome the introduction of these regulations in the Bill and recommend the Senedd consent to clause 32.

Part 1 Licensing of Carbon Dioxide Transport and Storage:
Chapter 4 Special Administration Regime

18. Clause 46 (Modification of conditions of licences) has been amended to better reflect that the intent of consultation would be as carbon storage licensing authority in relation to insolvency. In the LCM, the Welsh Government recommended withholding consent subject to further consideration.

19. Following further discussion with the UK Government and subsequent amendment to this clause, our position is that this clause relates to the reserved matter of “Insolvency” and is not within the legislative competence of the Senedd. Senedd consent is therefore not required for clause 46.

Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production: Chapter 1 Revenue Support Contracts

20. Clause 67 (Designation of carbon capture counterparty) subclause (7) the definition of “carbon capture entity” has been amended to a person carrying on activities in the United Kingdom with a view to capturing carbon dioxide that is in the atmosphere and dissolved in sea water, in addition to carbon dioxide that has been produced by commercial or industrial activities as drafted in the Bill as introduced. This clause has also been amended to provide a definition of activities taking place in the “United Kingdom” to include territorial waters adjacent to the United Kingdom (subclause (8)(a)), and waters in a Gas Importation and Storage Zone (subclause (8)(b)).

21. These amendments concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required so far as this amended clause applies in the territorial sea adjacent to Wales. I welcome this and recommend the Senedd consents.

22. Clause 73 (Power to appoint allocation bodies) a new subclause (2) has been added so that the power to appoint under subclause (1) may be exercised so that more than one appointment has effect under that paragraph at the same time. This amendment makes provision that concerns the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required in so far as it relates to carbon dioxide capture, but not hydrogen production. We recommend the Senedd withhold consent. Consent from Welsh Ministers should be sought if the regulations contain provisions that would be within devolved competence.

Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production: Chapter 2 Decommissioning of Carbon Storage installations

23. Clause 92 (Financing of costs of decommissioning etc) subclause (1) has been amended to specify that the Secretary of State may by regulations make provision for requiring relevant persons to provide security relating to the future abandonment or decommissioning of “carbon dioxide-related sites, pipelines or installations”. This amends the Bill as drafted which referred to a “carbon storage installation”. Subclause (2) defines “carbon dioxide-related” and subclause (3) defines the location of sites to include

those in, under or over the territorial sea adjacent to the UK or waters in the Gas Importation and Storage Zone.

24. The amendments to this clause make relevant provision as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required in so far as this amended clause applies in the territorial sea adjacent to Wales.
25. These amendments provide greater clarity to the scope of the regulations and we recommend the Senedd consents to clause 92.

Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production:
Chapter 5 Carbon Storage information and samples

26. A new Chapter 5 (Carbon storage information and samples), consisting of clauses 106 to 126, has been inserted into Part 2. Broadly, this Chapter makes provision relating to carbon storage information and samples of substances acquired by or on behalf of a licensee in the course of carrying out activity under the licensee's carbon storage license. The carbon storage license means a license granted or having effects as if granted by the Oil and Gas Authority (OGA) under section 18(1) of the Energy Act 2008 (clause 106(2)).
27. This Chapter makes provision in respect of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required for the clauses in this Chapter, which are briefly summarised below:
 - 27.1. Clause 106 (Key definitions) and clause 126 (Interpretation of Chapter 5) contain definitions used throughout this Chapter.
 - 27.2. Clause 107 (Retention of information and samples) regulates for the requirement that information on carbon storage information and samples may be required by specified licensees.
 - 27.3. Clause 108 (Preparation and agreement of information and samples plans) requires that a responsible person must prepare an information and samples plan.
 - 27.4. Clause 109 (Information and samples plans: supplementary) requires any changes to information and samples plans must be agreed by the OGA.
 - 27.5. Clause 110 (Information and samples: coordinators) requires the appointment of an information and samples coordinator within a licensee or exploration operator.

