LEGISLATIVE CONSENT MEMORANDUM
GROWTH AND INFRASTRUCTURE BILL

Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Minister for Energy, Enterprise and Tourism, is:

“That the Parliament agrees that the provisions of the Growth and Infrastructure Bill, introduced in the House of Commons on 18 October 2012, relating to the conferral of new powers on the Scottish Ministers to vary consents granted under Section 36 of the Electricity Act 1989 for the construction, extension or operation of electricity generating stations and to the amendment of the Town and Country Planning (Scotland) Act 1997 in relation to the grant and variation of deemed planning permissions either in relation to such generating stations and ancillary development or in relation to overhead electric lines and ancillary development, should, insofar as these matters fall within the legislative competence of the Scottish Parliament or confer new functions on the Scottish Ministers, be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by Fergus Ewing, Minister for Energy, Enterprise and Tourism, under Rule 9.B.3.1(a) of the Parliament’s standing orders. The Growth and Infrastructure Bill was introduced in the House of Commons on 18 October 2012. The Bill can be found at:

http://services.parliament.uk/bills/2012-13/growthandinfrastructure.html

Content of the Growth and Infrastructure Bill

3. The Bill makes provision in connection with facilitating or controlling the provision or use of infrastructure, the carrying-out of development, and the compulsory acquisition of land; to make provision about when rating lists are to be compiled; to make provision about the rights of employees of companies who agree to be employee owners; and for connected purposes.

Provisions Which Relate to Scotland

4. The Bill proposes amendments to the Electricity Act 1989 to enable consents granted under section 36 to be varied. In relation to Scotland, the power to grant consent under section 36 has been executively devolved to the Scottish Ministers. When granting consent under section 36 the Scottish Ministers may direct that planning permission for the development is deemed to be granted. The equivalent powers available to the Secretary of State are contained in section 90(2) of the Town and Country Planning Act 1990.

5. The changes to section 57 of the Town and Country Planning (Scotland) Act 1997 will enable the Scottish Ministers, when varying a section 36 consent or
section 37 consent, to vary the terms of the related planning permission. Ministers currently have, in terms of section 37(3)(b) of the Electricity Act 1989, the power to vary section 37 consents for the installation of overhead electric lines but not the power when doing so to also vary the related planning permission. The opportunity is also being taken to amend an anomaly in section 57 which currently only applies to consents for the construction of onshore generating stations.

Reasons for seeking a legislative consent motion

6. The Bill confers new functions directly on the Scottish Ministers in relation to the reserved matter of electricity generation and so alters the executive competence of the Scottish Ministers. By amending the Town and Country Planning (Scotland) Act 1997, the Bill also includes provisions extending to Scotland within the legislative competence of the Scottish Parliament. It is therefore a relevant Bill for the purposes of Standing Orders, and an LCM is required.

7. The UK Government propose to enable those who hold consents to construct generating stations issued under Section 36 of the Electricity Act 1989 to apply to have their consents varied by the Secretary of State (or Scottish Ministers in Scotland) so as to take account of post-consent developments in generating station technology and design changes, or required changes to conditions which have subsequently emerged, and that cannot be implemented under their existing consents. The UK Government propose corresponding changes to Section 57 of the Town and Country Planning (Scotland) Act 1997 to give the Scottish Ministers additional powers, when varying a Section 36 consent or Section 37 consent, to vary the terms of the related planning permission. The amendment will be very useful in removing a restriction on dealing with errors or changes in circumstances which has been problematic in the past, and which was set to become more so in future.

8. The Scottish Government asked for legislative devolution of both section 36 and Section 37 back in 2008 but this was refused by DECC. That remains the Government’s preferred position, but these proposals go some way to offering an alternative.

9. A UK Bill and accompanying LCM provides the most appropriate legislative mechanism in this instance because the primary changes relate to non-devolved matters. There are clear benefits for end-users in making changes which allow the sort of flexibility to amend consents, subject to appropriate applications and consultation, which is provided for in other, comparative planning legislation.

Consultation

10. The provisions set out in the Bill have not been subject to detailed consultation but, in enabling variation to consents, bring the law relating to section 36 consents under the Electricity Act 1989 into line with comparative planning legislation such as the Town and Country Planning (Scotland) Act 1997 and section 37 of the Electricity Act 1989 itself, which allow for variation of consents.
11. Within the abbreviated timescales provided by the UK Government for clearance of measures for inclusion in the Bill, it has not been possible to consult developers. However, previous contact with developers wishing to have their consents varied indicates that they would strongly support the measure.

12. Similarly, it’s not been possible to consult other potentially interested parties. However, there is a clear intention to ensure that all interested parties, including local authorities and members of the public, will have a chance to make their views known on specific applications to vary consents during a public consultation period. Scottish Ministers will give careful consideration to those views before taking a decision.

Financial Implications

13. It seems likely that the flexibility which the amendments will bring could have a significant impact on reducing the financial and regulatory burden to developers seeking to bring a consented development to fruition. Although an appropriate process would still have be followed and consultation on any proposed amendments to a consent would be required, it is nevertheless envisaged that these requirements would not present the same financial risk and burden to a developer as embarking on a new section 36 application would present.

Conclusion

14. The view of the Scottish Government is that the Growth and Infrastructure Bill, insofar as its subject matter falls within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

Scottish Government
01 November 2012