



Ministry of Housing,  
Communities &  
Local Government

**Rt Hon Angela Rayner MP**

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Stuart McMillan MSP  
Convenor, Delegated Powers and Law Reform  
Committee  
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Dear Stuart,

Thank you for your letter which sets out the Scottish Parliament's Delegated Powers and Law Reform Committee's questions about the delegated powers in the Planning and Infrastructure Bill.

As you are aware, the Bill cuts across a variety of policy areas and multiple government departments. As such, the below explanations reflect subject matters which sit under the direct responsibilities of my ministerial colleagues. However, I have outlined the answers below to aid both your Committee and the Net Zero, Energy and Transport Committee in their consideration of the measures.

### **Consents for Electricity Infrastructure in Scotland**

You have asked several questions about clauses 14, 15 and 20 of the Bill. As you note in your letter, Scottish Ministers have executive competence for electricity infrastructure consenting in Scotland under the Electricity Act 1989. The bill provisions do not seek to change this position.

Clauses 14, 15 and 20 grant powers to Scottish Ministers and the Secretary of State to bring forward regulations. Although this enables both governments to bring forward regulations which would be laid in one parliament (not both), DESNZ and Scottish Ministers have agreed that the expectation is that the Scottish Government will lead on the development of the first set of regulations to be laid in the Scottish Parliament. The regulations will be technical and operational in nature as they relate to the processes of the reformed consenting system in Scotland on which Scottish Ministers, with responsibility for operating and making decisions within the consenting framework, are best placed to decide.

The UK and Scottish Governments consider that a consult duty for powers under Clauses 14, 15 and 20 is a pragmatic and proportionate approach, and is consistent with how the UK and Scottish Governments have been working collaboratively on the consenting reforms to date.

DESNZ and the Scottish Government will continue their close joint working on the reforms to electricity infrastructure consenting in Scotland. Future decisions on the exercise of these powers

relating to regulations will be agreed between both governments during the implementation of the reforms but on the default understanding that the Scottish Government will lead on the regulations using these powers.

### **Fees for applications for Harbour Orders**

On clause 96 granting power to make commencement provision for harbour order regulations under clause 42, both governments agree that the making of regulations under new paragraph 9A in Schedule 3 to the Harbours Act 1964, be a devolved matter in Scotland. Provisions for the new system of setting fees will come into effect two months from Assent. To ensure that fees can still accompany harbour orders before regulations are made the provision repealing the current power to determine fees will be commenced by regulations. The new fees system will take precedence over the current system upon commencement of this clause. As such, the way clause 42(7) operates means that there is no practical need for the previous regime to be switched off for the new fees regs to be made. However, a decision on the desired timing for this repeal in Scotland will be necessary following discussion with the Devolved Governments. The Secretary of State would, as a routine matter, make the commencement order at a date of Ministers in the Devolved Government's choosing.

While there have been some exceptions, the conventional approach to commencement orders is for them to be made by the same body that introduced the parent legislation. The UK Government is committed to collaboratively working with the Scottish Government, and the Secretary of State can commit to agreeing a commencement date with Scottish Ministers. In the nature of the business of preparing for a change in fee structures, we would not expect there to be any difficulty in providing the Department for Transport with sufficient notice to avoid any logistical difficulties in this regard. We therefore consider this to be a conventional arrangement, and one that should pose no impediment to legislative consent.

Thank you for writing on this important matter.

Yours ever,

**RT HON ANGELA RAYNER MP**

Deputy Prime Minister and Secretary of State for Housing, Communities & Local Government