- 27.6. Clause 111 (Powers of OGA to require information and samples) gives power to the Oil and Gas Authority to require information and samples.
- 27.7. Clause 112 (Prohibition on disclosure of information or samples by OGA) prohibits the disclosure of information or samples by the OGA.
- 27.8. Clause 113 (Power of Secretary of State to require information and samples), and new Schedule 7, gives power to the Secretary of State to require information and samples held by the OGA for the purpose of functions conferred by or under any Act, monitoring the OGA's performance or any Parliamentary proceedings.
- 27.9. Clause 114 (Power of OGA to give sanction notices) gives power to the OGA to give sanction notices, which mean the notices referred to in clauses 115 to 118.
- 27.10. Clause 115 (Enforcement notices) defines an enforcement notice.
- 27.11. Clause 116 (Financial penalty notices) defines a financial penalty notice.
- 27.12. Clause 117 (Revocation notices) defines a revocation notice.
- 27.13. Clause 118 (Operator removal notices) sets out the process for an operator removal licence.
- 27.14. Clause 119 (Duty of OGA to give sanction warning notices) is a duty of the OGA to give sanction warning notices.
- 27.15. Clause 120 (Publication of details of sanctions) gives the OGA powers to publish details of any sanctions notice given with exceptions set out in the clause.
- 27.16. Clause 121 (Subsequent sanction notices) gives powers to the OGA for subsequent sanction notices.
- 27.17. Clause 122 (Withdrawal of sanction notices) gives power to the OGA to withdraw a sanction notice.
- 27.18. Clause 123 (Sanctions: Information powers) gives power to the OGA to require documents or other information to be provided in relation to an investigation which concerns a sanctionable requirement or for the purpose of enabling the OGA to decide whether to make a sanction.
- 27.19. Clause 124 (Appeals) introduces a new Schedule 8 which defines the appeals against decisions made by the OGA relating to certain information and samples in Chapter 5.

27.20. Clause 125 (Procedure for enforcement decisions) outlines the procedure for enforcement decisions.

28. There is overlap between the geographical scope of the OGA and the territory over which the Senedd has competence under section 108A of the GOWA insofar as the provisions will apply to storage activities in the Welsh territorial sea. The Secretary of State's regulation making power is limited to carbon storage licences granted by the OGA. As such, these regulations will not extend to activities of the Energy Act 2008 in Wales (landmass and Welsh internal waters) where the Welsh Ministers are the sole licensing authority.

29. It is important that licensed activity have common requirements on information and samples for an efficient system across Great Britain. As such I have sought amendment to this Chapter to include licenses issued by Welsh Ministers with a process of consent sought should the regulations impact on areas of devolved competence. We recommend the Senedd withholds consent to clauses 106-126.

Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production

Chapter 6 General

30. As noted in the LCM, clause 127 (Access to infrastructure) (previously clause 96) gives power to the Secretary of State to make regulations about the acquisition of rights to use a site of geographical storage of carbon dioxide or a pipeline which is used or intended to be used to convey carbon dioxide. This clause has been amended to include a list of the kind of provision which the Secretary of State may by regulation make under this clause, which includes conferring discretions on any person and creating criminal offences. This clause makes provision in respect of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required.

31. Before making regulations under this part the Secretary of State must consult with Welsh Ministers if the regulations contain provisions that would be within the legislative competence of the Senedd. The requirement to consult should be amended to a requirement to seek the consent of Welsh Ministers so I recommend the Senedd withholds consent to clause 127.

Part 11 Energy Savings Opportunity Schemes

32. A new Part has been introduced to the Bill in relation to the Energy Savings Opportunity Scheme (ESOS). These measures are intended to improve the quality of ESOS audits and provide powers to expand the scheme to include net zero elements in audits and more businesses. These amendments will apply UK-wide. The clauses listed below make

provision within the legislative competence of the Senedd to the extent that provision is about the encouragement of energy efficiency (otherwise than by prohibition or regulation).

