



The Scottish Parliament
Pàrlamaid na h-Alba

The Rt Hon Michael Gove
MP,
Secretary of State for
Levelling Up, Housing and
Communities and Minister
for Intergovernmental
Relations
By email only

Local Government, Housing and Planning Committee
The Scottish Parliament
Edinburgh
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09 November 2022

Dear Michael,

Levelling-Up and Regeneration Bill: Part 3, Chapter 1 (Planning Data)

The Local Government, Housing and Planning Committee has been designated a secondary committee for consideration of the Legislative Consent Memorandum (LCM) lodged by the Scottish Government on the Bill. Our scrutiny is focussing on aspects of the Bill which engage with devolved competence in respect of planning data, namely through the provisions outlined in part 3, Chapter 1 of the Bill which gives the Secretary of State the power to regulate the processing of planning data by planning authorities, to create binding “approved data standards” for that processing. The Scottish Government’s LCM states that the Bill would enable the Secretary of State to create such standards after consulting Scottish Ministers, thereby enabling the UK Government “to legislate within areas of devolved competence following consultation with Scottish Ministers.” We note that there is no requirement on the face of the Bill for either Scottish ministers or the Scottish Parliament to consent to UK ministers legislating in areas of devolved competence.

At our meeting on 25 October 2022, the Committee took evidence on the LCM from a panel of planning professionals¹. We then took evidence from The Minister for Public Finance, Planning and Community Wealth (“the Minister”) on 1 November 2022. Following these sessions, we are now seeking further clarity on a number of points in relation to the Bill.

¹ [Official Report \(parliament.scot\)](#)

² [Official Report \(parliament.scot\)](#)

All of our witnesses referred in evidence to “Transforming Places Together: Scotland’s digital strategy for planning” which was published in November 2020 and covers planning applications as well as building standards. We heard of the benefits that a coherent and trusted set of data could bring, particularly for spatial planning. However, our witnesses noted the lack of clarity in the Bill which “does not say what the data standards will be or provide any detail on the process that is to be undertaken to take them forward, other than to say that UK Government ministers will need to consult Scottish ministers.” We further note that the Bill provides no indication of a timetable for implementation. Heads of Planning Scotland pointed out that “if the data standards are introduced in the next year or so, there will be a huge resource issue for us if we are to amend our standards to comply with the legislation.”

Clause 75(2) of the Bill sets out a definition of planning data which would include “any information which is provided to, or processed by,” the planning authority “for the purposes of a function under a relevant planning enactment.” A relevant planning enactment would include any enactment made by the Secretary of State under Part 5 of the Bill which relates to Environmental Outcome Reports. The Minister expressed a willingness to engage with the UK Government should you wish “to engage constructively, recognise the competence of this Parliament and not stick to acting in a way that means that it can legislate without the agreement of the Parliament.” The key issue for him was that definitions of planning data for these purposes should not be mandated by the UK Government.

The Minister also expressed frustration at the lack of meaningful engagement between the two governments before the Bill was introduced. Whilst he recognised and supported the need for planning data standards in principle, in his view, “the lack of detail on how the provisions will be implemented leaves unanswered questions.” He also highlighted the potential for conflict with the work being undertaken on the digital planning transformation programme and spoke of the risk that “we could find ourselves in the unhelpful situation of having Scottish planning authorities being subjected to conflicting measures, with one imposed on them through a UK bill and the other agreed through mutual collaboration in order to improve our planning system in line with our own domestic legislation and priorities.” In his view, the “crucial point is that the requirement is that there be consultation only—not consent and not agreement, but consultation.”

The Minister highlighted the extensive engagement that the Scottish Government had undertaken with stakeholders and contrasted this with the UK Government approach which, for him, was seeking “in effect to undermine and go against the spirit of devolution.” In his view, “the lack of consultation and detail in advance of the bill does not bode well for how UK ministers intend to consult if the Bill becomes an Act.”

Our witnesses noted that Scotland’s local authorities used digital planning systems in slightly different ways and spoke of the benefits that a consistent digital approach could bring. In respect of businesses operating across the UK, Homes for Scotland stated that it had not received any feedback from members that a UK-wide approach was needed. Whilst they acknowledged that such an approach might bring benefits,

they were unable to provide a definitive answer without knowing exactly what the data provisions might be.

The Committee also explored the potential impact of the Bill on the National Planning Framework (NPF4), a long-term plan looking to 2045 that will guide spatial development, set out national planning policies, designate national developments and highlight regional spatial priorities. The Minister noted that any impact on data could have an indirect impact on delivery of NPF4 but did “not want to indulge too much in speculation; ultimately, we do not have enough clarity from the UK Government to come to a fully informed view.”

We note the letter of 25 October from the Minister for Levelling Up to the Delegated Powers and Law Reform Committee which states that discussions are taking place with the devolved administrations which are intended to address whether these concurrent digital powers should extend to the devolved administrations. The letter confirms that “the UK Government will bring forward amendments to ensure the Bill reflects what is agreed with the Scottish Government” The Minister’s officials confirmed in evidence that they have ongoing dialogue with UK officials but that “we have not seen any proposals about what the replacement clauses would look like; we have not had sight of any drafts, which is a concern...The process itself remains unknown and the timetable for further meaningful proposals to come forward is also unknown.”

Given the lack of clarity on several aspects of the planning data parts of the Bill as set out above, the Committee is currently unable to make a recommendation on whether the Parliament should consent to UK ministers legislating in areas of devolved competence. I would therefore be grateful if you could provide a response to the questions below by no later than 22 November.

1. How will planning data be defined and what will qualify as a “relevant planning enactment”? Why will certain data sets be specified on the face of the Bill whilst others won’t?
2. What would happen in circumstances where planning applicants have already provided data sets that do not comply with the new data standards? Would any such application be invalidated, thereby causing delays in development?
3. What consideration has been given to the Bill’s interaction with Scotland’s digital strategy for planning?
4. What are your expected timescales for the parliamentary passage of the Bill and under what timescales does the UK Government intend to implement its planning data provisions?
5. Can you provide an update on progress in agreeing amendments to the Bill with Scottish ministers? What role do you envisage for the Scottish Parliament in providing democratic oversight of these discussions?
6. What consideration has been given to the potential impact of the Bill on NPF4?

I am copying this letter to the Convener of the Net Zero, Transport and Energy Committee. I look forward to your response.

Yours sincerely,

Ariane Burgess, Convener,
Local Government, Housing and Planning Committee