

Supplementary Legislative Consent Memorandum

Planning and Infrastructure Bill

Background

1. This memorandum has been lodged by Fiona Hyslop MSP, Cabinet Secretary for Transport in accordance with Rule 9B.3.1 (c) of the Parliament's Standing Orders.
2. The Planning and Infrastructure Bill was introduced by the UK Government in the House of Commons on 11 March 2025. The Bill is available on the UK Parliament website via this link: [Planning and Infrastructure Bill publications Parliamentary Bills - UK Parliament](#).
3. The Scottish Government lodged an LCM ([LCM-S6-56](#)) on 27 March 2025, recommending that the Parliament consent to clauses 14 to 20 and withhold consent for clause 42 and clause 96(1)(z1) of the Bill. The Scottish Government noted at the time that a supplementary LCM was likely to be required with a final position following discussion between UK Government and Scottish Government officials.

Content of the Bill

4. The Bill covers a number of different subject matters: planning; nationally significant infrastructure projects (NSIPs); the transmission, distribution and supply of electricity; forestry matters, transport and roads; the operation of harbours; the environment; and compulsory purchase.
5. The UK Government has requested legislative consent for a number of provisions in the Bill which extend to Scotland.
6. Notably, clauses 14-20 of the Bill, that the Scottish Government has recommended that parliament consent to, see LCM ([LCM-S6-56](#)), will make various changes to electricity infrastructure consenting in Scotland. The Scottish Ministers are responsible for determining applications for consent under section 36 and section 37 of the Electricity Act 1989, which is reserved legislation.
7. The Bill provisions will provide the Scottish Ministers with regulation-making powers to implement more technical statutory elements of reform. These will be concurrent powers that are exercisable by either the Scottish Ministers or the Secretary of State. The UK Government is of the view that this will provide flexibility by giving both the UK and Scottish Government Ministers the ability to deliver any necessary secondary legislation.

8. The Scottish Government recommended that consent be given to these clauses in the original LCM. That position has not changed and no amendments have been lodged that would trigger the requirement for a supplementary LCM in respect of these provisions. These clauses are not therefore discussed further in this LCM.

9. In relation to ports and harbours, clause 46 (formerly clause 42) of the Bill provides enhanced powers to the Marine Management Organisation (in England and for Milford Haven) and to the Scottish Ministers to recover costs associated with the handling of applications for port development and changes to port and harbour governance arrangements, to improve capacity and capability at the authority for dealing with the applications. This includes a new regulation-making power conferred on the Scottish Ministers to provide for fees to be payable by applicants in connection with applications for harbour revision orders and the repeal of existing powers to determine fees in connection with such applications. Clause 110 (formerly clause 96) of the Bill makes provision about the commencement of clause 46 (among other things).

10. In the original LCM the Scottish Government recommended withholding consent to clauses 42 and 96 as far as it related to clause 42. This supplementary legislative consent memorandum (supplementary LCM) relates to clauses 46 and 110, which were formerly clause 42 and 96 which have been amended to address concerns raised by the Scottish Ministers about the approach to commencement of clause 46 when the Bill was originally introduced. In particular, these amendments adjust the commencement provisions in clause 110 so that the repeal of existing fee-charging powers in the Harbour Act 1964 (“the 1964 Act”) takes effect in each of England, Scotland and Wales only when new fee regulations come into force in the area concerned, rather than conferring the power to commence in all jurisdictions solely on the Secretary of State. The Bill is currently at Committee Stage at the House of Lords, with the relevant amendments tabled on 15 July 2025. The amendments have allowed the Scottish Government to recommend consent to all of the relevant provisions in the Bill as set out in the original LCM and below.

Provisions which require the consent of the Scottish Parliament

11. The Scottish Government considers that legislative consent is required for clauses 46 and 110(1)(x) and (x)(ii) of the Bill, as they make provision for a devolved purpose and alter the executive competence of the Scottish Ministers. The Scottish Government’s view is accordingly that the Bill is a relevant Bill under Rule 9B.1.1 of the Standing Orders so far as clauses 46 and 110(1)(x) and (x)(ii) are concerned. The UK Government agrees with the Scottish Government’s view as regards the relevant clauses.

12. The provisions of the Bill which require the legislative consent of the Scottish Parliament are set out in detail below.

Clause 46 – Fees for applications for harbour orders

13. Clause 46 amends paragraphs 7 and 9 of the 1964 Act to remove the power of the Scottish Ministers to make a determination setting the fees for a harbour revision order and to replace this with a power for the Scottish Ministers to, by regulations, provide for fees to be payable by applicants for harbour revision orders. Regulations may empower or require the Scottish Ministers not to proceed with an application if the fee is not paid.