- 32.1. Clause 250 (Energy savings opportunity schemes) gives power to the Secretary of state to regulate to establish one or more ESOS.
 - 32.2. Clause 251 (Application of energy savings opportunity schemes) relates to the processes for applying for ESOS.
 - 32.3. Clause 252 (Requirement for assessment of energy consumption) sets out a requirement for carrying out assessments of energy consumption.
 - 32.4. Clause 253 (Assessors) provides for ESOS regulations to confer functions on an assessor in relation to assessing, monitoring and reporting on compliance with requirements imposed by the regulations.
 - 32.5. Clause 254 (ESOS action plans) provides for ESOS regulations to make provision for participants to produce ESOS action plans.
 - 32.6. Clause 255 (Action to achieve energy savings or emissions reductions) sets out the actions the ESOS regulations may provide for.
 - 32.7. Clause 256 (Scheme administration) provides for ESOS regulations to set out the scheme administration.
 - 32.8. Clause 259 (ESOS regulations: procedure etc) sets out the procedure for ESOS regulations to come into force including a requirement for the Secretary of State to consult with Welsh Ministers to the extent that regulations contain provisions within devolved competence.
 - 32.9. Clause 260 (Directions to scheme administrators) gives powers to the Secretary of State to give directions to a schemes administrator.
 - 32.10. Clause 261 (Financial assistance to scheme administrators and participants) gives powers to the Secretary of State to give or arrange to give financial assistance to scheme administrators and participants.
 - 32.11. Clause 262 sets out the interpretation of Part 11.
33. The Welsh Government supports a UK wide ESOS. However, where ESOS regulations contain provisions within the devolved competence of the Senedd the Secretary of State must seek the consent of Welsh Ministers before making regulations. Specifically, I recommend the Senedd withholds consent to clause 259, it is my view that the Secretary of State must seek the consent of Welsh Ministers before making

regulations if the regulations contain provisions that would be within the legislative competence of the Senedd.

UK Government view on the need for consent

34. The UK Government agrees that Senedd consent is required. Specifically, the UK Government have concluded that:

- 34.1. For Part 1 on Licensing of Carbon Dioxide Transport and Storage, provisions across the Part engage the LCM process. However, there are some provisions related to reserved matters, notably those dealing with functions under competition law and insolvency processes.
- 34.2. For Part 2 on Carbon Dioxide Capture, Storage etc and Hydrogen Production, provisions across the Part engage the LCM process in so far as carbon capture and the transport and storage of CO₂ are matters that are generally within devolved competence. However, they have concluded that provisions in respect of hydrogen are reserved by virtue of the D2 Oil and Gas reservation in the GOWA and are therefore outside devolved competence. Where clauses relate to the hydrogen levy and its administration, the UK Government deem such provision is a reserved matter as relating to a tax for the purposes of the A1 reservation and the LCM process is not engaged.
- 34.3. For Part 11 on ESOS the UK Government have deemed that the LCM process is engaged in for this Part but does not provide any specific details as to individual clauses.

Welsh Government position on the changes to the Energy Bill up to 11 July 2023

35. I laid an LCM on 29 June 2023 on the Bill as introduced. The amendments made to the Bill since introduction do not change my position contained within that LCM.
36. The Welsh Government welcomes a number of the amendments to the Bill as they provide useful clarifications and additional detail on how the measures first introduced in the Bill will operate. It remains the position of the Welsh Government that the contains essential provisions to help support the transition of the UK towards net zero.
37. As with the Bill as introduced, in a number of areas, the amendments made to the Bill do not sufficiently respect the competence of the Senedd. Specifically, the Welsh Government recommends the Senedd withhold consent on clauses 9, 73, 106 to 126, 127 and 259 and we are seeking a requirement for the Secretary of State to seek the consent of Welsh Ministers before new regulations with respect to Chapters 5 and 6 of Part

2, and Part 11 can come into effect. The following table summarises my position.

Table 1: Summary Welsh Government position on consent

Clauses as amended – Energy Bill 11 July 2023	
Recommend the Senedd consent	Recommend the Senedd withholds consent.
Part 1: 19, 29, 32.	Part 1: 9
Part 2: 67, 92.	Part 2: 73, 106-126, 127.
Part 11: 250-256, 260-262	Part 11: 259
Schedule 3	Schedules 7 and 8

Financial implications

38. There may be financial implications for the Welsh Government which may need to be considered. Were the Bill to introduce any new powers that were to be administered by Welsh Ministers, assurances would need to be sought from the UK Government of corresponding resource being made available.

Conclusion

39. Whilst delivery of these provisions in a UK Bill could be an appropriate way to legislate, unless and until the matters of concern have been resolved, I do not recommend the Senedd consents to this Bill.

Julie James MS
Minister for Climate Change
01 September 2023

Annex 1:

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
Part 1 – Licensing of Carbon Dioxide Transport and Storage		
1	Principal objectives and general duties of Secretary of State and economic regulator	1
2	Prohibition on unlicensed activities	2
3	Consultation on proposals for additional activities to become licensable	3
4	Territorial scope of prohibition	4
5	Exemption from prohibition	5
6	Revocation or withdrawal of exemption	6
7	Power to grant licences	7
8	Power to create licence types	8
9	Procedure for licence applications	9
10	Competitive tenders for licences	10
11	Conditions of licences: general	11
12	Standard conditions of licences	12
13	Modification of conditions of licences	13
14	Modification of conditions under section 13: supplementary	14
15	Modification by order under other enactments	15
16	Interim power of Secretary of State to grant licences	16
17	Termination of licence	17
18	Transfer of licences	18
19	Consenting to transfer	19
20	Appeal to the CMA	20
21	Procedure on appeal to CMA	21

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
22	Determination by CMA of appeal	22
23	CMA's powers on allowing appeal	23
24	Time limits for CMA to determine an appeal	24
25	Determination of appeal by CMA: supplementary	25
26	Provision of information to or by the economic regulator	26
27	Power of Secretary of State to require information	27
28	Monitoring, information gathering etc	28
29	Power to require information for purposes of monitoring	29
30	Duty to carry out impact assessment	30
31	Reasons for decisions	31
32	Enforcement of obligations of licence holders	32
33	Making of false statements etc	33
34	Liability of officers of entities	34
35	Criminal proceedings	35
36	Functions under the Enterprise Act 2002	36
37	Functions under the Competition Act 1998	37
38	Sections 36 and 37: supplementary	38
39	Forward work programmes	39
40	Information in relation to CCUS strategy and policy statement	40
41	Annual report on transport and storage licensing functions	41

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
42	Transport and storage administration orders	42
43	Objective of a transport and storage administration	43
44	Application of certain provisions of the Energy Act 2004	44
45	Conduct of administration, transfer schemes etc	45
46	Modification of conditions of licences	46
47	Modification under the Enterprise Act 2002	47
48	Power to make further modifications of insolvency legislation	48
49	Interpretation of Chapter 4	49
50	Transfer schemes	50
51	Consultation in relation to transfers	51
52	Conduct of transfer schemes	52
53	Cooperation of storage licensing authority with economic regulator	53
54	Amendments related to Part 1	54
55	Interpretation of Part 1	55
Part 2 – Carbon Dioxide Capture, Storage ETC and Hydrogen Production		
56	Chapter 1: interpretation	56
57	Revenue support contracts	57
58	Duties of revenue support counterparty	58
59	Designation of transport and storage counterparty	59
60	Direction to offer to contract	60
	Designation of hydrogen transport counterparty	61
	Direction to offer to contract with eligible	62

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
	hydrogen transport provider	
	Designation of hydrogen storage counterparty	63
	Direction to offer to contract with eligible hydrogen storage provider	64
61	Designation of hydrogen production counterparty	65
62	Direction to offer to contract with eligible hydrogen transport provider	66
63	Designation of carbon capture counterparty	67
64	Direction to offer to contract with eligible hydrogen storage provider	68
65	Appointment of hydrogen levy administrator	69
66	Obligations of relevant market participants	70
	Payments to relevant market participants	71
67	Functions of hydrogen levy administrator	72
68	Power to appoint allocation bodies	73
69	Standard terms of revenue support contracts	74
70	Allocation notifications	75
71	Allocation of contracts	76
72	Duty to offer to contract following allocation	77
73	Modification of standard terms	78
74	Sections 75 to 78: supplementary	79
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Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
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76	Application of sums held by a revenue support counterparty	82
77	Information and advice	83
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78	Consultation	85
79	Transfer schemes	86
80	Modification of transfer schemes	87
81	Shadow directors, etc	88
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82	Financing of costs of decommissioning etc	92
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84	Provisions relating to Part 4 of the Petroleum Act 1998	94
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87	Change of use relief: supplementary	97
88	Designation of strategy and policy statement	98
89	Duties with regard to considerations in the statement	99
90	Review	100
91	Procedural requirements	101
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Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
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	Power of Secretary of State to require information and samples	113
	Power of OGA to give sanction notices	114
	Enforcement notices	115
	Financial penalty notices	116
	Revocation notices	117
	Operator removal notices	118
	Duty of OGA to give sanction warning notices	119
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Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
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Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
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Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
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Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
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Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
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