14. The setting of fees in connection with harbour revision order applications made to the Scottish Ministers is a matter which is within the legislative competence of the Scottish Parliament in light of the exception of ports and harbours from the marine transport reservation in Section E3 of schedule 5 of the Scotland Act 1998. Clause 46 also alters the executive competence of the Scottish Ministers in so far as it removes existing powers to set fees in connection with harbour order applications and confers a new regulation-making power on the Scottish Ministers in that regard. The legislative consent of the Scottish Parliament is accordingly required in relation to clause 46.

Clause 110 (x) and (xa)(ii) – commencement of amendments to the Harbours Act 1964

15. Clause 110(1)(x) and (xa)(ii) makes provision about the commencement of clause 46 in Scotland. When the Bill was introduced, the provisions of clause 46 creating the new power to make regulations about fees for harbour revision orders were to commence two months after the Bill is passed and the provision repealing the existing power for the Scottish Ministers to determine fees in connection with harbour revision order applications was to be commenced on a date appointed by the Secretary of State in regulations.

16. Clause 110 has been amended so that the new powers to set fees and associated requirements in regulations will continue to come into force two months after the Bill is passed and to provide that the existing power to determine fees in connection with harbour order applications will be repealed only when regulations setting out those new arrangements come into force. The repeal of existing fee-charging powers for harbour orders – and the commencement of those repeals – are devolved matters and accordingly the Scottish Parliament's consent is required for clause 110(1)(x) and (xa)(ii).

Reasons for recommending legislative consent

Clause 46 – Fees for applications for harbour orders

17. The effect of clause 46 is to remove the power of the Scottish Ministers to make a determination setting the fees for a harbour revision order (HRO), and instead create a regulation making power for the Scottish Ministers to provide for fees to be payable by applicants for harbour revision orders. Such regulations may give Ministers the power not to proceed with an application if the fee is not paid.

18. Harbour Revision Order fees are devolved, and the levels at which they are set is a decision solely for the Scottish Ministers.

19. Giving legislative consent for clause 46 would provide enhanced powers to the Scottish Ministers to recover the costs associated with the handling of HRO applications. Having additional flexibility to amend the HRO fees structure in Scotland would be welcomed. Whilst the Scottish Government has no current plans to review the fee structure in Scotland, having the option of reviewing the fixed fee system in the future would be advantageous. A review could be built in to future work plans, with any changes to the existing regime requiring policy consideration, stakeholder consultation and the drafting and approval of appropriate legislation. Considerable work therefore needs to be done to evaluate whether such a change should take place. Having the enhanced powers to be able to consider the optimum fee structure would be preferable.

20. The Scottish Government therefore recommends consent for clause 46.

Clause 110(1)(x) and(xa)(ii) – commencement of amendments to the Harbours Act 1964

21. The Bill aims to give each jurisdiction the new regulation-making power in new paragraph 9A of schedule 3 to the Harbours Act 1964, but also to let the existing power to set the fee for an application for a HRO to continue in the meantime, until specifically removed by the coming into force of those paragraph 9A regulations. It is the Secretary of State for Transport who will be making those regulations to remove that determination making power.

22. The UK Government has now proposed an amendment that would adjust the commencement of clause 46 so that the repeal of existing fee-charging powers takes effect in each of England, Scotland and Wales only when new fees regulations come into force in the area concerned.

23. This amendment would result in the existing requirements in relation to payment of fees for harbour orders being repealed only when regulations setting out new arrangements come into force, which would be wholly in the remit of Scottish Ministers.

24. This amendment would remove the risk with the current drafting that if the commencement powers and repeal of the existing HRO fee arrangements in Scotland were to reside with the UK Government, the Scottish Ministers could be left in a position of being unable to charge any harbour revision order fees, if new regulations and a new fee structure was not in place in Scotland.

25. The Scottish Government therefore recommends consent for clause 110(1)(x) and(xa)(ii).

Consultation

26. There has been no broad consultation on this Bill, due to the speed at which it has been introduced and is progressing.

Financial implications

27. There are no financial implications arising directly from these provisions in the Bill.

Post EU scrutiny

28. There are no EU alignment issues. HROs can create and empower Harbour Authorities to undertake works projects or vary their existing powers.

Conclusion

29. The Scottish Government has concluded that relevant clauses amended into the Bill at Committee stage at the House of Lords require consent from the Scottish Parliament.

30. The Scottish Government recommends that the Scottish Parliament consents to:

- Clause 46 which provides enhanced powers for Scottish Ministers to recover costs associated with the handling of applications for port development.
- Clause 110(1)(x) and (xa)(ii) which makes commencement and transitional provision in relation to clause 46.

Draft motion on legislative consent

31. The draft motion, which will be lodged by the Cabinet Secretary for Transport is:

“That the Parliament agrees that clauses 14 to 20, clause 46 and clause 110(1)(x) and (xa)(ii) of the Planning and Infrastructure Bill, introduced in the House of Commons on 11 March 2025 and as amended, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government
August 2025

This Supplementary Legislative Consent Memorandum relates to the Planning and Infrastructure Bill (UK legislation) and was lodged with the Scottish Parliament on 13 August 2025

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